



**MEMORANDUM OF AGREEMENT
FOR THE PROVISION OF TECHNICAL ASSISTANCE
PURSUANT TO SECTION 204(c) OF WRDA 1986, AS AMENDED
MAY 9, 2019**

Applicability and Instructions:

1. The attached agreement is provided as a template to be used in the development of a Memorandum of Agreement (MOA) for the provision of technical assistance to a non-Federal interest carrying out, pursuant to Section 204(b) of WRDA 1986, as amended (33 U.S.C. 2232(b), construction of a Federally authorized water resources development project, or separable element thereof. Guidance on the provision of technical assistance is provided in ER 1165-2-504, dated July 12, 2017, as modified by Implementation Guidance, dated April 12, 2019, for Section 1153 of WRDA 2018. **Note that the provision of technical assistance to a non-Federal interest constructing a project for Federal assumption of maintenance under Section 204(f) is NOT authorized, and so this MOA template may not be used for that situation.**
2. Authority to approve the MOA has been delegated to the MSC Commander, with no further delegation authorized. Division Counsel concurrence that the negotiated MOA is acceptable and legally sufficient is required prior to approval. Signature authority for an MOA, once approved, is delegated to the District Commander.
3. Make all required insertions; remove this cover page; remove the open and close brackets and any instructional text; and ensure the spacing and page breaks throughout the MOA are appropriate.
4. The attached Certificate of Authority and Certification Regarding Lobbying are to be included as a part of the agreement package.

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT FULL NAME OF NON-FEDERAL INTEREST]
FOR THE PROVISION OF TECHNICAL ASSISTANCE
RELATING TO THE
[INSERT FULL NAME OF THE PROJECT] SECTION 204 PROJECT

This MEMORANDUM OF AGREEMENT (hereinafter the “Agreement”) is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for the **[Insert Name of District]** District (hereinafter the “District Commander”), and the **[Insert Full Name of Non-Federal Interest]** (hereinafter the Non-Federal Interest), represented by the **[Insert Title]**.

WITNESSETH, THAT:

WHEREAS, construction of the **[Insert Full Name of the Project]** Project was authorized by **[Insert cite]**;

WHEREAS, Section 204(b) of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2232(b)) authorizes the Non-Federal Interest to undertake construction of a federally authorized water resources development project, or separable element thereof (hereinafter “Section 204 Project”), in accordance with a plan approved by the Secretary of the Army for the Section 204 Project, and subject to any conditions that the Secretary may require; and

WHEREAS, the Government is authorized pursuant to Section 204(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(c)), upon request by the Non-Federal Interest, to undertake all necessary studies, engineering, and technical assistance relating to the Section 204 Project if the Non-Federal Interest pays all costs for the studies, engineering, or technical assistance.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Government shall provide technical assistance in accordance with a scope of work (SOW) developed by the Government and Non-Federal Interest, and any modifications thereto. The SOW shall provide a detailed description of activities to be undertaken with funds provided by the Non-Federal Interest (hereinafter the “Technical Assistance”), including a detailed estimate of cost for each activity and schedules, and identification of travel by Government personnel that may be necessary for the activities covered under this Agreement, with such travel to be undertaken in accordance with the Federal Travel

Regulation, Title 41 of the Code of Federal Regulations, Chapters 300 through 304, and estimated separately. The Government and Non-Federal Interest shall regularly review and update, as necessary, the SOW.

2. The Non-Federal Interest shall provide to the Government funds to pay all costs associated with the Technical Assistance, including the costs of supervision and administration, in accordance with the provisions of this paragraph:

a. Within 15 calendar days after the effective date of this Agreement, the Non-Federal Interest shall provide to the Government \$ _____ to develop the SOW.

b. Within _____ () calendar days after the SOW has been agreed upon by the Government and the Non-Federal Interest and prior to initiating any activities identified in the SOW, the Non-Federal Interest shall provide to the Government the amount specified in the SOW to carry out the Technical Assistance for the Section 204 Project. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount, and, no later than _____ () calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.

c. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED, [Insert District and EROC code, e.g., New Orleans (B2)]” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

3. The Government shall provide the Non-Federal Interest with [Insert “quarterly” or “monthly”, based on Non-Federal Interest preference] reports of obligations for the Technical Assistance. The first such report shall be provided within _____ () calendar days after the final day of the first full [Insert “quarter” or “month”, based on option selected above] of the Government fiscal year following receipt of the funds pursuant to this Agreement. Subsequent reports shall be provided within _____ () calendar days after the final day of each succeeding [Insert “quarter” or “month”, based on option selected above] until the Government completes provision of the Technical Assistance.

4. Following provision of the Technical Assistance and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of the Technical Assistance and furnish the Non-Federal Interest with written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Interest, the Non-Federal Interest, within sixty (60) calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Interest has provided funds in excess of the costs of the Technical Assistance, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Interest’s responsibility to pay all costs of the Technical Assistance, including contract claims or any other liability that may become known after the final accounting.

5. No credit or repayment shall be provided for any funds provided by the Non-Federal Interest and obligated by the Government for the Technical Assistance.
6. The acceptance of such funds for, and the provision of, Technical Assistance will not impact impartial decision making at any level of the Government with respect to the Section 204 Project, either substantively or procedurally.
7. The parties agree to use their best efforts to resolve any dispute in an informal fashion through consultation and communication. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.
8. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.
9. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as shown below. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

If to the Non-Federal Interest:

[Insert Title and Address of Non-Federal Interest representative to receive notices]

If to the Government:

[Insert Title and Address of Government representative to receive notices]

10. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.
11. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.
12. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this Agreement by

providing at least fifteen (15) calendar days written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this Agreement and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

[INSERT FULL NAME OF NON-FEDERAL INTEREST]

BY: _____
[Insert Typed Name]
[Insert Rank], U.S. Army
District Commander

BY: _____
[Insert Typed Name]
[Insert Full Title]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer for the **[Insert Full Name of the Non-Federal Interest]**, that the **[Insert Full Name of the Non-Federal Interest]** is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and the **[Insert Full Name of the Non-Federal Interest]** in connection with the **[Insert Full Name of Project]** Section 204 Project, and that the person who executed this Memorandum of Agreement on behalf of the **[Insert Full Name of the Non-Federal Interest]** acted within **[insert "his" or "her", as applicable]** statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20__.

[SIGNATURE]

[TYPED NAME]

[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF MOA SIGNATORY] _____
[TYPED NAME]
[TITLE IN FULL]

DATE: _____