



MOA

**MEMORANDUM OF AGREEMENT  
FOR THE PROVISION OF TECHNICAL SERVICES  
TO A LOCAL GOVERNMENT PURSUANT TO SECTION 1123 OF WRDA 2018  
MAY 13, 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 services to a local government to assess the reasons a Federally constructed levee owned or operated by the local government is not accredited by the Federal Emergency Management Agency (FEMA). Guidance on the provision of technical services is provided in Implementation Guidance, dated May 2, 2019, for Section 1123 of WRDA 2018.
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 LOCAL GOVERNMENT]  
FOR THE PROVISION OF TECHNICAL SERVICES  
RELATING TO THE  
[INSERT FULL NAME OF THE LEVEE SYSTEM]

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 Local Government]** (hereinafter the “Local Government”), represented by the **[Insert Title]**.

WITNESSETH, THAT:

WHEREAS, the Government is authorized pursuant to Section 1123 of the Water Resources Development Act of 2018 (33 U.S.C. 3306), at the request of a local government, to provide technical services to the local government to assess the reasons a Federally constructed levee owned or operated by the local government is not accredited by the Federal Emergency Management Agency (FEMA), if the local government pays all costs for the technical services;

WHEREAS, Section 1123 of the Water Resources Development Act of 2018 (33 U.S.C. 3306) applies only to complete levee systems in which all levee segments are Federally constructed and owned or operated by local governments or the Government, except non-project segments that were not originally constructed to function as a levee; and

WHEREAS, by letter dated **[Insert Date]**, the Local Government requested the Government to provide technical services to assess the reasons the **[Insert Full Name of the Levee System]** is not accredited by FEMA, and agrees to pay all costs of such technical services upfront.

NOW, THEREFORE, the Government and the Local Government agree as follows:

1. The Government shall provide technical services in accordance with a scope of work (SOW) developed by the Government and Local Government, and any modifications thereto. The SOW shall provide a detailed description of activities to be undertaken with funds provided by the Local Government (hereinafter the “Technical Services”), 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 Local Government shall regularly review and update, as necessary, the SOW.

2. The Local Government shall provide to the Government funds to pay all costs associated with the Technical Services, 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 Local Government 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 Local Government and prior to initiating any activities identified in the SOW, the Local Government shall provide to the Government the amount specified in the SOW to carry out the Technical Services. If at any time the Government determines that additional funds are needed, the Government shall notify the Local Government in writing of the amount, and, no later than \_\_\_\_\_ (\_\_\_) calendar days from receipt of such notice, the Local Government shall provide to the Government the full amount of the additional funds.

c. The Local Government 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 Local Government with [Insert "quarterly" or "monthly", based on Local Government preference] reports of obligations for the Technical Services. 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 Services. The Government shall provide the Local Government a final assessment within sixty (60) calendar days of completion of the Technical Services.

4. Following provision of the Technical Services and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of the Technical Services and furnish the Local Government with written results of such final accounting. Should the final accounting determine that additional funds are required from the Local Government, the Local Government, 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 Local Government has provided funds in excess of the costs of the Technical Services, the Government shall refund the excess amount,

subject to the availability of funds. Such final accounting does not limit the Local Government's responsibility to pay all costs of the Technical Services, 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 Local Government and obligated by the Government for the Technical Services.

6. Nothing in this Agreement affects the responsibilities of the Local Government to operate and maintain the levee for which the Local Government requested an assessment or obligates the Government to expend additional Federal resources on levees operated and maintained by the Government.

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 Local Government 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 Local Government:

**[Insert Title and Address of Local Government 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 Local Government 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 THE LOCAL GOVERNMENT]**

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 Local Government]**, that the **[Insert Full Name of the Local Government]** 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 Local Government]** in connection with the **[Insert Full Name of Levee System]**, and that the person who executed this Memorandum of Agreement on behalf of the **[Insert Full Name of the Local Government]** 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: \_\_\_\_\_