



**SECTION 22 AGREEMENT
FOR THE DEVELOPMENT OF A COMPREHENSIVE PLAN
JUNE 8, 2016
(with updates as of JULY 8, 2019)**

APPLICABILITY AND INSTRUCTIONS:

1. The attached agreement is provided as a template to be used in the development of an agreement for the provision of assistance to develop a comprehensive plan pursuant to Section 22 of the Water Resources Development Act of 1974, as amended (42 U.S.C. 1962d-16). Guidance on the development of comprehensive plans under this authority is provided in Appendix G of ER 1105-2-100. Additional guidance is also provided in the Implementation Guidance for Section 3015 of WRRDA 2014, dated June 13, 2016 and for Section 1128 of WRDA 2016, dated September 28, 2017, and the Implementation Requirements for Section 22 of WRDA 1974, as amended, and Non-Federal Interests, dated July 19, 2018, which can be found on the Corp's "Project Partnership Agreements" website under the "Planning Assistance to States" tab. A separate template agreement is available for the provision of technical assistance under Section 22.
2. The following options, including language for the agreement, are addressed in the Attachment:
 - a. Option 1: Multiple Sponsors - Other than Multiple States (page A-1).
 - b. Option 2: Multiple Sponsors - Multiple States (page A-3).
 - c. Option 3: Comprehensive Plan in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (page A-6).
3. Reminder: Make all required insertions, including language associated with the options; remove this cover page; remove the open and close brackets and any instructional text; ensure the page numbers, spacing and page breaks throughout the agreement are appropriate; and delete the Attachment.
4. In accordance with Appendix G of ER 1105-2-100, the District must submit the negotiated Agreement to the MSC Planning Assistance to States Program Manager for approval. Division Counsel concurrence in the agreement is required prior to approval. The Certificate of Authority and Certification Regarding Lobbying need to be included with the Agreement. The certificates can be found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT FULL NAME OF NON-FEDERAL SPONSOR]
FOR DEVELOPMENT OF A COMPREHENSIVE PLAN

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for **[Insert Name of USACE District, e.g., New Orleans District]** (hereinafter the "District Commander") and the **[Insert Full Name of Non-Federal Sponsor]** (hereinafter the "Non-Federal Sponsor"), represented by the **[Insert Title]**.

WITNESSETH, THAT:

WHEREAS, Section 22 of the Water Resources Development Act of 1974, as amended (42 U.S.C. 1962d-16) authorizes the Secretary of the Army, acting through the Chief of Engineers, to provide assistance in the preparation of a comprehensive water resources plan (hereinafter the "Plan") to a State, group of States, or non-Federal interest working with a State, and to establish and collect fees for the purpose of recovering 50 percent of the costs of such assistance except that Secretary may accept and expend non-Federal funds provided that are in excess of such fee; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. The Government shall develop the Plan, in coordination with the Non-Federal Sponsor, in accordance with the attached Scope of Work, and any modifications thereto, that specifies the scope, cost, and schedule for activities and tasks, including the Non-Federal Sponsor's in-kind services. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations.

2. The Non-Federal Sponsor shall provide 50 percent of the costs for developing the Plan in accordance with the provisions of this paragraph. As of the effective date of this Agreement, the costs of developing the Plan are projected to be \$_____, with the Government's share of such costs projected to be \$_____ and the Non-Federal Sponsor's share of such costs projected to be \$_____, which includes creditable in-kind services projected to be \$_____ and the amount of funds required to meet its cost share projected to be \$_____.

a. After considering the estimated amount of credit for in-kind services that will be afforded in accordance with paragraph 4, if any, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor for the initial fiscal year of development of the Plan, with a fiscal year beginning on

October 1st and ending on September 30th of the following year. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such 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 by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

b. No later than August 1st prior to each subsequent fiscal year during development of the Plan, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government using one of the payment mechanisms specified in paragraph 2.a. above.

c. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s costs of developing the Plan, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

d. Upon completion of the Plan and resolution of any relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 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 Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of costs, including contract claims or any other liability that may become known after the final accounting.

3. In addition to its required cost share, the Non-Federal Sponsor may determine that it is in its best interests to provide additional funds for development of the Plan. Additional funds provided under this paragraph and obligated by the Government are not included in calculating the Non-Federal Sponsor’s required cost share and are not eligible for credit or repayment.

4. The in-kind services include those activities (including services, materials, supplies, or other in-kind services) that are required for development of the Plan and would otherwise have been undertaken by the Government and that are specified in the Scope of Work and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the Scope of Work. The Government shall credit towards the Non-Federal Sponsor’s share of costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind services, including associated supervision and administration. Such costs shall be subject to audit in accordance with paragraph 8 to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

a. As in-kind services are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind services shall not exceed the Non-Federal Sponsor's share of costs.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind services are completed and credit is afforded; for the value of in-kind services obtained at no cost to the Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

5. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Plan. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

6. Upon 30 calendar days written notice to the other party, either party may elect, without penalty, to suspend or terminate further development of the Plan. Any suspension or termination shall not relieve the parties of liability for any obligation incurred.

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. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

a. The Government may conduct, or arrange for the conduct of, audits of the Plan. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Plan shall not be included in the shared costs of the Plan, but shall be included in calculating the overall Federal cost of the Plan.

b. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this

Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

9. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

10. 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 certified mail, with return receipt, as shown below. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this paragraph.

If to the Non-Federal Sponsor:

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

If to the Government:

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

11. 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.

12. 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.

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

DEPARTMENT OF THE ARMY

[INSERT FULL NAME OF SPONSOR]

BY: _____

BY: _____

[INSERT TYPED NAME]

[INSERT TYPED NAME]

[Insert Rank], U.S. Army

[Insert Full Title]

District Commander

DATE: _____

DATE: _____

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Option 1: Multiple Non-Federal Sponsors - Other than Multiple States.

1. It is strongly preferred that there is one party only as the Non-Federal Sponsor for the Agreement. Nonetheless, it is permissible to have more than one Non-Federal Sponsor if the Non-Federal Sponsors are jointly and severally responsible for all non-Federal obligations and responsibilities under the Agreement. **The Agreement should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural.** In addition, insert into the Agreement as the last paragraph the following:

“13. The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.”

2. If one of the Non-Federal Sponsors is a non-profit entity, in accordance with ASA(CW) Memorandum, dated April 5, 2012, Subject: Implementation Guidance for Section 2003(b) of the Water Resources Development Act of 2007 – Definition of Non-Federal Interest, confirm eligibility of the non-profit entity to serve as one of the Non-Federal Sponsors and ensure that a legally constituted public body is also serving as one of the Non-Federal Sponsors on the PPA. This memorandum can be found on the Corps’ “Project Partnership Agreements” website under the “Guidance” tab. In addition, in accordance with Implementation Requirements for Section 22 of WRDA 1974, as amended, and Non-Federal Interests, dated July 19, 2018, which can be found on the Corp’s “Project Partnership Agreements” website under the “Planning Assistance to States” tab, an eligible non-profit entity must provide a letter from the affected local government consenting to the non-profit entity serving as a Non-Federal Sponsor for the Comprehensive Plan. Also, for the non-profit entity that is serving as one of the Non-Federal Sponsors, use the Certificate of Authority for a Non-Profit Entity as provided on the Corps’ PPA website under the “Forms” tab.

In addition to the Agreement changes in paragraph 1 above, when one of the Non-Federal Sponsors is a non-profit entity also make the following changes to the Agreement:

Delete the “and” at the end of the first Whereas Clause and insert the following two WHEREAS clauses after the first WHEREAS clause in the Agreement:

“WHEREAS, the [FULL NAME OF NON-PROFIT ENTITY] is an organization that is incorporated under the applicable laws of the [Insert State of [Name of State] or Commonwealth of [Name of Commonwealth]] as a non-profit organization,

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exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501);

WHEREAS, by letter dated [**Month Day, Year**], the [**FULL NAME OF AFFECTED LOCAL GOVERNMENT**], the affected local government has consented to the [**FULL NAME OF NON-PROFIT ENTITY**], serving as a Non-Federal Sponsor for the Plan; and”

Option 2: Multiple Non-Federal Sponsors - Multiple States. Implementation Guidance for Section 1128 of WRDA 2016, dated September 28, 2017, and the Implementation Requirements for Section 22 of WRDA 1974, as amended, and Non-Federal Interests, dated July 19, 2018, which can be found on the Corp’s “Project Partnership Agreements” website under the “Planning Assistance to States” tab, provide guidance when multiple States are participating in the development of a comprehensive plan. The first sentence of paragraph 5 of the referenced July 19, 2018 memorandum defines a “State” consistent with Section 22 of the Water Resources Development Act of 1974, as amended. **In addition to the revised provisions provided in the paragraphs below, the remaining provisions of the Agreement should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural.**

1. Replace the citation on page 1 with the following:

“THIS AGREEMENT is entered into this ___ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for [**Insert Name of USACE District, e.g., New Orleans District**] (hereinafter the “District Commander”), and [**Insert Full Names and representatives of each State, e.g. the State of Missouri (hereinafter “Missouri”), represented by the [Insert Title] and the State of Illinois (hereinafter “Illinois”) represented by the [Insert Title], with Missouri and Illinois**] hereinafter collectively referred to as the “Non-Federal Sponsors” or separately referred to as a “Non-Federal Sponsor”.”

2. Replace the paragraph 2 in its entirety with the following:

“2. The Non-Federal Sponsors shall collectively provide 50 percent of the costs for developing the Plan, with [**Insert name of each State and their portion of such amount as a percentage, e.g., Missouri providing 60 percent and Illinois providing 40 percent of such costs**], in accordance with the provisions of this paragraph. As of the effective date of this Agreement, the costs of developing the Plan are projected to be \$_____, with the Government’s share of such costs projected to be \$_____ and the total Non-Federal Sponsors’ share of such costs projected to be \$_____, which includes total creditable in-kind services projected to be \$_____, of which [**Insert projected amount of in-kind services by State, e.g., \$_____ is projected to be provided by Missouri and \$_____ by Illinois**] and the total amount of funds required to meet the non-Federal share is projected to be \$_____, of which [**Insert projected amount of funds by State, e.g., \$_____ is projected to be provided by Missouri and \$_____ by Illinois**].

- a. After considering the estimated amount of credit for in-kind services that will be afforded to each Non-Federal Sponsor in accordance with paragraph 4, if any, the Government shall provide each Non-Federal Sponsor with a written estimate of the amount of funds required for the initial fiscal year, with a fiscal year beginning on October 1st and ending on September 30th of the following year. No later than 15 calendar days after such notification, each Non-Federal Sponsor shall provide the full

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amount of such funds to the Government by delivering checks payable to “FAO, USAED, [Insert District and EROC code, e.g., New Orleans (B2)]” to the District Commander or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

b. No later than August 1st prior to each subsequent fiscal year during development of the Plan, the Government shall provide each Non-Federal Sponsor with a written estimate of the amount of funds required during that fiscal year. No later than September 1st prior to that fiscal year, each Non-Federal Sponsor shall provide the full amount of such required funds to the Government using one of the payment mechanisms specified in paragraph 2.a. above.

c. If the Government determines at any time that additional funds are needed from a Non-Federal Sponsor to cover its share of the non-Federal costs of developing the Plan, the Government shall provide that Non-Federal Sponsor with a written notice of the amount of additional funds required. Within 60 calendar days of such notice, that Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

d. Upon completion of the Plan and resolution of any relevant claims and appeals, the Government shall conduct a final accounting and furnish each Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from a Non-Federal Sponsor, that Non-Federal Sponsor, within 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 a Non-Federal Sponsor has provided funds in excess of the required amount, the Government shall refund the excess amount to the that Non-Federal Sponsor, subject to the availability of funds. Such final accounting does not limit each Non-Federal Sponsor’s responsibility to pay its share of costs, including contract claims or any other liability that may become known after the final accounting.”

3. Replace the paragraph 4 in its entirety with the following:

“4. The in-kind services include those activities (including services, materials, supplies, or other in-kind services) that are required for development of the Plan and would otherwise have been undertaken by the Government and that are specified in the Scope of Work and performed or provided by a Non-Federal Sponsor after the effective date of this Agreement and in accordance with the Scope of Work. The Government shall credit towards each Non-Federal Sponsor’s share of costs, the costs, documented to the satisfaction of the Government, that each Non-Federal Sponsor incurs in providing or performing in-kind services, including associated supervision and administration. Such costs shall be subject to audit in accordance with paragraph 8 to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

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a. As in-kind services are completed and no later than 60 calendar day after such completion, each Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind services shall not exceed each Non-Federal Sponsor's share of costs for the Plan.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind services are completed and credit is afforded; for the value of in-kind services obtained at no cost to a Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government."

4. Replace paragraph 6 in its entirety with the following:

"6. Upon 30 calendar days written notice to the other parties, a party may elect, without penalty, to suspend or terminate further development of the Plan, or portion thereof. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. The Government and remaining **[Insert Non-Federal Sponsor or Non-Federal Sponsors, as applicable]** shall update the Scope of Work and amend the Agreement, as applicable."

Option 3: Comprehensive Plan in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe or tribal organization (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5304). The cost sharing waiver of up to \$484,000 shall not be included in calculating costs of developing the Plan that are cost shared but shall be included in calculating the limit on expenditure of Federal funds in any one State in any one year.

The following changes to the Agreement should be made:

1. Delete the “and” at the end of the first WHEREAS clause and insert the following WHEREAS clause after the first WHEREAS clause in the Agreement:

“WHEREAS, Section 1156 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2310) provides a cost sharing waiver of up to \$484,000 for the Non-Federal Sponsor; and”

2. Replace the first sentence in paragraph 2 with the following:

“The first \$484,000 of developing the Plan will be undertaken at full Federal expense. The Non-Federal Sponsor shall provide 50 percent of the remaining costs for developing the Plan in accordance with the provisions of this paragraph.”