



**MODEL AGREEMENT
FOR
TRIBAL PARTNERSHIP PROGRAM
COST SHARED WATER-RELATED PLANNING ACTIVITIES
APRIL 9, 2020**

APPLICABILITY AND INSTRUCTIONS:

1. The attached model agreement must be used for water-related planning activities conducted under the authority of the Tribal Partnership Program (TPP), Section 203 of the Water Resources Development Act of 2000, as amended (33 U.S.C. 2269) that are cost shared 50 percent Federal and 50 percent non-Federal. Watershed assessments that are cost shared 75 percent Federal and 25 percent non-Federal pursuant to Section 203 should use the Model Agreement for Cost Shared Watershed and River Basin Assessments. A separate model agreement will be available for feasibility studies without project-specific recommendations pursuant to Section 203(b)(3)(B). Feasibility studies pursuant to Section 203 that will recommend construction of water resources development projects or construction of projects for the preservation of cultural and natural resources related to water resources development should use the Model Agreement for Cost Shared Feasibility Studies.
2. Authority to approve a TPP water-related planning activity agreement that does not deviate from the approved model, or for an amendment to the model for the purpose of including an approved option to the model, has been delegated to the MSC Commander and may be further delegated to the District Commander in accordance with implementation guidance for Section 1121 of WRDA 2016, dated February 5, 2018. Division Counsel concurrence (or District Counsel concurrence if approval authority is further delegated) that the agreement, or amendment, does not deviate from the subject model, and is appropriate for use for the particular water-related planning activities, is required prior to approval. In addition, authority to approve non-substantive deviations to the model agreement also has been delegated to the MSC Commander. Division Counsel concurrence that a deviation is non-substantive, with the recommendation to approve the deviation, is required prior to approval by the MSC Commander. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for MSC review and then transmitted to the appropriate HQUSACE RIT and the HQUSACE PPA Team, with MSC Division Commander recommendations, for review and approval by the Director of Civil Works. The District Commander is authorized to execute the agreement after its approval.
3. The following options, including language for the agreement, are addressed in the Attachment:
 - a. Option 1: Accelerated Funds, following approval by HQUSACE (page A-1).
 - b. Option 2: TPP ability to pay adjustment (page A-2).
4. Reminder: Make all required insertions, including language associated with an option; 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; if more than one option is used, ensure the Article and paragraph numbering are correct; and delete the Attachment.
5. The Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability should be included as a part of the agreement package. These 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 THE
[INSERT FULL NAME OF WATER-RELATED PLANNING ACTIVITIES]

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 203 of the Water Resources Development Act of 2000, Public Law 110-114, as amended (33 U.S.C. 2269) (hereinafter “Section 203”), authorizes the Secretary to carry out water-related planning activities (hereinafter the “water-related planning activities”, as defined in Article I.A. of this Agreement) that will substantially benefit Indian Tribes, and are located primarily within Indian country (as defined 18 U.S.C. 1151) or in the proximity to Alaska Native villages;

WHEREAS, Section 203 specifies the cost-sharing requirements applicable to the water-related planning activities; 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:

ARTICLE I - DEFINITIONS

A. The term “water-related planning activities” means the work required to **[Insert description of the water-related planning activities to be conducted, e.g., identify and evaluate water resource problems and needs, including but not limited to those related to the hydrological, economic, environmental, cultural resources, hazardous substances, real estate, or environmental impacts necessary to advance the planning of water resources management]** for **[Insert location of the water related planning activities]**.

B. The term “shared planning costs” means all costs incurred by the Government and Non-Federal Sponsor after the effective date of this Agreement that are directly related to performance of the water-related planning activities and cost shared in accordance with the terms of this Agreement. The term includes, but is not necessarily limited to, the Government’s costs for preparing the

PMP; for planning and evaluation, including applicable costs for economic, engineering, real estate, cultural resources, hazardous substances, and environmental analyses; for preparing and processing the planning report; for supervision and administration; and for Agency Technical Review and other review processes required by the Government; and the Non-Federal Sponsor's creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsor in the Coordination Team to discuss significant issues and actions; audits; or negotiating this Agreement.

C. The term "PMP" means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for water-related planning activities, including the Non-Federal Sponsor's in-kind contributions, and that guides the performance of the water-related planning activities.

D. The term "in-kind contributions" means those services (including data collection and other services) that are integral to the water-related planning activities, would otherwise have been undertaken by the Government for the water-related planning activities, and that are identified in the PMP and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the PMP.

E. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the water-related planning activities using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies.

B. The Non-Federal Sponsor shall contribute 50 percent of shared planning costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsor shall provide funds in the amount of \$25,000, for the Government to initiate the water-related planning activities, including preparation of the PMP. In the event more funds are needed to develop the PMP, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor, and no later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. As soon as practicable after completion of the PMP, and after considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor to meet its share

of shared planning costs for the remainder of the initial fiscal year of the water-related planning activities. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

3. No later than August 1st prior to each subsequent fiscal year of the water-related planning activities, 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 to meet its cost share. 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.

C. The Government shall include in shared planning costs and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions 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 contributions shall not exceed the Non-Federal Sponsor's share of shared planning costs less the amount of funds provided pursuant to paragraph B.1. of this Article.

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

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. 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 water-related planning activities. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. 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, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

H. In addition to the ongoing, regular discussions of the parties in the delivery of the water-related planning activities, the Government and the Non-Federal Sponsor may establish a Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Coordination Team shall not be included in shared planning costs, but shall be included in calculating the overall Federal cost of the water-related planning activities. The Non-Federal Sponsor's costs for participation on the Coordination Team shall not be included in shared planning costs and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, shared planning costs 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 \$ _____. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated shared planning costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the water-related planning activities.

C. The Non-Federal Sponsor shall provide to the Government required funds by delivering a check payable to "FAO, USAED, [**Insert District and EROC code, e.g., New Orleans (B2)**]" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of shared planning costs as those costs are incurred. If the

Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of shared planning costs, 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.

E. Upon completion of the water-related planning activities and resolution of all 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 shared planning costs, including contract claims or any other liability that may become known after the final accounting.

ARTICLE IV - TERMINATION OR SUSPENSION

Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the water-related planning activities. In the event of termination, the parties shall conclude their activities relating to the water-related planning activities. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of contract claims, and resolution of contract modifications. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. 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.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. 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.

B. The Government may conduct, or arrange for the conduct of, audits of the water-related planning activities. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the water-related planning activities shall not be included in shared planning costs, but shall be included in calculating the overall Federal planning activity cost.

C. 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.

ARTICLE VII - RELATIONSHIP OF PARTIES

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.

ARTICLE VIII - NOTICES

A. 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 follows:

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]

B. 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 Article.

ARTICLE IX - CONFIDENTIALITY

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.

ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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: _____
[INSERT TYPED NAME]
[Insert Rank], U.S. Army
District Commander

BY: _____
[INSERT TYPED NAME]
[Insert Full Title]

DATE: _____

DATE: _____

Attachment

Option 1: Accelerated Funds. Following written approval by HQUSACE to allow the acceptance of accelerated funds, the Agreement may include the following changes:

Guidance on Accelerated Funds is provided in CECW-P (2020-01) Director’s Policy Memorandum FY 2020, dated December 19, 2019, Subject: Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds. This memorandum can be found on the Corps’ “Project Partnership Agreements” website under “What’s New”.

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

“WHEREAS, the Non-Federal Sponsor proposes to accelerate its provision of funds (hereinafter “accelerated funds”) for the immediate use by the Government for the water-related planning activities; and”

2. Add a new paragraph F. to Article I as follows:

“F. The term “accelerated funds” means non-Federal funds out of proportion with Federal funds but within the ultimate non-Federal cash contribution.”

3. Add new paragraph I. to Article II as follows.

“I. In addition to providing the funds required by paragraph B. of this Article, the Non-Federal Sponsor may provide accelerated funds for immediate use of the Government. The Non-Federal Sponsor understands that use of accelerated funds shall not constitute any commitment by the Government to budget, or the Congress to appropriate, funds for this water-related planning activities or to match any accelerated funds provided by the Non-Federal Sponsor; that any accelerated funds will be credited toward the Non-Federal Sponsor’s cost share only to the extent matching Federal funds are provided; and that the Non-Federal Sponsor is not entitled to any repayment for any accelerated funds obligated by the Government even if the water-related planning activities ultimately is not completed.”

Attachment

Option 2: Tribal Partnership Program (TPP) Ability to Pay Adjustment. If a Tribe qualifies for the ability to pay adjustment as described in the TPP Implementation Guidance dated February 5, 2018, the following changes to the Agreement should be made:

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

“WHEREAS, Section 203(d)(1) of the Water Resources Development Act of 2000, as amended (33 U.S.C. 2269(d)(1)) requires that cost share agreements under the Tribal Partnership Program shall be subject to the ability of the non-Federal interest to pay in accordance with procedures established by the Secretary, and the Non-Federal Sponsor has met the applicable criteria for the ability to pay adjustment, reducing the non-Federal share from 50 percent to 10 percent of shared planning costs; and”

2. Replace Article II.B. in its entirety with the following:

“B. The Non-Federal Sponsor shall contribute 10 percent of shared planning costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor to meet its cost share for the remainder of the initial fiscal year of the water-related planning activities, which includes funds for preparation of the PMP. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1st prior to each subsequent fiscal year of the water-related planning activities, 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 to meet its cost share. 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.”

3. Replace the last sentence in Article II.C.1. with the following:

“The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor’s share of shared planning costs.”