



**MODEL IN-KIND MEMORANDUM OF UNDERSTANDING (MOU)  
FOR  
NON-FEDERAL INTEREST DESIGN WORK  
PRIOR TO  
EXECUTION OF A PROJECT PARTNERSHIP AGREEMENT  
MAY 30, 2008  
(with updates as of APRIL 24, 2020)**

**APPLICABILITY AND INSTRUCTIONS:**

1. For a project for which a project partnership agreement covering both design and construction (such as for CAP projects where there is no separate design agreement) will be executed, the attached model In-Kind MOU should be used if the non-Federal interest intends to provide design work only pursuant to Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)) prior to execution of the project partnership agreement. For a project for which a separate design agreement will be executed, this model should not be used; instead, there is a separate model In-Kind MOU developed for that scenario. In addition, for construction (including design associated with that construction) by a non-Federal interest, use the separate model In-Kind MOU developed for that purpose.
2. Authority to approve an In-Kind MOU that does not deviate from the model In-Kind MOU has been delegated to the MSC Commander. Division Counsel concurrence that the In-Kind MOU does not deviate from the model is required prior to approval. In addition, authority to approve to approve non-substantive deviations to the model also has been delegated to the MSC Commander. Division Counsel concurrence that a deviation is non-substantive, with recommendation to approve the deviation, is required prior to approval by the MSC Commander. An In-Kind MOU 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, with MSC Commander recommendations, for review and approval by the Director of Civil Works. The District Commander is authorized to execute the In-Kind MOU after its approval.
3. If there are multiple non-Federal interests, modify the In-Kind MOU to use the term “Non-Federal Interests” throughout and make the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural.
4. Reminder: Make all required insertions; remove this cover page; remove the open and close brackets and any instructional text; and ensure the page numbers, spacing and page breaks throughout the In-Kind MOU are appropriate.
5. The Certificate of Authority and Certification Regarding Lobbying should be included as a part of the In-Kind MOU package. These certificates can be found on the Corps’ “Project Partnership Agreements” website under the “Forms” tab. Also, if a non-profit entity is serving as a Non-Federal Interest 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, use the Certificate of Authority for a Non-Profit Entity as provided on the website mentioned above.

IN-KIND MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND THE  
**[FULL NAME OF NON-FEDERAL INTEREST]**  
FOR DESIGN WORK  
PRIOR TO EXECUTION OF  
A  
PROJECT PARTNERSHIP AGREEMENT  
FOR THE  
**[FULL NAME OF PROJECT]**

THIS IN-KIND MEMORANDUM OF UNDERSTANDING (hereinafter the “In-Kind MOU”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the “Government”), represented by the represented by the District Commander for **[Insert Name of USACE District, e.g., New Orleans District]** (hereinafter the “District Commander”) and the **[FULL NAME OF THE NON-FEDERAL INTEREST]** (hereinafter the “Non-Federal Interest”), represented by the **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)), provides that a cost sharing agreement may provide credit for the value of materials or services provided before the execution of such cost sharing agreement if the Secretary and the non-Federal interest enter into an In-Kind MOU under which the non-Federal interest shall carry out such work and only work carried out following the execution of such In-Kind MOU shall be eligible for credit;

WHEREAS, the Non-Federal Interest understands and acknowledges that any credit for eligible in-kind contributions will be afforded only toward the required non-Federal contribution of funds (i.e. cash contribution) under the Project Partnership Agreement for the project or separable element thereof **[INSERT THE FOLLOWING PHRASE IF THE PROJECT INCLUDES STRUCURAL FLOOD RISK MANAGEMENT FEATURES: “, except such credit will not be afforded toward the non-Federal requirement pursuant to the Project Partnership Agreement to pay a cash contribution equal to 5 percent of the construction costs allocated to structural flood risk management” OR IF THE PROJECT INCLUDES GENERAL NAVIGATION FEATURES: “, except such credit will not be afforded toward the non-Federal requirement pursuant to the Project Partnership Agreement to pay an additional 10 percent of construction costs over 30 years”];** and

WHEREAS, by letter dated **[Month Day, Year]**, the Non-Federal Interest stated its intent to provide certain design work (hereinafter the “Design Work”, as defined in Paragraph 1 of this In-Kind MOU) prior to the execution of the Project Partnership Agreement for the **[FULL NAME OF PROJECT]** at **[SPECIFIC LOCATION OF THE PROJECT, INCLUDING STATE, COMMONWEALTH, OR TERRITORY]**.

NOW, THEREFORE, the parties agree as follows:

1. The Non-Federal Interest shall provide the Design Work in accordance with the terms and conditions of this In-Kind MOU and requirements of applicable Federal laws and implementing regulations. The Design Work shall consist of [**describe the design work the Non-Federal Interest will provide for the project, including any data collection related to the design work and design-related studies for historic preservation activities except data recovery**] as generally described in the letter from the Non-Federal Interest.
2. The Non-Federal Interest shall keep books, records, documents, and other documentation of costs and expenses incurred for the Design Work in accordance with this In-Kind MOU. The value of the Design Work shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Interest incurred to provide the Design Work. Such costs may include, but are not necessarily be limited to: engineering and design, real estate, economic and environmental analyses, and evaluation costs; supervision and administration costs; and documented incidental costs associated with providing the Design Work, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Interest's employees.
3. The Non-Federal Interest understands that eligibility for credit for the Design Work is subject to:
  - a. A determination by the Division Commander for [**Insert Name of USACE Division, e.g., Mississippi Valley Division**] that the Design Work is integral to the project;
  - b. Review and verification by the Government that the Design Work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies; and
  - c. An audit by the Government to determine the reasonableness, allocability, and allowability of such costs.
4. The Non-Federal Interest understands further that:
  - a. No interest charges or adjustment will be applied to the costs incurred for the Design Work to reflect changes in price levels;
  - b. Federal program funds may not be used to meet any of its obligations under this In-Kind MOU unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor;

c. Only the costs of the Design Work that do not exceed the Government's estimate of the cost of such work if the work had been accomplished by the Government are eligible for credit;

d. No credit will be provided for the value of Design Work obtained at no cost to the Non-Federal Interest or performed prior to the effective date of this In-Kind MOU;

e. Crediting for the costs of the Design Work may be withheld, in whole or in part, as a result of the Non-Federal Interest's failure to comply with the terms of this In-Kind MOU; and

f. Credit may be afforded only if a Project Partnership Agreement is executed subsequently by the Government and the Non-Federal Interest.

5. In the exercise of their respective rights and obligations under this In-Kind MOU, 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.

6. Execution of this In-Kind MOU does not constitute, represent, or imply any Federal assurance or commitment regarding approval of the project or execution of any future agreement that may include provisions for affording credit for Design Work undertaken under this In-Kind MOU. In addition, execution of this In-Kind MOU in no way prevents the Government from modifying the project even if it results in the Design Work provided by the Non-Federal Interest no longer being an integral part of the project.

7. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the project in the future; and nothing herein shall represent, or give rise to, any duty, obligation, or responsibility for the United States. Any activity undertaken by the Non-Federal Interest for the Design Work is solely at the Non-Federal Interest's own risk and responsibility.

8. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this In-Kind MOU 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 follows:

If to the Non-Federal Interest:

**[RECIPIENT'S TITLE & ADDRESS]**

If to the Government:

**[RECIPIENT'S TITLE & ADDRESS]**

b. 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.

9. This In-Kind MOU may be modified or amended only by written, mutual agreement of the parties.

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

DEPARTMENT OF THE ARMY

**[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: \_\_\_\_\_