



**MODEL MEMORANDUM OF AGREEMENT (MOA) FOR
ADDITIONAL WORK
IN CONNECTION WITH CONSTRUCTION OR OPERATION AND
MAINTENANCE OF A FEDERAL PROJECT
FOR WHICH THERE IS NO NON-FEDERAL SPONSOR
OR THE NON-FEDERAL INTEREST IS NOT THE PROJECT SPONSOR**

September 28, 2018, Instructions Updated August 10, 2020

APPLICABILITY AND INSTRUCTIONS:

1. The attached model MOA is for additional work to be undertaken in connection with construction or operation and maintenance of a Federal project for which there is no required non-Federal sponsor or when the non-Federal interest is not the non-Federal sponsor for the project. The entity requesting and providing funding for the additional work must be a non-Federal interest as that term is defined in Section 221(b) of the Flood Control Act of the 1970, as amended (42 U.S.C. 1962d-5b(b)).
2. In accordance with paragraph 10 of CECW-P (2020-01) Director's Policy Memorandum FY 2020, dated December 19, 2019, subject: Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds, authority to approve an MOA that does not deviate from the model has been delegated to the MSC Commander. Division Counsel concurrence that the MOA does not deviate from the model MOA, and is appropriate for use for the particular proposal, is required prior to approval by the MSC Commander. In addition, authority to approve non-substantive deviations to the model MOA 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. The District Commander is authorized to execute the MOA after its approval.
3. 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 agreement are appropriate.
4. Include the Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Interest's Self-Certification of Financial Capability as a part of the agreement package submitted for approval. These certificates can be found on the Corps' "Project Partnership Agreements" website under the "Forms" tab.

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL INTEREST]
FOR ADDITIONAL WORK DURING **[INSERT “CONSTRUCTION” OR
“OPERATION AND MAINTENANCE”]** OF
[FULL NAME OF THE PROJECT]

This MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Commander, _____ District (hereinafter the “District Commander”), and the **[FULL NAME OF THE NON-FEDERAL INTEREST]** (hereinafter the “Non-Federal Interest”), represented by **[TITLE OF NON-FEDERAL INTEREST’S REPRESENTATIVE SIGNING MOA]**.

WITNESSETH, THAT:

WHEREAS, the **[FULL NAME OF THE PROJECT]** (hereinafter the “Project”) was authorized pursuant to **[CITE AUTHORITY, INCLUDING SECTION NUMBER AND PUBLIC LAW NUMBER]**;

WHEREAS, the Non-Federal Interest requests **[DESCRIPTION OF ADDITIONAL WORK]** (hereinafter the “Additional Work”) and agrees to pay all costs associated with the Additional Work; and

WHEREAS the Government is authorized pursuant to 33 U.S.C. 701h to accept and expend funds to carry out the Additional Work in connection with **[“construction” or “operation and maintenance”, as applicable]** of the Project.

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

1. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, and engineering and design, associated with the Additional Work. While the Government will endeavor to limit the costs associated with the Additional Work to the current estimate of \$_____, the Non-Federal Interest acknowledges that the actual costs for the Additional Work may exceed such estimated amount due to claims or other unforeseen circumstances and that the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Work.
2. Within _____(____) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government the sum of \$_____. 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.

3. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to “FAO, USAED _____ District” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence the Additional Work until: a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341); and the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements and rights-of-way the Government determines to be required for the Additional Work.

5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Additional Work. The first such report shall be provided within _____(____) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of the funds pursuant to this MOA. Subsequent reports shall be provided within _____(____) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Work.

6. Upon conclusion of the Additional Work and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest’s responsibility to pay for all costs associated with the Additional Work, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within _____(____) calendar days of such written notice by delivering a check payable to “FAO, USAED _____ District” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within _____(____) calendar days of such written notice, subject to the availability of funds.

7. Before either party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In the exercise of their respective rights and obligations under this MOA, 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. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

[TITLE AND ADDRESS]

If to the Government:

[TITLE AND 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.

10. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this MOA by providing at least 15 calendar dates 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 MOA for the Additional Work and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this MOA, 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: _____