

SECTION 217(b) OF THE WATER RESOURCES DEVELOPMENT ACT OF 1996

**MODEL AGREEMENT
FOR THE
PLACEMENT OF DREDGED MATERIAL
INTO A
FEDERAL DREDGED MATERIAL PLACEMENT FACILITY
BY A
NON-FEDERAL INTEREST
June 30, 2016**

APPLICABILITY: The following agreement is used for placement of dredged material pursuant to Section 217(b) of the Water Resources Development Act of 1996 (33 U.S.C. 2326a(b)) by a Non-Federal Interest, as that term is defined in Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5(b)), into a dredged material placement facility for which the Corps of Engineers is responsible for operation and maintenance. The placement must be approved in accordance with the February 3, 2017 implementation guidance. Fees collected under the authority of Section 217(b) are deposited into a special account in the Treasury and, after appropriation of the credited fees, are available for the operation and maintenance of the placement facility for which the fees were collected. For placement by a private entity, Federal Permittee, the model agreement for placement pursuant to Section 401(c) of the Clean Water Act (33 U.S.C. 1341(c)) will be used.

PREPARING AGREEMENT FOR SIGNATURE. – 1) Remove this cover page; make all appropriate insertions; remove all bold type instructions; and ensure spacing and page breaks throughout the agreement are appropriate. Prepare two originals of the agreement. Before signature by the Government representative on each original, ensure that the non-Federal interest has signed and dated its signature and that the Certificate of Authority has been signed and dated by the appropriate person. The date on the first page should be filled in by the Government representative signing the agreement, not the Non-Federal Interest. The Government should retain one signed original and provide the other signed original to the Non-Federal Interest.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL INTEREST]
FOR PLACEMENT OF DREDGED MATERIAL
INTO THE
DREDGED MATERIAL PLACEMENT FACILITY
[FULL NAME OF DMPF INCLUDING LOCATION, COUNTY & STATE]

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, _____ District (hereinafter the "District Engineer"), and **[FULL NAME OF NON-FEDERAL INTEREST]** (hereinafter the "Non-Federal Interest") represented by **[NON-FEDERAL INTEREST REPRESENTATIVE SIGNING THIS AGREEMENT]**.

WITNESSETH, THAT:

WHEREAS, Section 217(b) of the Water Resources Development Act of 1996 (33 U.S.C. 2326a(b)) authorizes the Secretary of the Army (hereinafter the "Secretary") to permit the use of dredged material placement facilities under the Secretary's jurisdiction by Non-Federal Interests and to impose fees to recover capital, operation, and maintenance costs associated with such use;

WHEREAS, the Non-Federal Interest was issued Permit # _____ by the U.S. Army Engineer District, _____, on **[INSERT DATE]** to conduct dredging of **[INCLUDE BRIEF DESCRIPTION OF DREDGING TO BE ACCOMPLISHED]**;

WHEREAS, the Non-Federal Interest requested that material dredged in accordance with Permit # _____ be placed in the Government operated **[INSERT FULL NAME OF DMPF INCLUDING LOCATION, COUNTY & STATE]** (hereinafter the "Dredged Material Placement Facility"), and the Government determined that allowing placement of approximately _____ cubic yards of dredged material into the Dredged Material Placement Facility will not reduce the availability of the facility for project uses; and

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

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

1. The Non-Federal Interest shall comply with all applicable State and Federal laws and regulations in the dredging and placement of the dredged material, including the requirements of the Clean Water Act, 33 USC 1341, et seq., and Permit # _____ issued by the U.S. Army Engineer District, _____ on _____, and may place up to approximately _____ cubic yards of dredged material into the Dredged Material Placement Facility, subject to payment by the Non-Federal Interest in accordance with paragraph 3 and all other requirements of this Agreement.

2. Prior to the Non-Federal Interest placing any dredged material into the Dredged Material Placement Facility, the Non-Federal Interest shall prepare and submit for approval by the Government a placement plan that includes, but is not limited to, identifying the independent inspectors who will be responsible for monitoring all phases of the placement of the dredged material, the inspector's responsibilities and duties, and reporting procedures.

3. The Non-Federal Interest is responsible for all costs related to the placement of dredged material under this Agreement and shall pay a placement fee, as determined in accordance with **[CITE TO LETTER REPORT THAT ESTABLISHES AMOUNT OF THE FEE]**.

a. Prior to any placement into the Dredged Material Placement Facility, the Non-Federal Interest shall provide \$ _____, which is based on the estimated amount of cubic yards that will be placed, by delivering a check payable to "FAO, USAED, _____" to the District Engineer or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

b. After completion of the Non-Federal Interest's placement of dredged material into the Dredged Material Placement Facility, or if both parties mutually agree not to continue with the placement, the Government shall conduct a final accounting and furnish the Non-Federal Interest with the results of the final accounting.

(1) If the final accounting shows that the amount paid by the Non-Federal Interest is less than the amount required based on the actual cubic yards of dredged material placed into the Dredged Material Placement Facility, the Non-Federal Interest, no later than 30 calendar days after receipt of written notice, shall provide the additional required amount by delivering a check payable to "FAO, USAED, _____" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

(2) If the final accounting shows that the amount paid by the Non-Federal Interest exceeds the amount required based on the actual cubic yards of dredged material placed into the Dredged Material Placement Facility, the Government, subject to the

availability of funds, shall refund the excess to the Non-Federal Interest no later than 30 calendar days after the final accounting is complete.

4. The Government shall determine the actual amount of cubic yards placed in the Dredged Material Placement Facility based on a review of the Non-Federal Interest's dredging surveys and volume computations of yards dredged [**OR SPECIFY OTHER APPROPRIATE METHOD**].
5. The Government and the Non-Federal Interest may meet periodically to discuss preparation and approval of the Non-Federal Interest's placement plan; estimated costs; compliance with the permit; and other matters as may be necessary. Any disputes that arise should be resolved at the lowest level possible.
6. In the exercise of their respective rights and obligations under this Agreement, 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.
7. Nothing in this Agreement alters, or is intended to alter, any responsibility or liability of any party pursuant to existing environmental laws and regulations.
8. The Non-Federal Interest shall hold and save the Government free from all damages arising from this placement of dredged material into the Dredged Material Placement Facility, except for damages due to the fault or negligence of the Government or its contractors.
9. Any notice, request, demand, or other communication required or permitted 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 Interest:

[INSERT TITLE AND ADDRESS]

If to the Government:

[INSERT TITLE AND ADDRESS]

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.

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.

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

DEPARTMENT OF THE ARMY

**[FULL NAME OF
NON-FEDERAL INTEREST]**

BY: _____
[INSERT TYPED NAME]
**[Insert Colonel, U.S. Army or
Lieutenant Colonel, U.S. Army, as
applicable]**
District Engineer

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

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL INTEREST]**, that the **[FULL NAME OF NON-FEDERAL INTEREST]** has the full authority and legal capability to perform the terms of this Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL INTEREST]** in connection with the placement of dredged material into the Dredged Material Placement Facility **[FULL NAME OF DMPF, INCLUDING LOCATION, COUNTY & STATE]** and that the person who executing this Agreement on behalf of **[FULL NAME OF NON-FEDERAL INTEREST]** has acted within his or her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____.

[TYPED NAME]
[TITLE IN FULL]

[NOTE: THE PERSON SIGNING THE CERTIFICATE OF AUTHORITY CAN NOT BE THE SIGNATORY TO THE AGREEMENT. THE PERSON SIGNING THE CERTIFICATE OF AUTHORITY IS CERTIFYING THAT THE SIGNATORY TO THE AGREEMENT HAS THE AUTHORITY TO SIGN FOR THE NON-FEDERAL INTEREST.]