

**SECTION 22 AGREEMENT
FOR PROVIDING TECHNICAL ASSISTANCE
JUNE 8, 2016
(with updates as of MAY 19, 2017)**

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 technical assistance pursuant to Section 22 of the Water Resources Development Act of 1974, as amended (42 U.S.C. 1962d-16). Guidance on providing such technical assistance is provided in the Implementation Guidance for Section 3015 of WRRDA 2014. A separate template agreement is available for the provision of assistance to develop a comprehensive plan under Section 22.
2. The following option, including language for the Agreement, is addressed in the Attachment:
Option 1: Technical Assistance in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe (page A-1).
3. 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.

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT FULL NAME OF NON-FEDERAL SPONSOR]
FOR THE PROVISION OF CERTAIN TECHNICAL ASSISTANCE

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, **[Insert Name of District]** (hereinafter the “District Engineer”) 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 to provide technical assistance related to the management of State water resources (hereinafter “Technical Assistance”) to a State 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 provide Technical Assistance in accordance with the attached Scope of Work, and any modifications thereto, that specifies the scope, cost, and schedule for activities and tasks.

2. The Non-Federal Sponsor shall provide 50 percent of the costs of providing the Technical Assistance in accordance with the provisions of this paragraph. As of the effective date of this Agreement, the costs of providing the Technical Assistance 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 \$_____.

a. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsor shall provide the full amount of its share of costs by delivering a check payable to “FAO, USAED, **[Insert District and EROC code, e.g., New Orleans (B2)]**” to the District Engineer or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

b. 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 the Technical Assistance, 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.

c. Following provision of the Technical Assistance 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 the Technical Assistance. 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 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 provision of the Technical Assistance. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

5. 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.

6. Upon 30 calendar days written notice to the other party, either party may elect, without penalty, to suspend or terminate the provision of Technical Assistance under this Agreement. Any suspension or termination shall not relieve the parties of liability for any obligation incurred.

7. 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.

8. 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.

9. 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]

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.

11. 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 Engineer.

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

[INSERT FULL NAME OF SPONSOR]

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: _____

Attachment

Option 1: Technical Assistance in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or Puerto Rico, or involving an Indian Tribe (as defined in section 102 of the Federal Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130). The cost sharing waiver of up to \$455,000 shall not be included in calculating costs of providing the Technical Assistance that are cost shared.

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 22(f) of the Water Resources Development Act of 1974, as amended (42 U.S.C. 1962d-16(f)) provides a cost sharing waiver of up to \$455,000 in accordance with Section 1156 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2310) for the Non-Federal Sponsor; and”

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

“The first \$455,000 of providing Technical Assistance will be undertaken at full Federal expense. The Non-Federal Sponsor shall provide 50 percent of the remaining costs of providing the Technical Assistance in accordance with the provisions of this paragraph.”