

**MODEL MOA
FOR CONTRIBUTED FUNDS PURSUANT TO 33 U.S.C. 701h
FOR CERTAIN OPERATION AND MAINTENANCE ACTIVITIES**

September 12, 2017

APPLICABILITY AND INSTRUCTIONS:

- 1. The attached model MOA is for the acceptance of contributed funds pursuant to 33 U.S.C. 701h for operation and maintenance activities (may include maintenance dredging in addition to other O&M activities) at a project that the Corps of Engineers operates and maintains; there are limited or no Federal funds available; and the Contributor provides funds needed to perform the identified operation and maintenance activities, including environmental compliance, labor, utilities and related costs.**

- 2. The responsibility for review and approval of a MOA that does not deviate from the approved model has been delegated to the MSC Commander. Division Counsel concurrence that the MOA does not deviate from the model, and is appropriate for use for the particular proposal, is required prior to approval. In addition, the MSC Commander has been delegated authority to approve non-substantive deviations to the model PPA. Division Counsel review of such deviations, with a recommendation to approve such deviations, is required prior to approval by the MSC Commander. Signature authority for an MOA, once approved, is delegated to the District Commander.**

- 3. PARAGRAPH 13 is optional and should only be included if the Contributor specifically requests this language and District Counsel determines, by written legal opinion identifying the specific statutes or constitutional provisions, that the Contributor meets the Federal statutory criteria for inclusion of this paragraph. See Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b). If paragraph 13 is used, identify the legislative body that makes the appropriations. (Example: Legislature of the State of Ohio or City Counsel of the City of Cleveland) and provide the specific citation to the constitutional or statutory limitation on committing future appropriations. (Example: Article 16 Section 12 of the Constitution of the State of Arkansas).**

- 4. Reminder: Make all required insertions; remove this cover page; remove the open and close brackets and any instructional text; and ensure the spacing and page breaks throughout the agreement are appropriate.**

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF CONTRIBUTOR]
FOR CERTAIN ACTIVITIES AT
[FULL NAME OF FEDERAL PROJECT]

This MEMORANDUM OF AGREEMENT (hereinafter this “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 CONTRIBUTOR]** (hereinafter the “Contributor”), represented by **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, the Government is authorized to operate and maintain **[Name of Project]** (hereinafter the “Project”) pursuant to **[cite the relevant authorization]**;

WHEREAS, limited or no Federal funding is available for operation and maintenance of the Project;

WHEREAS, the Contributor considers it to be in its own interest to contribute funds voluntarily to be used by the Government to perform **[identify the specific operation and / or maintenance activities to be undertaken with the Contributed Funds]** of the Project (hereinafter “Contributed Funds Work”); and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to receive and expend funds to be used for Contributed Funds Work.

NOW, THEREFORE, the Government and Contributor agree as follows:

1. The Contributor plans to provide to the Government funds to pay all costs associated with the Contributed Funds Work, including the costs of environmental compliance, labor, services, materials, equipment, supervision and administration, and engineering and design. While the Government will endeavor to limit costs associated with the Contributed Funds Work under this MOA to the current estimate of \$_____, the Contributor acknowledges that the actual costs for the Contributed Funds Work may exceed this estimated amount due to claims or other unforeseen circumstances and that the Contributor is responsible for all costs, including any claims, related to the Contributed Funds Work that exceed the Federal funds provided for operation and maintenance of the Project.

2. Within _____ () calendar days of execution of this MOA, the Contributor shall provide to the Government the sum of \$ _____, which is the current estimated cost of the Contributed

Funds Work. If at any time the Government determines that additional funds are needed, the Government shall notify the Contributor in writing and no later than thirty (30) calendar days from receipt of such notice, the Contributor shall provide to the Government the full amount of the additional funds needed.

3. The Contributor shall provide the funds to the Government by delivering a check payable to “FAO, USAED _____” 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 any Contributed Funds Work until 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).

5. The Government shall provide the Contributor with quarterly reports of obligations for the Contributed Funds Work. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following initial receipt of funds pursuant to this MOA. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes all Contributed Funds Work under this MOA.

6. Upon conclusion of the Contributed Funds Work and resolution of all relevant claims and appeals, the Government shall complete a final accounting of the costs of such Contributed Funds Work and furnish the Contributor with written notice of the results of such final accounting. Such final accounting shall in no way limit the Contributor’s responsibility to pay all costs associated with the Contributed Funds Work, including contract claims or any other liability that may become known after the final accounting. If the costs of the Contributed Funds Work exceed the amount of funds provided by the Contributor and Federal funds provided for operation and maintenance of the Project, the Contributor shall provide the required additional funds within thirty (30) calendar days of such written notice by delivering a check payable to “FAO, USAED _____” to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If the costs of the Contributed Funds Work are less than the amount of funds provided by the Contributor, the Government shall refund the excess to the Contributor within thirty (30) calendar days of such written notice.

7. No credit or repayment is authorized, nor shall be provided, for any funds provided by the Contributor and obligated by the Government for the Contributed Funds Work.

8. 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, obligations of the United States.

9. The Contributor shall hold and save the Government free from all damages arising from the Contributed Funds Work, except for damages due to the fault or negligence of the Government or its contractors.

10. In the exercise of their respective rights and obligations under this MOA, the Government and the Contributor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

11. 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 delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Contributor:

[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.

12. This MOA may be modified or amended only by written, mutual agreement of the parties.

13. **[OPTIONAL LANGUAGE: SEE NOTE 3]** Nothing in this MOA shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____, where creating such an obligation would be inconsistent with _____ of the _____ of _____.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

THE DEPARTMENT OF THE ARMY **[FULL NAME OF CONTRIBUTOR]**

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

BY: **[SIGNATURE]**
 [TYPED NAME]
 [TITLE IN FULL]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the **[FULL NAME OF CONTRIBUTOR]**, that the **[FULL NAME OF THE CONTRIBUTOR]** is a legally constituted public body with full authority and legal capability to perform the terms of the Memorandum of Agreement between the Department of the Army and the **[FULL NAME OF THE CONTRIBUTOR]**, and that the person who executed the Memorandum of Agreement on behalf of the **[FULL NAME OF THE CONTRIBUTOR]** acted within **[his / her]** statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20__.

[SIGNATURE]

[TYPED NAME]

[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF MOA SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____