



**MODEL MOA
TO RECEIVE AND EXPEND FUNDS
-PURSUANT TO 33 U.S.C. 701h
FOR DESIGN WHERE
CONTRIBUTOR PROVIDES ALL FUNDS FOR THE WORK**

JANUARY 30, 2018

APPLICABILITY AND INSTRUCTIONS:

1. The attached model Memorandum of Agreement (MOA) is for contributed funds for design work where the contributor is providing all funds for such work. The responsibility for review and approval of an MOA that does not deviate from the model is 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 contributed funds proposal, is required prior to approval. In addition, the MSC Commander is delegated authority to approve non-substantive deviations to the model MOA. Division Counsel review of such deviations, with a recommendation to approve such deviations, is required prior to approval by the MSC Commander.

2. The following optional language may be included as paragraph 10 if specifically requested by the Contributor 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.

“10. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the **[Insert name of the legislative body that makes the appropriations, e.g., legislature of the State of New York or the New York City Council]**, where creating such an obligation would be inconsistent with **[Insert the specific citation to the constitutional or statutory limitation on committing future appropriations]**”.

3. 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 DESIGN WORK FOR THE **[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 District Commander, _____ District (hereinafter the "District Commander"), and the **[FULL NAME OF THE CONTRIBUTOR]** (hereinafter the "Contributor"), represented by **[INSERT TITLE]**.

WITNESSETH, THAT:

WHEREAS, **[INSERT "study" or "construction"]** of the **[FULL NAME OF THE PROJECT]** (hereinafter the "Project") was authorized pursuant to **[CITE AUTHORITY]**;

WHEREAS, no Federal funding is available for the work covered by this MOA;

WHEREAS, the Contributor considers it to be in its own interest to contribute funds voluntarily to be used by the Government to **[SPECIFY DESIGN WORK TO BE UNDERTAKEN]** (hereinafter the "Design Work"); and

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

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

1. The Contributor shall provide to the Government funds to pay all costs associated with the Design Work. 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 Design Work. If at any time the Government determines that additional funds are needed, the Government shall notify the Contributor in writing of the amount, 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. The Contributor shall provide 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.

2. The Government shall provide the Contributor with quarterly reports of obligations for the Design 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 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 completes the Design Work.

3. Upon completion of the Design Work, the Government shall conduct a final accounting of the costs of such 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 for all costs associated with the Design Work, including contract claims or any other liability that may become known after the final accounting. If the costs of the Design Work exceed the amount of funds provided by the Contributor, 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 Design 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.

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

5. 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.

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

7. 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.

8. A. 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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

[TITLE]
[ADDRESS]

If to the Government:
District Commander
_____ District
[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 Article.

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

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 Agreement between the Department of the Army and the **[FULL NAME OF THE CONTRIBUTOR]**, and that the person who executed this Agreement on behalf of the **[FULL NAME OF THE CONTRIBUTOR]** has acted within **[Insert "his" or "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: _____