

**MODEL MOA
TO RECEIVE AND EXPEND FUNDS PURSUANT TO 33 U.S.C. 701h
FOR MULTIPLE YEARS OF MAINTENANCE DREDGING FOR FEDERAL
NAVIGATION PROJECTS**

May 4, 2015, Updated April 27, 2017

APPLICABILITY.

A. The attached model MOA is one of several MOA Models to receive and expend funds pursuant to 33 U.S.C. 701h. This model should be used when the Contributor plans to provide funds over multiple years to pay costs of maintenance dredging.

B. Each model MOA to receive and expend funds pursuant to 33 U.S.C. 701h fits a specific set of circumstances. The other MOA Models currently available are posted on the Project Partnership Agreement (PPA) Web page. If none of the models posted are applicable, the Project Delivery Team should consult with the appropriate HQ RIT for guidance/assistance in drafting the agreement.

NOTES/DRAFTING TIPS:

- 1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the MOA prior to processing for approval.**
- 2. BLANKS. – There are several locations where information specific to the work to be performed is required to fill in a blank. All blanks must be filled in, except the date in the first paragraph, prior to processing the MOA for approval. Including the information required to fill in a blank is not considered a deviation from the model.**
- 3. CONTRIBUTOR’S REPRESENTATIVE. – Insert the title of the Contributor’s representative signing the MOA. Do not include the name, only the title. The title used in this location must match the title used on the signature page. Further, it should be preceded by “the” or “its”, as appropriate, to match the title of the Contributor’s representative. (Example: the Mayor or its Executive Director)**
- 4. PROJECTS TO BE DREDGED. – The name of each project to be dredged must be included and agree with the list contained in the Committee notification memo. They should be in alphabetical order and include the full name of the authority for construction, including the Section # and Public Law #. For example:**

Atlantic Intracoastal Waterway, North Carolina – River and Harbor Act of 1912 (Public Law 62-241), River and Harbor Act of 1927 (Public Law 69-560), River and Harbor Act of 1930 (Public Law 71-520), River and Harbor Act of 1937 (Public Law 75-392), and River and Harbor Act of 1948 (Public Law 80-858);

Channel from Pamlico Sound to Rodanthe, North Carolina – River and Harbor Act of 1945 (Public Law 79-14);

5. PARAGRAPH 1. - Fill in beginning and end dates for the agreement. The time period used must agree with period in fiscal years contained in the Committee notification memo.

A. If the beginning date is October 1, 2013 and it has a 5 year duration, the end date would be September 30, 2018.

B. If the beginning date is any date other than October 1, the partial FY counts as year 1. For example: if beginning date is June 1, 2013 and it has a 5 year duration, the end date would be September 30, 2017.

6. PARAGRAPH 2.

A. Choose Option (1) if the beginning date is October 1st; otherwise choose Option (2). Delete, in its entirety, the option not used.

B. If Option (2) is selected, fill in the first blank with amount of funds that will be contributed in current FY and fill in the second blank with the current FY#.

7. PARAGRAPH 12. – OBLIGATIONS OF FUTURE APPROPRIATIONS.

A. Paragraph 12 is optional and should only be included in the MOA 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).

B. The information to be added in the first three blanks of the first sentence of Paragraph 12 must identify the legislative body that makes the appropriations. (Example: Legislature of the State of Ohio or City Council of the City of Cleveland)

C. The information to be included in the fourth - sixth blanks of the first sentence of Paragraph 12 must identify 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)

D. If this paragraph is deleted, renumber the remaining paragraph. Renumbering the paragraph is not a deviation from the model.

8. CERTIFICATE OF AUTHORITY. - The attorney signing the Certificate of Authority must be the principal legal officer of the Contributor and is certifying that the Contributor's representative signing the MOA has the authority to obligate the Contributor. Do not forget to fill in the name in the first line prior to execution of the MOA.

9. PREPARING MOA FOR SIGNATURE.

A. When printing the MOA for execution: 1) remove the cover pages and any bold type text from the MOA; 2) ensure that the appropriate information has been included in all blanks in the MOA and the Certificate of Authority; 3) ensure that there are no page breaks which allow half empty pages; and 4) use the following format for District Engineer's signature block. Correct the rank in 2nd line as necessary.

**Name
Colonel, U.S. Army
District Engineer**

B. Before signature by the District Engineer, the district must ensure that the Contributor signs and dates a minimum of two copies of the MOA and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the District Engineer, not the Contributor.

C. The Government should retain one copy of the fully executed MOA. All other copies should be provided to the Contributor. A photocopy or a pdf file (as determined by the MSC and the appropriate HQ RIT) of the fully executed MOA should be provided to the MSC and appropriate HQ RIT within 7 days after execution of MOA.

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF CONTRIBUTOR]

FOR MAINTENANCE DREDGING OF
SPECIFIED FEDERAL NAVIGATION PROJECTS

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 Engineer, _____ District (hereinafter the "District Engineer"), and the **[FULL NAME OF THE CONTRIBUTOR]** (hereinafter the "Contributor"), represented by **[SEE NOTE - 3]**.

WITNESSETH, THAT:

WHEREAS, the following Federal navigation projects (hereinafter the "Projects") were constructed pursuant to the specified authorizations:

[SEE NOTE - 4]

WHEREAS, limited or no Federal funding is available for maintenance dredging of the Projects;

WHEREAS, the Contributor considers it to be in its own interest to contribute funds voluntarily to be used by the Government to perform maintenance dredging of the Projects (hereinafter "Maintenance Work"); and

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

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

[SEE NOTE - 5]

1. The Contributor plans to provide to the Government up to \$_____ per fiscal year of the Government to pay costs associated with the Maintenance Work, including the costs of environmental compliance, supervision and administration, and engineering and design, during the period beginning _____, _____, and ending September 30, _____, for a total amount of up to \$_____ for the entire period. While the Government will endeavor to limit costs associated with the Maintenance Work under this MOA to the Government estimates, the Contributor acknowledges that the actual costs for the Maintenance 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 Maintenance Work that exceed the Federal funds provided for such Maintenance Work.

[SEE NOTE – 6 – OPTION 1 used if the beginning date is October 1st]

2. The Contributor shall provide funds in accordance with the provisions of this paragraph.

a. No later than thirty (30) calendar days before the beginning of each full fiscal year of the Government covered by this MOA, the Government and Contributor shall develop a Work Plan for Maintenance Work proposed to be performed during the upcoming fiscal year. The Work Plan shall identify the amount of funds the Contributor plans to provide; the Project(s) to be dredged; the schedules for completion of compliance with applicable environmental laws and regulations and initiation of dredging for each Project; the Government's estimate for dredging of each Project; and the Government's estimate of funds required for each quarter. No later than fifteen (15) calendar days before the beginning of each quarter of the fiscal year, the Contributor shall provide to the Government funds for all estimated costs, including the costs of environmental compliance and engineering and design work, of Maintenance Work to be accomplished in that quarter, provided further that for Maintenance Work to be accomplished by contract, the Contributor shall provide to the Government all funds estimated to be necessary for the contract no later than fifteen (15) calendar days prior to solicitation of that contract. The Government and Contributor shall review and update, as necessary, the Work Plan. Both parties will confer before any substantive changes are made to the Work Plan.

b. If at any time the Government determines that additional funds are needed for a specific Project, the Government shall notify the Contributor in writing and adjust the Work Plan to use available, unobligated funds received for that Project pursuant to this MOA to satisfy the balance owed. In the event there are no funds available to satisfy the balance, the Government shall notify the Contributor in writing of the amount needed and no later than fifteen (15) calendar days from receipt of such notice, the Contributor shall provide to the Government the full amount of the additional funds needed for that specific Project.

[SEE NOTE – 6 – OPTION 2 used if beginning date is other than October 1st]

2. The Contributor shall provide funds in accordance with the provisions of this paragraph.

a. Within fifteen (15) calendar days of the execution of this MOA, the Contributor shall provide to the Government \$_____, which is the currently estimated cost of Maintenance Work to be performed during the remainder of the ____ fiscal year of the Government. The Government and Contributor shall develop expeditiously a Work Plan for Maintenance Work proposed to be performed during the remainder of the fiscal year. The Work Plan shall identify the Project(s) to be dredged; the schedules for completion of compliance with applicable environmental laws and regulations and initiation of dredging for each Project; and the Government's estimate for dredging of each Project. Both parties will confer before any substantive changes are made to the Work Plan.

b. No later than thirty (30) calendar days before the beginning of each full fiscal year of the Government covered by this MOA, the Government and Contributor shall develop a Work Plan for Maintenance Work proposed to be performed during the upcoming fiscal year. The Work Plan shall identify the amount of funds the Contributor plans to provide; the Project(s) to be dredged; the schedules for completion of compliance with applicable environmental laws and regulations and initiation of dredging for each Project; the Government's estimate for dredging each Project; and the Government's estimate of funds required for each quarter. No later than fifteen (15) calendar days before the beginning of each quarter of the fiscal year, the Contributor shall provide to the Government funds for all estimated costs of Maintenance Work to be accomplished in that quarter, provided further that for Maintenance Work to be accomplished by contract, the Contributor shall provide to the Government all funds estimated to be necessary for the contract no later than fifteen (15) calendar days prior to solicitation of that contract. The Government and Contributor shall review and update, as necessary, the Work Plan. Both parties will confer before any substantive changes are made to the Work Plan.

c. If at any time the Government determines that additional funds are needed for a specific Project, the Government shall notify the Contributor in writing and adjust the Work Plan to use available, unobligated funds received for that Project pursuant to this MOA to satisfy the balance owed. In the event there are no funds available to satisfy the balance, the Government shall notify the Contributor in writing of amount needed and no later than fifteen (15) calendar days from receipt of such notice, the Contributor shall provide to the Government the full amount of the additional funds needed for that specific Project.

3. The Contributor shall provide the funds to the Government by delivering a check payable to "FAO, USAED _____" to the District Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.

4. The Government shall not commence Maintenance Work for any Project 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 Maintenance 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 Maintenance Work under this MOA.

6. Upon conclusion of Maintenance Work under this MOA and resolution of all relevant claims and appeals, the Government shall complete a final accounting of the costs of such Maintenance Work and furnish the Contributor with written notice of the results of such final accounting. If the costs of the Maintenance Work exceed the amount of funds provided by the Contributor and Federal funds provided for the Maintenance Work, 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 Engineer or providing an Electronic Funds

Transfer of such funds in accordance with procedures established by the Government. If any funds provided by the Contributor were not obligated for the Maintenance Work, the Government shall refund those funds to the Contributor within thirty (30) calendar days of completion of the final accounting.

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 Maintenance Work.

8. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the Projects 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 Maintenance 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 either 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. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

[SEE NOTE - 7]

12. 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 _____.

13. 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 persons who have executed this Agreement on behalf of the **[FULL NAME OF THE CONTRIBUTOR]** have acted within their 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: _____