

**MODEL MOA
TO RECEIVE AND EXPEND FUNDS PURSUANT TO 33 U.S.C. 701h
FOR O&M DREDGING
WHERE SUCH DREDGING IS A FEDERAL EXPENSE; BOTH FEDERAL AND
CONTRIBUTED FUNDS WILL BE USED; AND CONTRIBUTOR PROVIDES ALL
FUNDS NEEDED FOR WORK ABOVE THE AMOUNT OF FEDERAL FUNDS
AVAILABLE**

May 4, 2015

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 only for O&M dredging that is a Federal expense; there are some Federal funds available but not enough for Corps to award a reasonable dredging contract; and the Contributor provides ALL remaining funds needed in excess of the available Federal funds to perform the dredging and related activities (engineering and design work, environmental coordination, S&A, etc).

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. 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 2 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 2 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.

5. 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.

6. 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 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
[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 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 **[FULL NAME OF THE PROJECT]** (hereinafter the “Project”) was constructed pursuant to **[CITE AUTHORITY, INCLUDING SECTION NUMBER AND PUBLIC LAW NUMBER]**;

WHEREAS, the amount of Federal funds available for maintenance dredging of the Project is insufficient to award any dredging contracts;

WHEREAS, the Contributor considers it to be in its own interest to contribute funds voluntarily to be used by the Government in conjunction with the Federal funds available to perform maintenance dredging of the Project (hereinafter the “Maintenance Work”); and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701h to receive and expend funds to be used for the Maintenance 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 Maintenance Work, including the costs of environmental compliance, supervision and administration, and engineering and design, in excess of the Federal funds available for such Maintenance Work. The current estimate of costs associated with the Maintenance Work is \$_____ and \$_____ of Federal funds are available; therefore, the estimate of funds to be provided by the Contributor is \$_____. While the Government will endeavor to limit costs associated with the Maintenance Work under this MOA to the current estimate, 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 in excess of the Federal funds available for such Maintenance Work.

2. Within _____ (___) calendar days of execution of this MOA, the Contributor shall provide to the Government the sum of \$_____, which is the current estimate of funds to be required from the Contributor. 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.
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 any Maintenance 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 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 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 the Maintenance Work.
6. Upon conclusion of the Maintenance Work and resolution of all relevant claims and appeals, 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 costs associated with the Maintenance Work, including contract claims or any other liability that may become known after the final accounting. If the costs of the Maintenance Work exceed the sum of the Federal funds and 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 Engineer or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If the costs of the Maintenance Work are less than the sum of the Federal funds and 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 Maintenance 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 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 first-class, registered, or certified mail, 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 - 4]

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: _____