

**MODEL AGREEMENT
FOR
CONSTRUCTION OF ADDITIONAL CAPACITY
AT DREDGED MATERIAL PLACEMENT FACILITIES CONSTRUCTED
BY THE CORPS OF ENGINEERS
17 August 2015**

APPLICABILITY AND INSTRUCTIONS:

1. The attached model agreement is for the provision of Additional Capacity at a Dredged Material Placement Facility constructed by the Department of the Army pursuant to Section 217(a) of the Water Resources Development Act of 1996, as amended (33 U.S.C. 2326a(a)), if the Non-Federal Sponsor agrees to pay all costs associated with the Additional Capacity.

2. **OPTIONAL LANGUAGE:** While the non-Federal Sponsor must pay all costs associated with the Additional Capacity, there is some flexibility on the timing of such payments, and paragraph 1.a. of the model agreement may be replaced with the following:

“ a. Within _____(_____) calendar days of execution of this MOA, the Non-Federal Sponsor shall provide to the Government \$_____, which is the estimated cost associated with design and issuance of the solicitation for the Additional Capacity. Within _____ (_____) calendar days prior to award of the contract, or exercise of an option, for the Additional Capacity, the Non-Federal Sponsor shall provide the full amount of all costs for award of such contract, or exercise of such option, that are associated with the Additional Capacity.”.

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.

4. The Certificate of Authority, Certification Regarding Lobbying, and the Non-Federal Sponsor's Self-Certification of Financial Capability should be included as a part of the agreement package. These certificates can found at the following Corps website:
http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements/ppa_forms.a.spx

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF SPONSOR]
FOR CONSTRUCTION, OPERATION, AND MAINTENANCE
OF ADDITIONAL CAPACITY
AT **[FULL NAME OF DREDGED MATERIAL PLACEMENT FACILITY]**
[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 SPONSOR]** (hereinafter the “Non-Federal Sponsor”), represented by _____.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor executed a **[CITE LCA, PCA, PPA]** on **[INSERT DATE]** for construction, operation, and maintenance of the **[FULL NAME OF THE PROJECT]** (hereinafter the “Project”) pursuant to **[CITE AUTHORITY, INCLUDING SECTION OF LAW]**;

WHEREAS, Government constructed **[FULL DESCRIPTION OF DREDGED MATERIAL PLACEMENT FACILITY]** (hereinafter the “Dredged Material Placement Facility”) in connection with construction, operation, or maintenance of the Project;

WHEREAS, Section 217(a) of the Water Resources Development Act of 1996, as amended (33 U.S.C. 2326a(a)), authorizes the Government to provide additional capacity at a dredged material placement facility constructed by the Government beyond the capacity that is required for project purposes if the Non-Federal Sponsor agrees to pay all costs associated with the additional capacity;

WHEREAS, the Non-Federal Sponsor has requested **[FULL DESCRIPTION OF THE ADDITIONAL CAPACITY TO BE CONSTRUCTED]** at the Dredged Material Placement Facility (hereinafter the “Additional Capacity”); 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 Government and Non-Federal Sponsor agree as follows:

1. The Non-Federal Sponsor shall pay all costs associated with design, construction, and operation and maintenance of the Additional Capacity, including the costs of environmental compliance and supervision and administration. The cost of design and construction is estimated to be \$_____, and the annual cost of operation and maintenance is estimated to be \$_____. While the Government will endeavor to limit costs associated with the Additional Capacity to these estimates, the Non-Federal Sponsor acknowledges that the actual costs may exceed these estimated amounts due to claims or other unforeseen circumstances, and that the Non-Federal Sponsor is responsible for all costs, including any claims, related to the Additional Capacity.

a. Within _____ (___) calendar days of execution of this MOA, the Non-Federal Sponsor shall provide to the Government \$_____, which is the current estimated cost of design and construction of the Additional Capacity.

b. No later than August 1st of each year, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required for operation and maintenance of the Additional Capacity for the upcoming fiscal year, which starts on October 1st of that year and ends on September 30th of the following year. Not later than September 1st of that year, the Non-Federal Sponsor shall provide the full amount of such required funds.

c. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Sponsor, 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.

d. The Non-Federal Sponsor shall provide required 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.

2. The Non-Federal Sponsor shall provide, at no cost to the Federal Government, all lands, easements, and rights-of-way required for construction, operation, and maintenance of the Additional Capacity.

3. The Government shall not commence construction of the Additional Capacity 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).

4. The Government and the Non-Federal Sponsor shall develop an operations plan that governs use of the Additional Capacity, including requirements for before and after surveys, sediment testing, and other information needed for utilization of the Additional Capacity.

5. The Government shall provide the Non-Federal Sponsor with quarterly reports of obligations for the Additional Capacity. 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.

6. Upon conclusion of design and construction and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of design and construction costs for the Additional Capacity 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 sixty (60) calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. If the costs of design and construction of the Additional Capacity are less than the amount of funds provided by the Non-Federal Sponsor, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor within sixty (60) calendar days of such written notice. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay all costs of design and construction costs for the Additional Capacity, including contract claims or any other liability that may become known after the final accounting.

7. The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the Additional Capacity, except for damages due to the fault or negligence of the Government or its contractors.

8. In the exercise of their respective rights and obligations under this MOA, 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.

9. 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, with return receipt, by registered or certified mail, as follows:

If to the Non-Federal Sponsor:

[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.

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 SPONSOR]**

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

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

DATE: _____

DATE: _____