

**AGREEMENT FOR ACCEPTANCE OF CONTRIBUTED FUNDS
FOR A SECTION 408 EVALUATION**

Applicability and Instructions:

1. The attached agreement is provided as a template to be used in the development of an agreement for accepting funds from non-federal public or private entities to evaluate requests under 33 U.S.C. 408. The template agreement may be modified as appropriate to address case-specific circumstances. Guidance on the acceptance and expenditure of such funds is provided in the Implementation Guidance for Section 1156(a)(2) of WRDA 2016.
2. 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.
3. Following review and concurrence by the District Counsel or Division Counsel, as applicable, that the negotiated agreement is acceptable, the District Commander or Division Commander, respectively, may approve and sign the agreement.

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

THIS AGREEMENT is entered into this ____ day of _____, 20__, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, **[Insert either _____ Division, or _____ District, as applicable and insert “(hereinafter “Division Engineer” or the “District Engineer”, as applicable)]** and the **[FULL NAME OF THE CONTRIBUTOR]** (hereinafter the “Contributor”), together (“the Parties”).

WITNESSETH, THAT:

WHEREAS, the Contributor considers it to be in its own interest to contribute funds voluntarily to be used by the Government to evaluate a request under 33 U.S.C 408 (hereinafter “Section 408”) to alter **[DESCRIBE FEDERAL PROJECT(S) AFFECTED]** (“hereinafter the “Project(s)”);

WHEREAS, the Government is authorized pursuant to Section 408 to accept and expend funds to evaluate such requests;

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

1. The Contributor plans to contribute funds to the Government to pay costs associated with evaluation of engineering plans and other information prepared by Contributor related to a request under Section 408. The Contributor shall provide funds in accordance with the provisions of this paragraph:

a. The Government and Contributor shall develop a scope of work for activities that will be undertaken with funds provided by the Contributor. The scope of work shall provide a detailed description of activities to be undertaken, including a detailed estimate of cost for each activity and schedules, and identification of travel by Government personnel that may be necessary to the activities covered under this Agreement, with such travel to be undertaken in accordance with the Federal Travel Regulations and estimated separately. The Government and Contributor shall review and update, as necessary, the scope of work.

b. Prior to the Government initiating any activities identified in the scope of work, the Contributor shall provide to the Government funds to cover the estimated cost of activities under the scope of work through the current and next fiscal year quarter of the Government. No later than fifteen calendar days before the beginning of each subsequent fiscal year quarter, the Contributor shall provide to the Government funds for all estimated costs of activities to be accomplished during that quarter.

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

d. The Contributor shall provide funds to the Government by delivering a check payable to "FAO, USAED _____" to the **[insert District Engineer or Division Engineer, as applicable]** or by 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 activities under this Agreement. The Government shall provide the first report within thirty calendar days after the final day of the first full fiscal year quarter following initial receipt of funds pursuant to this Agreement. The Government shall provide subsequent reports within thirty calendar days after the final day of each succeeding quarter until the Government concludes work under this Agreement.

3. Upon conclusion of all work under this Agreement, the Government shall complete a final accounting and furnish the Contributor with written notice of the results of such final accounting. If the costs of the activities under this Agreement exceed the amount of funds provided by the Contributor, the Contributor shall provide the required additional funds within thirty calendar days of such written notice. If any funds provided by the Contributor were not obligated for activities under this Agreement, the Government shall refund those funds to the Contributor within thirty calendar days of completion of the final accounting.

4. No credit or repayment is authorized, nor shall be provided, for any funds provided by the Contributor and obligated by the Government for activities under this Agreement

5. Nothing herein shall constitute, represent, or imply any commitment regarding the Government's consideration of the Section 408 request. The acceptance and expenditure of funds will not impact impartial decision making at any level of the Government with respect to the review and any final decision, either substantively or procedurally. The review must comply with all applicable laws, regulations and procedures. None of the funds provided under this Agreement will be used by the decision maker in his or her review, recommendations, or decision concerning a Section 408 request.

6. The Parties agree to use their best efforts to resolve any dispute in an informal fashion through consultation and communication. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the Parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

7. This Agreement may be modified only by a written amendment to this Agreement signed by both Parties. Either party may terminate further performance under this Agreement by providing 60 calendar days advance written notice to the other party. In the event of termination, the

Contributor remains responsible for all costs incurred by the Government pursuant to this Agreement.

8. 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 Contributor:
[TITLE]
[ADDRESS]

If to the Government:
[Title: District Engineer or Division Engineer, as applicable]
[ADDRESS]

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.

9. In the exercise of their respective rights and obligations under this Agreement, 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.

10. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the **[Insert Division Engineer or District Engineer, as applicable]**.

DEPARTMENT OF THE ARMY

CONTRIBUTOR

BY: _____
[TYPED NAME]
[TITLE]

BY: _____
[TYPED NAME]
[TITLE]

DATE: _____

DATE: _____