

**MODEL AGREEMENT
FOR
COST SHARED WATERSHED AND RIVER BASIN ASSESSMENTS
MAY 28, 2015
(with updates as of OCTOBER 28, 2016)**

APPLICABILITY AND INSTRUCTIONS:

1. The attached model agreement must be used for all watershed and river basin assessments conducted under the authority of Section 729 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2267a) and other applicable authorities for assessment of water resources (e.g., an assessment under Section 203 of the Water Resources Development Act of 2000, as amended (33 U.S.C. 2269)) that are cost shared 75 percent Federal and 25 percent non-Federal. The responsibility for review and approval of a watershed and river basin assessment agreement that does not deviate from the approved model has been delegated to the MSC Commander and may be further delegated to the District Commander. Division Counsel concurrence (or District Counsel concurrence if approval authority is further delegated) that the agreement does not deviate from the subject model, and is appropriate for use for the particular assessment, is required prior to approval. In addition, the MSC Commander has been delegated authority to approve non-substantive deviations to the model agreement. 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 options, including language for the Agreement, are addressed in the Attachment:

- a. Option 1: Sponsor is a Non-Profit Entity (page A-1).
- b. Option 2: Not An Obligation of Future Appropriations (page A-2).
- c. Option 3: Multiple Sponsors (page A-3).
- d. Option 4: Project Management Plan prepared prior to execution of the Agreement (page A-4).
- e. Option 5: Accelerated Funds, following approval by HQUSACE (page A-5).
- f. Option 6: Contributed Funds, following Committee notification (page A-6).

3. Reminder: Make all required insertions, including language associated with an option; remove this cover page; remove the open and close brackets and any instructional text; ensure the spacing and page breaks throughout the Agreement are appropriate; if more than one option is used, ensure the Article and paragraph numbering are correct; and delete the Attachment.

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.aspx

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[INSERT FULL NAME OF NON-FEDERAL SPONSOR]
FOR THE
[INSERT FULL NAME OF WATERSHED OR RIVER BASIN ASSESSMENT]

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, **[Insert Name of District]** (hereinafter the “District Engineer”) and the **[Insert Full Name of Non-Federal Sponsor]** (hereinafter the “Non-Federal Sponsor”), represented by the **[Insert Title]**.

WITNESSETH, THAT:

WHEREAS, Section 729 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2267a) (hereinafter “Section 729”) **[Insert any additional cites for the assessment authority (e.g., and Section 203 of the Water Resources Development Act of 2000, as amended)]** authorizes **[Insert short description of the assessment]**;

WHEREAS, the Government shall consult with Federal, tribal, State, interstate, and local governmental entities in carrying out the watershed and river basin assessment;

WHEREAS, Section 729 specifies the cost-sharing requirements; 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 parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Assessment” means the activities and tasks required to identify and evaluate the water resource needs from any source within the watershed or river basin, provide a joint vision of a desired end-state including potential solutions regardless of Federal, State, or local agency responsibilities that reflects other Federal interests as well as potential interests of the U.S. Army Corps of Engineers, and prepare a watershed plan that documents the results of the Assessment.

B. The term “shared assessment costs” means all costs incurred by the Government and Non-Federal Sponsor after the effective date of this Agreement that are directly related to performance of the Assessment and cost shared in accordance with the terms of this Agreement. The term includes, but is not necessarily limited to, the Government’s costs for preparing the PMP; for planning and evaluation, including applicable costs for economic,

engineering, real estate, and environmental analyses; for preparing and processing the watershed plan; for supervision and administration; and for Agency Technical Review and other review processes required by the Government; and the Non-Federal Sponsor's creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation in the Assessment Coordination Team; audits; or negotiating this Agreement.

C. The term "PMP" means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for Assessment activities and tasks, including the Non-Federal Sponsor's in-kind contributions, and that guides the performance of the Assessment.

D. The term "in-kind contributions" means those planning activities (including data collection and other services) that are integral to the Assessment and would otherwise have been undertaken by the Government for the Assessment and that are identified in the PMP and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the PMP.

E. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Assessment using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies.

B. The Non-Federal Sponsor shall contribute 25 percent of shared assessment costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsor shall provide funds in the amount of \$25,000, for the Government to initiate the Assessment, including preparation of the PMP. In the event more funds are needed to develop the PMP, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor, and no later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. As soon as practicable after completion of the PMP, and after considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from

the Non-Federal Sponsor to meet its share of shared assessment costs for the remainder of the initial fiscal year of the Assessment. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

3. No later than August 1st prior to each subsequent fiscal year of the Assessment, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. The Government shall include in shared assessment costs and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor's share of shared assessment costs less the amount of funds provided pursuant to paragraph B.1. of this Article.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any items provided or performed prior to completion of the PMP; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Assessment. Federal

program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

H. In addition to the ongoing, regular discussions of the parties in the delivery of the Assessment, the Government and the Non-Federal Sponsor may establish a Assessment Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Assessment Coordination Team shall not be included in shared assessment costs, but shall be included in calculating the overall Federal cost of the Assessment. The Non-Federal Sponsor's costs for participation on the Assessment Coordination Team shall not be included in shared assessment costs and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, shared assessment costs are projected to be \$_____, with the Government's share of such costs projected to be \$_____ and the Non-Federal Sponsor's share of such costs projected to be \$_____. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated shared assessment costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Assessment.

C. The Non-Federal Sponsor shall provide to the Government required funds by delivering a check payable to "FAO, USAED, **[Insert District and EROC code, e.g., New Orleans (B2)]**" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an

escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of shared assessment costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of shared assessment costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional funds.

E. Upon conclusion of the Assessment and resolution of all relevant claims and appeals, the Government shall conduct a final accounting 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 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of shared assessment costs, including contract claims or any other liability that may become known after the final accounting.

ARTICLE IV - TERMINATION OR SUSPENSION

Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Assessment. In the event of termination, the parties shall conclude their activities relating to the Assessment. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of contract claims, and resolution of contract modifications. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. 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.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Assessment. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Assessment shall not be included in shared assessment costs, but shall be included in calculating the overall Federal assessment cost.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE VII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, 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. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VIII - NOTICES

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 certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

[Insert Title and Address of Sponsor representative to receive notices]

If to the Government:

[Insert Title and Address of Government representative to receive notices]

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

ARTICLE IX - CONFIDENTIALITY

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.

ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

[INSERT FULL NAME OF SPONSOR]

BY: _____
[INSERT TYPED NAME]
[Insert Colonel, U.S. Army or
Lieutenant Colonel, U.S. Army, as
applicable]
District Engineer

BY: _____
[INSERT TYPED NAME]
[Insert Full Title]

DATE: _____

DATE: _____

Attachment

Option 1: Sponsor is a Non-Profit Entity that has the consent of the Local Government. In accordance with ASA(CW) Memorandum, dated April 5, 2012, Subject: Implementation Guidance for Section 2003(b) of the Water Resources Development Act of 2007 – Definition of Non-Federal Interest, confirm eligibility of the non-profit entity to serve as the Non-Federal Sponsor and whether a legally constituted public body must also be a Non-Federal Sponsor on the Agreement.

http://www.usace.army.mil/Portals/2/docs/civilworks/Project%20Planning/wrda/2007/sec_2003b.pdf

Use the Certificate of Authority for a non-profit entity as provided on the Corps' PPA website. Insert the following two WHEREAS clauses after the first WHEREAS clause in the Agreement:

“WHEREAS, the **[FULL NAME OF NONPROFIT ENTITY]** is an organization that is incorporated under the applicable laws of the **[Insert State of [Name of State] or Commonwealth of [Name of Commonwealth]]** as a non-profit organization, exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501);

WHEREAS, by letter dated **[Month Day, Year]**, the **[FULL NAME OF AFFECTED LOCAL GOVERNMENT]**, the affected local government has consented to the **[FULL NAME OF NON-FEDERAL SPONSOR]**, serving as a Non-Federal Sponsor for the Assessment;”

Attachment

Option 2: Not An Obligation of Future Appropriations. Section 221(a) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that an agreement may reflect that it does not obligate future appropriations when doing so is inconsistent with constitutional or statutory limitations of a State or political subdivision thereof. However, section 221(a) does NOT provide that the Non-Federal Sponsor’s performance and payments are subject to appropriations of funds. The Government retains the right to exercise any legal rights it has to protect the Government’s interests. If applicable and requested by the Non-Federal Sponsor, insert into the Agreement as the last Article the following:

“ARTICLE XI - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. 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].”**

Attachment

Option 3: Multiple Non-Federal Sponsors. While it is preferable that there is one party only as the Non-Federal Sponsor for the Agreement, it is permissible to have more than one Non-Federal Sponsor and in such case, the Agreement should be modified to use the term “Non-Federal Sponsors” throughout along with the necessary modifications to change, as appropriate, verbs and pronouns from singular to plural. The Non-Federal Sponsors need to understand that they will be jointly and severally liable for all non-Federal obligations and responsibilities under the Agreement. Any proposal to allow for a division of responsibilities between Non-Federal Sponsors will require approval of the HQUSACE. Insert into the Agreement as the last Article the following:

“ARTICLE XI – JOINT AND SEVERAL RESPONSIBILITY OF THE NON-FEDERAL SPONSORS

The obligations and responsibilities of the Non-Federal Sponsors shall be joint and several, such that each Non-Federal Sponsor shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.”

Attachment

Option 4: Project Management Plan prepared prior to execution of the Agreement.

The following changes to the Agreement should be made:

1. In Article I.B., replace “preparing the PMP” with “updating the PMP”.

2. Replace Article II.B. in its entirety with the following:

“B. The Non-Federal Sponsor shall contribute 25 percent of shared assessment costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor for the remainder of the initial fiscal year of the Assessment. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

2. No later than August 1st prior to each subsequent fiscal year of the Assessment, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.”

3. Replace the last sentence in Article II.C.1. with the following:

“The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor’s share of shared assessment costs.”

Attachment

Option 5: Accelerated Funds. Following written approval by HQUSACE to allow the acceptance of accelerated funds, the Agreement may include the following changes:

1. Insert the following WHEREAS clause before the next to last WHEREAS clause in the Agreement:

“WHEREAS, the Non-Federal Sponsor proposes to accelerate its provision of funds for the immediate use by the Government for the Assessment;”

2. Add new paragraph I. to Article II as follows.

“I. The Non-Federal Sponsor may accelerate the provision of all or a portion of its funds required pursuant to paragraph B. of this Article for immediate use by the Government. No repayment shall be provided for any funds accelerated by the Non-Federal Sponsor and obligated by the Government, and use of such funds shall not constitute, represent, or imply any commitment to budget or appropriate funds for the Assessment in the future.”

Option 6: Contributed Funds, following Committee notification. Guidance on Contributed Funds is provided in CECW-P Memorandum, dated February 11, 2015, Subject: Implementation Guidance for Sections 1015 and 1023 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Contributed Funds.

http://www.usace.army.mil/Portals/2/docs/civilworks/Project%20Planning/wrda/2014/2014_sec_1015_1023.pdf

Following completion of the Committee notification process, the Agreement may include the following changes:

1. Insert the following WHEREAS clause before the next to last WHEREAS clause in the Agreement:

“WHEREAS, in addition to providing the required non-Federal cost share, the Non-Federal Sponsor considers it to be in its own interest to contribute funds voluntarily (hereinafter the “Contributed Funds”) to be used by the Government for the Assessment, as authorized pursuant to 33 U.S.C. 701h;”

2. Replace the last sentence in Article I.B. with the following:

“The term does not include any costs for dispute resolution; participation in the Assessment Coordination Team; audits; work funded with Contributed Funds; or negotiating this Agreement.”

3. Add a new paragraph F. to Article I as follows:

“F. The term “Contributed Funds” means those funds above any statutorily required non-Federal cost share that are provided voluntarily by the Non-Federal Sponsor for the Assessment, with no credit or repayment authorized for such funds.”

4. Add a new paragraph I. to Article II as follows:

“I. In addition to providing the funds required pursuant to paragraph B. of this Article, the Non-Federal Sponsor will be providing Contributed Funds currently estimated at \$_____, for the Assessment. The Non-Federal Sponsor shall make the full amount of such funds available to the Government by delivering a check payable to “FAO, USAED, [**Insert District and EROC code, e.g., New Orleans (B2)**]” to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. No credit or repayment is authorized, nor shall be provided, for any Contributed Funds provided by the Non-Federal Sponsor that are obligated by the Government. In addition, acceptance and use of Contributed Funds shall not constitute, represent, or imply any commitment to budget or appropriate funds for the Assessment in the future.”