

**SECTION 22 AGREEMENT
FOR THE DEVELOPMENT OF A COMPREHENSIVE PLAN
JUNE 8, 2016
(with updates as of OCTOBER 28, 2016)**

APPLICABILITY AND INSTRUCTIONS:

1. The attached agreement is provided as a template to be used in the development of an agreement for the provision of assistance to develop a comprehensive plan pursuant to Section 22 of the Water Resources Development Act of 1974, as amended (42 U.S.C. 1962d-16). Guidance on the development of comprehensive plans under this authority is provided in Appendix G of ER 1105-2-100 and Implementation Guidance for Section 3015 of WRRDA 2014. A separate template agreement is available for the provision of technical assistance under Section 22.
2. The following option, including language for the Agreement, is addressed in the Attachment:
Option 1: Multiple Sponsors (page A-1).
3. Reminder: Make all required insertions, including language associated with the 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; and delete the Attachment.
4. In accordance with Appendix G of ER 1105-2-100, the District must submit the negotiated Agreement to the MSC Planning Assistance to States Program Manager for approval. Division Counsel concurrence in the agreement is required prior to approval. A Certification Regarding Lobbying needs to be included with the Agreement. The certificate 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 DEVELOPMENT OF A COMPREHENSIVE PLAN

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 22 of the Water Resources Development Act of 1974, as amended (42 U.S.C. 1962d-16) authorizes the Secretary of the Army, acting through the Chief of Engineers, to provide assistance in the preparation of a comprehensive water resources plan (hereinafter the “Plan”) to a State or non-Federal interest working with a State, and to establish and collect fees for the purpose of recovering 50 percent of the costs of such assistance except that Secretary may accept and expend non-Federal funds provided that are in excess of such fee; 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:

1. The Government shall develop the Plan, in coordination with the Non-Federal Sponsor, in accordance with the attached Scope of Work, and any modifications thereto, that specifies the scope, cost, and schedule for activities and tasks, including the Non-Federal Sponsor’s in-kind services.

2. The Non-Federal Sponsor shall provide 50 percent of the costs for developing the Plan in accordance with the provisions of this paragraph. As of the effective date of this Agreement, the costs of developing the Plan 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 \$_____, which includes estimated credit in the amount of \$_____ for in-kind services.

a. After considering the estimated amount of credit for in-kind services that will be afforded in accordance with paragraph 4, if any, 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 initial fiscal year of development of the Plan, with a fiscal year beginning on October 1st and ending on September 30th of the following year. No later than 15 calendar days after such notification, the Non-Federal Sponsor

shall provide the full amount of such funds 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 required funds in accordance with procedures established by the Government.

b. No later than August 1st prior to each subsequent fiscal year during development of the Plan, 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. 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 using one of the payment mechanisms specified in paragraph 2.a. above.

c. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s costs of developing the Plan, 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.

d. Upon completion of the Plan and resolution of any 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 costs, including contract claims or any other liability that may become known after the final accounting.

3. In addition to the required 50 percent of costs, the Non-Federal Sponsor may determine that it is in its best interests to provide additional funds for development of the Plan. Additional funds provided under this paragraph and obligated by the Government are not included in calculating the Non-Federal Sponsor’s required 50 percent of costs and are not eligible for credit or repayment.

4. The in-kind services includes those activities (including services, materials, supplies, or other in-kind services) that are required for development of the Plan and would otherwise have been undertaken by the Government and that are specified in the Scope of Work and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the Scope of Work. The Government shall credit towards the Non-Federal Sponsor’s share of costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind services, including associated supervision and administration. Such costs shall be subject to audit in accordance with paragraph 9 to determine

reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

a. As in-kind services 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 services shall not exceed the Non-Federal Sponsor's share of costs.

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

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

6. 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.

7. Upon 30 calendar days written notice to the other party, either party may elect, without penalty, to suspend or terminate further development of the Plan. Any suspension or termination shall not relieve the parties of liability for any obligation previously incurred.

8. 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.

9. 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.

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

b. 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.

10. 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.

11. 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 shown below. 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 paragraph.

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]

12. 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.

13. 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: 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 paragraph the following:

“14. 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.”