



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE
ARLINGTON, VA 22204-1373

ARNG-IEC

21 FEB 2017

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Military Construction Cooperative Agreement (MCCA) Template

1. The template for Military Construction Cooperative Agreements (MCCA) was revised January 2017; see enclosure 1; and is available for your use. Several changes were made since the last version in February 2011.
2. The new MCCA template was approved 30 Jan 17 by the Office of the Principal Assistant Responsible for Contracting (PARC); see enclosure 2. The template is available on Guard Knowledge Online (GKO) in the PARC and ARNG-I&E home pages.
3. To find the MCCA template in GKO, go to NGB / OCNGB Staff / PARC / Cooperative Agreements / Quick Links, Grants & Cooperative Agreements / Templates / Formats / Tools / Military Construction Cooperative Agreements (MCCA) (ANG and ARNG) Formats / word document "MCCA (ARNG) January 2017". It is also available on the GKO in ARNG-I&E / ARNG-IEC (Construction Branch) / Misc. Files / Current MCCA.
4. Please begin using the revised version and let the Construction Branch know if you have any questions or concerns. Thank you to the Facilities Engineering Advisory Council and States for your input.
5. The point of contact for this memorandum is LTC Daymone Simmons, Chief, Construction Branch, at DSN 327-7941, 703-607-7941, or daymone.a.simmons.mil@mail.mil.

A handwritten signature in black ink, appearing to read "ERIK T. GORDON".

2 Encls
1-2. as

ERIK T. GORDON
COL, GS
I&E, Army National Guard

DISTRIBUTION:
Each State USPFO
Each State CFMO

January 2017

+MILITARY CONSTRUCTION COOPERATIVE AGREEMENT [ARNG]	
AGREEMENT NO. Wxxxxx-__-2001 to 2099	PAGE 1 OF _____ PAGES
BETWEEN NATIONAL GUARD BUREAU AND THE STATE [COMMONWEALTH, DISTRICT OR TERRITORY] OF _____	

PROJECT TITLE: <i>(Project Number and Title from DD Form 1390/91)</i>
PROJECT LOCATION: <i>(Project Location)</i>

TABLE OF CONTENTS

ARTICLE	DESCRIPTION	PAGES	ARTICLE	DESCRIPTION	PAGES
I	SCOPE, PURPOSE AND AUTHORITY	1	VII	GENERAL PROVISIONS	2
II	OBLIGATIONS OF THE PARTIES	1	VIII	APPLICABLE LAWS AND REGULATIONS	3
III	COSTS	2	IX	PROCUREMENT	1
IV	FUNDING LIMITATIONS	1	X	PROPERTY	1
V	PAYMENT	1	XI	LEGAL AUTHORITY	1
VI	DEFINITIONS	2	XII	TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION	1
			XIII	AGREEMENT PARTICULARS	1
ATTACHMENTS – APPENDICES					[]

EXECUTION

By executing this cooperative agreement, the parties agree to terms and conditions contained herein, including attachments.

IN WITNESS WHEREOF, the parties hereto have executed this cooperative agreement, and the Chief, ARNG-I&E has signed on this day of _____

THE STATE [COMMONWEALTH, OR TERRITORY] OF _____ BY: _____ <i>(Signature Block of The Adjutant General)</i> DATE: _____	NATIONAL GUARD BUREAU BY: _____ <i>(Signature Block of the USPFO)</i> DATE: _____ APPROVED AS TO BUDGET (I&E): BY: _____ Name I&E, Army National Guard
APPROVED AS TO LEGAL FORM _____ State Counsel	APPROVED AS TO LEGAL FORM _____ Judge Advocate

ARTICLE I - SCOPE, PURPOSE AND AUTHORITY

Section 101. General.

a. The Grantor, National Guard Bureau (NGB) through the United States Property and Fiscal Officer (USPFO) and the Grantee (States, Territories or the District of Columbia) have entered into this Military Construction Cooperative Agreement (MCCA) to establish terms and conditions applicable to the reimbursement of federal funds or contribution of In-Kind Assistance for design and construction of a facility. Both NGB and the Grantee benefit from the design and construction of a facility. The design and construction process links the Grantee's obligation to design and construct a facility using this single MCCA.

b. Appendices, upon attachment, are integral to this MCCA.

c. The provisions of NGR 5-1 and National Guard Pamphlet 415-5, Chapter 7, Army National Guard Military Construction Program Execution are integral to this MCCA.

d. Although this MCCA is not an appendix to the Master Cooperative Agreement (MCA) (October 2015 revision) which includes Attachment A thereto, the terms of the MCA are incorporated herein by reference. The MCA contains provisions required by federal law and regulation which apply to this MCCA and govern it.

Section 102. Property and Improvements.

a. The Grantee will submit prior to bidding the construction of the facility, satisfactory evidence of necessary property interest to real estate upon which the facility is to be constructed. In addition, the Grantee must certify that the real estate is of a nature and is located in an area that is appropriate, under local laws and ordinances, for the intended construction and use. [Not required if a facility is on federal property using Grantee contracting procedures].

b. Title to real property improvements, including real property installed equipment, except for ARNG Intrusion Detection System (IDS) equipment, constructed under this MCCA, shall be held by the Grantee. When constructing a facility on federal property using Grantee contracting procedures, title for real property improvements shall be held by the United States Government.

c. The Grantee waives any claim to title of any commercial IDS equipment furnished by ARNG-IES ESS for installation in the facility. ARNG-IES ESS Program will reimburse the Grantee for costs of operation and maintenance of any installed IDS equipment or ESS system protecting federal assets as approved by the ARNG-IES ESS Program Manager. The Grantee, using State ESS Program certified technicians and MCA 5-1 Appendix 1004 funds, will remove any IDS equipment or ESS system upon discontinuance of the use of the facility constructed under this MCCA as a facility for administration or training of Reserve Forces of the United States or upon NGB's determination that such removal is in the best interests of the United States, whichever is earlier.

Section 103. Scope of Activities.

The scope of activities is contained in Appendices.

Section 104. Performance Specifications.

The Grantee's performance specifications are contained in Appendices.

Section 105. Authority.

a. This MCCA is authorized under the Secretary of Defense, as provided in Title 10 U.S.C. Chapter 1803. In accordance with the provisions of 10 U.S.C. Chapter 1011, the Chief, National Guard Bureau (CNGB) is the channel of communication between the armed forces and the National Guard of the Grantee. The CNGB is authorized to contribute funds necessary for design and construction of facilities as set forth in 10 U.S.C. Chapter 1803. Contribution of funds by NGB and construction of the facility are necessary to accomplish federal and state missions of the State Army National Guard.

b. This MCCA is a cooperative agreement within the meaning of 31 U.S.C. §§ 6301-6308.

ARTICLE II - OBLIGATIONS OF THE PARTIES

Section 201. Obligations of the Grantee.

a. The Grantee shall exercise its best efforts to supervise, manage, operate and maintain all activities or projects within the scope of this MCCA according to sound, efficient, commercial practices, and the terms, conditions, and specifications of this MCCA.

b. The Grantee will obligate sufficient funds to pay its share of costs of this MCCA.

c. Once the project is completed, the Grantee may not permit any use or disposition of the constructed facility which will interfere with its use for the administration and training of units of the Reserve Forces of the United States, or in time of war or national emergency, by other units of the Armed Forces of the United States or any other use by the federal government until the event of termination of this MCCA. (See Section 701 Term of Agreement).

d. In the event the Grantee desires to place the facility under some use other than for administration and training of units of Reserve Forces of the United States, the Grantee, upon approval of the United States Property and Fiscal Officer (USPFO), may place the facility in such other use, provided:

(1) the facility is still adequate for its original purpose and still required for the use of any Reserve Component of the United States, the Grantee replaces the facility in-kind without further federal contribution; and

(2) a modification is executed to this MCCA recognizing all terms and conditions as applying to the replacement facility for the remaining term of this MCCA. Determination of whether the replacement facility is adequate for use as is, in fact in-kind, shall be within the sole discretion of the USPFO.

e. When the facility constructed under this MCCA is no longer required by any Reserve Component of the United States, as determined by any use or disposition of the facility that would interfere with its use for administering and training the Reserve Components or, in time of war or national emergency, by other units of the armed forces, or by the United States for any purpose, the Grantee agrees to reimburse the United States the amount calculated by multiplying the total federal contribution for design and construction of the facility by the percentage derived by dividing the number of months remaining in the term of this MCCA by 300 (25 years). Service Secretaries may waive this clause for individual facilities when he/she determines reductions in strength of the Army National Guard of the United States or the Air National Guard of the United States will cause an undue financial hardship on the Grantee.

Section 202. Obligations of NGB.

a. Whenever terms of this MCCA provide for reimbursement or cost sharing by the federal government, NGB shall reimburse the Grantee for allowable costs incurred in performance of this MCCA, according to terms and conditions for such reimbursement set forth herein.

b. Whenever terms of this MCCA provide for approval by NGB, such approval will not be unreasonably withheld. Any request for such approval shall be considered and acted upon by NGB in a timely fashion.

c. The obligations of NGB are subject to the availability of federal funds for the MCCA and the Grantee's funding contribution for its share of this MCCA.

ARTICLE III – COSTS

Section 301. General.

NGB shall reimburse the Grantee for allowable costs incurred in performance of this MCCA.

Section 302. Estimated Cost.

- a. Total estimated costs of this MCCA are specified in Appendix/Appendices.
- b. The Grantee shall share in costs of this MCCA performance as provided for in approved budgets of the Appendices.

Section 303. Cost Sharing.

- a. Wherever any item of cost for performance of this MCCA, as listed in a budget in the Appendices, is identified to be funded in part by NGB reimbursement, NGB shall be obligated to reimburse the Grantee only for its percentage share of total costs that would otherwise be allowable under this MCCA.
- b. Cost Share Percentage. For the purposes of liquidating the Grantee's obligation to pay for its share of costs, the percentage share of allowable costs for design or construction of the facility to be reimbursed to the Grantee shall be identified in Appendices.

Section 304. Allowability of Costs.

- a. Except as otherwise stated in this article or elsewhere in this MCCA, allowability of costs incurred by the Grantee in performance of this MCCA shall be determined according to 2 CFR Part 200, , 32 CFR Part 33, and NGR 5-1, Chapter 5, effective at the time the cost is incurred. Specifically, the provisions of 2 CFR 200.400 are applicable to costs for awards to states and local governments, including but not limited to 200.416 (Special Considerations for States, Local Governments and Indian Tribes) and 200.420, et seq. (General Provisions for Selected Items of Cost).
- b. Costs for acquisition of real property for purposes of this MCCA are unallowable.
- c. Costs of Grantee Improvements are unallowable. These unallowable improvements are facility components in excess of authorized criteria, which will not qualify for federal reimbursement.
- d. In addition to unauthorized activities and charges specified elsewhere in this agreement, unallowable costs identified in General Provisions for Selected Items of Cost 2 CFR 200.420 through 200.475 shall be unauthorized for reimbursement.
- e. The allowability of costs has no effect on the maximum funding level of this cooperative agreement. NGB has no liability to reimburse any cost over and above the maximum amount of funding obligated in this cooperative agreement, even if such cost would otherwise be allowable.

Section 305. Authorized Charges

See MCA Section 304-A

Section 306. Advance Agreements on Allowability of Costs.

- a. No cost incurred by the Grantee that is contrary to any restriction, limitation, or instruction contained in any approved budget under this MCCA shall be allowable.

b. The costs of compensation for personnel services, including but not limited to the cost of premiums for workmen's compensation, unemployment compensation, State sponsored life/health insurance and retirement benefits, shall be allowable as specified in NGR 5-1, Chapter 5 and 2 CFR 200.431.

c. Other specific agreement on costs, such as Pre-Agreement Costs. [If none, state NONE.]

Section 307. Project Close-Out and Settlement.

a. Within number of days as specified in NGR 5-1 under "Final Accounting and Settlement" of final completion of the project (execution date of the NGB Form 593 PROJECT INSPECTION REPORT by the State and the USPFO), or upon termination of this MCCA, whichever comes earlier, the State shall promptly deliver to NGB a full and final accounting liquidating all payments or reimbursements under this MCCA. After completion of the State's final accounting, NGB shall make a final settlement of the total NGB contribution for this MCCA. Costs incurred for performance of the project which are not disclosed by the State shall not be eligible for reimbursement by NGB. At its sole discretion, NGB may extend the time limit for good cause shown.

ARTICLE IV - FUNDING LIMITATIONS

Section 401. Funding Limitation.

- a. NGB funding limitations for design and construction are separately specified in Appendices.
- b. Within its discretion, NGB may unilaterally increase maximum funding limitations reflected in the Appendices at any time.
- c. Project Funding and Appropriation Limitation. Funding is limited to availability at NGB and the limits in appendices of the current MCCA or MCCA modification. Due to appropriation limitations, NGB funding authority for project construction shall not exceed current Congressional limitations and DoD Directives. Exceeding these limitations can only be done through Congressional Reprogramming.

Section 402. Method of Funding.

This MCCA shall be funded for each phase, according to Appendices.

Section 403. Grantee Advance Funding of Design Option.

- a. Within its discretion, the Grantee may contract, and fund the payment of costs, for preparation of project design in order to fulfill its obligation to provide design documents. To the extent that "federally-reimbursed" costs are required, the Grantee's incurrence of these costs shall be reimbursed by NGB through the Grantor to the Grantee.
- b. Limitations in this article relate to funds necessary for reimbursement to the Grantee for its design costs. The fact that federal funds may not be available for obligation, or obligated to this MCCA, or available for reimbursement of Grantee costs until completion of project design documents by the Grantee or the beginning of construction of the project, shall not be grounds for claim by either party that this MCCA is unenforceable because of failure of consideration.
- c. Design costs associated with this project incurred by the Grantee in advance of this MCCA may not exceed the amounts identified in Appendix SD and must be approved by NGB before reimbursement, usually granted in accordance with Section 403.d. below.
- d. Obligation of NGB for federal reimbursement of Grantee costs for design requires a pre-agreement be in place and is typically contingent upon one or more of the following conditions being met:
 - (1) Congressional appropriation of project MILCON construction funds, or
 - (2) Congressional language directing Project Design, or
 - (3) Inclusion of Project in the Future Year Defense Plan.
- e. In all conditions the design must meet NGB design criteria as set forth in the appropriate NGB design guides and regulations.

ARTICLE V – PAYMENT

Section 501. General.

There are only two payment methods authorized in the execution of this MCCA, the reimbursement method and the advance method. Either payment method may be used, pursuant to the policy and procedures in NGR 5-1, Chapter 11; the award term for the method not chosen requires a strikethrough.

Section 502. Payment by the Reimbursement Method.

Reimbursement method payments shall be according to procedures established by the Defense Finance and Accounting Service (DFAS), DoD Financial Management Regulation 7000.14R Volumes 11A and 11B and NGR 5-1, Chapter 11.

Section 503. Payment by Advance Method.

NGB may reimburse the Grantee in advance. The advance payment method shall be according to procedures established by the Defense Finance and Accounting Service and NGR 5-1, Chapter 11.

Section 504. Direct Federal Payment of Grantee Obligations.

In no event, shall the USPFO make direct payment to a Grantee contractor, Grantee employee, contractor employee, or Grantee vendor for any costs incurred by the Grantee under this MCCA.

Section 505. Interest.

The amount of interest due the United States on funds advanced to the Grantee or interest due the Grantee shall be determined and paid in accordance with 31 U.S.C. § 6503 and the terms of the Cash Management Improvement Act Agreement in effect between the Grantee and U.S. Treasury and regulations as issued by the U.S. Department of Treasury and the Department of Defense, as amended. For interest on advance payments see 31 U.S.C. 6503, 32 C.F.R. § 33.21.

ARTICLE VI – DEFINITIONS

Section 601. Army National Guard Military Construction Cooperative Agreement.

See MCA Section 601

Section 602. Readiness Center/Non-Readiness Center Construction Project.

A readiness center construction project shall include acquisition, construction, expansion, rehabilitation, and conversion of facilities for administration and training support of ARNG units. A non-readiness center construction project shall include acquisition, construction, expansion, rehabilitation, and conversion of facilities for administration and logistical support, or training support, of ARNG units.

Section 603. Army National Guard.

See MCA Section 603

Section 604. Chief, National Guard Bureau.

See MCA Section 604

Section 605. Construction.

Construction means the erection, installation, or assembly of a new facility; the relocation of a facility; the complete replacement of an existing facility; or the expansion, extension, alteration/conversion (to a new type use) of an existing facility. This includes equipment (not furniture) installed and made a part of the facility, related site preparation, excavation, backfilling, landscaping, or other land improvements. It also includes increases in components of facilities for functional reasons and the extension of utilities to areas not previously served. The federal reimbursement of project costs cannot exceed the statutory ceiling in 10 U.S.C. 18236(b).

Section 606. Equipment (Non-Military).

See MCA Section 606

Section 607. Fiscal Year.

See MCA Section 607

Section 608. Estimated Construction Costs.

For purposes of this MCCA, estimated construction costs shall be the NGB approved DD Forms 1390/91 construction amount. It shall not include the five percent (5%) contingency allowance nor the Title II/Type "C" SUPERVISION, INSPECTION AND OVERHEAD Services (SIOH) amount separately identified on DD Forms 1390/91 approval documents.

Section 609. Grantee.

See MCA Section 609

Section 610. Grants Officer.

See MCA Section 610

Section 611. Grants Officer Representative.

See MCA Section 611

Section 612. In-Kind Assistance.

See MCA Section 612

Section 613. Military Equipment.

See MCA Section 613

Section 614. National Guard Bureau.

See MCA Section 614

Section 615. Design Services.

Design services mean any service necessary, or reasonably related to, investigation of a construction site for suitability, layout, engineering requirements, or development of plans and specifications for construction, preparation of construction estimates, reproduction of construction contract bid documents, or supervision and inspection of construction.

Section 616. Operation and Maintenance Activities.

See MCA Section 616

Section 617. State.

See MCA Section 617

Section 618. Territory.

See MCA Section 618

Section 619. The Adjutant General.

See MCA Section 619

Section 620. United States Property and Fiscal Officer (USPFO) (Grantor)

See MCA Section 620

Section 621. Grantee (State) Improvements.

Grantee improvements is other work to facilities or portions of facilities included within the scope of the project, as identified in appendices to this MCCA, which are desired by the Grantee and for which Grantor will make no reimbursement of funds for either design or construction.

ARTICLE VII - GENERAL PROVISIONS

Section 701. Term of Agreement.

Unless sooner terminated by its terms, this MCCA shall terminate 25 years after the date of USPFO's acceptance of the facility, which is the placed-in-service date, also known as the substantial completion or beneficial occupancy. Nonetheless, this term in no way implies that NGB will reimburse the Grantee for any costs beyond those authorized in the appendices and their approved budgets.

Section 702. Sole Benefit.

This MCCA is intended for the sole benefit of NGB and the Grantee and is not intended to create any other beneficiaries.

Section 703. Modification.

This MCCA may be modified only by a written instrument signed by the parties hereto. See NGR 5-1, Chapter 3, for Military Construction Cooperative Agreement (ARNG) Modification procedures.

Section 704. Successors and Assigns.

This MCCA may not be assigned by a party without the express written consent of the other party. All covenants made under this MCCA shall bind and take effect to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

Section 705. Entire Agreement.

This MCCA forms the entire agreement between the parties as to scope and subject matter of this MCCA. All prior discussions and understandings concerning such scope and subject matter are superseded and incorporated by this MCCA.

Section 706. Severability.

If any provision of this MCCA is held judicially invalid, the remainder of this MCCA shall continue in force and effect to the extent not inconsistent with such holding.

Section 707. Waiver of Breach.

If a party waives enforcement of any provision of this MCCA (or appendices) upon any event of breach by the other party, such waiver shall not automatically extend to any other or future events of breach.

Section 708. Notices.

Any notice, transmittal, approval, or other official communication made under this MCCA shall be in writing and shall be delivered by hand, email, facsimile (FAX) transmission, or by mail to the other party at the address or facsimile transmission telephone number set forth below or at such other address(es) as may be later designated:

NGB (USPFO): {name, position, address, email, and FAX numbers}

Grantee: {name, appropriate Grantee official, address, email, and FAX numbers}

Section 709. Execution.

This MCCA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all attached Appendices shall not affect the legality or enforceability of this MCCA.

Section 710. Conflict of Interest.

The Grantee shall insure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

Section 711. Access to and Retention of Records.

The Grantee shall afford any authorized representative of NGB, the Department of Defense, or the Comptroller General access to and the right to examine all records, books, papers, and documents ("Records") that are within the Grantee's custody or control and that relate to its performance under this MCCA. The Grantee shall retain all such records intact in such form, if not original documents, as may be approved by NGB for at least three (3) years following project, completion or termination.

Section 712. Change of Circumstances.

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this MCCA.

Section 713. Liability and Indemnity.

Nothing in this MCCA shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage or for death or personal injury arising out of and during performance of this MCCA. Any liabilities or claims for property loss or damage, or for death or personal injury, by a party or its agents, employees, contractors or assigns or by third persons, arising out of and during the performance of this MCCA, shall be determined according to applicable law.

Section 714. Reports.

In addition to any financial or other reports required by terms of this MCCA, NGB may require the Grantee to prepare reports or provide information relating to this MCCA. The Grantee agrees to provide such reports within a reasonable time of request and in such detail as may be required.

Section 715. Special State Requirements.

Changes to established requirements of this MCCA made necessary by governing state statutes will be processed in accordance with NGR 5-1, Chapter 3. Upon approval, a statement of alterations or changes, along with justification, shall be attached to this MCCA and will be considered a part thereof. If none, state NONE.

Section 716. Government Furnished Equipment (GFE).

In addition to the Liability and Indemnity provisions in Section 713, nothing in this MCCA shall be construed as an indemnification by the United States of the State, its employees, agents, or third persons, for liability with respect to any and all claims, including, but not limited to: (1) claims for damages; and (2) claims for reimbursement arising from property loss, personal injury or accident damage related to the use, care, or operation of GFE. The Grantee's liability for lost or damaged GFE will be in accordance with applicable state laws. (NGR 5-1, Chapter 8). The Grantee is liable for loss and damage. In the event that state law does not authorize indemnification, GFE should not be provided.

ARTICLE VIII – APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law.

This MCCA is incidental to implementation of a Federal program. Accordingly, this MCCA shall be governed by and construed according to Federal law as it may affect rights, remedies, and obligations of the United States.

Section 802. Governing Regulations.

See MCA Section 802

Section 803. Officials Not to Benefit.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

Section 803-A Nondiscrimination.

See MCA Section 803

Section 804. Lobbying.

See MCA Section 804

Section 805. Drug-Free Work Place.

See MCA Section 805

Section 806. Environmental Standards.

See MCA Section 806

Section 807. Preference for United States Flag Carriers.

See MCA Section 807

Section 808. Debarment and Suspension.

See MCA Section 808

Section 809. Buy American Act.

See MCA Section 809

Section 810. Uniform Relocation Assistance and Real Property Acquisition Policies.

See MCA Section 810

Section 811. Copeland "Anti-Kickback" Act. *(All contracts and sub-grants for construction or repair.)*

See MCA Section 811

Section 812. Contract Work Hours and Safety Standards Act.

See MCA Section 812

Section 813. [Statutory requirements formerly known as the Davis-Bacon Act.]

IF THIS AWARD TERM IS NOT AUTHORIZED BY ARNG-I&E, IT REQUIRES STRIKETHROUGH.

The Grantee covenants and agrees that it will comply with the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by federal grant program legislation). All rulings and interpretations of the Davis-Bacon Act contained in 29 CFR Part 5 are incorporated by reference in this MCCA. As applied to this MCCA, the Davis-Bacon Act (40 U.S.C. Sections 3141-3148) provides that contracts in excess of \$2,000 to which the federal Government provides assistance funding for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a provision that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the U.S. Secretary of Labor.

Section 814. National Historic Preservation Act.

(Any construction, acquisition, modernization, or other activity that may impact a historic property.)

The Grantee covenants and agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593.

(36 CFR Part 800 requires Grants Officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.)

Section 815. Hatch Act.

The Grantee covenants and agrees to comply with the Hatch Act (5 U.S.C. 1501 - 1508 and 7324 - 7326), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of state or local governments whose employment is connected to an activity financed in whole or part with federal funds.

Section 816. Equal Employment Opportunity.

(All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees.)

The Grantee covenants and agrees to comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

Section 817. Cargo Preference. *(Any agreement under which international air travel may be supported by U.S. Government funds.)*

The Grantee covenants and agrees that it will comply with the Cargo Preference Act of 1954 (46 USC Chapter 553), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this Agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S. flag commercial vessels, if available.

Section 818. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

The Grantee covenants and agrees that it will comply with Executive Order 13202 of February 17, 2001, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, as amended on April 6, 2001.

Section 820. System for Award Management and Universal Identifier Requirements.

See MCA Section 813

Section 821. Reporting Subawards and Executive Compensation

See MCA Section 814

ARTICLE IX – PROCUREMENT

Section 901. Procurement Procedures Applicable to States.

See MCA Attachment A – 2 CFR Part 200 Award Provisions, Part 6, particularly Articles I and III. The Grantee's acquisition of goods and services in performance of this MCCA shall be in accordance with applicable state contracting procedures and the standards and procedures cited in the preceding sentence.

Section 902. State Contract Flow-down.

As specified in MCA Attachment A – 2 CFR Part 200 Award Provisions, Part 6, Article I §D, state contracts issued in support of the grantee's responsibilities pursuant to this agreement must conform to the requirements of Part 6, Article III, unless state laws or regulations offer more protection.

ARTICLE X – PROPERTY

Section 1001. Equipment.

See MCA Section 1001

Section 1002. Operating Materials and Supplies.

See MCA Section 1002

ARTICLE XI - LEGAL AUTHORITY

Section 1101. Legal Authority.

The Grantee represents and warrants that it is under no existing or foreseeable legal disability that would prevent or hinder it from fulfilling terms and conditions of this MCCA. The Grantee shall promptly notify NGB of any legal impediment that arises during the term of this MCCA that may prevent or hinder the Grantee's fulfillment of its obligations under this MCCA.

Section 1102. Opinion of Counsel.

Concurrent with its execution of this MCCA, the Grantee's highest legal officer, or his or her designee, certifies by signature approval as to legal form of this MCCA, that.

- a. The Grantee has the requisite authority to enter into this MCCA.
- b. The Grantee can make the warranty set forth in Section 1101 above;
- c. The Grantee is empowered to assume responsibilities and obligations the Grantee proposes to undertake under this MCCA;
- d. The provisions of this MCCA intended to secure NGB interests are enforceable according to their terms;
- e. The execution of this MCCA has been duly authorized by the Grantee; and
- f. That the individual signing this MCCA on behalf of the Grantee has the requisite legal authority to bind and obligate the Grantee to terms and conditions of this MCCA.

ARTICLE XII - TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1201. Termination.

This MCCA may be terminated by either party according to terms and conditions of 32 CFR § 33.44.

Section 1202. Enforcement.

a. NGB may take such actions to enforce terms of this MCCA as may be provided for in and under terms of 32 CFR § 33.43.

b. Circumstances under which NGB may take actions provided in Section 1202.a. above includes, but shall not be limited to, the following:

- (1) Failure by the Grantee to appropriate funds sufficient for its share of project costs;
- (2) Unreasonable failure by the Grantee to begin, prosecute, or complete construction of the Project;
- (3) Failure by the Grantee to substantially complete construction in accordance with Project Design Documents, approved and accepted in accordance with terms of this MCCA.

Section 1203. Claims, Disputes Resolution and Appeals.

a. Any claim made by the Grantee arising out of this MCCA shall be presented in writing to the Grants Officer. The claim shall include: the amount of monetary relief claimed or the nature of other relief requested, the basis for relief, and the documents or other evidence pertinent to the claim.

b. Claims shall be made within 60 days after the basis of the claim is known or should have been known, whichever is earlier. It is the Grantee's duty to include in its claim all information needed to demonstrate its timeliness.

c. Upon receipt of a claim, the Grants Officer shall provide a written decision denying or sustaining the claim, in whole or part, which decision shall include the reason for the action, within 60 days of the date of the receipt of a claim. The determination shall be final unless appealed by the Grantee pursuant to the provisions of this section.

d. Alternative Dispute Resolution (ADR).

(1) Policy. It is NGB policy to try to resolve all issues concerning cooperative agreements at the Grants Officer's level. Grant Officers are encouraged to use ADR procedures to the maximum extent practicable.

(2) Procedures. If a Grantee decides to appeal a Grants Officer's decision, the Grants Officer shall encourage the Grantee to enter into ADR procedures. The ADR procedures to be used shall be agreed to at the time the parties determine to employ them.

e. Appeals.

(1) Grant Appeal Authority. The CNGB shall designate a Grants Appeal Authority at the time of receipt of appeal.

(2) Right of Appeal. The Grantee has the right to appeal a Grants Officer's decision to the Grant Appeal Authority.

(3) Appeal Procedures.

(a) Notice of appeal. The TAG may appeal a decision of the Grants Officer within 90 days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the Grants Officer.

(b) Appeal file. Within 30 days of receiving the notice of appeal, the Grants Officer shall forward to the Grant Appeal Authority and the Grantee the appeal file, which shall include copies of all documents relevant to the appeal.

(c) Decision. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

(d) Final Appeal. If the Grantee is not satisfied with the opinion/decision of the CNGB, the Grantee can take the case to Federal Court.

f. Nothing in this section is intended to limit a Grantee's right to any remedy under the law.

ARTICLE XIII - Agreement Particulars.

The information below shall be recorded by the Grants Officer's Representative (GOR) for the compliance with the reporting requirements of the DoD Assistance Award Action Report System (DAADS) and the Federal Funding Accountability and Transparency Act of 2006.

- a. Grantee/Recipient Category: Government
- b. Grantee/Recipient Type: State Government
- c. Grantee/Recipient DUNS: _____
- d. Primary Place of Performance (Project Location): _____

- e. Grantee/Recipient County (Primary Place of Performance): _____
- f. Grantee/Recipient Congressional District (Primary Place of Performance): _____
- g. Major Agency: DOD
- h. Agency Code: 2100
- i. Funding Agency: Army
- j. Program Source Agency: 21
- k. Transaction Type: Cooperative Agreement
- l. CFDA: 12.400
- m. CFDA Program Title: Military Construction National Guard

- n. Program Source Account-Funding: _____
- o. Treasury Appropriation Code: _____
- p. Award/Obligation/Action Date: _____
- q. Starting Date: _____
- r. Ending Date: _____
- s. Record Type: Individual Action
- t. Fiscal Year/Quarter: _____ / _____
- u. Unique Federal Award Identification Number (FAIN) _____
- v. Approved Budget Amount: _____
- w. R&D Award (Yes or No) _____
- x. Indirect Cost Rate or CPP Rate: _____

ATTACHMENTS – APPENDICES

Appendix SP Project Description, Scope, and Schedule

Appendix SD Statement of Work, Grantee Design for a Facility

Appendix SC Statement of Work, Grantee Construction for a Facility

APPENDIX SP

PROJECT DESCRIPTION, SCOPE, AND SCHEDULE

PROJECT DESCRIPTION

[Complete a brief description of the construction project as stated on the approved DD Form 1390-91, to include all major elements thereof; identification of Grantee improvements; indicate Land (Federal or State); and indicate Contracting Procedures (Federal or State)]

PROJECT SCOPE

[Show full scope of all "Primary Facility" items as specified in the cost estimate on the approved DD Form 1390-91 and provide a brief description of major Secondary Facility items.]

PROJECT SCHEDULE

[Show all significant schedule dates, i.e., design development; project award; construction start and completion dates, etc. as stated on the approved DD Form 1390-91]

APPENDIX SD

STATEMENT OF WORK GRANTEE DESIGN FOR A FACILITY

1. Purpose. This Statement of Work defines the Grantee's obligation in providing Grantee design for a construction project.

2. Scope of Services. By contract or otherwise, the Grantee will obtain Architect-Engineer (A-E) services necessary to develop plans, specifications, and cost estimates (collectively referred to as Project Design Documents) required for construction of the facility.

3. Design Services. Design services shall be designated in the following manner:

3.1. Title I/Type "A" SITE INVESTIGATION Services: Field surveys and investigations required to obtain data essential for production of plans and specifications for construction which may include, but not be limited to, topographical surveys, soil borings, site planning, soils, chemical and mechanical surveys and investigations, survey of utility locations and capacities, and similar fact-finding investigations and technical studies.

3.2. Title I/Type "B" DESIGN Services: Services to perform code and criteria review and to produce construction plans, construction specifications and construction cost estimates at the preliminary (35 percent completion), final (95 percent completion) and bid final (bidding documents) phases.

3.3. Title I/Reproduction Services: Services to reproduce construction plans and specifications suitable for bidding purposes.

3.4. Title II/Type "C" SUPERVISION AND INSPECTION Services: Services to supervise and inspect construction performance and review of construction contractor prepared as-built drawings.

4. Design Responsibilities.

4.1. Grantee design may occur under the following circumstances.

4.1.1. Congress has authorized construction of the facility and appropriated funds to the Department of Defense therefore; or

4.1.2. Federal funds are available for design but are not yet available for construction of the facility; or

4.1.3. Federal funds are not yet available for either design or construction of the facility.

4.1.3.1. The Grantee shall carry out final design of the facility as the project is defined in this appendix. Final design shall include construction plans and specifications, construction cost estimates, the construction schedule and applicable construction phasing or sequencing requirements.

4.1.3.2. The Grantee will select and contract for A-E design services.

4.1.3.3. The Grantee shall transmit design documents for NGB review, comment, and approval at the 30, 60 and 90 percent design prior to the Grantee's approval and acceptance of documents at the 35, 65, 95, and 100 percent stages of design completion. NGB shall approve, disapprove, or approve subject to comments, Grantee submitted design documents. If NGB approves design documents subject to comments, the Grantee shall make good faith efforts to resolve comments prior to accepting documents from the design A-E.

4.2. NGB direction of Grantee design contractor. NGB shall not issue directions to the Grantee's design A-E and shall communicate with the Grantee's design A-E only through, or with permission of, an authorized representative of the Grantee.

4.3. Design changes.

4.3.1. Facility design changes that increase design or estimated construction costs above design or estimated construction costs stated in this appendix should not be approved by the Grantee until this appendix is modified by the parties to reflect additional costs, as provided for elsewhere in this appendix.

4.3.2. Title to design documents. Title to project design documents shall be provided in the Grantee design contract. The Grantee shall insure that the design contract provides an unlimited right to use of project design documents at no additional cost.

4.3.3. Limitation of liability.

4.3.3.1. The Grantee acknowledges that it (or its contractor) is preparing project design documents in its right and not as an agent or contractor of NGB.

4.3.3.2. No NGB or Grantee approval given under this appendix shall be construed as a warranty of any kind.

5. Project Schedule. The parties agree to exercise their best efforts to complete project design documents within the period set forth on the Project Schedule (page APP-SP-1).

6. Estimated Cost of Construction. During the project design period, the Grantee will promptly advise NGB if it finds that the estimated cost of construction is likely to be in excess of the stipulated cost. The Grantee shall provide a new estimated cost of construction for NGB's review. Upon NGB's review of Grantee estimates, the parties shall agree to either reduce the scope of construction to keep the estimated cost within the amount set forth in this appendix or to establish a new estimated cost of construction and modify this appendix as provided elsewhere in this appendix.

7. Reimbursement of Design Costs. Federal (USPFO) reimbursement of Grantee incurred design costs, not to exceed the Project Design Budget, will be made upon Grantee's submission at 30, 60, and 90 percent with NGB's authorization of Project Design Documents at 35, 65 and 95 percent, and the Grantee's proper billing for reimbursement of the federal share of costs under terms of this MCCA, in accordance with the following schedule:

	DD 1390/91 Approval by NGB (A-E auth memo)	Conceptual (35%) Authorized	Preliminary (65%) Authorized	Final (95%) Authorized	Bid Final (100%) Approval
Type A services	100%	100%	100%	100%	100%
Type B services	0%	35%	65%	95%	100%
Reproduction Services	0%	0%	0%	0%	100%
Type C services		(Incrementally during construction)			
Note: All entries refer to a percentage of the federal dollar share of the respective cost item.					

8. Architect-Engineer Fee Limits. The Grantee may negotiate whatever Architect-Engineer services contract it desires. However, in addition to any other limitation on costs set forth in this MCCA, NGB shall have no obligation to reimburse the Grantee for more than the federal pro rata share of:

8.1. Type "A" SITE INVESTIGATION Services costs in excess of 3% (unless increase is approved in advance by NGB) of the estimated cost of construction.

8.2. Type B "DESIGN" Services costs in excess of 6% of the estimated cost of construction (no increase unless justified "lost design").

8.3. Bid Document Reproduction in excess of 25 sets (unless approved in advance by NGB) of bid documents.

8.4. Type "C" SUPERVISION AND INSPECTION Services costs in excess of 3% of the sum of the estimated cost of construction and contingency. [See Project Construction Budget (page APP-SC-2) for limitation of construction inspection costs].

9. Project Design Budget.

9.1 The Project Design Budget is the maximum amount for which NGB is obligated to reimburse the Grantee for costs of performance of this MCCA.

9.2 Unless otherwise provided for in the Project Design Budget, any line item therein may be changed only by amendment of this MCCA. Either party may propose a change to a budget by submitting such proposal in writing to the other party.

9.3 The Project Design Budget shall include any limitation, restriction, or instruction on expenditure of funds applicable to the project or any line item in the Project Design Budget.

PROJECT DESIGN BUDGET

(PROJECT NUMBER, TITLE AND LOCATION)

Activity	Estimated Federal Share	Estimated Grantee Share	Estimated Totals
Estimated Construction Costs (Note 4)			
Site Investigation Services (Type A Services)			
Design Services (Type B Services)			
Design Commissioning			
Bid Document Reproduction Services			
TOTALS (Maximum Design Funding)			

Project Design Budget notes, terms and conditions:

1. This Project Design Budget is incorporated into this appendix for the purpose of establishing total estimated Project Design Costs and the amount of NGB funding necessary to reimburse the Grantee for the federal share to produce Project Design documents.
2. The United States shall not be liable to reimburse the Grantee for costs of design except those for Cost Shared Improvements or Federal Improvements.
3. All design work after the date of construction award will be Title II/Type "C" SUPERVISION AND INSPECTION Services (SIOH); see page APP-SC-2.
4. Estimated Construction Costs = DD Forms 1390/91 construction amount, as approved by NGB, excluding Contingency and Title II/Type "C" SUPERVISION AND INSPECTION Services.
5. Design Commissioning shall be limited to 0.4% of primary facility estimated construction, unless pre-approved.
6. Other specific design budget terms unique to this MCCA. If none, state NONE.

APPENDIX SC

STATEMENT OF WORK GRANTEE CONSTRUCTION FOR A FACILITY

1. Purpose. This Statement of Work defines the Grantee's obligation in providing Grantee construction for a facility.

2. Scope of Responsibilities and Administration.

2.1. Grantee construction.

2.1.1. The Grantee shall carry out construction of the facility in strict accordance with Project Design documents as accepted by the Grantee.

2.1.2. Upon acceptance of Project Design documents, the Grantee will timely undertake to contract for construction of the facility according to this MCCA.

2.2. NGB approval of construction documents. The Grantee shall notify NGB of its intent to award a contract(s) for construction of the facility. At its discretion, NGB may review, make comment, or deny approval of the contract prior to the Grantee's execution of the contract. NGB may disapprove contracts only for the following reasons:

2.2.1. The contract price exceeds the amount in the Project Construction Budget in this Appendix; or.

2.2.2. The proposed contractor (or any tier subcontractor) has been debarred or suspended from performing federal contracts or performing contracts under Grants or Cooperative Agreements with the federal government (see Section 808).

2.3. Inspection and acceptance of construction.

2.3.1. The Grantee shall be responsible for inspection and acceptance of the work of its construction contractor(s).

2.3.2. The FINAL PROJECT INSPECTION REPORT (NGB Form 593) shall be completed and certified by the USPFO upon all the bills being paid and any outstanding claims settled.

2.3.3. Final payment reimbursement to the state shall be granted after the NGB Form 593 has been completed.

2.3.4. Upon the USPFO's certification of final acceptance, the project shall be considered complete.

2.4. NGB direction of Grantee contractor(s). NGB shall not issue directions to any Grantee contractor and shall communicate with a Grantee contractor only through, or with permission of, an authorized representative of the Grantee.

3. Project Schedule. The parties agree to exercise their best efforts to complete project construction within the period set forth on the Project Schedule (page APP-SP-1).

4. Project Construction Budget.

4.1 The Project Construction Budget is the maximum amount for which NGB is obligated to reimburse the Grantee for costs of performance of this MCCA.

4.2 Unless otherwise provided for in the Project Construction Budget, any line item therein may be changed only by amendment of this MCCA. Either party may propose a change to a budget by submitting such proposal in writing to the other party.

4.3 The Project Construction Budget shall include any limitation, restriction, or instruction on expenditure of funds applicable to the project or any line item in the Project Construction Budget.

4.4 Subject to the project appropriation limitation, and within its discretion, NGB may increase its maximum funding limitation reflected in this appendix at any time.

PROJECT CONSTRUCTION BUDGET

(PROJECT NUMBER, TITLE AND LOCATION)

Activity	Estimated Federal Share	Estimated Grantee Share	Estimated Totals
Construction of Cost Shared Improvements			
Construction of Federal Improvements		NA	
Construction of Grantee Improvements	NA		
Subtotal			
Construction Contingency			
Subtotal			
Supervision, Inspection and Overhead Services (SIOH)			
Construction Commissioning			
TOTALS			

Project Construction Budget notes, terms and conditions:

1. This project construction budget is incorporated into this appendix for the purpose of establishing total estimated project costs and the amount of NGB funding necessary to reimburse the Grantee for the federal share of construction, and supervision and inspection services.
2. The United States shall not be liable to reimburse the Grantee for costs of construction except those for Cost Shared Improvements, Federal Improvements, or Construction Contingency (change orders).
3. **ALL** design work after the date of construction award will be Title II/Type "C" SUPERVISION AND INSPECTION Services (SIOH).
4. Costs for Construction, Contingency, SIOH and Commissioning shall be the same figures used in the latest approved project DD Form 1390/91. Cost for SIOH shall be calculated by using the formula: X% (usually 3%) times the sum of the estimated construction and contingency costs. Construction Commissioning shall be limited to 0.6% of primary facility estimated construction, unless pre-approved.
5. Other specific construction budget terms unique to this MCCA. If none, state NONE.

EXAMPLE - USE ONLY FOR D-B Projects

Project is Design-Build (D-B) and Design fees in the D-B contract are included in the construction cost.



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE, AHS2
ARLINGTON, VA 22204-1373

30 January 2017

NGB-OPARC-A

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Grants and Cooperative Agreements Policy Letter (GCAPL) 17-01 – Military Construction Cooperative Agreement (ARNG).

1. This GCAPL implements and accompanies the posting of the January 2017 revision of NGB's Military Construction Cooperative Agreement (ARNG). This iteration reflects the name change to I&E, better integrates the requirements of 2 CFR part 200 into the agreement, and standardizes many of the specific provisions, incorporating them by reference to those same provisions in the Master Cooperative Agreement.
2. The MCCA (January 2017) has been posted on GKO.
3. Questions related to this GCAPL should be directed Doug Patterson, 703-607-7945, email: douglas.t.patterson4.civ@mail.mil or to NGB PARC-A: David F. Shaw 703 607-2644, email: david.f.shaw.civ@mail.mil; or Joseph A. Wannemacher 703 601-6702, email: joseph.a.wannemacher.civ@mail.mil

A handwritten signature in blue ink, appearing to read "JAW", written over a circular stamp or mark.

Joseph A. Wannemacher
NGB Grants and Cooperative Agreements

Atch:
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