

Figure C12.F4. Memorandum of Understanding Template for Humanitarian Construction

**Instructions:** This Memorandum of Understanding (MOU) template represents a non-binding understanding of the activities to be taken by the U.S. Department of Defense (DoD) and Partner Nation, and it should be used as appropriate for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA)-funded construction projects. Paragraphs may be modified or added to address individual project requirements or specific activities that the DoD or Partner Nation intends to perform. Proposed agreement language will adhere to Combatant Command (CCMD) standards, review, and obtain approval. MOUs must be reviewed by DSCA (Front Office, Office of the General Counsel (FO/OGC)) before execution.

**MEMORANDUM OF UNDERSTANDING**

Between

The United States Combatant Command,

Department of Defense, United States Government

and

the Ministry or Regional Government (who owns or will own the facility),

Country of \_\_\_\_\_

**CONCERNING PROJECT [NAME, LOCATION and OHASIS Project #]**

1. **Purpose.** U.S. (Combatant) Command (hereinafter U.S. Government) and *the Ministry or Regional Government (who owns or will own the facility)* (hereinafter partner nation) hereby establish this Memorandum of Understanding (MOU) for the purpose of coordinating each participant's independent and voluntary efforts concerning a potential U.S. Government's Humanitarian Assistance construction project in the partner nation funded by the U.S. Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) appropriation. This MOU does not establish or create any binding obligation upon either participant under domestic or international law and does not constitute a contract or international agreement. Execution of this MOU promotes continued U.S. Government and partner nation consideration of a potential humanitarian assistance project but does not indicate a commitment that the proposed project will be accomplished.
2. **Overview.**
  - a. This MOU concerns the U.S. Government's potential efforts to renovate an existing facility or construct a new facility in order to improve the partner nation's capability to provide an essential service to its civilian populace. The construction efforts may be undertaken by

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Department of Defense personnel and/or a Department of Defense contractor acting pursuant to an awarded U.S. Government contract. The U.S. Government may obtain construction materials/supplies pursuant to a U.S. Government procurement from a local or foreign supplier.

- b. The U.S. Government intends to develop the facility's design to meet or exceed applicable partner nation's construction codes and to facilitate the partner nation's intended use for the facility.

**3. General Understandings.**

- a. Any portion of this project that is accomplished pursuant to a contract by the United States will be subject to unilateral U.S. Government contract oversight, and be executed in accordance with that contract and applicable U.S. and partner nation laws and regulations. Any modification to the construction or deviation from the DoD-approved scope of work can only be directed by the U.S. Government. Any required or recommended changes to the facility's design drawings and specifications must be pre-approved by the U.S. Government.
- b. The U.S. Government execution of this project is premised upon the understanding that:
  - i. Access to services provided at the completed facility will not be restricted to any specific portions of the local population based on religion, gender, race, political, or family ties.
  - ii. The primary use of the completed facility will be for its intended purpose.
  - iii. U.S. Government-funded excess construction materials, if any, will be used by the partner nation to maintain the assisted facility and will not be diverted for other uses without obtaining the prior approval of the U.S. Government.
  - iv. The partner nation will furnish, maintain, operate, and upkeep the facility after completion.
- c. The U.S. Government may undertake efforts to further the proposed humanitarian assistance project after the partner nation has:
  - i. Provided a deed or written assurance that it owns the property on which this facility exists or will be built.
  - ii. Established that the U.S. Government, a U.S. Government contractor hired to accomplish the humanitarian assistance project, and the U.S. procurement of construction materials/supplies for the proposed humanitarian assistance project will not be subjected to any partner nation sales tax, value added tax, custom or import tax, or other similar taxation.

**4. Responsibilities for Proposed Project Execution.**

- a. The U.S. Government intends to do the following:

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- i. **Contract Administration.** Administer the related contracts in accordance with applicable U.S. laws including payments and actions for any required contract modifications.
  - ii. **Progress Reports.** If requested by the partner nation, periodically make construction progress reports available to the partner nation.
  - iii. **Design/Specification Changes.** Advise the partner nation representative of any required or viably recommended design or specification changes. Authority for changes to designs and specifications remains with the U.S. Government.
  - iv. **Dedication/Facility Turnover.** Coordinate with appropriate partner nation officials to schedule a formal dedication ceremony of the completed facilities to the partner nation.
- b. The partner nation Government intends to do the following:
- i. **Establish Land Usage Rights/Permits.** Provide the U.S. Government with a written deed or written assurance to establish public ownership of the land for the project site. Ensure the proposed construction site is appropriately authorized for this type of usage and free of any legal or regulatory restrictions that would delay or restrict the proposed construction, including but not limited to applicable construction permits or waivers of such permits by day/month/year. **Tax Exemptions.** Establish that no partner nation value added, sales, or custom taxes will be levied against the U.S. Government efforts or a U.S. Government contractor efforts to accomplish the proposed humanitarian assistance project. The completion of this MOU, by itself, is not sufficient to establish relief from partner nation taxation for this effort. Foreign tax relief for this humanitarian assistance project may be established by a pre-existing binding bi-lateral international agreement or existing domestic law that provides the necessary tax relief. In the absence of an existing international agreement or domestic law that exempts the U.S. Government funds for this effort from such partner nation taxes, partner nation tax relief may be established pursuant to a subsequent exchange of binding diplomatic notes. The failure to establish partner nation tax exemption will frustrate the U.S. Government's ability to consider and/or proceed with such assistance.
  - ii. **Plan and inform the U.S. Government of any security measures that will be accomplished at the proposed construction site to ensure the safety of U.S. Government personnel/equipment and/or U.S. Government contractors/equipment from potential criminal acts, including acts of violence, theft, or vandalism.**
  - iii. **Staff, equip, and maintain any completed facility so that the completed facility is used for its intended purpose for the foreseeable future.**
  - iv. **Allow the assisted facility to include a plaque provided by the U.S. Government that recognizes the U.S. Government efforts towards the assisted facility.**
  - v. **Allow U.S. Government personnel access to the project site after project completion to enable the U.S. Government assess the effectiveness the humanitarian assistance project.**
- 5. The following designated representatives for the participants may be contacted in regards to this potential humanitarian assistance project:**

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- a. U.S. Government Representative Contact Info: *(insert name, title, organization, phone, and e-mail of U.S. Government Representative)*
  - b. Partner Nation Representative Contact Info: *(insert name, title, organization, phone, and e-mail of Partner Nation representative)*
6. **Project Funding.** The proposed activities of the Participants under this MOU are subject to the availability of funds authorized and appropriated in accordance with the respective national laws of both countries.
7. **Rights of Participants.** This MOU does not create any rights or benefits, substantive or procedural, against the Government of the United States of America or the partner nation, their agencies, personnel, or any other person. Moreover, this MOU does not impose any legally binding requirements.
8. **Resolution of Disagreements.** Any disagreement regarding the interpretation or application of this MOU will be resolved by consultations between the participants and will not be referred by either Participant to any international tribunal or third party for settlement.
9. **Modifications and Effectiveness.**
- a. **Modifications.** This MOU may only be modified in writing by the mutual consent of the participants. Either participant may unilaterally terminate this MOU upon written notice to the other participant.
  - b. **Effective Date.** This MOU shall take effect on the date the last signature is obtained.

| <i>For the Partner Nation</i> | <i>For the U.S. (Combatant Command)</i> |
|-------------------------------|---|
| <p>_____</p> <p>Signature</p> | <p>_____</p> <p>Signature</p>           |
| Title: _____                  | Title: _____                            |
| Date: _____                   | Date: _____                             |