

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE MINERALS MANAGEMENT SERVICE  
AND  
THE U.S. ARMY CORPS OF ENGINEERS, ALASKA DISTRICT

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ARTICLE I – PURPOSE AND AUTHORITY

REGIONAL DIRECTOR, ALASKA  
Minerals Management Service  
ANCHORAGE, ALASKA

This Memorandum of Agreement (MOA) is entered into by and between the Minerals Management Service (MMS) and the U.S. Army Corps of Engineers, Alaska District (hereafter referred to as 'USACE') for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of USACE goods and services described in Article II, below. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. 1535).

ARTICLE II – SCOPE

Goods and services which the USACE may provide under this MOA include development of information for environmental analyses conducted by Minerals Management Service under the National Environmental Policy Act (NEPA), the Outer Continental Shelf Lands Act (OCSLA) and other applicable laws, regulations, and orders. This information includes description of the affected environment, analysis of effects from a proposed action, and analysis of cumulative effects, and such other related goods or services that may be agreed upon in the future.

Nothing in this MOA shall be construed to require the MMS to use USACE or to require the USACE to provide any goods or services to the MMS, except as may be set forth in Support Agreements (SAs).

ARTICLE III – INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the USACE and MMS, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The MMS Principal Representative is the Chief, Environmental Analysis Section, Alaska OCS Region. The USACE Principal Representative is the Program Manager for Interagency and International Services. Additional representatives may also be appointed to serve as points of contact on SAs.

For MMS:  
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Environmental Analysis Section  
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For USACE:  
Patrick Roth, Program Manager  
U.S. Army Corps of Engineers, Alaska  
District  
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#### ARTICLE IV – SUPPORT AGREEMENTS

In response to requests from the MMS for USACE assistance under this MOA, the USACE and the MMS shall conclude mutually agreed upon written SAs. Those SAs must be on either Engineer Form 4914-R or similar document containing the same information as the Department of Defense Form 1144. SAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work as stated above;
- the MMS's fund citation and the date upon which the cited funds expire for obligation purposes;
- names of individual project managers;
- types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment; contract administration; records maintenance; rights to data; software and intellectual property; and contract audits;
- procedures for amending or modifying the SA; and
- such other particulars as are necessary to describe clearly the obligations of the parties, with respect to the required goods and services.

Goods and services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA. Upon signature by each party's representative, a SA shall constitute a valid Economy in Government Act order. In case of conflict between this MOA and a SA, this MOA shall control.

#### ARTICLE V – RESPONSIBILITIES OF THE PARTIES

##### A. Responsibilities of the Department of the Army

1. The USACE shall provide the MMS with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.
2. The USACE shall identify authorized USACE representatives to sign SAs.

3. The USACE shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The USACE shall provide detailed periodic progress, financial and other reports to the MMS as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures.

5. The USACE shall inform the MMS of all contracts entered into under each SA.

#### B. Responsibilities of the Minerals Management Service

1. The MMS shall certify prior to the execution of each SA under this MOA, that the SA complies with the requirements of the Economy in Government Act.

2. The MMS shall pay all costs associated with the USACE's provision of goods or services under this MOA and shall certify, at the time of signature of an SA, the availability of funds necessary to accomplish that SA.

3. The MMS shall ensure that only the authorized MMS contracting officers sign SAs.

4. The MMS shall develop draft SAs to include scope of work statements.

#### ARTICLE VI – FUNDING

The MMS shall pay all costs associated with the USACE's provision of goods or services under this MOA. The MMS will reimburse the USACE for the goods or services. The USACE shall bill the MMS monthly for costs incurred using the Intra-governmental Payments and Collection System (IPAC), and the MMS shall reimburse the USACE within 30 days of receipt of the IPAC transaction.

MMS reimbursement is not to exceed the amount agreed to in each SA, except as provided below. If the USACE forecasts its actual costs under an SA to exceed the amount of funds available under that SA, it shall promptly notify the MMS of the amount of additional funds necessary to complete the work under that SA. The MMS shall modify the SA to provide the additional funds to the USACE, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA. Any change in funding or in the scope of work will require modification of the SA.

Within 90 days of completing the work under the SA, the USACE shall conduct an accounting to determine the actual costs of the work. Such an accounting shall in no way limit the MMS's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

## ARTICLE VII – APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the USACE shall be governed by the USACE policies and procedures.

## ARTICLE VIII – CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the USACE shall be resolved in accordance with Federal law and the terms of the individual contract. The USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The USACE shall be responsible for handling all litigation involving the disputes and appeals, and for coordinating with the Department of Justice as appropriate. The USACE shall notify the MMS of any such litigation and afford the MMS an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

## ARTICLE IX – DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the MMS and the USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget or such other entity as may be appropriate.

## ARTICLE X – RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the USACE's provision of the goods or services under this MOA, the USACE will accept accountability for its actions, but the MMS shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge the liability, including funds that may be made legally available through transfer, reprogramming, or other means. Should the MMS have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming, or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

Notwithstanding the above, this MOA does not confer any liability upon the MMS for claims payable by the USACE under the Federal Torts Claims Act. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOA.

#### ARTICLE XI – PUBLIC INFORMATION

Justification and explanation of the MMS's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the MMS. The USACE may provide, upon request, any assistance necessary to support the MMS's justification or explanation of the MMS's programs conducted under this MOA. In general, the MMS is responsible for all public information. The USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administrative process. The MMS or the USACE shall make its best efforts to give the other party advance notice before making any public statement regarding the work contemplated, undertaken, or completed pursuant to SAs under this MOA.

#### ARTICLE XII – MISCELLANEOUS

##### A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the MMS and the USACE.

##### B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

##### C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

#### ARTICLE XIII – AMENDMENT, MODIFICATION, AND TERMINATION

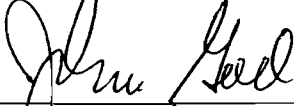
This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the MMS shall continue to be responsible for all costs incurred by the USACE under this MOA and for the costs of closing out or transferring ant on-going contracts.


ARTICLE XIV – EFFECTIVE DATES

This MOA shall become effective when signed by both the MMS and the USACE. The MOA shall terminate on September 30, 2011 if the MOA is not extended or is otherwise terminated in accordance with Article XIII before that date.

Minerals Management Service

U.S. Army Corps of Engineers, Alaska District

  
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John Goll  
Regional Director

  
\_\_\_\_\_  
Timothy Gallagher,  
Commander, Alaska District

DATE: 12/13/05

DATE: 16 Dec 2005

  
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Beverly C. Schriest  
Contracting Officer

DATE: 12/8/2005