

MEMORANDUM OF AGREEMENT
BETWEEN
THE ENVIRONMENTAL PROTECTION AGENCY
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army (DA) and the U.S. Environmental Protection Agency ("EPA") (The parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA technical assistance and related goods and services to the EPA Facilities Management and Services Division, the EPA Safety, Health and Environmental Management Division, and other EPA entities that require DA technical assistance for facilities management and related services. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535).

ARTICLE II - SCOPE

Goods and services relating to facility engineering which the DA may provide under this MOA include planning; engineering; construction; industrial hygiene, fire protection, and other health and safety activities; environmental studies; remediation and mitigation; real estate services and such other related goods or services as may be mutually agreed upon in the future.

Goods and services provided by the DA relating to environmental assessments, hazardous waste remediation and mitigation are intended to assist the EPA in meeting its requirements under the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. §§ 6901-6991h) and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA") (42 U.S.C. §§ 9601-9675), and other related environmental statutes.

Nothing in this MOA shall be construed to require the EPA to use the DA or to require the DA to provide any goods or services to the EPA except as may be set forth in individual Interagency Agreements ("IAs").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the EPA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on IAs or Tasking Assignments ("TAs").

ARTICLE IV - INTERAGENCY AGREEMENTS

In response to requests from the EPA for DA assistance under this MOA, the DA and the EPA shall conclude mutually agreed upon written IAs, which shall include:

- a general scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement, the EPA fund citation and the date upon which the cited funds expire for obligation purposes;
- the amount of funds required and available to accomplish the scope of work as stated above;
- identification of individual project officers;
- identification of 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; -agreement by the DA that it will comply with the quality assurance program set forth in the EPA Project Officers' Handbook, or an equivalent quality assurance program approved by EPA;
- provisions that, prior approval by EPA shall be required for any training expenses that will be submitted to EPA for funding under the IA or a TA, regardless of whether such expenses will be categorized as direct or indirect; -procedures for amending or modifying the IA and individual TAs; and -such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods or services.

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

ARTICLE V - TASKING ASSIGNMENTS

In response to the project specific requirements of the EPA for DA technical assistance in accordance with mutually agreed upon IAs, the DA and EPA may conclude mutually agreed upon written TAs for project specific work, which shall include:

- a specific, detailed scope of work statement: -detailed schedules;

-identification of EPA and DA points of contact for work execution;
-the amount of funds allocated and available from the IA to accomplish the TA; and -such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

The purpose of the TA is to describe specific tasks, or projects, to be accomplished pursuant to an agreed upon, executed IA. The specific task, or project, shall be accomplished within the scope of work as established by the IA and shall not expand the scope of work beyond that specified in the applicable IA. The TA shall not expand the estimated or required funding

beyond the amount certified and made available for obligation by the applicable IA pursuant to which the TA task, or project, is authorized.

in the case of conflict between this MOA, or any IA, and a TA, this MOA or the IA shall control the TA, and this MOA shall control the IA.

ARTICLE VI - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

The DA shall provide the EPA with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in IAs and, if applicable, TAs.

The DA shall ensure that only authorized DA representatives sign IAs and, if applicable, TAs.

The DA shall use its best efforts to provide goods and services either by contract or by in-house effort; provided, however, the DA shall consult with the EPA on the propriety of using outside contractors where the DA plans to provide goods or services by contract. The DA shall issue a solicitation only after receiving approval from the EPA that contracting by the DA is an acceptable method of accomplishing the work authorized in the IA or, if applicable, TA. Should EPA not approve the DA recommendation to provide goods and services by contract, the DA shall have the option to withdraw from supporting the work that was proposed to be provided by contract.

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

The DA shall inform the EPA of all contracts entered into under each IA and, if applicable, TA.

B. Responsibilities of the EPA

The EPA shall fund all actual costs incurred by the DA in accordance with the purpose, terms, and conditions of this MOA and with the specific requirements set forth in IAs and, if applicable, TAs. Such actual costs may include, but are not limited to, contract claims (as provided in Article X) and other liabilities stemming from work done pursuant to this MOA, IAs, and TAs (as provided in Article XII).

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

The EPA shall ensure that only authorized project officers sign IAs and TAs.

The EPA shall draft IAs and, if applicable, TAs to include scope of work statements.

The EPA shall certify, at the time--of signature of an IA, the availability of funds necessary to accomplish that IA.

The EPA shall use reasonable efforts to obtain for the DA all necessary real estate interests, access to all work sites and support facilities, and shall perform coordination with, and obtain any permits from, state and local agencies, as necessary during the execution of each IA and, if applicable, TA. EPA may seek assistance from the DA in these activities.

The EPA shall confirm the availability of funds allocated from an IA necessary to accomplish a TA.

The EPA, as an owner or generator under CERCLA, if CERCLA is applicable, shall retain legal liability, as between the EPA and the DA, for hazardous substances and wastes associated with work under this MOA.

ARTICLE VII - FUNDING

The EPA shall pay all costs associated with the DA's provision of goods or services under this MOA. The DA shall bill the EPA monthly for costs incurred on behalf of EPA, using Standard Form (SF) 1080, Voucher for Transfers Between Appropriations and/or Funds. In addition to SF 1080, the DA shall submit for each IA, as a minimum, detailed information describing regular and overtime hours, and travel, contract and other direct costs, all categorized by project and/or TA. EPA shall reimburse the DA within 30 days of receipt of the SF 1080 and the supporting documentation.

If the DA forecasts its actual costs under an IA or TA to exceed the amount of funds available under that IA or the amount of funds allocated for the TA, it shall promptly notify EPA of the amount of additional funds necessary to complete the work under that IA or TA. The EPA shall either provide the additional funds to the DA under an amended IA or TA, or require that the scope of the work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that IA or TA.

Within 90 days of completing the work under an IA or TA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the EPA any funds advanced in excess of the actual costs as then known, unless there are unsettled claims or anticipated change orders, or the EPA shall, subject to available appropriations, provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the EPA duty in accordance with Article XII - LIABILITY to pay for any costs, such as contract claims (as provided in Article X) or other liability (as provided in Article XII), which may become known after the final accounting.

ARTICLE VIII - 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 DA shall be governed by DA policies and procedures.

ARTICLE IX - MANIFESTS AND RELATED DOCUMENTS

DA personnel are authorized to execute all manifests and related documents, federal and state, on behalf of the EPA that pertain to work performed under this MOA by the DA or its contractors. DA personnel shall annotate the manifests and related documents with the phrase "On behalf of the Environmental Protection Agency." If applicable regulations do not permit the DA to sign such documents on behalf of EPA, the DA shall contact the EPA representative for specific guidance. Upon physical completion of work under an IA or TA, the DA shall forward manifests and

related documents to the EPA. The DA shall retain contract-related documents.

ARTICLE X - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with federal law and the terms of the individual contract. The DA 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 U.S. Army Corps of Engineers Board of Contract Appeals (ENG BCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for litigating all disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the EPA of any such litigation and afford the EPA an opportunity to provide comments on the litigation proceedings and any resulting settlement negotiations.

ARTICLE XI - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the EPA and the DA 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.

ARTICLE XII - LIABILITY

As between the parties to this MOA, if liability of any kind is imposed on the United States relating to the DA's provision of goods and services under this MOA, the parties shall be responsible for providing and, when necessary, seeking funds to discharge any such liability in accordance with the following: the DA shall be responsible for any liability it may have under the Federal Tort Claims Act, 28 U.S.C. §§ 1346 and 2671-2680 (FTCA), or other applicable law, that is attributable to the activities of its employees when such activities are not directly part of the goods and services provided to the EPA; and EPA shall be responsible for any other liability payable by EPA under applicable law. In the event an administrative claim under the FTCA is made against the DA for an activity that is directly a part of the goods or services provided to the EPA, the EPA shall be designated as the lead agency for purposes of administering the claim and the DA shall give full and timely cooperation to the EPA in connection with the investigation and administration of the claim.

This article apportions the responsibility between the DA and EPA to pay the United States' liabilities under this MOA; neither this Article nor any other provision of this MOA imposes, or may be construed to impose, on either the DA or EPA, any liability to any third party. Neither this Article nor any other provision of this MOA shall limit EPA's ability to enforce or administer any laws or regulations in connecton with the activities of the DA under this MOA.

ARTICLE XIII - PUBLIC INFORMATION

Justification and explanation of the EPA programs before Congress and other agencies, departments, and offices of the federal Executive Branch shall be the responsibility of the EPA. The DA may provide, upon request, any assistance necessary to support the EPA justification or explanations of the EPA programs conducted under this MOA. The DA shall make public announcements and respond to all inquiries relafing to the ordinary procurement and contract award and administration process. In general, the EPA is responsible for all public information regarding EPA projects and programs. The EPA or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAs or TAs under this MOA.

ARTICLE XIV - MISCELLANEOUS

A Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligation between the EPA and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration of this MOA shall remain in force notwithstanding the expiration 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 XV- 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 wriften 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 by the EPA, the EPA shall be responsible for all

costs, as provided in the IAs and, if applicable, the TAs, until the date of the termination, and shall be responsible for all the costs of -suspending, closing out or transferring any ongoing contracts or activities. In the event of termination by the DA, the EPA shall be responsible for all costs, as provided in the IAs and, if applicable, the TAs, until the date of the termination, and the DA, to the extent it has appropriated funds available for this purpose, shall be responsible for all the costs of suspending, closing out or transferring any ongoing contracts or activities. In the event that the DA does not have appropriated funds available to pay for the costs described in the preceding sentence, the DA's obligations after it provides notice of termination shall be limited to providing full and timely cooperation to the EPA in transferring and/or terminating all ongoing contracts and activities prior to the effective date of the termination of this MOA.

ARTICLE XVI - EFFECTIVE DATE

This MOA shall become effective when signed by the EPA and the DA.

Environmental Protection Agency

U.S. Department of the Army

John C. Chamberlin

Dr. John H. Zirschky

/signed/

/signed/

Director, Office of Administration

Acting Assistant Secretary of the Army

(Civil Works)

Date: 1/25/95

Date: 12/5/94