

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF HOMELAND SECURITY  
AND  
THE DEPARTMENT OF THE ARMY**

**ARTICLE I - PURPOSE AND AUTHORITY**

This Memorandum of Agreement ("Agreement") is entered into by and between the U.S. Department of the Army ("DA"), U.S. Army Corps of Engineers ("USACE") and the Federal Emergency Management Agency ("FEMA"), U.S. Department of Homeland Security ("DHS") (FEMA) ("the Parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties under Interagency Agreements (hereinafter referred to as "Support Agreements" or "SAs" or "IAAs") executed by the Parties during the effective period of this agreement. This agreement is intended to govern those SAs entered into between the specified agencies under the Economy Act (31 U.S.C. § 1535-36) and Federal Acquisition Regulation Subpart 17.5 in furtherance and support of activities arising under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. §§ 5121-5207) ("Stafford Act") for reimbursable work USACE will perform for FEMA that is not the subject of a Mission Assignment.

**ARTICLE II – SCOPE**

This Agreement is intended to address and govern interagency agreements to be entered into between the agencies when FEMA requires goods or services from the DA. Goods and services which the DA may provide under this MOA include the following:

1. Supplies, services, or space;
2. Contract support; and
3. Such other related goods or services as may be agreed upon in the future.

This Agreement does not apply to tasks to be performed by USACE under a Mission Assignment issued under sections 402 or 502 of the Stafford Act (42 U.S.C. §§5170a, or 5192) and regulations at 44 CFR Part 206.

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the DA and the FEMA, each party shall appoint a Principal Representative at the Headquarters level to serve as its central point of contact on matters relating to this Agreement.

**ARTICLE IV - SUPPORT AGREEMENTS**

A. In response to requests from FEMA for DA assistance under this Agreement, the DA and FEMA shall conclude mutually agreed upon written SAs. Those SAs must be on either Engineer

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Form 4914-R or similar document containing the same information as 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;
- FEMA's fund citation and the date upon which the cited funds expire for obligation purposes;
- Identification of individual project managers;
- 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;
- 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 requested goods and services.

B. Goods or services shall be provided under this Agreement 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 reimbursable order. In the case of conflict between this Agreement and an SA, this Agreement shall control except with respect to specific funds citations or similar fiscal matters.

## ARTICLE V - RESPONSIBILITIES OF THE PARTIES

### A. Department of the Army

1. DA shall provide the FEMA with goods or services in accordance with the purpose, terms, and conditions of this Agreement and with the specific requirements set forth in SAs and any other bilateral implementing arrangement.

2. DA shall identify authorized DA representatives to sign SAs.

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

4. DA shall provide detailed periodic progress, financial and other reports to FEMA as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecasted obligations and expenditures. (See also requirements in ARTICLE IX.B, *infra*.)

5. The DA shall inform FEMA of all contracts entered into under each SA.



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6. If the DA forecasts its actual costs under a SA to exceed 80 percent of the amount of funds then available under that SA, it shall promptly notify FEMA of the amount of additional funds necessary to complete the work under that SA. FEMA shall either provide the additional funds to the DA; 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.

7. Within 90 calendar days of completing the work under a SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 calendar days of completion of this accounting, the DA shall return to FEMA any funds advanced in excess of the actual costs as then known, or FEMA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit FEMA's duty to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

**B. FEMA**

1. FEMA shall certify, prior to the execution of each SA under this Agreement, that the SA complies with any applicable statutory authority.

2. FEMA shall pay actual costs associated with DA's provisions of goods or services under this Agreement and shall certify, at the time of signature of an SA, the availability of funds necessary to accomplish that SA.

3. FEMA shall ensure that only authorized FEMA contracting officers sign SAs.

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

**ARTICLE VI - FUNDING**

Consistent with the Economy Act or other applicable authority, FEMA shall pay actual costs associated with the DA's provision of goods or services through SAs issued under this MOA.

Billing and reimbursement for SAs issued under this Agreement shall be handled through the Intra-governmental Payment and Collection (IPAC) system. The Payable IAA number, the Agency Locator Codes, appropriate accounting code(s), and associated dollar amounts must be referenced on all IPAC transactions or invoices. The servicing agency shall provide documentation supporting all charges to the requesting agency's COTR/POC on a monthly basis.

Both agencies agree to comply with the applicable intra-governmental business rules prescribed in Treasury Financial Manual, Vol. I, Bulletin No. 2007-03 and promptly discuss and resolve issues and questions regarding payments and reconciliation of intergovernmental transactions. The servicing agency will promptly initiate year-end and closeout adjustments, as appropriate, once final costs are known.

When the servicing agency has completed performance under SAs issued under this Agreement, the servicing agency will provide a written project evaluation and final accounting of project costs to the requesting agency's Contracting Officer. The servicing agency account will

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then be closed and any unobligated balances will be returned to the requesting agency immediately. After final accounting, the remaining balance in the project account will be de-obligated by Payable IAA modification.

**ARTICLE VII - APPLICABLE LAWS**

This Agreement 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 DA shall be governed by DA policies and procedures.

**ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES**

A. 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. In accordance with the Contract Disputes Act of 1978 (41 U.S.C. § 601-613), 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 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.

B. DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. DA shall notify the FEMA Office of the Chief Counsel of any such litigation within two days after receipt of a claim or dispute, and shall, within two days after receipt notify the FEMA Office of the Chief Counsel of any adverse litigation decision. Further, the FEMA Office of the Chief Counsel shall have an opportunity to review the litigation proceedings and shall be consulted with, in advance, on any proposed negotiations and final settlement agreement.

C. FEMA shall transfer to DA any funds necessary for DA to make payments under this Section as a result of adverse litigation decisions or settlements of claims. When such payments are required and are a result of DA actions, in whole or in part, DA will accept accountability for its actions and agrees to provide to FEMA any information or other support necessary for FEMA to seek additional appropriations, respond to any investigation by the FEMA oversight committees, or address any other concerns regarding that liability.

**ARTICLE IX - DISPUTE RESOLUTION**

The Parties agree that, in the event of a dispute between the Parties, FEMA and 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 or such other entity as may



be appropriate, such as Offices of the Secretary of Defense and the Secretary of the Department of Homeland Security.

#### **ARTICLE X - RESPONSIBILITY FOR COSTS**

A. If liability of any kind is imposed on the United States for acts arising out of or relating to the DA provision of goods or services under this MOA, DA will accept accountability for its actions and will act in accordance with Article IX [on Dispute Resolution between the agencies], but FEMA 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 this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should FEMA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, FEMA shall 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.

B. Notwithstanding the above, this MOA does not confer any liability upon FEMA for claims payable by DA under the Federal Torts Claims Act. 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.

C. Nothing in this Agreement 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 Agreement.

#### **ARTICLE XI - PUBLIC INFORMATION**

Justification and explanation of FEMA programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of FEMA. DA may provide, upon request, any assistance necessary to support the FEMA justification or explanations of the FEMA programs conducted under this Agreement. In general, FEMA is responsible for all public information. DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. FEMA and 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 SAs under this Agreement.

#### **ARTICLE XII – MISCELLANEOUS**

A. Other Relationships or Obligations. This Agreement shall not affect any pre-existing or independent relationships or obligations between FEMA and DA, including, but not limited to, Mission Assignments.

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

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C. Severability. If any provision of this Agreement 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.

D. Prompt Payment Act Interest. FEMA shall be liable for any Prompt Payment Act interest incurred by DA with the understanding that DA shall use its best efforts to avoid such liability.

E. No Obligation of Funds. Nothing in this Agreement obligates funds of the Parties.

F. Nothing herein is intended to conflict with current FEMA, DHS or DA directives. If any terms of this Agreement are found to be inconsistent with existing directives of either of the Parties, and unless the directive has been waived, then those provisions determined to be inconsistent shall be invalid, but all remaining terms and conditions will not be affected by such inconsistency.

G. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed a duplicate original.

**ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION**

This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this Agreement 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, FEMA shall continue to be responsible for all costs incurred by the DA under this Agreement and for the costs of closing out work and terminating or transferring any on-going contracts.

**ARTICLE XIV – EFFECTIVE DATE**

This Agreement is effective upon the last date of signature by the Parties hereto.

**Federal Emergency Management Agency**

**Department of the Army**

By: Harvey E. Johnson, Jr.

Harvey E. Johnson, Jr.  
FEMA Deputy Administrator  
Chief Operating Officer

By: Don T. Riley

Don T. Riley  
Major General, US Army  
Deputy Commander

Date: 3 DEC 2008

Date: 24 NOV 2008



## COORDINATION AND CONCURRENCE

Date: November 28, 2008

Subject: FEMA-USACE Memorandum of Agreement (MOA)

Summary: FEMA and USACE have been working for many months to establish a MOA that characterizes a mutually acceptable template for future IAA language. Recently, following the direct engagement of the USACE General Counsel by Deputy Administrator Johnson, the last remaining legal issues were worked out to the satisfaction of OCC and their USACE counterparts. Major General Riley has signed the MOA, and it now requires FEMA countersignature. Because this MOA crosses functional programmatic areas within FEMA, the signature of either the Administrator or Deputy Administrator is required.

Recommendation: Deputy Administrator countersign for FEMA.

  
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David Garratt  
Deputy Assistant Administrator/DAD

11/28/08  
\_\_\_\_\_  
Date

*measures 12/2*  
*DMH III with comment: Title of Document does not match text - MOA is between USACE and FEMA*  
  
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Bob Powers  
Deputy Assistant Administrator/DOD

12/3/08  
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Date

  
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David Trissell  
Chief Counsel

12.3.08  
\_\_\_\_\_  
Date

  
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Harvey Johnson, Jr.  
Deputy Administrator/Chief Operating Officer

12/3/08  
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Date