

**MEMORANDUM OF AGREEMENT BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION AND  
THE U.S. ARMY CORPS OF ENGINEERS**

**ARTICLE I –PARTIES**

a. The parties to this Memorandum of Agreement (MOA) are the U.S. Army Corps of Engineers (Corps) and the Federal Highway Administration (FHWA), collectively known as “Parties.”

b. The identity and role of the Parties are further defined as follows:

- (1) The Corps is an agency of the Department of the Army and Department of Defense (DOD). The Corps is organized into 41 District offices and 8 Division offices across the country and throughout the world. In addition to these offices, the Corps augments its engineering capability through its laboratories and centers of expertise. The Corps’ primary missions include planning, designing, building and operating water resources and other civil works projects in the United States and in foreign countries; designing and managing the construction of military facilities; and providing design and construction management support for other Defense and federal agencies.

Congress funds the Corps both through direct appropriations and through appropriations for specific civil works and military construction projects. When requested, the Corps provides engineering expertise to other agencies under their authorities through the Economy In Government Act, 31 U.S.C. 1535 and 10 U.S.C. 3036(d).

- (2) FHWA is an operating administration of the Department of Transportation (DOT) that administers the Federal-aid Highway Program and the Federal Lands Highway Program under title 23 of the United States Code. The following offices have program-area responsibilities that relate to the scope of this MOA:

- (i). The FHWA Office of International Programs is responsible for working to improve the technological and institutional base of highway transportation system performance and program delivery in the United States and abroad. Pursuant to 23 U.S.C. §308, FHWA is authorized to perform engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Government agencies, cooperating foreign countries and State cooperating agencies. Pursuant to 23 U.S.C. §506, FHWA is authorized to engage in activities to inform the domestic highway community of technological innovations in foreign countries that could

significantly improve highway transport in the United States; to promote U.S. highway transportation expertise, goods, and services in foreign countries; and to increase transfers of U.S. highway transportation technology to foreign countries.

- (ii). The FHWA Office of Federal Lands Highway provides transportation engineering services for planning, design, construction, and rehabilitation of the highways and bridges providing access to Federally owned lands and lands operated by other Federal agencies (e.g., the National Park Service, the Bureau of Indian Affairs, and the Fish and Wildlife Service). Pursuant to 23 U.S.C. §§ 201-204, FHWA, through its Federal Lands Highway Program, is involved in the survey, design and construction of forest highway system roads, parkways and park roads, Indian reservation roads, defense access roads, and other Federal lands roads.
- (iii) The FHWA Office of Infrastructure provides leadership, technical expertise, and program assistance in Federal-Aid Highway Programs, Asset Management, Pavements and Bridges.

## ARTICLE II – AUTHORITY

The Parties enter into this MOA pursuant to the Economy in Government Act (31 U.S.C. §§ 1535-1536).

## ARTICLE III – PURPOSE

This MOA is entered into by and between the Corps and FHWA for the purpose of fulfilling the goals outlined in the Partnership Agreement entered into by the Parties in January 2003. The Partnership Agreement, which is attached and made a part of this agreement, was designed to promote a long-term relationship between the Parties on collaborative efforts that will be of mutual benefit to the United States and governments of other nations. This MOA establishes a framework governing the responsibilities, terms, and conditions for the provision of goods and services as described in ARTICLE IV below.

## ARTICLE IV – SCOPE

a. In carrying out the purpose described in Article III above, and as funding permits, the Corps may provide the following goods and services in accordance with this MOA: planning, design, construction, and also environmental restoration, hazardous or toxic materials removal, engineering or technical assistance, training, and such other related goods or services as may be agreed upon by the Parties in the future.

b. In carrying out the purpose described in Article III above, and as funding permits, FHWA may provide the following goods and services in accordance with this MOA: planning, design, construction, operation and maintenance of highways and roadways, capacity building and training, institutional development, bridge, tunnel and environmental assessments, and such other related goods or services as may be agreed upon by the Parties in the future.

c. Nothing in this MOA shall be construed to require either Party to use the other Party or to require either Party to provide any goods or services to the other Party, except as may be set forth in Support Agreements executed by the Parties in accordance with this MOA. Support Agreements are defined in Article V below.

d. All goods and services provided by the Parties will be governed by the terms of individual Support Agreements executed by the Parties in accordance with this MOA. Where the terms of the Support Agreements are inconsistent with terms of this MOA, the terms of this MOA shall apply.

#### ARTICLE V – SUPPORT AGREEMENTS (“SA” or “SAs”)

a. In response to requests from one Party (the “Ordering Agency”) for the other Party’s (the “Servicing Agency”) goods and services, the Parties will develop mutually agreed upon written Support Agreements (SAs)<sup>1</sup> that detail the specific order of goods and services between the Parties. SAs must be prepared on Engineer Form 4914-R, DOT Form 2300.1, or a similar form containing the same information as DOD Form 1144. SAs must include:

- a detailed scope of work statement;
- schedules, timeframes, deliverables, and priorities (where known);
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the current and future amount of funds required and available to accomplish the scope of work (cost ceiling);
- cost estimates, which shall include all estimated administrative and overhead costs;
- the Ordering Agency’s fund citation; the date upon which the cited funds expire for obligation purposes; and the lapse date for the funds;
- a certification under the Anti-Deficiency Act that no funds will be expended in excess of available appropriations;
- acquisition authority as appropriate;
- a description of any applicable fund restrictions or permissions;
- identification of individual project managers;
- identification of the types of contracts to be used (if known);
- the types and frequencies of reports;

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<sup>1</sup> SAs are also known as reimbursable agreements or interagency agreements throughout the Federal government.

- 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;
- identification of procedures to address overlapping areas of responsibility (where applicable);
- procedures for amending or modifying the SA;
- other information needed to describe clearly the obligations of the parties with respect to the requested goods and services; and
- any other information required under 48 Code of Federal Regulations (C.F.R) Section 17.504(b).

b. Goods or services requested in accordance with this MOA shall be provided only after an appropriate SA has been signed by a representative of each Party authorized to execute that SA. Once signed by both Parties, a SA shall constitute a valid Economy in Government Act (“Economy Act”) order as defined in 31 U.S.C. §1535(d) and 48 C.F.R. Subpart 17.5. For all SAs executed by the Parties in accordance with this MOA, the Ordering Agency must certify that the following requirements outlined in §1535(a) of the Economy Act have been met:

- (1) the [funding] amounts are available;
- (2) the head of the ordering agency or unit decides that the order is in the best interest of the United States Government;
- (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and
- (4) the head of the [ordering] agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

#### ARTICLE VI – INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and FHWA, the Parties shall each 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 individual SAs executed by the Parties in accordance with this MOA.

#### ARTICLE VII – RESPONSIBILITIES OF THE PARTIES

- a. Responsibilities of the Servicing Agency under each SA
  - (1) The Servicing Agency shall provide goods or services in accordance with the purpose, terms, and conditions of this MOA and pursuant to the specific requirements set forth in SAs.

- (2) The Servicing Agency shall ensure that only authorized Servicing Agency representatives sign SAs.
- (3) The Servicing Agency shall use its best efforts to provide goods or services requested under individual SAs. The Servicing Agency shall determine whether it is more appropriate to secure the necessary goods or services either by contract or in-house effort.
- (4) The Servicing Agency shall provide detailed periodic progress, financial, and other reports as required under each SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
- (5) The Servicing Agency shall inform the Ordering Agency of all contracts entered into under each SA and shall provide copies to the Ordering Agency upon request.

b. Responsibilities of the Ordering Agency under each SA

- (1) The Ordering Agency shall certify in writing, prior to the execution of each SA in accordance with this MOA, that the SA complies with the requirements of the Economy Act.
- (2) The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under a SA executed by the Parties in accordance with this MOA and shall certify, at the time a SA is signed by both Parties, the availability of funds necessary to accomplish that SA.
- (3) The Ordering Agency shall ensure that only authorized Ordering Agency representatives sign SAs.
- (4) The Ordering Agency shall develop draft SAs that include scope of work statements and cost estimates.
- (5) The Ordering Agency shall, through its own means or with the assistance of other governmental and non-governmental entities, obtain for the Servicing Agency all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from International, National, State and local agencies, as necessary during the execution of each SA.

## ARTICLE VIII – FUNDING

a. The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under a SA executed by the Parties in accordance with this MOA. For SAs estimated to cost more than \$250,000 total in contracts and in-house services or \$50,000 total in contracts, the Servicing Agency may bill the Ordering Agency in advance and the Ordering Agency shall provide the necessary funds in advance. For SAs valued at less than these amounts, the Ordering Agency may reimburse the Servicing Agency for the goods or services provided. For these lesser requirements, the Servicing Agency shall bill the Ordering Agency monthly for costs incurred using Standard Form (SF) 1080, Voucher for Transfers between Appropriations and / or Funds, and the Ordering Agency shall reimburse the Servicing Agency within thirty (30) days of receipt of a properly executed SF 1080 or other payment method that may be identified in SAs executed in accordance with this MOA.

b. As soon as the Servicing Agency predicts that its actual costs under a SA will exceed estimated costs and the amount of funds available under that SA it shall promptly notify the Ordering Agency of the amount of additional funds necessary to complete the work under that SA. The Ordering Agency shall either provide the additional funds to the Servicing Agency; 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.

c. Within one hundred eighty (180) days of completing the work under a SA, or some other period of time agreed upon by the Parties, the Servicing Agency shall initiate an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the Servicing Agency shall return to the Ordering Agency any funds advanced in excess of the actual costs as then known, or the Ordering Agency shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the Ordering Agency's duty in accordance with Article XII to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

d. Actual costs, as outlined above, shall include expenditures incurred by the Servicing Agency that are identifiable and attributed to services provided through SAs executed under this MOA. These costs shall include, but not be limited to: employee salaries (including accrued annual and sick leave), travel expenses, materials or equipment furnished during performance of the requested services, and any other cost agreed upon by the Parties.

## ARTICLE IX – APPLICABLE LAWS

In addition to the Economy Act, the applicable statutes, regulations, directives, and procedures of the United States shall govern this MOA and all documents created and actions taken under a SA executed by the Parties. Unless otherwise required by law, all contract work undertaken by the Corps shall be governed by Corps policies and procedures and all contract work undertaken by the FHWA shall be governed by FHWA policies and procedures.

## ARTICLE X – CONTRACT CLAIMS AND DISPUTES

### a. Corps of Engineers Contracting

(1) All claims and disputes by contractors arising under or relating to contracts awarded by the Corps, pursuant to SAs executed by the Parties, shall be resolved in accordance with Federal law and the terms of the individual contract. The Corps 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.

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

(3) In the event FHWA is named as a defendant in an action brought by a Corps contractor, the Corps shall take the lead in defending the action and FHWA shall provide such litigation support as requested by the Corps.

### b. Federal Highway Administration Contracting

(1) All claims and disputes by contractors arising under or relating to contracts awarded by the FHWA, pursuant to SAs executed by the Parties, shall be resolved in accordance with Federal law and the terms of the individual contract. FHWA 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).

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

(3) In the event the Corps is named as a defendant in an action brought by a FHWA contractor, FHWA shall take the lead in defending the action and the Corps shall provide such litigation support as requested by FHWA.

## ARTICLE XI –DISPUTE RESOLUTION BETWEEN THE PARTIES

The parties agree that, in the event of a dispute between the parties, the FHWA and the Corps shall use their best efforts to resolve the dispute through consultation and communication at the working level. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it to signatory level for final resolution.

## ARTICLE XII – RESPONSIBILITY FOR COSTS

a. In accordance with Article VIII of this MOA, if the Ordering Agency pays the necessary funds to the Servicing Agency in advance:

- (1) For any claim that arises with regard to the Servicing Agency's provision of goods or services, and requires a reimbursement to the Judgment Fund (established by 31 U.S.C. §1304); reimbursements to the Judgment Fund shall be paid by the Servicing Agency up to the amount available from the project funding provided in advance by the Ordering Agency. All costs related to the claim will also be paid by the Servicing Agency up to the amount available from the project funding provided in advance by the Ordering Agency
- (2) If the amount available from the project funding provided in advance by the Ordering Agency does not cover the full balance owed to the Judgment Fund or the full balance of all related costs, the Ordering Agency shall be responsible for the remaining balance. If the Ordering Agency does not have sufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, it remains responsible for seeking additional funds from Congress for such purpose. Nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

b. In accordance with Article VIII of this MOA, if the Servicing Agency uses its own appropriations to fund the work (to be reimbursed by the Ordering Agency):

- (1) For any claim that arises with regard to the Servicing Agency's provision of goods or services, and requires a reimbursement to the Judgment Fund (established by 31 U.S.C. §1304); reimbursements to the Judgment Fund shall be paid by the Servicing Agency up to the ceiling amount of funds designated by the Ordering Agency as available to fund the work. All costs related to the claim will also be paid by the Servicing Agency up to the ceiling amount of funds designated by the Ordering Agency as available to fund the work.
- (2) If the ceiling amount of funds designated by the Ordering Agency as available to fund the work does not cover the full balance owed to the Judgment Fund or the full balance of all related costs, the Ordering Agency shall be responsible for the remaining balance. If the Ordering Agency does not have sufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, it remains responsible for seeking additional funds from Congress for such purpose. Nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.



c. Claim, as outlined above, means any judicial proceeding or alternative dispute resolution proceeding, where liability of any kind is imposed on the United States relating to the Servicing Agency's provision of goods or services under this MOA.

d. This MOA is not designed to amend, restrict, or override existing Federal law governing the settlement of claims submitted by Federal employees, including but not limited to the Federal Employees Compensation Act (FECA) (5 U.S.C Chapter 81); and the Military Personnel and Civilian Employees Claims Act of 1964 (31 U.S.C §3721). The Corps and FHWA shall be responsible for settling all claims that are brought by their respective employees.

e. Notwithstanding the above, this MOA does not confer any responsibility upon the Ordering Agency for claims payable by the Servicing Agency under the Federal Torts Claims Act. 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 XIII – PUBLIC INFORMATION

a. Justification and explanation of the FHWA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the FHWA. The Corps may provide, upon request, any assistance necessary to support the FHWA's justification or explanations. In general, the FHWA is responsible for making determinations regarding the public release of documents it creates under this MOA. The Corps may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The FHWA or the Corps 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 executed in accordance with this MOA.

b. Justification and explanation of the Corps programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the Corps. The FHWA may provide, upon request, any assistance necessary to support the Corps justification or explanations. In general, the Corps is responsible for making determinations regarding the public release of documents it creates under this MOA. The FHWA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The Corps or the FHWA 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 executed in accordance with this MOA.

#### ARTICLE XIV – MISCELLANEOUS

##### a. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the FHWA and the Corps. Nothing in this MOA is intended to affect the authority of either Party to carry out its statutory, regulatory or other official functions, nor is it

intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, or officers.

b. Survival

The provisions of this MOA or any SA entered into by the Parties pursuant to this MOA that require performance after the termination of this MOA shall remain in force notwithstanding the termination of this MOA.

c. Severability

Nothing in this MOA or any SA executed by the Parties is intended to conflict with current law, regulation, orders, or directives of DOD, the Corps, DOT, FHWA, or any other Federal agency or entity. If a provision of this MOA or any SA executed by the Parties is inconsistent with such authority, then that provision will be invalid to the extent of such inconsistency, but the remainder of that provision and all other responsibilities, terms, and conditions of this MOA and any SA executed by the Parties will remain in full force and effect.

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 written notice to the other Party. The termination shall be effective upon the sixtieth (60) calendar day following notice, unless a later date is set forth in the written termination. In the event of termination by the Ordering Agency, the Ordering Agency shall continue to be responsible for all costs incurred by the Servicing Agency under unexpired SAs executed by the Parties in accordance with this MOA, and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVI - EFFECTIVE DATE

This MOA shall become effective as of the date of final signature by FHWA and the Corps.

Mary E. Peters  
Mary E. Peters  
Administrator  
Federal Highway Administration

George S. Dunlop  
George S. Dunlop  
Principal Deputy Assistant Secretary of the Army

1/22/04  
Date

3/15/2004  
Date