

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,  
U.S. DEPARTMENT OF HOMELAND SECURITY  
AND  
U.S. ARMY CORPS OF ENGINEERS,  
U.S. DEPARTMENT OF THE ARMY**

**ARTICLE I - PURPOSE AND AUTHORITY**

This Memorandum of Agreement (“MOA”) is entered into by and between the U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA), Department of Homeland Security (collectively “the Parties”) for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the provision of USACE goods and services related to the identification of floodplains and other areas subject to the risk of flooding. This MOA is entered into pursuant to the National Flood Insurance Act (NFIA) (42 U.S.C. §4101) and the Chiefs Economy Act, 10 U.S.C. §3036(e).

**ARTICLE II - SCOPE**

Goods and services that the USACE may provide under this MOA include flood hazard mapping products and other goods or services related to the identification of flood hazards, as may be agreed upon in the future.

Nothing in this MOA shall be construed to require FEMA to use the USACE or to require the USACE to provide any goods or services to FEMA, except as may be set forth in Interagency Agreements (IAAs)

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the USACE and FEMA, each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA, and shall provide their Principal Representatives contact information to the other party. Additional representatives may also be appointed to serve as points of contact on IAAs.

**ARTICLE IV - INTERAGENCY AGREEMENT**

In response to requests from FEMA for USACE assistance under this MOA, the USACE and FEMA shall enter into mutually agreed upon written IAAs. Those IAAs will be executed on either Interagency Agreement FEMA Form 40-3 or on any form acceptable to both Parties that contains the same substantive information as Department of Treasury FMS Form 7600A/B and is consistent with FEMA and USACE policy.

Upon signature by each Party’s authorized representative, an IAA shall constitute a valid order under the authority cited.

IAAs 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 stated above;
- the 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 IAA; 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 IAA has been signed by one or more representative(s) of each Party who are authorized to execute that IAA. After being signed by each Party's representative, an IAA shall constitute a valid order under the authority of the NFIA. In the event of a conflict between this MOA and an IAA, this MOA shall control.

#### **ARTICLE V -RESPONSIBILITIES OF THE PARTIES**

##### **A. Responsibilities of the USACE:**

1. The USACE shall provide FEMA with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in IAAs and implementing arrangements.
2. The USACE shall identify authorized USACE representatives to sign IAAs.
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 FEMA as agreed to in the IAA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
5. The USACE shall inform FEMA of all contracts entered into under each IAA.

##### **B. Responsibilities of FEMA:**

1. FEMA shall certify, prior to the execution of each IAA under this MOA, that the IAA complies with the requirements of the NFIA.
2. FEMA shall pay all costs associated with the USACE's provisions of goods or services under each IAA and shall certify, at the time an IAA is signed, the availability of funds necessary to accomplish that IAA.
3. FEMA shall identify authorized FEMA representatives to sign IAAs.
4. FEMA shall ensure that only authorized FEMA contracting officers sign IAAs for interagency acquisitions which are subject to FAR Subpart 17.5, in a manner consistent with FEMA policy and procedures.
5. FEMA shall develop draft IAAs to include scope of work statements.

6. FEMA shall obtain for the USACE all necessary real estate interests and access to all work sites and support facilities, and shall coordinate with and obtain any permits from State and local agencies, as necessary during the execution of each IAA.

#### **ARTICLE VI - FUNDING**

This MOA does not document the obligation of funds between the Parties. Any obligation of funds in support of this MOA will be accomplished by executing an IAA in accordance with Article IV.

FEMA shall pay all costs incurred by the USACE relative to providing goods or services under each IAA. The USACE will draw payments through the Intra-Governmental Payment and Collection (IPAC) system on a monthly basis in amounts equal to the monthly invoice amount, or as otherwise specified in each IAA. Bills rendered will not be subject to audit in advance of payment. FEMA shall provide adequate assurance that funds are available in advance of any obligation.

If the USACE forecasts its actual costs under an IAA to exceed the amount of funds available under that IAA, it shall promptly notify FEMA of the amount of additional funds necessary to complete the work under that IAA. FEMA shall either provide the additional funds to USACE, or the Parties shall amend the IAA to amend the scope of work, to direct termination of the work under that IAA, or to otherwise amend the IAA in a manner consistent with this agreement.

Within 90 days of completing the work under an IAA, the USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of completing this accounting, USACE 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 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 USACE shall be governed by Department of Army policies and procedures and by this agreement.

#### **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 but will consult closely with the FEMA Contracting Officer and Chief Counsel's Office in the process. Any Contracting Officer's final decision may be appealed by the contractor, pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 7101). 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 disputes arising under or relating to the contracts, including litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The USACE shall notify FEMA of any such litigation and afford FEMA 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, FEMA 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, if such measures fail to resolve the dispute, they shall refer it for resolution to the OMB or another appropriate entity.

## **ARTICLE X - LIABILITY**

If additional liability is imposed on the United States relating to the USACE's provision of goods or services under this MOA, the USACE shall accept accountability for its actions, 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 remains responsible for seeking additional funds from Congress for such purposes, subject to the Office of Management and Budget (OMB) approval. Nothing in this MOA shall be construed to imply that Congress will, at a later date, appropriate funds sufficient to meet the deficiencies.

Nothing in this Agreement shall be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b), 2671-2680, provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by Federal employees within the scope of their employment.

## **ARTICLE XI - PUBLIC INFORMATION**

Any information shared under this Agreement will comply with the Privacy Act and, to the extent required and allowable, the Freedom of Information Act (FOIA) and any other applicable statute, Executive Order, or regulation.

FEMA is responsible for justifying and explaining its programs before Congress and other agencies, departments, and offices of the Federal Executive Branch. The USACE may provide, upon request, any assistance necessary to support FEMA's justification or explanations of FEMA's programs conducted under this MOA. In general, FEMA 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 administration process. Both FEMA and the USACE shall make their best efforts to give the other Party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAAs 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 FEMA and USACE.
- B. Survival: The provisions of this MOA that require performance after this MOA has expired or been terminated shall remain in force, notwithstanding the expiration or termination.
- 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.

- D. Transferability: This MOA is not transferable except with the written consent of the Parties.
- E. No Restriction on Authorities: Nothing in this agreement is intended to restrict the authority of either Party to act as provided by statute or regulation
- F. Third Parties: This Agreement is between FEMA and the USACE and does not confer or create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any third person or Party (public or private) against the United States, its agencies its officers or employees.

**ARTICLE XIII - REQUIRED REVIEWS**

The Parties will review this MOA annually, on or around the anniversary of its effective date, for financial impacts, and triennially in its entirety.

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

This MOA may be modified or amended only by written, mutual agreement of the Parties. Either Party may unilaterally terminate this MOA by providing at least 180 days written notice to the other. In the event of termination, FEMA shall continue to be responsible for all costs incurred by the USACE under this MOA and for the costs of closing out or transferring any ongoing contracts.

**ARTICLE XV - EFFECTIVE DATE**

This MOA shall become effective when signed by both FEMA and the USACE.

**ARTICLE XVI-EXPIRATION DATE**

This MOA expires 9 years from the date it is signed by both FEMA and the USACE.

**ARTICLE XVII- CANCELATION OF PREVIOUS AGREEMENT**

AGREED:

**For the Federal Emergency Management Agency,  
U.S. Department of Homeland Security**



DAVID I. MAURSTAD  
Deputy Associate Administrator for Mitigation  
and Insurance  
Federal Insurance and Mitigation Administration

**For the U.S. Army Corps of Engineers  
U.S. Department of the Army**



JAMES C. DALTON, P.E.  
Director of Civil Works  
U.S. Army Corps of Engineers

DATE: **JUL 18 2019**

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