

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH  
INSPECTION SERVICE, WILDLIFE SERVICES  
AND  
THE U.S. ARMY CORPS OF ENGINEERS  
FOR  
WILDLIFE DAMAGE MANAGEMENT SERVICES  
[APHIS MOU #: 21-7100-0477-MU]

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 U.S. Department of Agriculture, Animal and Plant Health Inspection Service-Wildlife Services (APHIS-WS) (collectively "the Parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the provision of goods and services described in Article II. This MOA is entered into pursuant to the Economy Act (31 U.S.C. § 1535).

ARTICLE II - SCOPE

The parties do not anticipate that USACE will provide goods and services to APHIS-WS. If the need arises, the parties will address such goods and services in future agreements.

Goods and services which the APHIS-WS may provide under this MOA include managing damage caused by indigenous, non-native or feral vertebrates on USACE lands, facilities, and waters; minimizing livestock losses due to predation by coyotes, mountain lions, vultures, and other predators; managing wildlife diseases; managing damage caused by invasive species such as feral swine and rats; managing damage to Threatened and Endangered (T&E) species caused by avian and mammalian predators; managing nuisance wildlife; and protecting other wildlife, plants, and habitat from wildlife damage as requested by the USACE; and such other related goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require the Parties to exclusively order goods or services within the scope of this MOA from one another or to require the Parties to provide any goods or services, except as may be set forth in orders executed pursuant to Article V.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, 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 individual orders. The Principal Representatives are as follows:

For USACE:

- 1) Jeff Krause  
US Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314  
202-761-1228
- 2) Jeremy Crossland  
US Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314  
202-761-4259

For APHIS WS:

- 1) Robert Hromack, Staff Wildlife Biologist  
USDA-APHIS-WS  
4700 River Road, Unit 87  
Riverdale, MD 20737  
Office: (301) 851-4001
- 2) Stephen Kendrot, Deputy Director, Wildlife Operations (Alternate)  
USDA-APHIS-WS  
4700 River Road, Unit 87  
Riverdale, MD 20737  
Office (301) 851-4007

#### ARTICLE IV – G-INVOICING AND GENERAL TERMS AND CONDITIONS (GT&C) AGREEMENT

Prior to executing any orders under this MOA, the Parties shall execute a GT&C agreement using Department of Treasury Fiscal Service (FS) Form 7600A, that incorporates the terms and conditions of this MOA by reference. The Parties may execute one or multiple FS Forms 7600A under this MOA, as needed. The Parties shall enter all GT&Cs executed hereunder into G-Invoicing when both parties have access.

#### ARTICLE V - ORDERS

In response to requests from one Party (hereinafter “the Ordering Activity”) for the other Party’s assistance (hereinafter the “Servicing Activity”) under this MOA, the Parties shall conclude mutually agreed upon written orders. Goods and services shall be provided under this MOA and associated GT&C(s) only after an appropriate order has been signed by an authorized

representative of each Party. Prior to full implementation of G-Invoicing by both Parties, orders will be executed on FS Form 7600B (or another format acceptable to both Parties that contains the same substantive information as a FS Form 7600B). Once fully implemented, orders will be developed using the FS Form 7600B format in G-Invoicing.

By executing an order, both Parties certify that the following Economy Act requirements have been met:

- 1) The Ordering Activity has determined that funds are available;
- 2) The Ordering Activity has determined that the order is in the best interest of the United States Government;
- 3) The Servicing Activity has determined that it is able to provide or get by contract the ordered goods or services; and
- 4) The Ordering Activity has determined that the ordered goods or services cannot be provided by contract as conveniently or economically by a commercial enterprise.

In addition to the above, when the provision of the ordered goods or services under an order requires the Servicing Activity to perform a contract action on behalf of the Ordering Activity, the Ordering Activity must include the required Economy Act Determinations and Findings under FAR subpart 17.502-2 on each FS Form 7600B (or similar document) or provide separate written Determinations and Findings documents for each FS Form 7600B (or similar document).

Orders 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;
- the Ordering Activity's fund citation and the date upon which the cited funds expire for obligation purposes;
- procedures for amending or modifying the order; and
- such other particulars as are necessary to describe clearly the obligations of the Parties with respect to the requested goods or services.

In the event of a conflict between this MOA and an associated GT&C or order, this MOA shall control.

## ARTICLE VI - RESPONSIBILITIES OF THE PARTIES

The Servicing Activity shall:

1. Provide the Ordering Activity with goods or services in accordance with the purpose, terms, and conditions of this MOA and any specific requirements set forth in associated GT&C(s), orders, and implementing arrangements.
2. Ensure that only authorized Servicing Activity representatives sign orders.
3. Provide detailed periodic progress, financial and other reports to the Ordering Activity as agreed to in an order. Financial reports shall include information on all funds received, obligated, and expended, and any forecasted obligations and expenditures.
4. Inform the Ordering Activity of all contracts entered into under each order.

The Ordering Activity shall:

1. Certify, prior to the execution of each order under this MOA and associated GT&C(s), that the order complies with the requirements of the Economy Act, and that any required written Economy Act Determinations and Findings have been completed in accordance with Article V of this MOA.
2. Pay all costs associated with the Servicing Activity's provisions of goods or services under this MOA and certify, at the time of signature of an order, the availability of funds necessary to accomplish that order.
3. Ensure that only authorized Ordering Activity representatives sign orders.
4. Develop draft orders to include scope of work statements.
5. Obtain for the Servicing Activity all necessary real estate interests and access to all work sites and support facilities, and perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each order.

## ARTICLE VII – PERFORMANCE OF APHIS-WS ACTIVITIES AT USACE PROJECTS

In some instances, APHIS-WS will have independent funding to perform wildlife damage management services anywhere in the United States, to include at USACE projects. In such instances, APHIS-WS can perform such services at USACE projects with no need for USACE reimbursement or an Economy Act order. Prior to doing so, however, USACE shall request, and APHIS-WS shall provide, a written statement, signed by an APHIS-WS official with proper authority as determined by APHIS-WS, that cites the statutory authority under which the APHIS-WS is conducting the specific wildlife damage management services and provides a certification that APHIS-WS has funding properly available for such purpose. USACE project offices may require additional documentation as needed to grant the APHIS-WS access to, and permit

APHIS-WS activities on, USACE projects. APHIS-WS may require USACE to approve a work initiation document that identifies the species being managed and the methods of control to be applied. Notwithstanding Articles XIII and XIV, USACE is not responsible for costs and liabilities arising from non-reimbursable support provided to USACE as contemplated under this Article.

#### ARTICLE VIII – ENVIRONMENTAL REVIEWS FOR WILDLIFE DAMAGE MANAGEMENT SERVICES PERFORMED AT USACE PROJECTS

For wildlife damage management services requested by USACE under Economy Act orders pursuant to Article V, USACE shall serve as the lead agency for National Environmental Policy Act (NEPA) compliance, unless, by mutual agreement, the APHIS-WS agrees to serve as lead agency. When acting as the lead agency, USACE may invite APHIS-WS to participate as a cooperating agency, or joint lead agency, as appropriate.

For wildlife damage management services that APHIS-WS performs at USACE projects using its own funding pursuant to Article VII, APHIS-WS shall serve as the lead agency for NEPA compliance, unless, by mutual agreement, USACE agrees to serve as lead agency. When acting as the lead agency, the APHIS-WS may invite USACE to participate as a cooperating agency, or joint lead agency, as appropriate.

#### ARTICLE IX - FUNDING

Neither this MOA nor any associated GT&C documents the obligation of funds between the Parties. Any obligation of funds in support of this MOA will be accomplished by executing an order on a FS Form 7600B (or similar document) in accordance with Article V.

The Ordering Activity shall pay all costs associated with the Servicing Activity's provision of goods or services under this MOA. The Servicing Activity shall bill the Ordering Activity monthly for costs incurred using Standard Form (SF) 1080, Voucher for Transfers Between Appropriations and/or Funds. The Ordering Activity will use the Intra-Governmental Payment and Collection System (IPAC) to automatically reimburse the Servicing Activity. Upon request by the Servicing Activity, the Ordering Activity shall provide funds in advance of any obligation. Bills rendered will not be subject to audit in advance of payment.

If the Servicing Activity forecasts its actual costs under an order to exceed the amount of funds available under that order, it shall promptly notify the Ordering Activity of the amount of additional funds necessary to complete the work under that order. The Ordering Activity shall either provide the additional funds to the Servicing Activity, 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 order.

Within 90 days of completing the work under an order, the Servicing Activity shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Servicing Activity shall return to the Ordering Activity any funds

advanced in excess of the actual costs as then known, or the Ordering Activity shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the Ordering Activity's duty in accordance with Article XIII to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

#### ARTICLE X - 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 Servicing Activity shall be governed by the Servicing Activity's policies and procedures.

#### ARTICLE XI - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the Servicing Activity shall be resolved in accordance with Federal law and the terms of the individual contract. The Servicing Activity 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. §§ 7101-7109). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals for USACE contracts executed pursuant to this MOA. The Civilian Board of Contract Appeals (CBCA) is designated as the appropriate board of contract appeals for the APHIS-WS contracts executed pursuant to this MOA. In lieu of appealing to the ASBCA or CBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The Servicing Activity 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 Servicing Activity shall notify the Ordering Activity of any such disputes and litigation and afford the Ordering Activity an opportunity to review and comment on the proceedings and any resulting settlement negotiations, however, as provided above, the Servicing Activity shall be the dispute resolution authority and will make all decisions regarding contractor claims and disputes, including whether to accept or propose any settlement. The Ordering Activity shall be responsible for all such costs in accordance with Article XI.

#### ARTICLE XII - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the Parties shall use their best efforts to resolve any such dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. In the event such measures fail to resolve the dispute, the Parties shall elevate the issue through their respective chains of command and, if needed, refer the matter to the respective executive agency of each Party for resolution.

## ARTICLE XIII — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the Servicing Activity's provision of goods or services under this MOA, the Servicing Activity will accept accountability for its actions, but the Ordering Activity shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs, to include any litigation expenses incurred by the Servicing Activity in defending a claim or dispute associated with the work. 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 the Ordering Activity have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, the Ordering Activity remains responsible for seeking additional funds from Congress for such purposes, subject to OMB approval. Nothing in this MOA shall be construed to imply that Congress will, at a later date, appropriate funds sufficient to meet any such deficiencies.

Notwithstanding the above, this MOA does not confer any liability upon the Ordering Activity for claims payable by the Servicing Activity 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 XIV - PUBLIC INFORMATION

Justification and explanation of the Ordering Activity's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the Ordering Activity. The Servicing Activity may provide, upon request, any assistance necessary to support the Ordering Activity's justification or explanations of the Ordering Activity's programs conducted under this MOA. In general, the Ordering Activity is responsible for all public information. However, the Servicing Activity may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. Each Party 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 orders under this MOA.

## ARTICLE XV - MISCELLANEOUS

A. Other Relationships or Obligations: This MOA shall not affect any pre-existing or independent relationships or obligations between the Parties.

B. Survival: The provisions of this MOA that 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.

D. Transferability: This MOA is not transferable except with the written consent of the Parties.

ARTICLE XVI – 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 XVII - 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 Party. In the event of termination, the Ordering Activity shall continue to be responsible for all costs incurred by the Servicing Activity under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVIII - EFFECTIVE DATE

This MOA takes effect beginning on the day after the last Party signs.

ARTICLE XIX – EXPIRATION DATE

This MOA expires five (5) years from its effective date.

AGREED:

For the U.S. Department of Agriculture,  
Animal and Plant Health Inspection Services

For the U.S. Army Corps of Engineers

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DATE: September 14, 2021

DATE: \_\_\_\_\_