

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. ARMY CORPS OF ENGINEERS  
AND  
THE NATURAL RESOURCES CONSERVATION SERVICE**

**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 Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA) (collectively "the Parties") for the purpose of establishing a framework governing the respective responsibilities for the provision of goods and services as described in Article II below. This MOA and any order pursuant to this MOA is entered into pursuant to the Economy Act (31 U.S.C. § 1535).

**ARTICLE II - SCOPE**

A. Goods and services that USACE may provide under this MOA include planning, design, construction, engineering or technical assistance, flood risk reduction, erosion control, emergency response and disaster assistance, environmental/ecosystem restoration, hazardous or toxic materials removal and/or mitigation, invasive species control, permit assistance, cultural resources coordination, research and development, laboratory testing, training and professional development, and such other related goods or services as may be agreed upon in the future.

B. Goods and services which NRCS may provide under this MOA include water supply management, ecosystem restoration, engineering or technical assistance, laboratory testing, training and professional development, 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 the 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.

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between USACE and the NRCS, each Party shall appoint a Principal Representative to serve as its central point of contact (POC) on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on order. If the POC changes, the Party making the change will notify the other Party via e-correspondence.

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 the Requesting Agency for Servicing Agency assistance under this MOA and associated GT&C agreements, the Servicing Agency and the Requesting Agency shall conclude mutually agreed upon written orders; orders will be executed on FS Form 7600B. Goods or services shall be provided under this MOA only after an appropriate order has been signed by an authorized representative of each Party. .

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

1. The Requesting Agency has determined that funds are available;
2. The Requesting Agency has determined that the order is in the best interest of the United States Government;
3. The Servicing Agency has determined that it is able to provide or get by contract the ordered goods or services; and
4. The Requesting Agency 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 Agency to perform a contract action on behalf of the Requesting Agency, the Requesting Agency must include the required Economy Act Determinations and Findings under FAR subpart 17.502-2 on each FS Form 7600B or provide separate written Determinations and Findings documents for each FS Form 7600B. When USACE is the Requesting Agency, USACE must also ensure that the requirements of DFARS subpart 217.7 are satisfied.

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 as stated above; and
- the Requesting Agency'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 and services.

In the event of a conflict between this MOA and an order, this MOA shall control.

## ARTICLE VI - RESPONSIBILITIES OF THE PARTIES

### A. Responsibilities of the Servicing Agency

1. The Servicing Agency shall provide the Requesting Agency with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in orders and implementing arrangements.

2. The Servicing Agency shall identify authorized the Servicing Agency representatives to sign orders.

3. The Servicing Agency shall provide detailed periodic progress, financial and other reports to the Requesting Agency as agreed to in the order. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

4. The Servicing Agency shall inform the Requesting Agency of all contracts entered into under each order.

### B. Responsibilities of the Requesting Agency

1. The Requesting Agency shall certify, prior to the execution of each order under this MOA, that the order complies with the requirements of the Economy Act, and that any required written Economy Act Determination & Findings have been completed in accordance with Article V of this MOA.

2. The Requesting Agency shall pay all costs associated with the Servicing Agency's provisions of goods or services under this MOA and shall certify, at the time of signature of an order, the availability of funds necessary to accomplish that order.

3. The Requesting Agency shall ensure that only authorized Requesting Agency representatives sign orders.

4. The Requesting Agency shall develop draft orders to include scope of work statements.

5. The Requesting Agency shall 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 state and local agencies, as necessary during the execution of each order.

## ARTICLE VII - FUNDING

Nothing in this MOA shall obligate either party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations. 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 in accordance with Article IV.

The Requesting Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA. If payments are to be on a reimbursable basis, the Servicing Agency will draw payments through the Intra-Governmental Payment and Collection (IPAC) system on a monthly basis in amounts equal to the monthly invoice amount. Bills rendered will not be subject to audit in advance of payment. If payments are to be on an advance basis, the Requesting Agency shall provide funds in advance of any obligation.

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

Within 90 days of completing the work under an order, the Servicing Agency shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Servicing Agency shall return to the Requesting Agency any funds advanced in excess of the actual costs as then known, or the Requesting Agency shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the Requesting Agency'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 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 Servicing Agency shall be governed by the Servicing Agency policies and procedures.

## ARTICLE IX – CONTRACT CLAIMS AND DISPUTES

All contractor claims and disputes arising under or relating to contracts awarded by the Servicing Agency shall be resolved in accordance with federal law and the terms of the individual contract. The Servicing Agency 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 NRCS contracts executed pursuant to this MOA. In lieu of appealing to the ASBCA or CBCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The Servicing Agency 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 Agency shall notify the Requesting Agency of any such litigation and afford the Requesting Agency an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations, however, as provided above, the Servicing Agency 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 Requesting Agency shall be responsible for all costs in accordance with Article XI.

#### ARTICLE X – DISPUTE RESOLUTION

In the event of a dispute between the Parties, the Parties 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. In the event such measures fail to resolve the dispute, the parties shall elevate the issue through their respective chains of command.

#### ARTICLE XI — RESPONSIBILITIES FOR COSTS

This MOA is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person. Nothing in this Agreement shall be construed as requiring a Party to expend funds in violation of the Federal Anti-deficiency Act codified at 31 U.S.C. § 1341.

If a liability of any kind is imposed on the United States relating to the Servicing Agency's provision of goods or services under this MOA, the Servicing Agency will accept accountability for its actions, but the Requesting Agency 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 Agency 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 Requesting Agency have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, the Requesting Agency remains responsible for seeking additional funds from Congress for such purpose, 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 the deficiencies.

Notwithstanding the above, this MOA does not confer any liability upon the Requesting Agency for claims payable by the Servicing Agency 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 XII – PUBLIC INFORMATION

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

A. Other Relationships or Obligations: This MOA shall not affect any pre-existing or independent relationships or obligations between the Requesting Agency and the Servicing Agency nor prevent either Party from entering into other relationships.

B. Survival: The provisions of this MOA which 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 XIV – 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 XV – AMENDMENT, MODIFICATION, AND TERMINATION

This MOA may be modified or amended only by the written and 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 Requesting Agency shall continue to be responsible for all costs incurred by the Servicing Agency under any order entered under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVI – EFFECTIVE DATE AND EXPIRATION

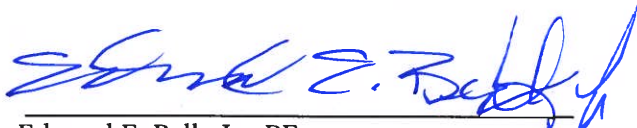
Unless otherwise modified or extended per Article XIV hereof, this MOA takes effect beginning on the day after the last Party signs and expires nine years after the day the last Party signs.

AGREED:

Natural Resources Conservation Service

U.S. Army Corps of Engineers

  
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Terry Cosby  
Chief, Natural Resources  
Conservation Service

  
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Edward E. Belk, Jr., PE  
Director of Civil Works

DATE: May 10, 2023

DATE: 17 APR 2023