**MODEL “UMBRELLA” MOA (for use with DoD activities)**

This Memorandum of Agreement (MOA) template is intended to serve as a model for developing “umbrella” MOAs governing Economy Act (and Project Order authority if applicable) support for others work to be provided by the U.S. Army Corps of Engineers to DoD activities. (Note that use of the Project Order authority (41 U.S.C. § 6307) is very limited (see DoD FMR Vol. 11A, ch. 2; and ER 37-1-26) and, thus, the provisions provided in this template that contemplate the use of the authority should only be included when the parties have a legitimate expectation that at least some orders under the MOA will qualify as valid Project Orders).

In accordance with DoD policy, the development of a FS Form 7600A General Terms and Conditions (GT&C) agreement is required for all reimbursable services. A MOA may still be used to detail the terms and conditions, but the parties must also executed a FS Form 7600A—which when used with an MOA would incorporates the terms and conditions of the MOA by reference—and corresponding orders prior to USACE performing any work. The MOA can be attached to the FS Form 7600A in G-Invoicing. Alternatively, the parties could proceed without an MOA by executing a FS Form 7600A that includes an appendix containing the terms and conditions that could otherwise be included in an MOA (appendix templates are available on the IIS website).

All MOAs under which USACE provides reimbursable support to other DoD activities must contain the substantive information and verbiage provided in this model MOA. However, the model may be amended to include supplemental provisions necessary to reflect details specific to the parties or projects involved so long as the amendments do not conflict with any substantive provisions in the model and otherwise comply with existing statutory and regulatory requirements.

All final draft MOAs must be reviewed by the appropriate Office of Counsel prior to execution. Changes made after review by the Office of Counsel, must be submitted to Office of Counsel for review prior to execution.

This model is intended for use with Economy Act and/or Project Order authority agreements, but may also be used as the initial drafting document for other authorized reimbursable transactions, so long as it is tailored to fit the specific authority relied upon and follows the DoD FMR provisions for Non-Economy Act transactions and any other applicable guidance. For agreements under authorities other than the Economy Act, the Office of Counsel should be engaged early and can assist in identifying the requirements for specific Non-Economy Act transactions.

# MEMORANDUM OF AGREEMENT

BETWEEN

THE [ORDERING ACTIVITY]

AND

THE U.S. ARMY CORPS OF ENGINEERS

FOR

[INSERT SUBJECT]

[INSERT AGREEMENT NUMBER]

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 [ORDERING ACTIVITY] (collectively "the Parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the provision of USACE **[insert general description of the type of USACE assistance; e.g. construction management, environmental restoration or design assistance]** services and any goods related thereto. This MOA is entered into pursuant to the Economy Act (31 U.S.C. § 1535) **[if applicable, add: “or Project Order authority (41 U.S.C. § 6307), as applicable”]** **[When necessary, also insert specific statutory authority for the ORDERING ACTIVITY to execute the program/work]**.

ARTICLE II - SCOPE

Services and any goods related thereto which USACE may provide under this MOA include **[insert detailed description of scope of USACE services and any goods related thereto, including brief description of Ordering Agency program/work if appropriate]**.

Nothing in this MOA shall be construed to require the [ORDERING ACTIVITY] to use USACE or to require USACE to provide any services and any goods related thereto to the [ORDERING ACTIVITY], except as may be set forth in Orders.

ARTICLE III - COMMUNICATIONS

To provide for consistent and effective communication between USACE and the [ORDERING ACTIVITY], 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:

* + 1. [**Insert the name, position, address, phone, e-mail, of each Principal Representative from each organization**]

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 [ORDERING ACTIVITY] for USACE assistance under this MOA and associated GT&C(s), USACE and the [ORDERING ACTIVITY] shall conclude mutually agreed upon written orders. Services and any goods related thereto 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. Orders will be executed on FS Form 7600B when G-Invoicing has the functionality and when both parties have G-Invoicing access **(NOTE: Prior to G-Invoicing having 7600B functionality, USACE preference is to use the hardcopy version of the 7600B if the other DoD party agrees)**, or via a DD Form 448, Military Interdepartmental Purchase Request (MIPR) when either party does not. When the Parties execute an order using only a MIPR, a specific Statement of Work must be incorporated or attached and the MIPR must otherwise include the same information required on a FS Form 7600B. Once fully implemented, orders will be developed using the FS Form 7600B format in G-Invoicing.

**[Add the following if the agreement is to include Project Orders: “Regardless of the format utilized, each order must clearly specify the applicable reimbursable authority relied upon (i.e., the Economy Act (31 U.S.C. § 1535) or Project Order authority (41 U.S.C. § 6307)) and the Parties must ensure that the order complies with all requirements of such applicable authority.”]**

By executing an Economy Act order, both Parties certify that the following 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) USACE has determined that it is able to provide or get by contract the services and any goods related thereto; and

4) The [ORDERING ACTIVITY] has determined that the ordered services and any goods related thereto cannot be provided by contract as conveniently or economically by a commercial enterprise.

In addition to the above, when the provision of the ordered services or any goods related thereto under an order requires USACE 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 MIPR) or provide separate written Determinations and Findings documents for each FS Form 7600B (or MIPR).

**[Add the following if the agreement is to include Project Orders: “By executing a Project Order, both Parties certify that the requirements of 41 U.S.C. § 6307 and 31 U.S.C. § 1501 have been met as described in DoD Financial Management Regulation Volume 11A, Chapter 2 and, for USACE activities, Engineering Regulation 37-1-26.”]**

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 services and any goods related thereto.

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

USACE shall:

1. Provide the [ORDERING ACTIVITY] with services and any goods related thereto 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 USACE 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 AGENCY] 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. **[NOTE: the Corps office involved should obtain a copy of any required written D&F prior to executing an order.]**

2. Pay all costs associated with USACE's provisions of services and any goods related thereto 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 USACE 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 - 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 MIPR) in accordance with Article V.

The [ORDERING ACTIVITY] shall pay all costs associated with USACE's provision of services and any goods related thereto under this MOA. USACE 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 USACE. Upon request by USACE, the [ORDERING ACTIVITY] shall provide funds in advance of any obligation. Bills rendered will not be subject to audit in advance of payment.

If USACE 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 USACE, 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, USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, USACE 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 XI 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 USACE shall be governed by USACE policies and procedures.

ARTICLE IX - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by USACE shall be resolved in accordance with Federal law and the terms of the individual contract. USACE 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. 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.

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. USACE 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, USACE 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 X - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the [ORDERING ACTIVITY] and USACE 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 appropriate Office of the Secretary of Defensefor resolution.

ARTICLE XI — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to USACE's provision of services and any goods related thereto under this MOA, USACE 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 USACE 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 USACE 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 [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]. USACE 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. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The [ORDERING ACTIVITY] or USACE 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 [ORDERING ACTIVITY] and USACE.

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 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 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 USACE under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVI - EFFECTIVE DATE

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

ARTICLE XVII – EXPIRATION DATE

This MOA expires on **[insert date, not to exceed 9 years (a period of 5 years or less is recommended)]**.

ARTICLE XVIII – CANCELATION OF PREVIOUS AGREEMENT **[use only as needed]**

This MOA cancels and supersedes the previously signed agreement between the same Parties with the title **[insert title of the previous Agreement]** executed on **[insert execution date of previous agreement]**.

AGREED: **[Approval authority signatures will never be alone on a blank page]**

For the [ORDERING AGENCY] For the U.S. Army Corps of Engineers

DATE: DATE: