

MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. ARMY TOXIC AND HAZARDOUS MATERIALS AGENCY
AND
U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE
ANIMAL DAMAGE CONTROL

ARTICLE I. PURPOSE

This Memorandum of Agreement (MOA) is entered into by and between the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control (USDA-ADC), for the purposes of establishing the respective responsibilities of the parties for delivering technical assistance, procurement, contract(s) management, and related services to accomplish tasks described in the Attachment to this Agreement.

ARTICLE II. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communications between USATHAMA and USDA-ADC, USATHAMA and USDA-ADC have appointed representatives to discuss and consider activities that may be pursued under this MOA. USATHAMA and USDA-ADC representatives are as follows:

For the U.S. Army Toxic and Hazardous Materials Agency:

Commander
U.S. Army Toxic and Hazardous Materials Agency
ATTN: CETHA-CO
Aberdeen Proving Ground, Maryland 21010-5401

For the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control:

State Director
Animal Damage Control
Animal and Plant Health Inspection Service
U.S. Department of Agriculture
720 O'Leary Street, NW.
Olympia, Washington 98502

USATHAMA and USDA-ADC representatives shall coordinate all requests for assistance under this MOA and shall serve as the points of contact between USATHAMA and USDA-ADC on matters relating to this MOA.

The respective representatives of USATHAMA and USDA-ADC will execute individual work plans (IWPs) necessary to accomplish tasks identified in the Attachment, in accordance with the terms of this Agreement.

ARTICLE III. PROVISIONS OF ASSISTANCE

Nothing in this MOA is intended to affect other arrangements between the parties. Nothing in this MOA can be or should be construed to require USATHAMA to use the services of USDA-ADC, or to require USDA-ADC to accept assignments from USATHAMA.

A. Responsibilities of USDA-ADC

USDA-ADC shall provide technical assistance related to projects funded by USATHAMA, to include engineering, contract management, contract administration quality assurance, change/claim resolution, progress payments processing, participation in final inspection with USATHAMA, contract(s) closeout, and related services. USDA-ADC shall prepare the solicitation documents and review design documents, including estimates.

B. Responsibilities of USATHAMA

USATHAMA shall have the responsibility for initiating IWPs, developing project concepts, and creating the scope of work statement. If the IWP requires USDA-ADC to award a contract, or issue a work order on an existing contract, USATHAMA will also furnish:

1. All information necessary to make any justification and approval (J&A) or determination and finding (D&F) required by law or regulation; and
2. Assistance necessary to comply with any condition or limitation applicable to the funds provided by USATHAMA, including special contract terms or other requirements unique to the fund cite.
3. Ensure the IWP does not conflict with any other agency's authority or responsibility.

USATHAMA retains ultimate responsibility for program funds in accordance with all applicable statutes and regulations and therefore retains the authority to conduct onsite reviews, project reviews, and activities related to audit.

USATHAMA shall provide the annual program projections to USDA-ADC for the following fiscal year (FY) commencing 1 October through 30 September.

USATHAMA may review recommendations and determinations made and actions taken by USDA-ADC at any time.

USATHAMA will ensure all IWPs conform to the requirements of FAR Subpart 7.3 (Contractor vs. Government Performance).

ARTICLE IV. FUNDING

USATHAMA shall, subject to the availability of funds, fund all costs of assistance for tasks provided under this MOA and the IWPs negotiated under this MOA. USATHAMA shall provide funds in advance of the commencement of the work or the issuance of any obligation of USDA-ADC for any task assigned. USATHAMA shall provide USDA-ADC the full amount of estimated expenses by delivering a DD Form 448, Military Interdepartmental Purchase Request (MIPR), prior to the start of each IWP. If the actual cost to USDA-ADC is forecast to exceed the amount of funds available, USDA-ADC shall promptly notify USATHAMA of the amount of the additional funding necessary to pay for the assistance. USATHAMA shall either provide the additional funds to USDA-ADC, or require that the scope of the assistance be limited to that which can be financed by the available funds, or direct termination of the project. Within fifteen (15) calendar days thereafter, USATHAMA shall provide USDA-ADC the full amount of the additional funds.

USDA-ADC will utilize the funds issued by USATHAMA to cover all USDA-ADC expenses including, but not limited to, salaries, travel, per diem, administrative overhead, and indirect costs pursuant to this MOA and the IWPs negotiated under this MOA. Established USDA-ADC accounting procedures will be used for recording costs.

Upon furnishing the assistance contemplated by this MOA and the IWPs negotiated under MOA, USDA-ADC shall conduct a final accounting within 120 calendar days of project completion (physical and financial) to determine the actual costs of the assistance provided. USDA-ADC shall return any funds advanced by USATHAMA in excess of the actual costs within 90 calendar days of the final accounting.

ARTICLE V. BILLING

Billing will be performed by USDA-ADC and forwarded to the billing address indicated on each IWP. Billing is performed

monthly for the costs recorded during the previous month on an SF Form 1080 for reimbursement to the USDA-ADC appropriation on the basis of actual costs incurred.

ARTICLE VI. ACCEPTANCE OF FUNDS

Funds shall be considered obligated upon USDA-ADC's acceptance of the funds and issuance of direction by letter to its contractor. No funds/project expiration dates will be added to the funding document and any schedules or delivery dates will be expressed in the project tasks description.

Performance by USDA-ADC shall continue until one or more of the following conditions are met:

- A. Completion of the Statement of Work and Task Closeout;
- B. Expenditures/commitments equal the amount authorized for this task;
- C. Task termination by either party to this Agreement;
- D. Work completion date as specified in the IWP. USDA-ADC cannot accept work completion dates not mutually agreed to by both parties. (Work completion dates are not to be confused with obligational expiration dates.)

ARTICLE VII. APPLICABLE LAWS AND REGULATIONS

USDA-ADC shall furnish all assistance under this MOA and the IWPs negotiated under this MOA in accordance with applicable laws and regulations. Unless otherwise required by law or set forth in this MOA, all contract work undertaken by USDA-ADC shall be performed in accordance with USDA-ADC procurement and claims policies and procedures.

Nothing in this MOA relieves any applicant, grantee, consultant, contractor, subcontractor, or other party from any obligations imposed upon them by law, regulation, and other applicable requirements.

ARTICLE VIII. RECORDS AND REPORTS

USDA-ADC shall establish and maintain records and receipts of the expenditure of all funds provided by USATHAMA. Records shall be maintained in sufficient detail to permit identification of the nature of the expenditures made by USDA-ADC and shall be made available for inspection by officials of USATHAMA upon request.

USDA-ADC will provide status reports on projects pursued under this MOA and the IWPs negotiated under this MOA. Upon request, USDA-ADC will also provide reports and/or briefings. These reports will include management information and will monitor scheduled activities. These reports will provide data to support planning and budget decisions.

Copies of all documents supporting contract management decisions and activities will be turned over to USATHAMA for maintenance. USDA-ADC will retain all originals.

ARTICLE IX. CONTRACT CLAIMS AND APPEALS

All claims submitted by contractors arising under or relating to contracts awarded by USDA-ADC shall be resolved in accordance with United States law and the terms of the individual contract. USDA-ADC has dispute resolution authority for these claims, and shall be responsible for litigating all claims or appeals. USDA-ADC shall consult with USATHAMA regarding any settlement negotiations.

USDA-ADC shall notify USATHAMA of claims or appeals and shall submit requests to USATHAMA for funds to cover such claims or appeals. USATHAMA shall promptly provide funds for payment of meritorious claims and appeals and for the administrative costs for processing all non-meritorious contractor claims and appeals. USATHAMA shall also promptly provide funds for the administrative costs for processing all Government claims and appeals.

ARTICLE X. PATENTS

Inventions made in performance of this work may fall within the USDA-ADC-issued Class Patent Waiver and the contractor may elect to retain title to such inventions subject to retention by the Federal Government of march-in-rights and a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the invention throughout the world.

ARTICLE XI. PROPERTY/EQUIPMENT

Title of permanent construction will pass to USDA-ADC upon completion of construction and acceptance by USDA-ADC. If equipment is acquired as part of the project, such equipment will be accounted for and maintained during the term of the project in the same manner as USDA-ADC property. When the project terminates, disposition of the equipment will be as previously agreed to or as instructed by requesting agency. This equipment

may be delivered to the requesting agency's location, transferred to USDA-ADC, or declared as excess.

ARTICLE XII. DISPUTE RESOLUTION

Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution, mutually acceptable to the parties.

If dispute between the parties to this Agreement arises over the terms or conditions of this Agreement, including any and all Attachments thereto, resolution of all dispute issues will be by use of a third party pursuant to procedures adopted by that third party.

ARTICLE XIII. HOLD AND SAVE HARMLESS

USDA-ADC agrees to indemnify and hold USATHAMA, its officers, agents, and employees harmless from all damages, claims, suits, or demands that may result from the assistance rendered by USDA-ADC or any of its agents, contractors, or representatives.

ARTICLE XIV. SECURITY AND CLASSIFICATION

USATHAMA will provide to USDA-ADC existing applicable classification and any new guides/updates as they are developed, which apply to classified tasks. Security requirements to be followed in performance of the work will be in accordance with applicable Department of Defense and USDA-ADC orders. Before any classified work under this project is initiated, USDA-ADC's and USATHAMA's security representatives will agree that appropriate security requirements/procedures are established.

ARTICLE XV. PUBLIC INFORMATION

Justification and explanation of USATHAMA programs before Congress and the Executive Branch shall be the responsibility of USATHAMA. USDA-ADC may assist USATHAMA in responding to Congressional inquiries by preparing and furnishing USATHAMA draft responses for review and final disposition.

USATHAMA will retain responsibility for public announcements. Prior to issuing public announcements pertaining to services related to this MOA, USATHAMA shall coordinate with USDA-ADC. USDA-ADC will provide, upon request, information to support

contacts with Congress and the Executive Branch. USDA-ADC will make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process.

ARTICLE XVI. OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or other elected official shall share in any part of this MOA, or any benefit that may arise therefrom.

ARTICLE XVII. COVENANT AGAINST CONTINGENT FEES

No person or selling agency has been employed or retained to solicit or secure this MOA upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees.

ARTICLE XVIII. CONFIDENTIALITY

To the extent permitted by the law governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party. USDA-ADC will verify any and all project-related results and technical details prior to release of information to the public by USATHAMA.

ARTICLE XIX. EFFECTIVE DATE AMENDMENT AND TERMINATION

This MOA is effective upon the date of the last signature by the parties. This MOA may be modified by mutual consent of both parties or by either party upon a thirty day (30) advance written notice to the other.

Either USDA-ADC or USATHAMA may terminate this MOA by providing 120 calendar days' written notice. In the event of termination, USDA-ADC and USATHAMA shall consult with each other concerning all claims for termination costs; however, USATHAMA shall continue to be responsible for all costs incurred by the United States under this MOA, or under the IWPs and for the costs of closing out or transferring any ongoing obligations.

Upon request by either party, but at least annually, both parties shall review this MOA, to assure that it continues to reflect the appropriate understandings and procedures to provide for current needs and capabilities.

ACCEPTANCE for the U.S. Army Toxic and Hazardous Materials Agency:

By: *Ralph G. Wooten* Date: 14 MAY 92
Ralph G. Wooten
Colonel, U.S. Army
Commanding
U.S. Army Toxic and Hazardous
Materials Agency

ACCEPTANCE for the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control:

By: *J. Gary Oldenburg* Date: 5/26/92
J. Gary Oldenburg
State Director, Washington, Hawaii, Alaska, and the
Pacific Islands
Animal Damage Control
Animal and Plant Health Inspection Service
U.S. Department of Agriculture