

MEMORANDUM OF AGREEMENT
BETWEEN
THE NATIONAL PARK SERVICE
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the National Park Service (NPS) ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA environmental compliance, environmental restoration, environmental remediation, design assistance goods and, engineering services, construction management, and/or other services within the DA authorities and as requested by the NPS. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535).

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include design and engineering, surveying, geotechnical, historic and cultural preservation, environmental documentation and remediation, construction, and any work in support of NPS programs as mutually agreed upon in the future by the NPS and DA.

Nothing in this MOA shall be construed to require the NPS to use the DA or to require the DA to provide any goods or services to the NPS, except as may be set forth in Interagency Acquisition Agreement(s) ("IA(s)").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the NPS, 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 IAs.

ARTICLE IV - INTERAGENCY WORK REQUESTS

In response to requests from the NPS for DA assistance under this MOA, the DA and the NPS shall conclude mutually agreed upon written IAs. Those IAs must be on National Park Service Interagency Acquisition Agreement (IA) form 10-192, Engineer Form 4914-R or similar document containing the same

information as Department of Defense Form 1144, such as National Park Service Interagency Acquisition Agreement Form 10-192. IAs 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 NPS 's fund citation and the date upon which the cited funds expire for obligation purposes;

The following must be addressed in each IA:

- identification of individual project managers;
- identification of types of contracts to be used (if known);
- status reports as requested by NPS;
- 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 IA; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate IA has been signed by a representative of each party authorized to execute that IA. Upon signature by each party's representative, an IA shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and an IA, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. The DA shall provide the NPS with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in IAs and implementing arrangements.
2. The DA shall identify authorized DA representatives to sign IAs.
3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide status and financial reports to the NPS as requested. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

5. The DA shall inform the NPS of all contracts entered into under each IA.

B. Responsibilities of the NPS

1. The NPS shall certify, prior to the execution of each IA under this MOA, that the IA complies with the requirements of the Economy in Government Act.

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

3. The NPS shall ensure that only authorized NPS contracting officers sign IAs.

4. The NPS shall develop draft IAs to include scope of work statements.

5. The NPS shall obtain for the DA 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 IA.

ARTICLE VI - FUNDING

NPS shall reimburse the DA for all costs associated with the DA's provision of goods or services under this MOA. The DA shall bill the NPS monthly for costs incurred, and the NPS shall reimburse the DA within 30 days of receipt of billing.

The DA shall monitor costs to prevent exceeding funds available under the IA. If the DA forecasts its actual costs under an IA to exceed the amount of funds available under that IA, it shall promptly notify the NPS of the amount of additional funds necessary to complete the work under that IA. Adjustments on the basis of actual costs shall be made as agreed to by the agencies. The NPS shall either provide the additional funds to the DA, or 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 the IA.

If the DA forecasts its actual costs under an IA to exceed the amount of funds available under that IA, it shall promptly notify the NPS of the amount of additional funds necessary to complete the work under that IA. The NPS shall

either provide the additional funds to the DA, 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 IA.

Within 90 days of completing the work under an IA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the NPS any funds advanced in excess of the actual costs as then known, or the NPS shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NPS's duty in accordance with Article X to pay for any costs, such as contract claims or other liability that 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 the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA 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. § 601-613). 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 DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the NPS of any such litigation and afford the NPS an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

A. The parties agree that, in the event of a dispute between the parties, the NPS and the DA 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, in the event such measures fail to resolve the dispute, they shall refer it to the next level of management (i.e., the District Engineer and Park Superintendent) for resolution. Any dispute shall be elevated as necessary until such time as it is resolved.

B. Disputes which are covered by this Article include, but are not limited to, costs or charges under this agreement believed to be unreasonable or arbitrary.

ARTICLE X — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the NPS 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 the NPS have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

Notwithstanding the above, this MOA does not confer any liability upon the NPS for claims payable by the DA 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 XI - PUBLIC INFORMATION

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

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.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the NPS shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the NPS and the DA.

National Park Service

Edward E. Coffey

Contracting Officer

DATE: April 13, 2007

U.S. Department of the Army

Michael W. Stewart

District Commander

DATE: 13 April 07