

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. DEPARTMENT OF HOMELAND SECURITY  
AND  
THE U.S. ARMY CORPS OF ENGINEERS

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement is entered into by and between the U.S. Army Corps of Engineers ("Corps") and the Federal Emergency Management Agency ("FEMA"), U.S. Department of Homeland Security ("DHS"), ("the Parties") to establish a mutual framework for the provision of Corps flood plain mapping services under future Interagency Agreements ("IAs"). This Agreement is entered into pursuant to 42 U.S.C.§4101 and 10 U.S.C.§3036(d). The services are to be provided on a reimbursable basis.

ARTICLE II – SCOPE

The scope of this agreement includes goods and services which the Corps, as the Servicing Agency, may provide to FEMA as the Requesting Agency as indicated in specific IAs, and include flood plain mapping services and such other related goods or services as may be agreed upon in the future.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Corps and FEMA, each party shall appoint a Point of Contact (POC) to serve as its central point of contact on matters relating to this Agreement. The initial POCs for this Agreement are set forth in Attachment A to this Agreement.

ARTICLE IV – INTERAGENCY AGREEMENTS

In response to specific requests from FEMA for Corps services, the Corps and FEMA shall enter into mutually agreed upon written IAs. Those IAs must be on either Engineer Form 4914-R or similar FEMA document containing the same information as Department of Defense Form 1144. IAs must include the following information:

- A detailed scope of work statement;
- Schedules;
- Funding arrangements, including whether payment shall be in advance or by reimbursement;
- Statement of the amount of funds required and available to accomplish the scope of work as stated above;
- FEMA's fund citation and the date upon which the cited funds expire for obligation purposes;

- Identification of individual project managers;
- Identification of types of contracts to be used (if known);
- Types and frequencies of reports;
- 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 by the Corps 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 reimbursable order. In no case shall the terms of an IA be construed to conflict with the overarching terms of this memorandum.

## ARTICLE V - RESPONSIBILITIES OF THE PARTIES

### A. Responsibilities of the Corps of Engineers

1. The Corps, as the Servicing Agency, shall provide FEMA, as the Requesting Agency, with ordered goods or services in accordance with the purpose, terms, and conditions of this Agreement and specific requirements as set forth in IAs and implementing arrangements.
2. The Corps shall identify authorized Corps representatives to sign IAs for flood plain mapping and similar services.
3. The Corps shall provide detailed periodic progress, financial and other reports to FEMA as agreed to in a specific IA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
4. The Corps shall inform FEMA of all contracts entered into under each IA.

### B. FEMA Responsibilities

1. FEMA shall pay all actual costs associated with the Corps's provisions of goods or services under IAs and shall certify, at the time of signature of an IA, the availability of funds necessary to accomplish that IA.
2. FEMA shall develop draft IAs, including statements of work.

## ARTICLE VI - FUNDING

FEMA shall pay all actual costs associated with the Corps's provision of goods or services under a specific IA. The Corps shall bill FEMA on an advance of funds or reimbursable basis as may be agreed upon in the IA. FEMA agrees to advance/reimburse funds upon receipt of a properly executed Standard Form 1080.

The Corps shall notify FEMA in writing when the costs incurred and outstanding commitments equal 80% of the estimated total costs. If at any time the Corps forecasts its actual costs under an IA will exceed the amount of funds available under that IA, it shall promptly notify FEMA of the amount of additional funds necessary to complete the work under that IA. FEMA shall either provide the additional funds to the Corps, 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 Corps shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Corps shall return to FEMA any funds advanced in excess of the actual costs as then known, or FEMA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit FEMA'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 VII - APPLICABLE LAWS

This Agreement 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 Corps shall be governed by Corps policies and procedures. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the DHS or the Corps. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

#### ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the Corps shall be resolved in accordance with Federal law and the terms of the individual contract. The Corps 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 Corps shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The Corps shall notify FEMA of any such litigation and afford FEMA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations. The Corps will submit claims for review, or requests for payments from FEMA, respecting claims settlement or adjudication in accordance with procedures mutually agreed upon by counsel of the respective agencies.

## ARTICLE IX - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, FEMA and the Corps 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 for resolution to the Office of Management and Budget.

## ARTICLE X- PROCESSING OF LIABILITY CLAIMS FROM AND PAYMENTS TO THIRD PARTIES

With respect to third-party liability for acts arising out of the performance of official duty by a government employee of the Corps as the servicing agency, the servicing agency undertakes responsibilities for the investigation, adjudication, settlement, and payment of any claim asserted against the United States; except that, in all cases, the responsibility for the investigation, adjudication, settlement, and payment of any claim with respect to third-party liability arising out of the use, damage, or destruction of loaned personal property shall be the responsibility of the particular agency that has custody and control of the said personal property. In addition, the servicing agency representative shall have the duty of investigating and reporting, in accordance with the servicing agency's regulations and policies, incidents occurring on, or involving that servicing agency's real property, and the requesting agency agrees to cooperate fully in such investigations.

## ARTICLE XI - PUBLIC INFORMATION

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

## ARTICLE XII - MISCELLANEOUS

### A. Other Relationships or Obligations

This Agreement shall not affect any pre-existing or independent relationships or obligations between FEMA and the Corps.

B. Survival

The provisions of this Agreement which require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement.

C. Severability

If any provision of this Agreement 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 Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this Agreement 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, FEMA shall continue to be responsible for all costs incurred by the Corps under this Agreement and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - NONOBLIGATION OF FUNDS

Nothing in this Agreement is intended nor should be construed as obligating funds of the Parties.

ARTICLE XV - EFFECTIVE DATE

This Agreement shall become effective when signed by both FEMA and the Corps.

**Federal Emergency Management Agency  
U.S. Department of Homeland Security**

**U.S. Department of the Army**

  
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DAVID I. MAURSTAD  
Acting Director, Mitigation Division and  
Federal Insurance Administrator

  
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DON T. RILEY  
Major General, US Army  
Director of Civil Works

DATE: August 9, 2005

DATE: 8-9-2005

Attachment A  
Agency Points of Contact

FOR FEMA:  
Fred Sharrocks  
(202) 646-2796

FOR THE CORPS OF ENGINEERS:  
Ken Zwickl  
(202) 761-4085