

MEMORANDUM OF AGREEMENT

BETWEEN THE

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

AND THE U.S. ARMY CORPS OF ENGINEERS

NOS Agreement Code: MOA-2008-017/7630

ARTICLE I - PURPOSE AND AUTHORITY

a. This two-way Memorandum of Agreement (MOA) is entered into by and between the U.S. Army Corps of Engineers (USACE) and the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) (collectively "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.

b. Any Interagency Agreements under this MOA will be entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and pursuant to the programmatic authorities of both the Department of Commerce and USACE. In addition, the appropriate programmatic authorities for the parties shall be cited in any subsequent Interagency Agreement (IA(s)).

c. This MOA supersedes the existing umbrella MOA between the parties, MOA-1995-412, as amended, which expires on July 21, 2008. Current Annexes and Work Orders under the previous MOA shall remain in full force and effect until their current expiration dates notwithstanding the execution of this MOA

ARTICLE II - SCOPE

a. Goods and services that USACE may provide under this MOA include planning, design, construction, project management, coastal mapping, ocean observations, data acquisition, environmental restoration, hazardous and toxic materials removal, research and development, engineering or technical assistance, facilities master planning, sensor testing facilities; software and computer models and model development and such other related goods or services as may be agreed upon in the future.

b. Goods and services that NOAA may provide under this MOA include hydrographic surveys and data acquisition; coastal mapping and habitat characterization; tidal datum, geodetic surveys, and GPS technology; ocean observations; hazardous material assessment and response, including marine debris; policy analysis; training coordination and technology support; research and development; sensor testing facilities; software and computer models and model development, and such other related goods or services as may be agreed upon in the future.

c. Nothing in this MOA shall be construed to require either party to use the other party or to require either party to provide any goods or services to the other party, except as may be set forth in an Interagency Agreements (IA(s)).

d. This MOA is of mutual interest to the parties because it is designed to make it easier for the parties to work together, when appropriate, in integrating their expertise and resources in addressing areas of mutual interest as stated in paragraphs a. and b. above.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between USACE and NOAA, 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 AGREEMENTS (IAs)

In response to requests from one party (the "Ordering Agency") for the other party's (the "Servicing Agency") goods and services, the parties will develop mutually agreed upon written IAs that detail the specific tasks to be completed. Those IAs must be on either Engineer Form 4914-R or a similar DOC/NOAA/NOS document. The IAs must contain the same information as Department of Defense Form 1144 and as required in DOC/NOAA/NOS agreement templates. IAs must include:

- a detailed scope of work statement;
- legal and programmatic authorities;
- 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 Agency's fund citation and the date upon which the cited funds expire for obligation purposes;
- the names of individual project managers;
- the types of contracts to be used (if known);
- the 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;
- OMB memorandum M-07-03 business rules for intergovernmental transaction requirements;
- if under the Economy in Government Act, a duly completed and executed Determinations And Findings - Pursuant To 48 CFR 17.503;
- other information needed to describe clearly the obligations of the parties;
- the terms and conditions of this MOA;
- a specific termination date for the particular IA; and
- a statement that the responsibilities of the parties are subject to the availability of appropriated funds and other resources.

b. If an interagency agreement involves multiple parties, by agreement of all parties, the parties will develop mutually agreed upon written IAs that detail all specific tasks to be completed pursuant to this agreement.

c. 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. In case of conflict between this MOA and an IA, the terms and conditions of this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

a. Responsibilities of the Servicing Agency under each IA

- (1) The Servicing Agency shall provide 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 Servicing Agency shall ensure that only authorized Servicing Agency representatives sign IAs.
- (3) The Servicing Agency shall use its best efforts to provide goods or services either by contract or in-house effort.
- (4) The Servicing Agency shall provide detailed periodic progress, financial, and other reports as outlined in the IA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
- (5) The Servicing Agency shall inform the Ordering Agency of all contracts entered into under each IA.

b. Responsibilities of the Ordering Agency under each IA

- (1) If the IA is pursuant to the Economy Act, the Ordering Agency shall attach to the IA a copy of the Determinations and Findings required by 48 CFR 17.503 executed by a warranted Contracting Officer or such higher official as required by agency regulations, if entered into pursuant to the economy act.
- (2) The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA and shall certify, at the time of signature of IA, the availability of funds necessary to accomplish that IA.
- (3) The Ordering Agency shall ensure that only authorized Ordering Agency representatives sign IAs.
- (4) The Ordering Agency shall develop draft IAs to include scope of work statements.
- (5) The Ordering 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 IA.

c. The Executive Agent for each party shall serve as the central point of contact for matters relating to this MOA. The Executive Agent for NOAA shall be the Assistant Administrator for Ocean Services and Coastal Zone Management. The Executive Agent for USACE shall be the Director for Civil Works. Executive Agents will appoint an Executive Secretary for its party who will be responsible for joint project tracking and communications, and staffing senior principle meetings.

d. Parties shall hold semi-annual meetings of senior principles to ensure transparent interagency communications and that all activities are in accordance with this MOA.

ARTICLE VI – FUNDING

a. The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA. For IAs estimated to cost more than \$1,000,000 the Servicing Agency shall bill the Ordering Agency in advance for not more than 50% of the order amount using the Intra-governmental Payments and Collection System (IPAC), and the Ordering Agency shall provide the necessary funds in advance using ENG Form 4914-R, Sep 97 or a similar form. The Ordering Agency will reimburse the Servicing Agency for goods and services for the remainder of costs for IAs that exceed \$1,000,000 as well. As for IAs valued at \$1,000,000 or less – the Servicing Agency shall bill the Ordering Agency at least quarterly, using IPAC, for costs incurred. The Ordering Agency shall reimburse the Servicing Agency within 30 days of receipt of the IPAC transaction. At least quarterly, the parties will reconcile balances related to revenue and expenses for work performed under any IA.

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

c. Within 90 days of completing the work under an IA, 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 Ordering Agency any funds advanced in excess of the actual costs as then known, or the Ordering Agency shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the Ordering 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 VII - APPLICABLE LAWS

The applicable statutes, regulations, directives, and procedures of the United States shall govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all contract work undertaken by USACE shall be governed by USACE policies and procedures and all contract work undertaken by NOAA shall be governed by NOAA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

a. USACE Contracting

(1) 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. §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.

(2) USACE shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. USACE shall notify NOAA of any such litigation and afford NOAA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

b. NOAA Contracting

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

(2) NOAA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. NOAA shall notify USACE of any such litigation and afford USACE an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, NOAA and USACE 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. The parties agree that, in the event such measures fail to resolve the dispute, disputes shall be resolved pursuant to applicable provisions of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol.1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Major Differences).

ARTICLE X - RESPONSIBILITY FOR COSTS

a. If 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 Ordering Agency 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 Ordering Agency have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, it remains 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.

b. Notwithstanding the above, this MOA does not confer any liability upon the Ordering Agency for claims payable by the Servicing Agency under the Federal Torts Claims Act. Nothing in this Agreement 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 Agreement.

ARTICLE XI - PUBLIC INFORMATION

a. Justification and explanation of NOAA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of NOAA. USACE may provide, upon request, any assistance necessary to support NOAA's justification or explanations. In general, NOAA 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. NOAA 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 IAs under this MOA.

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

c. The procedures of this Article will be applied consistent with the Freedom of Information Act and other laws and regulations applicable to government records.

ARTICLE XII - MISCELLANEOUS

a. Other Relationships or Obligations

(1) This MOA shall not affect any pre-existing or independent relationships or obligations between NOAA and USACE.

b. Survival

(1) 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

(1) If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the extent permitted by law and regulation.

ARTICLE XIII – AMENDMENT, MODIFICATION, AND TERMINATION

a. This MOA becomes effective upon the date of the last signature and shall remain in effect for five (5) years. The parties agree to review the terms and conditions of this MOA at least once every three (3) years to determine whether the MOA should be amended, modified, or terminated.

b. 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, in all circumstances the Ordering Agency shall continue to be responsible for all costs incurred by the Servicing Agency under this MOA, and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV – APPROVED AND ACCEPTED

Department of Commerce
National Oceanic and
Atmospheric Administration
National Ocean Service

U.S Department of the Army

By: *John H. Dunnigan*
John H. Dunnigan
Assistant Administrator

By: *Don T. Riley*
Don T. Riley, Major General
U.S. Army Deputy Commander for
Civil and Emergency Operations

Date: *May 19, 2008*

Date: *19 May 2008*