MODEL MOA
FOR ENGINEERING, DESIGN, CONSTRUCTION MANAGEMENT AND TECHNICAL SERVICES (NON-ENVIRONMENTAL) SUPPORT TO U.S. AGENCIES (DOMESTIC)

This Memorandum of Agreement (MOA) is intended to serve as a generic model for developing umbrella MOAs governing support for others work to be provided by the Department of the Army to other federal agencies. This generic MOA may be amended to include supplemental provisions necessary to reflect details specific to the ORDERING AGENCY or the project. MOAs must be reviewed by the appropriate Office of Counsel.

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MEMORANDUM OF AGREEMENT
BETWEEN
THE [ORDERING AGENCY]
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 [ORDERING AGENCY ("ACRONYM")] ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA [insert general description of DA assistance; e.g. construction management, environmental restoration or design assistance] goods and services. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and/or [statement of statutory authority for ACRONYM to execute the program/work].

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include [insert detailed description of scope of DA goods or services, including brief description of Ordering Agency program/work if appropriate], and such other related goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require the [ACRONYM] to use the DA or to require the DA to provide any goods or services to the [ACRONYM], except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the [ACRONYM], 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 SAs.

ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from the [ACRONYM] for DA assistance under this MOA, the DA and the [ACRONYM] shall conclude mutually agreed upon written SAs. Those SAs must be on either Engineer Form 4914-R or similar document containing the same information as Department of Defense Form 1144. SAs 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 [ACRONYM]'s fund citation and the date upon which the cited funds expire for obligation purposes;

[The following must be addressed in each SA, or in this MOA:

-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 SA; 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 SA has been signed by a representative of each party authorized to execute that SA. Upon signature by each parties' representative, a SA shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and a SA, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. The DA shall provide the [ACRONYM] with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

2. The DA shall identify authorized DA representatives to sign SAs.

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 detailed periodic progress, financial and other reports to the [ACRONYM] as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

5. The DA shall inform the [ACRONYM] of all contracts entered into under each SA.

B. Responsibilities of the [ORDERING AGENCY]

1. The [ACRONYM] shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of the Economy in Government Act.

2. The [ACRONYM] 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 a SA, the availability of funds necessary to accomplish that SA.

3. The [ACRONYM] shall ensure that only authorized [ACRONYM] contracting officers sign SAs.

4. The [ACRONYM] shall develop draft SAs to include scope of work statements.

5. The [ACRONYM] 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 SA.

ARTICLE VI - FUNDING

The [ACRONYM] shall pay all costs associated with the DA's provision of goods or services under this MOA. For SAs for work estimated to cost more than $250,000 total in contracts and in-house services or $50,000 in contracts, the DA shall bill the [ACRONYM] in advance and the [ACRONYM] shall provide the necessary funds in advance. For SAs for work valued at less than these amounts, the [ACRONYM] may reimburse the DA for the goods or services. For these lesser requirements, the DA shall bill the [ACRONYM] monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and the [ACRONYM] shall reimburse the DA within 30 days of receipt of an SF 1080.

If the DA forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the [ACRONYM] of the amount of additional funds necessary to complete the work under that SA. The [ACRONYM] 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 SA.

Within 90 days of completing the work under a SA, 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 [ACRONYM] any funds advanced in excess of the actual costs as then known, or the [ACRONYM] shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the [ACRONYM]'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 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 [ACRONYM] of any such litigation and afford the [ACRONYM] 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, the [ACRONYM] 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 for resolution to the Office of Management and Budget [or such other entity as may be appropriate, such as Office of the Secretary of Defense].

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 [ACRONYM] 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 [ACRONYM] 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 [ACRONYM] 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 in intended to be a beneficiary of this MOA.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the [ACRONYM]'s programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the [ACRONYM]. The DA may provide, upon request, any assistance necessary to support the [ACRONYM]'s justification or explanations of the [ACRONYM]'s programs conducted under this MOA. In general, the [ACRONYM] 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 [ACRONYM] 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 SAs 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 [ACRONYM] 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 [ACRONYM] 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 [ACRONYM] and the DA.

[ORDERING AGENCY]	U.S. Department of the Army
_____	_____
DATE:_____	DATE:_____