

**MODEL MOA
FOR SUPPORT TO
U.S. AGENCIES OVERSEAS**

This model Memorandum of Agreement (MOA) applies to Department of Army assistance to other federal agencies (ORDERING AGENCY) engaged in work overseas under authority of the Economy in Government Act (EA). This model 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 [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 [ACRONYM] 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 in writing 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;
- procedures for coordinating with the representatives of the Host Nation ("HN") and of the United States in the HN;
- 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; 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.
2. The DA shall ensure only authorized DA representatives 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 draft SAs to include scope of work statements.
5. The [ACRONYM] shall obtain for the DA both necessary real estate interests and access to all work sites and support facilities.
6. Except as otherwise agreed in a SA, the [ACRONYM] shall be primarily responsible for performing all coordination with and obtaining any permits from U.S. and HN agencies, as necessary during the execution of each SA.
7. The [ACRONYM] shall use its best efforts to obtain in an expeditious manner duty free importations of materials, equipment, supplies and services, and other items that may be provided by the DA or its contractors for the purposes of performing work under SAs. The [ACRONYM] shall reimburse the DA for any duties or other charges imposed.
8. The [ACRONYM] shall use its best efforts to ensure exemption of any U.S. or third country contractors that may be employed by the DA for purposes of this MOA and subsequent SAs from HN corporate, personal and other tax liabilities. The [ACRONYM] shall reimburse the DA for any duties or other charges imposed.
9. The [ACRONYM] shall use its best efforts to ensure that all Corps contractors shall be exempt from value added taxes. In the event such taxes are imposed, the [ACRONYM] shall reimburse the DA for any taxes or other charges imposed.
10. The [ACRONYM] shall make any material and equipment available to the [ACRONYM] available to the DA to expedite execution of SAs.
11. The [ACRONYM] shall assist the DA in obtaining logistical and administrative services to include office space, housing, transportation, and similar services.
12. Unless existing agreements otherwise provide for the status of DA personnel, the [ACRONYM] shall seek accreditation for DA personnel, including contractor personnel, at the same level that would be sought for the [ACRONYM] personnel performing similar functions and duties in the HN; provided, however, that the [ACRONYM] shall notify the DA in any case when the DA personnel, including contractor personnel cannot be accredited, at a minimum, as members of the administrative and technical staff of the diplomatic mission of the United States in the HN. In the event the [ACRONYM] is unable for any reason to secure necessary

accreditation for the DA personnel, including contractor personnel, the DA may terminate the applicable SA.

13. The [ACRONYM] shall except as otherwise agreed in a SA, provide security necessary to protect the work site, material, equipment, and DA personnel and contractors present in the host country to perform work pursuant to this MOA. The [ACRONYM] shall pay all of the costs related to reasonable requests by the DA for adequate protection. In the case that adequate protection is not provided by the [ACRONYM], the DA shall provide the same and the [ACRONYM] shall pay the costs.

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 or \$50,000 in contracts, the DA shall bill the [ACRONYM] in advance and the [ACRONYM] shall provide the necessary funds in U.S. dollars in advance. For SAs for work valued at less than these amounts, the [ACRONYM] may provide the funds through a reimbursable arrangement. 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, 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 that SA.

Within ninety (90) days of completing the work under a SA, the DA shall conduct a final accounting to determine the actual costs of the work. Within thirty (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. To the extent consistent with U.S. law, all work performed under this MOA shall conform to applicable HN laws. In the event applicable U.S. law conflicts with HN law, the DA may terminate any affected SA(s). In the event the DA terminates a SA, the [ACRONYM] shall remain responsible for all costs, including liabilities incurred by the DA pursuant to that SA.

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) or its successor 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 for inter-service MOAs].

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 [ORDERING AGENCY] 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.

ARTICLE XI - INTELLECTUAL PROPERTY

Unless otherwise prohibited by law, the DA shall have the sole right and responsibility to apply for, obtain, and maintain protection in the United States or other countries for technology or intellectual property developed by DA employees or arising under or related to contracts awarded by the DA pursuant to this MOA.

The DA shall retain and distribute any royalties or other income from any such protection to the extent allowed by law.

Unless otherwise prohibited by law, the DA may grant nonexclusive, exclusive, or partially exclusive licenses under any form of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions determined by the DA as appropriate in the public interest; however, as may be agreed to in SAs, the DA shall grant to [ACRONYM] a non-exclusive, royalty-free right to utilize the documents and work products produced under said SA.

The DA makes no express or implied warranty as to any manner whatsoever regarding technology developed by the DA, and shall not be responsible for any damaged of any kind resulting from utilization of such technology.

ARTICLE XII - PUBLIC INFORMATION

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.

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.

ARTICLE XIII - 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 XIV - 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 of this MOA or a SA hereunder, the [ACRONYM] shall continue to be responsible for all costs the DA incurs under this MOA or the terminated SA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XV - 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: _____