

**DRAFT**  
**MEMORANDUM OF AGREEMENT**  
**for**  
**Environmental Coordination Between**  
**U.S. Department of the Interior, U.S. Department of Agriculture**  
**(USDA), and U.S. Customs and Border Protection**  
**For Construction of Border Barrier Systems**

This Memorandum of Agreement (MOA) is entered into by the U.S. Department of the Interior (DOI) on behalf of the following bureaus: the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and the Bureau of Indian Affairs, the U.S. Department of Agriculture (USDA) on behalf of the U.S. Forest Service (USFS), and U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS). The DOI, USFS, and CBP are collectively referred to herein as the Parties.

**I. Purpose**

The purpose of this MOA is to formalize the commitment among the Parties to work in a collaborative manner to expeditiously execute border security requirements under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), primarily in circumstances when the Secretary of the Department of Homeland Security has issued a waiver of environmental laws. The intent of this MOA is to recognize the importance of the missions of each agency and for each agency to agree upon the methods and means by which the Parties will consult to ensure individual missions and values are considered and, to the extent practicable, incorporated into the design, construction, replacement, repair, and maintenance of border barrier systems including but not limited to wall, fence, gates, bridges, lighting, and roads.

**II. Background**

Under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as amended, 8 U.S.C. § 1103 note, the Secretary of the Department of Homeland Security has authority to waive environmental laws and regulations associated with construction of border security requirements along the southwestern border. Under Section 564 (C) of the 2008 Omnibus Appropriations Act, IIRIRA was amended to require the Secretary of the Department of Homeland Security to consult

with the Secretary of the Department of the Interior, and the Secretary of Agriculture among other agencies and property owners. Border barrier systems that may be utilized for the purposes of securing the borders could include, but is not limited to: the construction, replacement, maintenance, and repair of new border fencing and wall, roads, gates, bridges, and lighting.

### **III. Missions**

The mission of CBP is to safeguard the American homeland, protect the American public against terrorists and the instruments of terror, enforce the laws of the United States while fostering economic security through lawful international trade and travel, and serve the American public with vigilance, integrity and professionalism. In carrying out its mission, CBP constructs, maintains and operates various facilities and tactical and technological infrastructure along the coastlines and international borders of the United States.

The mission of DOI is to protect and manage the Nation's natural resources and cultural heritage; provide scientific and other information about those resources; and honor its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities. DOI has a longstanding responsibility of preserving and protecting cultural and natural resources in the Nation's borderlands. In particular, an array of valuable fish, wildlife, and plant communities coexist with important archaeological sites that collectively contribute to the fabric of borderlands.

The USFS's mission is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The USFS manages lands along the international borders to assist in meeting these goals and, like DOI, has a longstanding responsibility for many cultural and natural resources in the Nation's borderlands within national forests along the international borders.

### **IV. Statutory and Regulatory Authority**

WHEREAS, the Secretary of the Department of Homeland Security has the authority to execute a waiver of environmental laws for the expeditious construction of border barrier under the Illegal Immigration Reform and Immigrant Responsibility Act

WHEREAS, pursuant to Section 564 (C) of the 2008 Omnibus Appropriations Act, the Secretary of the Department of Homeland Security must consult with the Secretary of the Department of the Interior, and the Secretary of Agriculture among other agencies

and property owners.

## V. Commitment of the Agencies

In the spirit of cooperation and collaboration, and with the mutual understanding that this is a flexible working agreement among the signatory agencies, the Parties hereby commit to the following responsibilities:

A. To facilitate preparation of NEPA documents, the Parties agree:

I. That CBP will serve as lead agency for CBP border facility and technological and tactical infrastructure projects and will, as appropriate, coordinate NEPA

document development and review and associated scoping and environmental impact assessments with DOI and/or USFS and/or, where appropriate, Indian tribes;

2. That when DOI or USFS have special expertise or jurisdiction by law related to a proposed CBP action, they may request to be designated as cooperating agencies, and CBP will promptly consider their requests;

3. That where DOI and/or USFS are involved in any CBP projects that DOI and/or USFS will, when requested by CBP, serve as cooperating agencies for such projects, or in appropriate cases as co-lead;

4. That DOI and/or USFS will ensure there is an appropriate level of coordination with CBP where DOI and/or USFS is acting as the lead agency for a project undergoing NEPA review that has the potential to affect CBP's border security mission, including the construction, operation, or maintenance of CBP facilities and/or technological and tactical infrastructure; and

5. That each party will assume responsibility for its own actions.

A. As lead agency, the Parties agree:

1. To provide project and policy information in a timely and thorough manner;
2. To invite cooperating agencies to coordination meetings and joint field reviews ; and
3. To provide cooperating agencies an opportunity to comment on draft documents.

C. When serving as a cooperating agency, the Parties agree:

1. To promptly provide comments on draft documents and otherwise fulfill the role of a cooperating agency as set forth at 40 C.F.R. Part 150I , in accordance with established Departmental procedures ;
2. To provide technical assistance on tribal and non-tribal environmental and cultural resource issues; and
3. To the degree possible, seek ways to streamline, share data and facilitate the completion of environmental and cultural compliance processes.

#### IV. Miscellaneous Provisions

A. Nothing in this MOA may be construed to obligate the Parties or the United States to any current or future expenditure of funds in advance of availability of appropriations, nor does this MOA obligate the Parties or the United States to spend funds for any particular purpose, even if funds are available.

B. The Parties will, as appropriate, enter into specific reimbursable agreements pursuant to the Economy Act, 31 U.S.C. § 1535, when one party is to furnish materials or perform work or provide a service on behalf of another party.

C. The Parties shall retain all applicable legal responsibility for their respective personnel working pursuant to this MOA. This MOA is not intended to change in any way the individual employee status or the liability or responsibility of any party under Federal law.

D. Nothing in this MOA is intended to conflict with current law, regulation, directive, or other governing authority of any party to this MOA. If any term of this MOA is inconsistent with such authority, then that term shall not apply, but the remaining terms and conditions of the MOA shall remain in full force and effect.

E. This document is an intra-governmental agreement among the Parties and does not create or confer any rights, privileges, or benefits upon any person or entity not a signatory hereto. This MOA is not and shall not be construed as a rule or regulation.

F. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

G. NON BINDING AGREEMENT. This MOA creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOA. Nothing in this MOA authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOA neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

H. This MOA shall be effective through December 31, 2017, and may be renewed for another five years upon mutual agreement of the Parties. Any party to this MOA may

terminate its participation in this MOA upon thirty (30) days written notice to the other Party.

I. This MOA becomes effective upon the date of signature by the last signatory.

**V. Conclusion**

In signing this MOA, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the Parties agrees to pursue maximum cooperation and communication to secure our Nation's borders and to eliminate and mitigate the environmental degradation of DOI and USDA-administered lands by agency actions and persons illegally entering the United States.

AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed below are authorized to act in their respective areas for matters related to this MOA. In witness whereof, the parties hereto have executed this MOA as of the last date written below.

U.S. DEPARTMENT OF THE INTERIOR

(b) (6)

Date: \_

|

U.S. Forest Service

Date: <sub>1</sub> - \_\_\_\_\_

U.S. CUSTOMS AND BORDER PROTECTION

Date: /z/B o..... U>t3 The authority and format of this agreement have been reviewed and approved for signature.

(b) (6)

U.S. Forest Service Grants Management Specialist