

**MEMORANDUM OF AGREEMENT  
BETWEEN  
U.S. SECTION OF  
THE INTERNATIONAL JOINT COMMISSION  
AND  
THE DEPARTMENT OF THE ARMY  
OF THE UNITED STATES OF AMERICA**

**ARTICLE I - PURPOSE AND AUTHORITY**

**A. Purpose**

This Memorandum of Agreement (MOA) is entered into by and between the United States Department of the Army (DA) and The International Joint Commission (IJC), (hereinafter "U.S. Section") ("the parties"), for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA studies, planning and other services by the US Army Corps of Engineers ("USACE") employees to the U.S. Section. This MOA is entered into pursuant to 10 U.S.C. 3036(d) and 36 Stat. 2448. For the purpose of 10 U.S.C. 3036(d) the U.S. Section is an instrumentality of the United States.

**ARTICLE II - SCOPE**

A. Goods and services which the DA may provide under this MOA include delivering technical assistance to address problems related to water resources, infrastructure development, and environmental protection. Such assistance may involve studies, planning, real estate, engineering, construction, procurement, project management, contract management, water resource development, infrastructure development, environmental protection, details of USACE employees and such other work as may be agreed upon in the future.

B. Nothing in this MOA shall be construed to require the U.S. Section to use the DA or to require the DA to provide any goods or services to the U.S. Section, except as may be set forth in individual Support Agreements ("SA(s)").

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the DA and the U.S. Section, each party shall appoint in writing a Principal Representative to serve as the 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**

A. In response to requests from the U.S. Section for DA assistance under this MOA, the DA and the U.S. Section 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:

- detailed scope of work statement;
- schedules;
- the amount of funds required and available to accomplish the work;
- payment arrangements; including whether payment shall be in advance or by reimbursement
- the U.S. Section fund citation and the date upon which the cited funds expire for obligational 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; record maintenance; rights to data, software, and intellectual property; and contract audits;
- procedures for amending or modifying the SAs;
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services;

#### **ARTICLE V - RESPONSIBILITIES OF THE PARTIES**

##### **A. Responsibilities of the Department of the Army.**

The DA shall:

1. Provide the U.S. Section with goods and services in accordance with the purpose, terms, and conditions of this MOA and with the specific requirements set forth in SAs.
2. Ensure that only authorized DA representatives sign SAs.
3. Provide detailed periodic progress, financial, and other reports to the U.S. Section, as agreed to in the SAs. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
4. Inform the U.S. Section of all contracts entered into under each SA.

##### **B. Responsibilities of the U.S. Section**

1. The U.S. Section 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.
2. The U.S. Section 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.
3. The U.S. Section shall ensure that only authorized U.S. Section contracting officers sign SAs.

4. The U.S. Section shall develop draft SAs to include scope of work statements.
5. The U.S. Section shall provide access to all IJC work sites and support facilities as necessary during the execution of each SA.

#### ARTICLE VI - FUNDING

A. The U.S. Section 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 may bill the U.S. Section in advance and the U.S. Section shall provide the necessary funds in advance. For SAs for work valued at less than these amounts, the U.S. Section may reimburse the DA for goods or services. For these lesser requirements, the DA shall bill the U.S. Section monthly for costs incurred; using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/ or funds, and the U.S. Section shall reimburse the DA within 30 days of receipt of an SF 1080

B. 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 U.S. Section of the amount of additional funds necessary to complete the work under that SA. The U.S. Section 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.

C. Within ninety (90) days of completing the work under an 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 U.S. Section any funds advanced in excess of the actual cost as then known, or the U.S. Section shall provide any additional funds necessary to cover the actual costs as then known. Such a final accounting shall in no way limit the U.S. Section'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 U.S. Section of any such litigation and afford the U.S. Section 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 U.S. Section 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.

#### **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 parties agree that DA has no appropriations which may legally be made available for the services to be performed by DA under this agreement, other than funds provided by the U.S. Section. If the actual cost for DA's provision of services exceeds the amount of funds provided by the U.S. Section, the U.S. Section shall remain responsible as the program proponent for providing such funds as are necessary to discharge this responsibility, subject to available appropriations. If the U.S. Section has no funds legally available to discharge this responsibility, including such funds as may legally be made available through transfers, reprogramming, or other means, they remain responsible for requesting the Department of State seek 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 U.S. Section 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 is intended to be a beneficiary of this MOA.

#### **ARTICLE XI - PUBLIC INFORMATION**

Justification and explanation of the U.S. Section's program before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the

responsibility of the U.S. Section. The DA may provide, upon request, any assistance necessary to support the U.S. Section's justification or explanations of the U.S. Section's programs conducted under this MOA. In general, the U.S. Section is responsible for all public information relating to USACE programs conducted under this MOA. The U.S. Section 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 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 U.S. Section 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 its expiration or termination.

### **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.

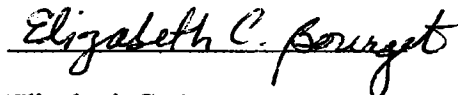
## **ARTICLE XIII - AMENDMENT, MODIFICATION, AND TERMINATION**

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 of this MOA or any SA hereunder, the U.S. Section shall continue to be responsible for all costs the DA incurs under this MOA and for the costs of closing out or transferring any on-going contracts.

**ARTICLE XIV - EFFECTIVE DATE**

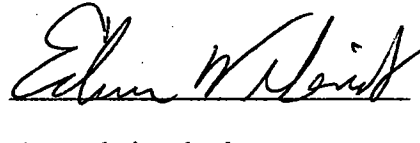
This MOA shall become effective when signed by both the U.S. Section and the DA. The undersigned agree to the terms and conditions of this MOA.

**International Joint Commission  
United States Section**



**Elizabeth C. Bourget  
Secretary, U.S. Section**

**Department of the Army**



**Dr. Edwin Theriot  
Chief, Interagency and International  
Services  
U.S. Army Corps of Engineers**

Date: *Sept. 29, 2006*

Date: *2 August 2006*