

**MEMORANDUM OF AGREEMENT
BETWEEN
TENNESSEE VALLEY AUTHORITY
AND
US ARMY CORPS OF ENGINEERS**

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is entered into by and between the Tennessee Valley Authority (TVA) and the US Army Corps of Engineers (USACE) for the purpose of fostering coordination and cooperation in environmental and water resource programs and project areas between the two US agencies. The USACE and TVA enter this MOA to create a mutual framework governing the respective responsibilities of the parties for the reciprocal provision of technical and professional services. This memorandum is entered into pursuant to the provisions of the Economy in Government Act, 31 U.S.C. § 1535.

ARTICLE II - SCOPE

Goods and services which the Parties may provide under this MOA include delivering technical assistance related to planning, engineering, construction, procurement, project management, and contract management related to water resources management, infrastructure development, environmental compliance and protection, safety and such other related work as may be agreed upon in the future.

Before the USACE places any order for goods or services with the TVA which requires the TVA to provide the goods and services through a contract entered into or administered by the TVA, a written determination must be prepared by the Senior Executive Procurement Official for the USACE or the Official's Authorized Representative.

Nothing in this MOA shall be construed to require either party to use goods or services of the other nor require either party to provide any goods or services to the other except as may be set forth in individual Support Agreements (SAs).

ARTICLE III - COMMUNICATIONS BETWEEN THE PARTIES

To provide for consistent and effective communication between the TVA and the USACE, 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 Support Agreements.

ARTICLE IV - SUPPORT AGREEMENTS

Either Party may request assistance from the other party pursuant to the terms and conditions of this MOA. The Party making the request hereinafter will be referred to as the requesting party (RP). The party providing the goods and services hereinafter will be referred to as the servicing party (SP).

In response to requests from the RP for SP assistance under this MOA, the RP and the SP 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;
- the amount of funds required and available to accomplish the scope of work stated;
- the RP's fund citation and the date upon which the cited funds expire for obligation purposes, if applicable;
- arrangements for funding consistent with Article VI FUNDING requirements;
- identification of individual project managers;
- identification of types of contracts to be used by the SP in completing the work, if such contracts will be necessary and are known;
- types and frequencies of reports;
- a statement concerning any intellectual property rights granted to the RP by the SP as appropriate;
- identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, and contract audits;
- procedures for amending, modifying, or terminating the Support Agreement;
- for overseas work, procedures for coordinating with representatives of the Host Nation and of the United States in the Host Nation; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods and services shall be provided under this MOA only after an authorized representative from each party has signed the appropriate Support Agreement. Upon signature by each parties' representative, an SA shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and a Support Agreement, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Servicing Party (SP):

the SP shall provide the RP with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in Support Agreements;

the SP shall ensure that only authorized SP representatives' sign Support Agreements;

the SP shall use its best efforts to provide goods or services either by contract or by in-house effort;

the SP shall provide detailed periodic progress, financial and other reports to the RP, as agreed to in the Support Agreement. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures; and

the SP shall inform the RP of all contracts entered into under each Support Agreement.

B. Responsibilities of the Requesting Party (RP):

the RI 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;

the RP shall identify in writing RP officials authorized to sign Support Agreements and shall draft Support Agreements in coordination with the SP to include scope of work statements;

the RP shall pay all costs associated with the SP's provisions of goods or services under this MOA and shall certify, at the time of signature of an SA, the availability of funds necessary to accomplish that SA;

the RP shall obtain for the SP both necessary real estate interests and access to all work sites and support facilities;

except as otherwise agreed in a Support Agreement, the RP shall be primarily responsible for performing all coordination with and obtaining any permits from agencies of the US Government, and foreign government when the work is carried out outside the US for the execution of the individual Support Agreement;

the RP shall use its best efforts to obtain in an expeditious manner duty-free import of materials, equipment, supplies, and services, and other items that may be provided by the SP or its contractors for the purposes of work performed outside the US under this MOA;

the RP shall use its best efforts to ensure that any United States or third country contractors that may be employed by the SP for purposes of this MOA and subsequent Support Agreements are exempt from host country corporate and personal tax liabilities and that all contractors are exempt from all direct or indirect taxes including Value Added Taxes for materials and equipment used in association with or incorporated into individual Support Agreements for work performed outside the US;

the RP shall ensure that any material, equipment, and data available to the RP is available to the SP to expedite work under this MOA;

the RP shall assist the SP in obtaining logistical and administrative services to include office space, housing, transportation, and similar services;

the RP shall provide security protection necessary to protect the work site, material, equipment, and SP personnel and contractors present to perform work pursuant to this MOA.

the RP shall pay all costs related to reasonable requests by the SP for security protection of personnel and property.

unless existing agreements otherwise provide for the status of SP personnel, the RP shall seek accreditation for SP personnel at the same level that would be sought for the RP's personnel performing similar function and duties in the Host Nation; provided, however, that the RP shall notify the SP in any case when the SP cannot be accredited, at a minimum, as members of the administrative and technical staff of the diplomatic mission of the United States in the Host Nation. In the event the RP is unable for any reason to secure necessary accreditation for the SP personnel, the SP may terminate the applicable SA. In the event the SP terminates an SA, the RP shall continue to be responsible for all costs and liabilities incurred by the SP pursuant to that SA.

ARTICLE VI - FUNDING

The RP shall pay all costs associated with the SP's provision of goods or services under this MOA. Both parties shall agree upon how to provide the necessary funding for each SA. Each SA shall stipulate the specific procedures upon which payment will be made to cover the costs of the work included in the SA.

The SP agrees that it will use its best efforts to remain within the level of funding defined under each SA. In furtherance of this goal, the SP shall review, prior to signing the SA, the scope of work to be accomplished pursuant to the SA and make its best estimate of the cost of goods and services to be provided pursuant to that SA. If the estimated cost exceeds the RP's available funding for that SA, the SP agrees to negotiate with the RP to adjust the scope of work to a level commensurate with RP's available funding.

If, during the execution of a SA, the SP forecasts its actual costs under the SA to exceed the amount of funds available under that SA, it shall promptly notify the RP of the amount of additional funds necessary to complete the work under that SA. The RP shall either provide the additional funds to the SP, 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 90 days of completing the work under a SA, the SP shall conduct an accounting to

determine the actual costs of the work. Within 30 days of completion of this accounting, the SP shall return to the RP any funds advanced in excess of the actual costs as then known, or the RP shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the RP'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 USACE shall be governed by USACE policies and procedures.

In the event that law, regulations, or procedures governing USACE activities conflict with laws, regulations, and procedures governing TVA activities, the parties will appropriately modify or terminate the affected SAs. To the extent consistent with U.S. law, all work performed under this MOA shall conform to applicable Host Nation laws. In the event applicable U.S. law conflicts with Host Nation law, the SP may terminate any affected SA(s). If both parties mutually determine that compliance with a provision of Host Nation law, while not in conflict with U.S. law, places an undue burden on the work to be performed under a particular SA, the parties may mutually agree to terminate the affected SA. In the event the SP terminates an SA under either circumstance, the RP shall remain responsible for all costs, including liabilities, incurred by the SP 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 SP shall be resolved in accordance with Federal law and the terms of the individual contract. The SP shall have dispute resolution authority for these claims. The SP shall be responsible for handling litigation involving disputes and appeals arising under or related to any contract, which it has awarded pursuant to this MOA, and for coordinating with the Department of Justice, where necessary and as appropriate. The SP shall notify the RP of any such litigation and afford the RP 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 USACE and the TVA 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 them. 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.

ARTICLE X -PAYMENT OF COSTS

The Parties agree that neither party anticipates having any appropriations which may legally be made available for the services to be performed by the other party under the terms of this agreement, other than the funds provided by the RP to the SP. Accordingly, the RP is responsible for all of the costs associated with SP's provision of goods and services under this MOA. The parties recognize that the funds available from the RP for services identified in Article II are limited to the amount set out in the individual Support Agreements. If the actual cost for SP provision of goods and services exceeds this amount, or any corresponding amount identified in any Support Agreement, the RP shall remain responsible as the program proponent for providing such funds as are necessary to discharge this responsibility, subject to available appropriations where necessary. If the RP has no funds legally available to discharge this responsibility, including such funds as may legally be made available through transfers, reprogramming, or other means, it remains responsible for seeking additional funds from Congress or other appropriate sources for such purposes in its next regular budget submission. Nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the deficiency.

The USACE liability for claims submitted under the Federal Tort Claims Act is limited to \$2,500 per claim.

ARTICLE XI - ADVERSE CONDITIONS

In the event the Parties determine that due to war, armed conflict, insurrection, civil or military strife, or other adverse conditions, the safety, health, or welfare of the SP officials, employees, contractor personnel or family members is threatened, the RP shall be responsible for any additional costs incurred by the SP to retain such personnel or secure replacements. In lieu of retention or replacement, the SP may elect to terminate the services being provided by those personnel, including by terminating any applicable Support Agreements.

ARTICLE XII - INTELLECTUAL PROPERTY

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

The SP 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 SP 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 SP as appropriate in the public interest; however, the SP shall grant to the RP a non-exclusive, royalty-free right to utilize the documents and work products produced under said Support Agreement.

Neither party makes any express or implied warranty as to any matter whatsoever regarding technology developed by it, nor shall such party be responsible for any damages of any kind resulting from utilization of such technology.

ARTICLE XIII - PUBLIC INFORMATION

In general, each Party is responsible for disseminating its own public information relating to this MOA. Each party may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. Each Party 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 Support Agreements under this MOA.

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

ARTICLE XIV - MISCELLANEOUS

Other Relationships or Obligations: This MOA shall not affect any pre-existing or independent agreements, relationships or obligations between the USACE and the TVA.

Survival: In the event of termination of this MOA or a Support Agreement hereunder, the RP shall continue to be responsible for all costs, including liabilities, the SP has incurred under this MOA or the terminated Support Agreement and for the costs of closing out or transferring any on-going contracts. The provisions of this MOA which require performance after the expiration of this MOA shall remain in force notwithstanding the expiration of this MOA.

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 XV - AMENDMENT, MODIFICATION, AND TERMINATION

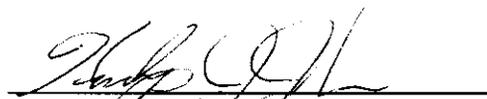
The MOA will remain in force for a period of five years and shall be extended by mutual agreement of the parties for each succeeding five-year period. This MOA may be modified or amended only by mutual written agreement of the parties. Either party may terminate this MOA

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 notice. In the event of termination of this MOA or a Support Agreement hereunder, the RP shall continue to be responsible for all costs, including liabilities, the SP has incurred under this MOA or the terminated Support Agreement and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVI - EFFECTIVE DATE

This MOA shall become effective when signed by both the TVA and the USACE.

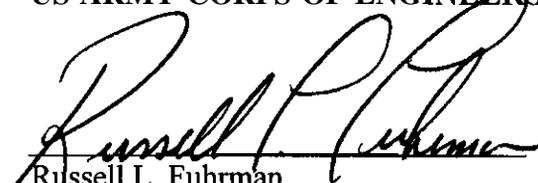
TENNESSEE VALLEY AUTHORITY



Kathryn J. Jackson
Executive Vice President
River System Operations
and Environment

Date: 7/26/99

US ARMY CORPS OF ENGINEERS



Russell L. Fuhrman
Major General, USA
Deputy Commander

Date: 20 July 1999