DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

SEP 25 2003

REPLY TO
ATTENTION OF:

CEMP-MA (415)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Memorandum of Agreement Between Headquarters, U.S. Army Corps of Engineers and the National Guard Bureau

1. This memorandum announces the signing of a Memorandum of Agreement (MOA) between HQUSACE and the National Guard Bureau (NGB) on 4 September 2003. A copy of the signed MOA is enclosed.

2. The MOA establishes Mobile District as a technical support center to provide nationwide support for the Army National Guard (ARNG). This support center will utilize a dedicated National Guard Support Team, a matrix of resources from other districts and National Guard staff and contractors. The execution of the work by Mobile District will cross USACE Division and District boundaries, however this is not a mandatory support center and this MOA does not supersede any existing agreements between USACE offices and NGB or ARNG state elements and does not preclude creation of new agreements. For work tasked to the Mobile District by the NGB or ARNG state elements, Mobile District will develop an acquisition strategy that considers the geographic districts to the greatest extent possible while meeting the expectations of the NGB and ARNG.

3. Along with signing the MOA, the NGB has established a liaison officer position located at HQUSACE, CEMP-MA. Major Todd Johnson will fill the position starting in mid October. Major Johnson will be available to work with any MSC or district on NGB issues.

4. Mobile District is preparing a Program Management Plan, which will provide details on how the program will be executed. The draft plan will be distributed to all MSCs for comments by the end of September. Both USACE and NGB are forming a new partnership with the signing of this MOA and both agencies can only benefit from establishing a good relationship from the beginning.

FOR THE COMMANDER:

R. L. Johnson

Encl

RONALD L. JOHNSON
Major General, USA
Director of Military Programs

CEMP-MA
SUBJECT: Memorandum of Agreement Between Headquarters, U.S. Army Corps of Engineers and the National Guard Bureau

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US ARMY ENGINEER RESEARCH AND DEVELOPMENT CENTER

MEMORANDUM OF AGREEMENT
BETWEEN
HEADQUARTERS, U.S. ARMY CORPS OF ENGINEERS
AND
NATIONAL GUARD BUREAU

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) between the National Guard Bureau (NGB) and the U.S. Army Corps of Engineers (USACE) ("the parties") establishes a framework for enhanced USACE support to the NGB and the Army National Guard installations through the offices of the USACE District at Mobile, AL. NGB programs and issues funds to, provides regulatory and policy guidance to, and maintains technical and financial oversight of ARNG installations but does not have command authority. ARNG installations shall request assistance from USACE through the United States Property and Fiscal Officer (USPFO) (32 U.S.C. 708), the only Title 10 officer at ARNG installations. This MOA is entered into pursuant to the Economy in Government Act, 31 U.S.C. 1535 and Chief's Economy Act, 10 U.S.C. 3036(d).

ARTICLE II - SCOPE

A. National Guard Bureau and USACE have selected the Mobile District to provide nationwide support for the ARNG. At the request of NGB and ARNG installations, the Mobile District will provide the goods and services under this MOA necessary to support sustainment, restoration, modernization, environmental and military construction needs of NGB and the ARNG. These services include, but are not limited to, master planning, project management, programming support, acquisition strategy, contract administration, project design and review, charrettes, construction management, quality assurance, technical support, training, real estate support and environmental compliance assistance.

B. The execution of the work by Mobile District resulting from this MOA will cross USACE Division/District boundaries. However, this MOA shall not supersede any existing agreement, interaction or support provided by USACE entities and offices to the NGB or ARNG installations, or preclude USACE entities and offices from soliciting work from the NGB or ARNG installations. Furthermore, nothing in this MOA requires the ARNG to use USACE's goods and services, or requires USACE to provide any goods and services to the ARNG, except as agreed to under this MOA or a MIPR under this MOA.

C. For the purposes of this MOA, the term "ARNG installation" shall mean any of the various ARNG installations requesting services through the USPFO under this MOA. ARNG installations are each of the States and applicable commonwealths, territories, and

the District of Columbia. The parties agree that only Federal funds disbursed by a USPFO shall be used to execute all MIPRs entered into pursuant to this MOA. The ARNG installations shall be responsible for ensuring that only Federal funds are transferred to USACE under all Support Agreements to this MOA. ARNG installations requesting work using State funds or through an officer other than an USPFO must enter into a separate agreement.

D. This MOA shall not apply to construction services where there is no certification on file at NGB from the State Attorney General that Federal contracting for construction on State-owned land is permitted under State law. The USPFO shall verify a valid certification is on file prior to requesting construction services on State-owned land.

ARTICLE III - PROCEDURE

The NGB and USACE shall complete a separate Program Management Plan that designates the roles, responsibilities, methods, and procedures to be followed in all projects involving requests for assistance. The Program Management Plan shall provide a general description of how the scope, schedule, estimated cost, and other requirements are developed for specific projects.

ARTICLE IV - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication, both NGB and USACE will appoint Principal Representatives to serve as central points of contact on matters relating to this MOA. As needed, the parties may also appoint additional representatives to facilitate this goal. All work covered by this MOA will be coordinated with ARNG points of contact. No technical work, design, maintenance and repair or construction will be initiated without proper reviews and approvals from the appropriate NGB and ARNG entities.

ARTICLE V- REQUESTS FOR SERVICES

A. Individual ARNG installations will determine whether USACE support will be requested for a particular project. The ARNG installations will assist USACE staff by participating in site visits and coordination meetings, data and background information gathering, preparation of the scope of work or plans, utilities clearances, and in the decision to execute the project with USACE in-house staff or through private contract. The USACE Contracting Officer has the ultimate responsibility for selecting the contract vehicle. ARNG installation representation on contract selection boards will be encouraged.

B. For all work estimated to cost less than $3,000,000, MIPRs will be issued under this MOA to identify specific work requirements including both scope and schedule and to obligate funds. These documents also will serve to confirm agreement, understanding, and acceptance of the specific work requirements. No

work under this agreement will commence until a properly executed MIPR is made available to USACE and funds are obligated to cover expenses anticipated for the initial period of performance. In the case of conflict between this MOA and any MIPR, this MOA shall control. For all work estimated to cost $3,000,000 or more, the parties will develop a specific Project Management Plan that establishes scope, schedule, funding, in addition to the MIPR.

ARTICLE VI- RESPONSIBILITIES OF THE PARTIES

A. U.S. Army Corps of Engineers

1. Provide the ARNG with goods and services in accordance with this MOA and with the specific requirements set forth in the MIPRs, including project management plans or agreed upon standard operating procedures.

2. Assemble appropriate technical, budget and contracting staff resources required to prepare scopes of work, plans and specifications, government estimates, environmental and real estate documentation, and conduct contract negotiations and award, and quality assurance through USACE personnel, private contract, and other resources as required.

3. Conduct site visits, scoping meetings, regulatory coordination, design review meetings, in-progress-review meetings, quality assurance activities, etc. to properly plan, design, execute and oversee projects.

4. Produce Progress Reports and maintain funds accountability.

B. National Guard Bureau

1. The USPFO or NGB, as appropriate, shall pay all costs associated with USACE's provisions of goods or services under this MOA and shall certify, at the time of signature of a MIPR, the availability of funds necessary to accomplish that MIPR.

2. The USPFO, shall ensure that only authorized contracting officers sign MIPRs.

3. The USPFO, through the requesting ARNG installation, shall obtain for USACE 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 MIPR. The USPFO through the requesting ARNG installation shall obtain for USACE all necessary real estate interests unless the Project Management Plan or MIPR otherwise provides.

4. Serve as the program proponent. NGB will interact with the ARNG installations and USACE's Mobile District to develop the Mobile District Facilities Support Center.

5. Participate in semi-annual (or as needed) coordination meetings and line item reviews with USACE and ARNG installations.

6. ARNG installations will provide the appropriate support resources for projects including, but not limited to, technical staff for scoping, field activities, coordination meetings, technical reviews, issue resolution and QA participation.

ARTICLE VII – CONSTRUCTION QUALITY ASSURANCE AND CONTRACT ADMINISTRATION

Construction Quality Assurance (QA) and contract administration will be included in the services available under this MOA. USACE will work with the ARNG installation to determine the preferred QA provider(s). Depending on the nature of the effort, this could be furnished by ARNG staff, USACE in-house personnel, contractors, Mobile District personnel or a combination of these. The Contracting Officers will insure that the selected QA provider meets all the requirements under the Federal Acquisition Regulations and that the proper arrangements have been made for the performance of inherently governmental responsibilities.

ARTICLE VIII – FUNDING

A. The USPFO or NGB, as appropriate, will fund all costs associated with USACE's provision of goods and services under this MOA. These include all costs to procure various contract vehicles, including but not limited to Architect – Engineering (A-E), Design-Build, Indefinite Delivery – Indefinite Quantity (IDIQ), Job-Ordering Contract (JOC) and others, and related expenses, to include funds required to satisfy the guaranteed minimum for award as required by Engineer Federal Acquisition Regulation Supplement (EFARS) 16.504.

B. USACE shall bill the requesting ARNG installation in advance and the ARNG shall provide the necessary funds in advance. USACE shall bill the ARNG monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds or Intergovernmental Payment and Collection (IPAC).

C. If the USACE forecasts its actual costs under a MIPR to exceed the amount of funds available under that MIPR, it shall promptly notify the ARNG of the amount of additional funds necessary to complete the work under that MIPR. The ARNG installation shall either provide the additional funds to the USACE, 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 MIPR.

D. USACE will typically be funded on a quarterly basis. Funds will be based on their approved annual operating budget and results obtained. Projected construction management costs for each project are required to be obligated at the same time and from the same source/year as the funds used for the work item (contract delivery order). At each semi-annual ARNG in-progress-review meeting, USACE will be required to brief

the financial and progress of the program. Financial reports will include information on all funds received, obligated, and expended, and on forecast obligations and expenditures. A copy of the reports provided to the ARNG installation for the semi-annual in-progress-review meeting will be provided to CEMP-MA within five days of the meetings. A copy of the minutes will also be provided to CEMP-MA.

E. Within 90 days of completing a contract action, USACE will conduct an accounting action to determine the actual cost of the work. Within 30 days of completion of this accounting, the USACE shall return to the ARNG installation's USPFO any funds advanced in excess of the actual costs as then known, or the ARNG installation shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NGB's or the ARNG installation's duty in accordance with Article XI to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE IX – APPLICABLE LAWS

This MOA and all documents and actions pursuant to it will 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 will be governed by USACE policies and procedures.

ARTICLE X – CONTRACT CLAIMS AND DISPUTES

A. All claims and disputes by contractors arising under or relating to contracts awarded by USACE will be resolved in accordance with Federal law and the terms of the individual contract. USACE will be responsible for handling all claims, disputes and appeals and will 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. Section 601-613). The Armed Services Board of Contract Appeal is designated as the appropriate board for contract appeals.

B. USACE will be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. USACE will notify NGB of any such litigation and afford NGB an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE XI – DISPUTE RESOLUTION

A. Issues that cannot be resolved will be forwarded through appropriate command channels for resolution at the lowest possible level. Within USACE, issues that that must be elevated should be forwarded to USACE Headquarters, CEMP-MA, which retains command oversight of Mobile District efforts.

B. NGB and USACE agree that, in the event of a dispute between them or between USACE and any ARNG installation, the parties will 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 will refer it for resolution to the Secretary of the Army.

ARTICLE XII – LIABILITY

A. If liability of any kind is imposed on the United States relating to USACE's provision of goods and services under this MOA, USACE will accept accountability for its actions, but the requesting ARNG installation will remain responsible 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 requesting ARNG installation 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 NGB or 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.

B. Notwithstanding the above, this MOA does not confer any liability upon the requesting ARNG installation for claims payable by USACE 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 XIII – PUBLIC INFORMATION

Justification and explanation of NGB's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch will be the responsibility of NGB. USACE may provide, upon request, any assistance necessary to support NGB's justification or explanations of the work conducted under this MOA. In general, ARNG is responsible for all public information. USACE may make public announcements and respond to inquiries relating to the ordinary procurement and contract award and administration process. ARNG and USACE will make their 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 XIV – MISCELLANEOUS

A. This MOA shall not affect any pre-existing or independent relationships or obligations between the ARNG and any USACE district, division, laboratory, center, or other component.

B. Survival. The provisions of this MOA which require performance after the expiration or termination of this MOA will 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 will remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XV – 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 will be effective upon the sixtieth (60) calendar day following notice, unless a later date is set forth. In the event of termination, NGB will continue to be responsible for all costs incurred by USACE under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XVI – EFFECTIVE DATE

This MOA will become effective when signed by both NGB and USACE.

R. L. Johnson

RONALD L. JOHNSON
Major General, USA
Director of Military Programs
U.S. Army Corps of Engineers

Date: 30 Jul 03

Roger Schultz

ROGER C. SCHULTZ
Lieutenant General, USA
Director, Army National Guard

Date: 4 SEP 2003