

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES NUCLEAR REGULATORY COMMISSION
AND
THE UNITED STATES ARMY CORPS OF ENGINEERS

ARTICLE I—AUTHORITY AND PURPOSE

This Memorandum of Understanding (MOU) is entered into by and between the United States Army Corps of Engineers (USACE) and the United States Nuclear Regulatory Commission (NRC) (“the parties”) to establish a mutual framework governing the respective responsibilities of the parties for the provision of USACE support for nuclear reactor-related activities, services and incidental supplies, including activities related to new reactors licensing. This MOU is entered into pursuant to the Economy Act (31 U.S.C. § 1535).

ARTICLE II—SCOPE

- A. Services and incidental supplies that USACE may provide under this MOU to support nuclear reactor-related activities, may include environmental studies, geotechnical engineering reviews, design reviews, construction management, safety monitoring, cost engineering, and other related services that may be authorized by the NRC Competition Advocate.
- B. To place an Interagency Agreement (IA) under this MOU, the NRC must ensure that all

NRC internal requirements are fulfilled. This includes the determination and finding requirements found in the FAR § 17.503. The NRC determination and finding will be conducted solely by NRC and will show that at least one of the following circumstances is applicable: (1) The service will be provided by USACE personnel; (2) the service will be performed under a USACE contract that permits services to other agencies; (3) The NRC Competition Advocate determines that USACE has capabilities or expertise to enter into a contract, and the capability or expertise is not available to the NRC, or (4) USACE is specifically authorized by law or regulation to purchase such services or supplies on behalf of other agencies.

- C. Nothing in this MOU shall be construed to require the NRC to use USACE or to require USACE to provide any services or incidental supplies to the NRC, except as may be set forth in IAs.

- D. This MOU does not obligate any funds. It is neither a fiscal nor a funds obligation document and does not obligate either agency to expend, advance, exchange, or reimburse funds, services, or supplies; transfer or receive anything of value; or enter into any contract, assistance agreement, IA, or other financial obligation. The decision to initiate each future IA is subject to the availability of sufficient funds appropriated to the NRC. This MOU shall not be construed to provide a private right of action for or by any person or entity.

ARTICLE III—INTERAGENCY COMMUNICATIONS

- A. To provide for consistent and effective communication between USACE and the NRC, each party shall appoint a principal representative to serve as its central point of contact on matters relating to this MOU. The agencies may also appoint additional representatives to serve as points of contact on IAs.

- B. Except as otherwise indicated, USACE will direct all written and oral communication between it and a license applicant or licensee, related to operating or new nuclear reactors, through the NRC Director of the Office of Nuclear Reactor Regulation (NRR) or the NRC Director of the Office of New Reactors (NRO), as appropriate, or designees. Information and materials developed by USACE for inclusion in NRC products will comply with applicable NRC guidance as determined by the NRR or NRO Directors or designees.

- C. The NRC's point of contact for all matters relating to specific IAs is the Contracting Officer.

ARTICLE IV—INTERAGENCY AGREEMENTS

- A. In response to requests from the NRC for USACE assistance under this MOU, USACE and the NRC shall execute mutually agreed-upon IAs written on Engineer Form 4914-R. NRC Form 662 is the equivalent to Engineer Form 4914-R and Defense Form 1144. IAs must include:

- a detailed scope of work statement
- delivery schedules
- funding and billing arrangements
- the amount of funds required and available to accomplish the scope of work as stated above
- the NRC's fund citation and the date upon which the cited funds expire for obligation purposes

B. Each IA must identify the following items:

- individual project managers
- types of contracts to be used (if known), and each party proposed to provide services
- types and frequencies of reports
- the party responsible for Government-furnished equipment; contract administration; records maintenance; rights to data, software, and intellectual property; and contract audits

- procedures for amending or modifying the IA

- other particulars necessary to describe clearly the obligations of the parties with respect to the requested services and supplies

- period of performance

- key personnel

- requirements for dissemination of project information

- requirement for a spending plan that projects the level of cost expenditure under a project or task order, to track costs and technical progress against the projected spending and percentage of the project or task order. (This requirement is not applicable to IAs that are for less than six months in duration.)

C. Services and incidental supplies shall be provided under this MOU only after an appropriate IA has been signed by a representative of each party authorized to execute that IA. When signed by each party's representative, an IA shall constitute a valid Economy Act agreement. In the case of conflict between this MOU and an IA, this MOU shall control.

ARTICLE V—RESPONSIBILITIES OF THE PARTIES

A. USACE has the following responsibilities:

- USACE shall provide the NRC with services and incidental supplies in accordance with the purpose, terms, and conditions of this MOU and with specific requirements set forth in IAs and implementing arrangements.
- USACE shall identify authorized USACE representatives to sign IAs.
- USACE shall use its best efforts to provide services and incidental supplies either through contract or in-house activities.
- USACE shall provide detailed periodic progress, financial, and other reports to the NRC as agreed to in the IA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
- USACE shall inform the NRC of all contracts entered into under each IA.

B. The NRC has the following responsibilities:

- Before executing each IA under this MOU, the NRC shall certify that the IA complies with the requirements of the Economy Act.

- The NRC shall pay all actual costs associated with the provisions of services and incidental supplies by USACE under this MOU and shall certify, at the time an IA is signed, the availability of funds necessary to accomplish that IA.

- The NRC shall ensure that only authorized NRC contracting officers sign IAs.

- The NRC shall develop draft IAs that include scope of work statements.

- The NRC shall obtain for USACE all necessary 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 IA.

- The NRC shall ensure that all requirements of NRC Management Directive 11.8, NRC Procedures For Placement and Monitoring Work With Other Federal Agencies Other Than DOE, are met before entering into an IA.

ARTICLE VI—FUNDING

- A. The NRC shall pay all actual costs associated with the provision of services and incidental supplies by USACE under this MOU. For IAs for work estimated to cost more than \$250,000 total in contracts and in-house services or \$50,000 in contracts, the NRC will provide funds in advance. For IAs for work valued at less than these amounts, the NRC may reimburse USACE for the services and incidental supplies. For these lesser requirements, USACE shall bill the NRC monthly for costs incurred, using Standard

Form (SF) 1080, "Voucher for Transfers between Appropriations and/or Funds," and the NRC shall reimburse USACE within 30 days of receipt of an SF 1080.

- B. If USACE forecasts its actual costs under an IA to exceed the amount of funds available under that IA, it shall promptly notify the NRC of the amount of additional funds necessary to complete the work under that IA. The NRC shall either provide the additional funds to USACE, limit the scope of work to that which can be paid for by the then-available funds, or terminate the work under that IA.

- C. Within 90 days of completing the work under an IA, USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of the completion of this accounting, USACE shall return to the NRC any funds advanced in excess of the actual costs as then known, or the NRC shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NRC's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, that may become known after the final accounting.

ARTICLE VII—APPLICABLE LAWS

- A. This MOU 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 USACE shall be governed by the USACE policies and procedures.

ARTICLE VIII—CONTRACT CLAIMS AND DISPUTES

- A. All claims and disputes by contractors arising under or relating to contracts awarded by USACE shall be resolved in accordance with Federal law and the terms of the individual contract. USACE shall have dispute resolution authority for these claims. The contractor may appeal any contracting officer's final decision 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 ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.
- B. USACE shall be responsible for handling all litigation involving disputes and appeals and for coordinating with the United States Department of Justice as appropriate. USACE shall notify the NRC of any such litigation and afford the NRC an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX—DISPUTE RESOLUTION

- A. The parties agree that, in the event of a dispute between the parties, the NRC and USACE shall use their best efforts to resolve that dispute in an informal

fashion through consultation and communication, or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties. The parties agree that if such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget or other entity as may be appropriate.

ARTICLE X—RESPONSIBILITY FOR COSTS

- A. If liability of any kind is imposed on the United States relating to the provision of services or supplies by USACE under this MOU, USACE will accept accountability for its actions, but the NRC shall remain responsible as the program proponent for providing the funds 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 NRC not have sufficient funds legally available, including funds that may be made legally available through transfer, reprogramming, or other means, the agency remains responsible for seeking additional funds from the Congress for such purpose, although nothing in this MOU shall be construed to imply that the Congress will appropriate funds sufficient to meet the liability.
- B. Notwithstanding the above, this MOU does not confer any liability upon the NRC

for claims payable by USACE under the Federal Torts Claims Act. Nothing in this MOU 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 MOU.

ARTICLE XI—PUBLIC INFORMATION

- A. The NRC shall be responsible for justifying and explaining the agency's programs before the Congress and other agencies, departments, and offices of the Federal executive branch. USACE may provide, upon request, any assistance necessary to support the NRC's justification or explanations of its programs conducted under this MOU. In general, the NRC is responsible for all public information. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The NRC or USACE 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 IAs under this MOU.

ARTICLE XII—MISCELLANEOUS

- A. Other Relationships or Obligations: This MOU shall not affect any preexisting MOUs or independent relationships or obligations between the NRC and

USACE.

- B. Survival: The provisions of this MOU that require performance after the expiration or termination of this MOU shall remain in force notwithstanding the expiration or termination of this MOU.

- C. Severability: If any provision of this MOU 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

- A. This MOU may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOU 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, the NRC shall continue to be responsible for all costs already incurred by USACE under this MOU before termination and for the costs of closing out or transferring any ongoing contracts.

ARTICLE XIV—EFFECTIVE DATE

A. This MOU shall become effective when signed by both the NRC and USACE.

U.S. Nuclear Regulatory Commission

U.S. Army Corps of Engineers

Luis A. Reyes

DATE: 12/12/06

Edwin A. Theriot

DATE: 12/20/06