

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES COAST GUARD
AND
THE UNITED STATES ARMY CORPS OF ENGINEERS

ARTICLE I - PURPOSE AND AUTHORITY

The parties to this Agreement are the United States Army Corps of Engineers (USACE) and the United States Coast Guard (USCG).

A. PURPOSE. The purposes of this Agreement are to:

1. Set forth terms by which USACE and USCG will establish a cooperative working relationship to provide short range aids to navigation data for the production of National River Authority (USACE)-approved S-57 format Inland Electronic Navigational Charts (IENC) thereby promoting the public safety.

2. Make provisions for the data management, improvement, streamlining, formatting, and exchange of changes to Short Range Aids to Navigation (SRA), and other relevant information between USACE and the USCG for chart updating.

3. Cooperate in the public dissemination of chart update information.

B. AUTHORITY. This Agreement is authorized under the provisions of:

1. Pub. L. 85-480, approved 2 July 1958, authorizes the Chief of Engineers to publish information pamphlets, maps, brochures, and other material on river and harbor, flood control, and other Civil Works activities, including related public park and recreation facilities under his jurisdiction, as he may deem to be of value to the general public.

2. The Economy Act of 1932, as amended 31 U. S. C. 1535

3. 33 CFR 209.325, which prescribes the policy, practice and procedure to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities, including the relationship between the Coast Guard and Army Corps of Engineers

4. 14 U.S.C. § 93(d) & (u), which provides that the USCG is authorized to conduct experiments, investigate, or cause to be investigated, plans, devices, and inventions relating to the performance of any Coast Guard function and cooperate and coordinate such activities with other Government agencies and with private agencies; and enter into cooperative agreements with other Government agencies and the National Academy of Sciences;

5. 14 U.S.C. § 141, which provides that the USCG is authorized to use its personnel and facilities to assist other Government agencies when requested to perform any activity for which

such personnel and facilities are especially qualified and, correlatively, authorizes the Coast Guard to utilize the personnel and facilities of other Government agencies.

ARTICLE II – SCOPE

A. DEFINITIONS: The following definitions are largely derived from IHO Publication S-52, Appendix 3, Glossary of ECDIS-Related Terms, 3rd Edition – December 1997; and apply to navigation on the inland waterways of the United States:

1. Inland Electronic Navigational Chart (IENC): The database, standardized as to content, structure and format, that is issued for use with an electronic navigation system on the authority of a government river authority (USACE). The IENC contains all the chart information necessary for safe navigation in shallow-draft, inland waterways for which electronic navigation charts (ENCs) from the National Oceanic and Atmospheric Administration (NOAA) are not available. IENCs may contain supplementary information in addition to that contained in the paper chart, which may be considered necessary for safe navigation.

2. International Hydrographic Organization (IHO): Coordinates the activities of national hydrographic offices; promulgates standards and provides advice to developing countries in the fields of hydrographic surveying and production of nautical charts and publications.

3. “S-57—IHO Transfer Standard for Digital Hydrographic Data” describes the standard to be used for the exchange of digital hydrographic data between national hydrographic offices and for its distribution to manufacturers, mariners and other data users. This transfer and distribution has to take place in such a way that none of the meaning of the data is lost.

4. International Maritime Organization (IMO): The specialized agency of the United Nations responsible for measures to improve the safety of international shipping and to prevent marine pollution from ships.

5. Marine Information: data deemed essential to the safety of navigation, and in the context of this MOA, specifically data on short-range-aids-to-navigation (SRA)

B. BACKGROUND.

1. The USACE has begun development of IENCs to benefit safety of navigation on the U.S. inland waterways. This initiative is in response to demand from the barge and towing industry, inadequacy of current USACE chart books, and commitment by the USACE to make geospatial data available to the public. IENCs will follow the IHO S-57 data exchange standard as much as reasonably possible. However, because of some profound differences between navigation on inland and coastal waterways, some modifications to or deviation from the S-57 standard will be necessary. The USACE will coordinate such differences with NOAA to ensure seamless transition between charts, and with the European Inland ECDIS forum to pursue international standardization.

2. The USCG uses electronic charting technologies on afloat units. Aboard river tenders, these systems currently use unofficial commercial raster charts produced from scanned USACE chart books, with some needed features added. Electronic vector charts from an official

hydrographic office such as the USACE are needed to manage risks associated with maritime transportation.

3. Advances in information technology are making it possible to provide Inland Waterways SRA data to the USACE as an integral part of the IENCs. This information is further needed in a uniform electronic format to enable unambiguous representation in the IENCs, compatibility with IENC production processes, and efficient transfer from USCG to USACE.

4. USACE is committed to develop, maintain, and disseminate official IENCs for public use. This synergistic relationship with USCG will:

- a. Enable USACE to efficiently integrate SRA information from the USCG into IENCs.
- b. Provide mariners on the inland waterways official USACE IENCs that are derived from international standards.
- c. Provide USCG official, consistent, and maintained IENCs.
- d. Enable the US government to disseminate timely inland waterways marine information updates to the mariner.

C. SERVICES PROVIDED: Goods and services which the USCG may provide under this MOA include the collection of Short Range Aids to Navigation data and information, testing and evaluation of ENC products and procedures, and such other related ENC goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require the USACE to use the USCG or to require the USCG to provide any goods or services to the USACE.

ARTICLE III - INTERAGENCY COMMUNICATIONS

A. POINTS OF CONTACT.

1. James Garster
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2. James Radice
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3. The Parties agree that they will notify each other in writing regarding any changes to the information in this section.

ARTICLE IV - MUTUAL UNDERSTANDING

A. The USCG will use its best efforts to:

1. Provide SRA data to USACE in a format conducive to IENC processing needs.
2. Assist the USACE with the timely dissemination of IENC update information.
3. Investigate, together with USACE, other opportunities to promote the safety of navigation, and the inclusion of other partners in agreements similar to this one.
4. Together with USACE, pursue standards development for inland navigation charts and systems at IHO and other relevant international standards bodies.
5. Participate with USACE in industry and ECS vendor forums assessing needs for inland waterway charts for the safety of navigation.

B. The USACE will use its best efforts to:

1. Maintain a database of IENCs for the public covering all U.S. inland waterways;
2. Provide the IENCs at no cost or restriction to federal agencies;
3. Partner with the USCG for the timely dissemination of IENC update information.
4. Investigate, together with the USCG, other opportunities to promote the safety of navigation, and the inclusion of other partners in agreements similar to this one.
5. Maintain archival database of SRA's on inland waterways.

C. This Article defines in general terms the basis on which the Parties intend to cooperate outside the scope of the Economy Act. Each Party may expend funds, and provide human resources, equipment, supplies, facilities, training, public information, and technical expertise to the extent that their participation is required, resources are available, and existing agency authorities and appropriations permit. Nothing in this Article requires or authorizes either party to obligate agency funds except as they see fit within the scope of their existing

authority. This Article in no way restricts the Parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES UNDER THE ECONOMY ACT

A. Responsibilities of the USCG

The USCG shall:

1. Develop software and procedures to collect and transfer SRA data to USACE in a format conducive to IENC processing needs.
2. Collect SRA data in test cases for evaluation in IENCs.
3. Participate in field evaluations of USACE IENCs.
4. Conduct activities and provide goods or services in accordance with the purpose, terms and conditions of this MOA.

B. Responsibilities of the USACE

The USACE shall:

1. Prior to the execution of this Economy Act Agreement, ensure that it complies with the requirements of the Economy in Government Act.
2. Pay all actual costs associated with the USCG's provisions of goods or services under this MOA and shall certify the availability of funds necessary to accomplish it.
3. Develop with the USCG the ability to collect SRA information;
4. Develop with the USCG a system of SRA data maintenance and export that will provide information in a format compatible to USACE IENC production processes;

ARTICLE VI - FUNDING OF ECONOMY ACT SERVICES

USACE shall pay all costs associated with the USCG's provision of goods or services under this MOA/ Economy Act Agreement. These costs are estimated to be \$40K. Payment arrangements will be made by mutual agreement of the parties.

If the USCG forecasts its actual costs to exceed the amount of funds available, it shall promptly notify the USACE of the amount of additional funds necessary to complete this work. USACE shall either provide the additional funds to the USCG, 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.

Within 90 days of completing the work, the USCG shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the

USCG shall return to the USACE any funds advanced in excess of the actual costs as then known, or the USACE shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the USACE'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

The applicable statutes, regulations, directives, and procedures of the United States shall govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all contract work undertaken by USCG shall be governed by USCG policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded or used by the USCG shall be resolved in accordance with Federal law and the terms of the individual contract. The USCG 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 USCG shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The USCG shall notify the USACE of any such litigation and afford the USACE 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 USCG 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

A. If liability of any kind is imposed on the United States relating to the USCG's provision of goods or services under this MOA, the USCG will accept accountability for its actions, but the USACE shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This includes all administrative and professional costs incurred by the USCG to defend, prosecute, or settle claims or equitable adjustments under the Contract Disputes Act, and any allowable third party fees under the Equal Access to Justice Act. 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 USACE 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 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 USACE for claims payable by USCG under the Federal Torts Claims Act. Provided further that nothing in this Agreement 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 Agreement

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the USACE's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the USACE. The USCG may provide, upon request, any assistance necessary to support the USACE's justification or explanations of the USACE's programs conducted under this MOA. In general, the USACE is responsible for all public information. The USCG may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The USACE or the USCG shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed under 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 USACE and the USCG.

B. Survival

The provisions of this MOA that require performance after the expiration or termination of this MOA shall 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 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, the USACE shall continue to be responsible for all costs incurred by the USCG 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 USACE and the USCG.

U.S. Coast Guard

U.S. Army Corps of Engineers



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DATE: 3 September 2002

DATE: 24 Jun 02