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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ARMY TOXIC AND HAZARDOUS MATERIALS AGENCY
AND
CHICAGO FIELD OFFICE, BROOKHAVEN AREA OFFICE
DOE

ARTICLE I. PURPOSE

This Memorandum of Understanding (MOU) is entered into by and between the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) and the U.S. Department of Energy (DOE), Chicago Field Office, Brookhaven Area Office (DOE-BHO) for the purpose of establishing the respective responsibilities of the parties for delivering technical assistance, contract management, and related services to accomplish specific tasks described in individual work plans (IWPs) to be executed by USATHAMA and DOE-BHO.

ARTICLE II. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communications between USATHAMA and DOE-BHO, USATHAMA and DOE-BHO have appointed representatives to discuss and consider activities that may be pursued under this MOU. USATHAMA and DOE-BHO representatives are as follows:

For the U.S. Army Toxic and Hazardous Materials Agency:

Commander
U.S. Army Toxic and Hazardous Materials Agency
ATTN: CETHA-OC
Aberdeen Proving Ground, Maryland 21010-5401

For the U.S. Department of Energy, Brookhaven Area Office:

U.S. Department of Energy
Area Manager
Brookhaven Area Office
53 Bell Avenue
Upton, New York 11973

USATHAMA and DOE-BHO representatives shall coordinate all requests for assistance under this MOU and shall serve as the points of contact between USATHAMA and DOE-BHO on matters relating to this MOU.

The respective representatives of USATHAMA and DOE-BHO will execute IWPs necessary to accomplish tasks in accordance with the terms of this agreement.

ARTICLE III. PROVISIONS OF ASSISTANCE

Nothing in this MOU is intended to affect other arrangements between the parties. Nothing in this MOU can be or should be construed to require USATHAMA to use the services of DOE-BHO, or to require DOE-BHO to accept assignments from USATHAMA.

USATHAMA shall provide all necessary documentation required by DOE-BHO to make NEPA determinations at DOE sites, and DOE-BHO shall provide all necessary documents required by USATHAMA to satisfy NEPA requirements for work performed at DOD sites. Neither party to this agreement will be required to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) on any facility but its own unless otherwise agreed to in an IWP.

A. Responsibilities of DOE-BHO

DOE-BHO shall provide technical assistance related to projects funded by USATHAMA. USATHAMA recognizes that one or more DOE-BHO contractors may perform the work assigned to DOE-BHO under this MOU. DOE contractors shall be responsible for managing the contract(s) under which DOE-BHO authorizes its contractor(s) to perform work under this MOU. Contract management shall include contract administration, quality assurance, change/claim resolution, progress payments processing, contract(s) closeout, and related services.

This work will be performed on best effort basis and neither DOE-BHO, its contractors, nor persons acting on their behalf will be responsible, irrespective of causes, for failure to perform their services or furnish the materials or information hereunder at any particular time or in any specific manner. Furthermore, DOE-BHO hereby specifically disclaims for itself and its contractors any and all warranties, express or implied, including any warranty or merchantability or fitness for any purpose.

B. Responsibilities of USATHAMA

USATHAMA shall have the responsibility for initiating IWPs, developing project concepts, and creating the scope of work statement. If the IWP is accepted by DOE-BHO, USATHAMA will also:

1. Furnish all information necessary to make any justification and approval (J&A) or determination and finding (D&F) required by law or regulation;
2. Provide assistance necessary to comply with any condition or limitation applicable to the funds provided by

USATHAMA, including special terms or other requirements unique to the fund cite;

3. Ensure the requested assistance does not conflict with any other agency's authority or responsibility;

4. Forward annual program projections to DOE-BHO for the following fiscal year (FY) commencing 1 October through 30 September;

5. Review recommendations and determinations made, together with other actions taken by DOE-BHO, which may affect USATHAMA projects; and

6. Confirm that all IWPs conform to the requirements of FAR Subpart 7.3 (Contractor vs. Government Performance).

ARTICLE IV. FUNDING

USATHAMA shall, subject to the availability of funds, fund all costs of assistance for tasks provided under this MOU and the IWPs negotiated under this MOU. USATHAMA shall provide funds in advance of the commencement of the work or the issuance of any obligation of DOE-BHO for any task assigned. USATHAMA shall provide DOE-BHO the full amount of estimated expenses by delivering a DD Form 448, Military Interdepartmental Purchase Request (MIPR), prior to the start of each IWP. If the actual cost to DOE-BHO is forecast to exceed the amount of funds available, DOE-BHO shall promptly notify USATHAMA of the amount of additional funding necessary to pay for the assistance. USATHAMA shall either provide the additional funds to DOE-BHO within fifteen (15) calendar days thereafter, or require the scope of the assistance be limited to that which can be financed by the available funds, or USATHAMA will direct termination of the project. Should USATHAMA not exercise any of the above options, DOE-BHO may immediately terminate the project notwithstanding Article XX of this MOU.

DOE-BHO will utilize the funds issued by USATHAMA to cover all DOE-BHO expenses, including, but not limited to, salaries, travel, per diem, administrative overhead, and indirect costs pursuant to this MOU and the IWPs negotiated under this MOU, including the allowable costs of its contractors. Established DOE-BHO accounting procedures will be used for recording costs.

Upon furnishing the assistance contemplated by this MOU and the IWPs negotiated under this MOU, DOE-BHO or its contractor shall conduct a final accounting within 120 calendar days of project completion (physical and financial) to determine the actual costs of the assistance provided. DOE-BHO shall return any funds advanced by USATHAMA in excess of the actual costs

within 90 calendar days of the final accounting or Defense Contract Audit Agency (DCAA) audit of any subcontracted work, whichever is later.

ARTICLE V. BILLING

Billing will be performed by DOE-BHO or its contractor and forwarded to the billing address indicated on each IWP. Billing is performed monthly for the costs recorded during the previous month on an SF Form 1080 for reimbursement to DOE-BHO or its contractor appropriation on the basis of actual costs incurred.

ARTICLE VI. ACCEPTANCE OF FUNDS

Funds shall be considered obligated upon DOE-BHO's acceptance of the funds and authorization letter to its contractor to perform the IWP. No project expiration dates will be added to the funding document and all schedules or delivery dates will be expressed in the project task descriptions.

Performance by DOE-BHO or its contractor shall continue until one or more of the following conditions are met:

- A. Completion of the Statement of Work and Task Closeout;
- B. Expenditures/commitments equal the amount authorized for the task;
- C. Task termination by either party to this agreement; or
- D. Arrival of the work completion date as specified in the IWP. Work completion dates will be mutually agreed upon by both parties. (Work completion dates are not to be confused with obligational expiration dates.)

ARTICLE VII. APPLICABLE LAWS AND REGULATIONS

DOE-BHO shall furnish all assistance under this MOU and the IWPs negotiated under this MOU in accordance with applicable laws and regulations. Unless otherwise required by law or set forth in this MOU, all work undertaken by DOE-BHO shall be performed in accordance with DOE-BHO or its contractor's DOE-approved procurement, claims, and reimbursable work policies and procedures.

Nothing in this MOU relieves any applicant, grantee, consultant, contractor, subcontractor, or other party from any obligations imposed upon them by law, regulations, and other applicable requirements.

This agreement is entered into pursuant to the authority of the Economy Act of 1932, as amended (31 U.S.C. 1535), and adheres to Federal Acquisition Regulation (FAR) 6.002 and other applicable Federal laws and regulations. To the best of USATHAMA's knowledge, the work requested will not place the Department of Energy and its contractor in direct competition with the private sector.

ARTICLE VIII. RECORDS AND REPORTS

DOE-BHO shall establish and maintain records and receipts of the expenditure of all funds provided by USATHAMA. Records shall be maintained in sufficient detail to permit identification of the nature of the expenditures made by DOE-BHO and shall be made available for inspection by officials of USATHAMA upon request.

DOE-BHO will provide status reports on projects pursued under this MOU and the IWPs negotiated under this MOU. Upon request, DOE-BHO will also provide reports and/or briefings. These reports will include management information and will monitor scheduled activities. These reports will provide data to support planning and budget decisions.

Upon request copies of documents supporting contract management decisions and activities affecting USATHAMA projects will be turned over to USATHAMA, for maintenance. DOE-BHO will retain all originals in accordance with Federal records management practices.

ARTICLE IX. CONTRACT CLAIMS AND APPEALS

All claims arising under or relating to this MOU or IWPs executed hereunder shall be resolved in accordance with Federal law and the terms of the individual contract. DOE-BHO has dispute resolution authority for these claims, and shall be responsible for litigating all claims or appeals. DOE-BHO shall consult with USATHAMA during settlement negotiations.

DOE-BHO shall notify USATHAMA of claims or appeals and shall submit requests to USATHAMA for funds to cover such claims or appeals. Subject to the availability of funds, USATHAMA shall promptly provide payment of judgments or settlements of claims and appeals and for the administrative costs for defending all such claims and appeals, as well as funds for the administrative costs for processing all claims and appeals.

ARTICLE X. PATENTS

DOE patent and intellectual property policies shall apply to any work performed, and appropriate patent and intellectual property provisions shall be included in any agreements entered

into in order to implement the IWP accepted under this MOU. Rights to inventions made by United States Government employees shall be determined by the employing agency. Rights in inventions and other intellectual property of a DOE prime operating contractor (or its subcontractors) shall be governed by the provisions of the DOE prime operating contract (or subcontract).

To further the mandates of the Technology Transfer Act, the parties agree to the extent consistent with law and with the nature of the work under this MOU to:

- A. Include technology transfer considerations in preliminary planning or work statements;
- B. Identify internal personnel or offices responsible for technology transfer; and
- C. Work cooperatively to enhance technology transfer opportunities that may arise under this MOU.

ARTICLE XI. PROPERTY/EQUIPMENT

If equipment is acquired as part of the project, such equipment will be accounted for and maintained during the term of the project in the same manner as DOE-BHO property. When the project terminates, disposition of the equipment will be as previously agreed to or as instructed by USATHAMA. Such equipment will be delivered to location requested by USATHAMA, transferred to DOE-BHO or declared as excess. Cost of disposition shall be born by USATHAMA.

ARTICLE XII. DISPUTE RESOLUTION

Before any signatory to this MOU may bring suit in any court against a third party concerning an issue relating to this MOU, such signatory must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution, mutually acceptable to the parties.

If the parties to this agreement cannot resolve any dispute arising over the terms or conditions of this agreement, including any and all IWP attachments hereto, resolution of all dispute issues will be through use of an arbitrator appointed by the Department of Justice, pursuant to procedures adopted by that arbitrator.

ARTICLE XIII. SECURITY AND CLASSIFICATION

USATHAMA will provide to DOE-BHO existing applicable classification and any new guides/updates as they are developed,

which apply to classified tasks. Security requirements to be followed in performance of the work will be in accordance with applicable Department of Defense and DOE-BHO orders. Before any classified work under this project is initiated, DOE-BHO's and USATHAMA's security representatives will establish appropriate security requirements/procedures.

ARTICLE XIV. PUBLIC INFORMATION

Subject to the Freedom of Information Act, 5 USC 552, decisions on disclosure of information to the public regarding work undertaken pursuant to this MOU shall be made by USATHAMA, following consultation with DOE-BHO. Justification and explanation of USATHAMA programs before Congress and the Executive Branch shall be the responsibility of USATHAMA. DOE-BHO may assist USATHAMA in responding to Congressional inquiries and may support USATHAMA in budget justifications.

No commercial use shall be made of the name of any party or contractor name without the prior written approval of the party.

Prior to issuing public announcements pertaining to services related to this MOU, USATHAMA and DOE-BHO shall coordinate and consult with each other. DOE-BHO may provide, upon request, information to support contacts with Congress and the Executive Branch. DOE-BHO may make public announcements and respond to all inquiries relating to administration matters.

ARTICLE XV. OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or other elected official shall share in any part of this MOU, or any benefit that may arise therefrom.

ARTICLE XVI. COVENANT AGAINST CONTINGENT FEES

No person or selling agency has been employed or retained to solicit or secure this MOU upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees.

ARTICLE XVII. CONFIDENTIALITY

To the extent permitted by the law governing each party, including the Freedom of Information Act, the parties agree not to disclose or disseminate to others exchanged information when requested not to do so by the providing party.

ARTICLE XVIII. ORGANIZATIONAL CONFLICT OF INTEREST

A. USATHAMA recognizes that a contractor may perform the work assigned to DOE-BHO under this MOU. DOE-BHO has approved internal procedures governing access to and flow of information between DOE-BHO contractors and affiliate organizations. DOE-BHO contracts adopt these procedures and apply to all work performed under DOE-BHO contracts. These procedures are subject to DOE-BHO audit at all times. The procedures prohibit the contractor, including any of its officials who may acquire information as a part of their management responsibilities, from further disseminating any third-party proprietary data or Government sensitive data information, as indicated by restrictive markings identifying the data and information so protected, to its affiliated organizations.

B. In view of the above, USATHAMA hereby agrees that affiliates of the contractor shall not be restrained or restricted from competing for any related follow-on contracts or subcontracts which may relate to work under this MOU other than as limited by law.

ARTICLE XIX. ENVIRONMENTAL AND SAFETY RESPONSIBILITY

Both parties agree that while DOE and its contractors and subcontractors will be expected to adhere to the requirements of applicable environmental or safety laws and regulations, none of the activities under this agreement create an obligation by DOE or its contractors and subcontractors for remedial action or payments therefor or any other continuing responsibility under any such law or regulation.

ARTICLE XX. EFFECTIVE DATE AMENDMENT AND TERMINATION

This MOU is effective upon the date of the last signature by the parties and shall remain effective for a five year period from the effective date unless terminated in accordance with the terms set forth herein. This MOU may be modified by mutual consent of both parties.

Either DOE-BHO or USATHAMA may terminate this MOU by providing 120 calendar days written notice. In the event of termination, DOE-BHO or USATHAMA shall consult with each other concerning all claims for termination costs; however, USATHAMA shall continue to be responsible for all costs incurred by the DOE including the allowable costs of its contractors under this MOU, or under the IWPs and for the costs of closing out or transferring any ongoing obligations.

Upon request by either party, but at least annually, both parties shall review this MOU, to assure that it continues to reflect the appropriate understandings and procedures to provide for current needs and capabilities.

ACCEPTANCE for the U.S. Army Toxic and Hazardous Materials Agency:

By: *Ralph G. Wooten* Date: 9/8/92
Ralph G. Wooten
Colonel, U.S. Army
Commanding
U.S. Army Toxic and Hazardous Materials Agency

ACCEPTANCE for the U.S. Department of Energy, Chicago Field Office, Brookhaven Area Office:

By: *Robert P. Gordon* Date: 9-11-92
~~Frank Crescenzo~~ Robert P. Gordon, Chief
~~Deputy Area Manager~~ Administrative Branch
Brookhaven Area Office
U.S. Department of Energy