

INTERAGENCY AGREEMENT

1. INTERAGENCY AGREEMENT NO. **W-93-E-4227** 2. EFFECTIVE DATE **See Block 12** 3. PROJECT/REQUISITION NO. **204687**

4. AGENCY PERFORMING SERVICE
 FEDERAL EMERGENCY MANAGEMENT AGENCY
 Office of Acquisition Management
 Mitigation and Recovery Support Division
 500 C Street, S.W., Room 726
 Washington, D.C. 20472

5. NAME, TITLE & PHONE NUMBER OF EACH GOVERNMENT PROJECT OFFICER FOR BOTH AGENCIES
 Lida Whitaker-Sheppard 202/646-3061
 (FEMA PO)

6. AGENCY PERFORMING SERVICE
 U.S. Army Corps of Engineers
 Attn: CEMP-R
 20 Massachusetts Avenue, N.W.
 Washington, D.C. 20314

Craig Crotteau 202/504-5145
 (Other Agency's Project monitor)

7. PROJECT TITLE
 Underground Storage Tank Remediation Site Work

8. PROJECT OBJECTIVE
 See Attached Memorandum of Agreement (MOA)
Apr 93

9. PERFORMANCE PERIOD OF AGREEMENT
 Date of award through September 30, 1996

10. ACCOUNTING AND APPROPRIATION DATA
 93-3-1200-2589-2-8100 (F)

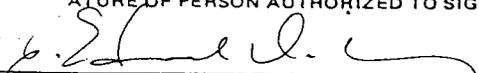
11. DOLLAR VALUE OF AGREEMENT
 \$5,525,000.00

12. FUNDING (The Federal Emergency Management Agency agrees to advance/reimburse funds up to the dollar amount of this agreement, upon receipt of a properly executed Standard Form 1080 or 1081. The appropriate form must be executed in original and six copies, be identified with agreement number and accounting data, and transmitted to the following office for funds action.)
 FEMA Office of the Comptroller
 Reports and Control Branch
 500 C Street, S.W., Room 722
 Washington, D.C. 20472
 FEMA will reimburse the COE for expenses incurred in providing the requested assistance with the exception of those that may be caused by administrative error (an example is payment of interest due to late payment)

(Any funds not utilized for the performance of the work described in this agreement must be returned to the Federal Emergency Management Agency.)

13. PURSUANT TO THE AUTHORITY OF
 Federal Civil Defense Act of 1950, as amended (50 USC § 2251)

(The Federal Emergency Management Agency may enter into this agreement. The person executing this agreement has a written delegation of authority to do so on behalf of the agency.)

SIGNATURE OF PERSON AUTHORIZED TO SIGN


DATE
 Apr 8 '93

16. SIGNATURE OF PERSON AUTHORIZED TO SIGN


DATE
 Apr 9 '93

15. TYPE NAME & TITLE OF PERSON AUTHORIZED TO SIGN
 G. Edward Dickey
 Acting Asst. Secretary of the Army (Civil Works)

17. TYPE NAME & TITLE OF PERSON AUTHORIZED TO SIGN
 H. Robert Weiss, Contracting Officer
 FEDERAL EMERGENCY MANAGEMENT AGENCY

MEMORANDUM OF AGREEMENT
BETWEEN THE
FEDERAL EMERGENCY MANAGEMENT AGENCY
AND THE
UNITED STATES DEPARTMENT OF THE ARMY

I. PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) commits the U.S. Department of the Army (DA) to furnish technical assistance to the Federal Emergency Management Agency (FEMA) in connection with FEMA's Underground Storage Tank (UST) Project (the Project) at Emergency Broadcast System (EBS) sites throughout the United States. This MOA is entered into pursuant to the Federal Civil Defense Act of 1950, as amended (50 U.S.C. § 2251), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (P.L. 102-389).

II. SCOPE

Subject to the terms of this MOA, the DA will provide all services required to perform technical assistance in support of the Project at EBS station sites. These services include a broad spectrum of investigation, design, project management, engineering, construction, environmental restoration, compliance and waste management services, to FEMA Headquarters to assist FEMA in meeting its requirements under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), and other related environmental statutes. Upon FEMA's request and the DA's agreement, the DA may also provide other services relating to the Project to FEMA. FEMA and its predecessor agencies have provided fuel storage at protected EBS stations to promote their ability to remain on the air during emergencies. Pursuant to the requirements of RCRA, FEMA has initiated the Project to identify, evaluate, and remediate the USTs located at these stations nationwide. Subject to the terms of this MOA, the DA will provide services at EBS stations (approximately 300 privately-owned sites) identified by FEMA as requiring removal, replacement, repair or retrofitting of USTs, including cleanup of contamination associated with leaks or spills from the tanks.

As an initial step, FEMA shall provide the DA with written Draft Supplemental Instructions (DSIs), which

may group sites geographically and which shall include plans, specifications, and general schedules and cost estimates for the work to be performed at each site. The DA shall provide its evaluation of the DSI. Upon resolution of any areas of divergence, FEMA shall issue the Supplemental Instructions as written Final Supplemental Instructions (FSIs).

III. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between FEMA and the DA, FEMA and the DA shall each appoint a representative to discuss activities required under this MOA.

The FEMA and DA representatives shall coordinate all requests for assistance under this MOA and shall serve as points of contact between FEMA and the DA on matters pertaining to this MOA. FEMA and the DA may designate other officials to perform some or all of their responsibilities under this MOA.

IV. RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the DA

The DA shall provide services to FEMA within the scope specified in Article II of this MOA and pursuant to FSIs issued by FEMA in accordance with Article V of this MOA. Such services shall be provided in accordance with the purpose, terms, and conditions of this MOA, and with specific requirements set forth in individual FSIs that specify one or more individual tasks. The DA reserves the right to decline work under this MOA in the event of national emergency.

The DA shall use its best efforts to provide FEMA with the technical services necessary to achieve the Project objectives within the budget and broad schedule provided for in applicable FSIs.

The DA shall provide support to FEMA through a combination of contracts and in-house effort.

The DA shall perform any coordination with state and local agencies that proves necessary during the implementation of an FSI.

The DA shall advise FEMA of any changes it deems necessary to a DSI or, during the course of implementation, to an FSI.

B. Responsibilities of FEMA

FEMA shall use the DA's services within the scope described in Article II of this MOA.

FEMA shall fully fund all costs and expenses incurred by the DA in connection with work done pursuant to this MOA and individual FSIs.

FEMA shall develop scope of work and shall, with the DA's agreement, further define the scope of work for individual sites as the need arises.

FEMA shall issue DSIs and FSIs, in accordance with Article V of this MOA.

FEMA shall obtain for the DA access to all construction sites, rights of entry, and any support facilities as required for each FSI.

FEMA shall, if required by the Office of Management and Budget, confirm the DA's manpower requests for tasks assigned in the FSIs.

V. PROCEDURE

A. Supplemental Instructions

The DA shall furnish technical services related to the Project pursuant to the terms and conditions of this MOA and to Supplemental Instructions drafted, evaluated, and issued as provided in this Article.

(1) FEMA shall issue Supplemental Instructions in two phases: (a) DTO; and (b) FSI. No work, except for the DA's technical evaluation of DSIs, shall be performed under this MOA until FEMA issues an FSI specifying performance of services under this MOA to the DA representative.

(2) FEMA shall issue DSIs to the DA for the work within the scope described in Article II of this MOA. A DSI shall include plans, specifications and a generalized schedule and cost estimate for the work contemplated. FEMA shall also designate its individual Project Manager for the services contemplated by the DSI.

(3) The DA shall notify FEMA of receipt of each DSI within a week of receipt.

(4) The DA shall then provide FEMA with the DA's evaluation of the DSI, including any revisions the DA deems necessary to the plans, specifications, schedule and cost estimate. In addition, the DA's evaluation shall include a specified cost estimate covering labor hours, travel and per-diem and other direct costs. The DA shall also designate its individual Project Manager for the services contemplated by the DSI and shall notify FEMA of the DA's costs for performing this evaluation.

(5) FEMA and the DA shall seek to resolve any areas in which the DSI and the DA's evaluation diverge.

(6) In accordance with the DA's determination of scope, schedule, cost estimate, and plans and specifications, FEMA shall issue an FSI authorizing the commencement and accomplishment of work and guaranteeing payment. An FSI shall be numbered serially, shall reference the Inter Agency Agreement (IAA) number and shall contain:

- A description of the remediation or replacement services to be performed and of the location of the project(s) or site(s) to which those services relate;
- Broad schedules, including the period of performance and delivery date, if appropriate;
- Plans and specifications for the work;
- Estimated cost;
- A funding document stating the amount of funds FEMA authorizes the DA to use for the execution of the services described;
- The name of FEMA's individual Project Manager, who shall act as FEMA's designated representative for further communication related to that particular FSI; and
- Such other particulars as are necessary to describe clearly the duties of the parties regarding that FSI.

(7) FEMA shall send DSIs and FSIs issued pursuant to paragraphs A(2) and (5) of this Article to the DA's representative designated in accordance with Article III of this MOA.

B. Changes to an FSI

In the event an FSI contains omissions, is not clearly understood, or requires alteration after the commencement of work, the DA shall notify FEMA

immediately upon discovery of the need for clarification or amendment. The DA may make clarifications or amendments that will not require funds in excess of the contingency amount. For all other changes, FEMA may issue a written change to the FSI upon agreement of FEMA and the DA. However, in the case of missing technical data, the DA may obtain that data directly from FEMA's Project Manager.

C. Manifests and Related Documents

DA personnel are authorized to execute all manifests and related documents, federal and state, on behalf of FEMA that pertain to work performed under this MOA by the DA or its contractors. DA personnel shall annotate the manifests and related documents with the phrase "On behalf of FEMA." If applicable state regulations do not permit the DA to sign such documents on behalf of FEMA, the DA shall contact the FEMA representative for specific guidance. Upon fiscal and physical completion of work under an FSI, the DA shall forward manifests and related documents to FEMA. The DA shall retain contract-related documents.

D. Records and Reports

The DA shall provide quarterly status reports to FEMA for each FSI issued to DA, including financial reports on all funds received, obligated, and expended. In addition, the DA shall provide FEMA any other reports upon which FEMA and the DA may agree.

E. Imminent Environmental Threats

In the event of a discovery of an imminent environmental threat to human health or property, the DA may make the services of the U.S. Army Corps of Engineers Rapid Response Contract available to FEMA. The DA shall advise FEMA concerning the use of this contract. The Rapid Response Contract shall be used only with FEMA's written advance approval and authorization of funds. The DA shall notify FEMA of the need to use the Rapid Response Contract by means of emergency procedures, if necessary. The DA shall be responsible for coordinating actions under the Rapid Response Contract.

VI. FUNDING

A. General

FEMA shall provide funding resources for all costs

associated with the DA's provision of assistance, including meritorious claims and liability. FEMA hereby obligates and provides an initial amount of funds as indicated in Block 11 of the FEMA-IA form 40-3 attached to this MOA, which is an integral part of this MOA. FEMA shall obligate and provide additional funds as necessary and as provided in future appropriations acts.

B. Technical Review Funding

So that the DA can conduct its technical review of DSIs issued by FEMA, FEMA shall provide funds sufficient for the DA to review all DSIs. The amount of these funds shall be agreed upon by FEMA and the DA, and may be supplemented by mutual agreement. FEMA shall advance these funds prior to the DA reviewing the first DSI issued by FEMA.

C. Procedure

(1) FEMA shall clearly identify in each FSI the amount of funds it authorizes the DA to spend to accomplish the work specified in that FSI. Funding authorized for each FSI shall include sufficient funds for the DA's management of the work and an appropriate contingency amount.

(2) If the DA forecasts its actual costs to exceed the amount of funds authorized for an individual FSI, the DA shall promptly notify FEMA of the amount of additional funding necessary. FEMA shall either authorize the use of additional funds in writing, require that the scope of the assistance be limited to that which can be financed by the previously authorized funds, or direct termination of the FSI.

(3) Within 120 days of the completion of the work under an FSI, the DA shall conduct a final accounting to determine the actual cost of the work. Within 120 days of the completion of this accounting, the DA shall return any funds paid by FEMA in excess of actual costs.

(4) In the event additional costs, such as meritorious claims or liability, arise, FEMA shall provide additional funding as necessary subject to the availability of funds and, if necessary, shall seek such funding in future appropriations acts.

VII. CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA has 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 U.S. Army Corps of Engineers Board of Contract Appeals (ENG BCA) is designated as the appropriate board of contract appeals.

In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Claims Court. The DA shall be responsible for litigating all such appeals. The DA shall consult FEMA regarding any settlement negotiations.

VIII. LIABILITY

If liability of any kind is imposed on the United States relating to the DA assistance or services under this MOA, the DA will accept accountability for its actions, but FEMA shall remain responsible as the program proponent for seeking any appropriations and providing such funds, in accordance with Article VI, as are necessary to discharge this liability.

IX. DISPUTE RESOLUTION

The parties agree that in the event of disputes between parties, both the DA and FEMA shall use their best efforts to resolve those disputes in an informal fashion through consultation and communication. The parties agree that, in the event that informal consultation and communication fail to resolve the dispute, the dispute shall be referred for resolution to the Office of Management and Budget or to such other entity as the parties may mutually agree in writing.

X. PUBLIC INFORMATION

Justification and explanation of FEMA programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of FEMA. However, the DA will provide, upon request, any technical assistance necessary to support FEMA's justification or explanations of FEMA programs conducted pursuant to this MOA. The DA will make public announcements and respond to all inquiries

relating to the ordinary procurement and contract award and administration process.

FEMA and the DA shall make their best efforts to give the other party at least three business days notice before making a public statement regarding the planning, process, or operation of the projects covered by FSIs entered into pursuant to this MOA. In the event there is not time to make advance notice, FEMA and the DA shall notify the other party as soon as practicable but no later than 24 hours after a public statement. Such notice shall be communicated through the representatives designated pursuant to Article III of this MOA.

XI. IMPLEMENTATION

FEMA and the DA shall issue instructions to their respective field organizations concerning the implementation of this MOA.

XII. EFFECTIVE DATE, AMENDMENT, AND TERMINATION

This MOA shall become effective when signed by the DA and FEMA. It may be modified or amended only by written agreement. Either the DA or FEMA may terminate this MOA by providing sixty (60) calendar days 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, FEMA shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any ongoing contracts. This agreement shall be reviewed triennially.

Federal Emergency Management
Agency

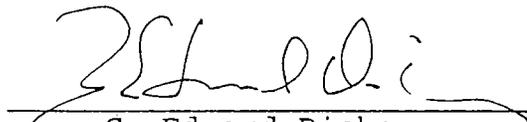


Richard W. Krimm

Deputy Associate Director,
State and Local Programs
and Support

Date: 4/1/93

U.S. Department of the Army



G. Edward Dickey

Acting Assistant Secretary
of the Army (Civil Works)

Date: Apr 8, 1993