

Document Version Date 11/01/2006

MEMORANDUM OF AGREEMENT

BETWEEN

CALIFORNIA DEPARTMENT OF WATER RESOURCES

AND

THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army Corps of Engineers' Institute for Water Resources ("IWR") and the California Department of Water Resources ("DWR") for the purposes of establishing a mutual framework governing the respective responsibilities of the parties for the application of the Shared Vision Planning (SVP) method to the California Water Plan and application and enhancement of IWR hydrologic modeling programs for use in DWR planning activities. This MOA is entered into pursuant to 31 U.S.C. § 6505 (Intergovernmental Cooperation Act) and section 133 of the California Water Code.

ARTICLE II - SCOPE

Products and services which IWR may provide under this MOA include technical assistance and training to DWR in the application of the Shared Vision Planning process to the California Water Plan and for the enhancement and application of IWR hydrologic modeling programs for use in DWR planning activities. Such support is designed to increase opportunities for public involvement in the development of the California Water Plan and other planning activities by DWR.

Nothing in this MOA shall be construed to require DWR to use the software or processes supplied by IWR or to require IWR to provide any other goods or services to DWR, except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent, effective, and timely communication between IWR and DWR, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs. The IWR has designated its technical representative to be Hal Cardwell, and Monica Franklin as representative for administrative and financial matters, and DWR has appointed Rich Juricich as its representative for technical matters and Tracey Lindberg as its representative for administrative and financial matters.

ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from DWR for assistance from IWR under this MOA, IWR and DWR may execute mutually agreed upon written Support Agreements (SAs). Support Agreements shall be executed using a form acceptable to both parties and shall include:

- a detailed scope of work statement;
- project and deliverable schedules;
- the amount of funds required and available to accomplish the scope of work as stated above;
- source of funds to be provided by DWR and date upon which funds expire for obligation purposes; and
- identification of individual project managers;
- types and frequencies of reports; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Products or services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each party authorized to execute that SA.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Institute for Water Resources

1. IWR shall provide DWR with products or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

2. IWR shall provide products or services either by contract or by in-house staff. DWR shall have the right to approve any contractor selected by IWR to perform or provide products or services under this MOA or any subsequent SA.

3. IWR shall provide periodic progress reports to DWR as specified in the applicable SA.

4. IWR shall inform the DWR of all contracts entered into under each SA.

B. Responsibilities of the Department of Water Resources.

1. DWR shall certify, prior to the execution of each SA under this MOA, that the SA complies with the applicable requirements of OMB Circular A-97.

2. DWR shall pay direct and indirect costs, as specified in the SA, associated with IWR's provisions of products or services under this MOA and shall certify, at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

3. DWR shall ensure that only authorized DWR contracting officers sign SAs.

4. DWR shall obtain for IWR all necessary access to all work sites and support facilities as needed, and shall perform all coordination with and obtain any permits from state and local agencies as necessary during the execution of each SA.

ARTICLE VI - FUNDING

DWR shall pay direct and indirect costs, as specified in the SA associated with IWR's provision of products or services under this MOA. Funds for the services to be provided by IWR shall be by check made out to "FAO, CEIWR-IWR" and sent by registered mail to:

United States Army Corps of Engineers
Institute for Water Resources
Attn: Budget Office
7701 Telegraph Road, Alexandria, VA 22315

Established Federal Government accounting procedures shall be used in management of the funds.

If IWR forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify DWR of the amount of additional funds necessary to complete the work under that SA. DWR shall either provide the additional funds to IWR, 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 SA. Any unused funds will either apply to a subsequent SA or be returned to DWR, as determined by DWR.

ARTICLE VII - APPLICABLE LAWS

This MOA 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 IWR shall be governed by Department of the Army policies and procedures unless specified otherwise. The authority of DWR to enter into this MOA and any SA shall be governed by applicable California law.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by third party contractors arising under or relating to contracts awarded by IWR in accordance with a support agreement shall be resolved in accordance with Federal law and the terms of the individual contract and corresponding support agreement. IWR 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 Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA, or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The Department of the Army shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The Department of the Army shall notify DWR of any such litigation and afford DWR 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, DWR and IWR 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 respective counsel.

ARTICLE X - RESPONSIBILITY FOR COSTS

DWR agrees to make payment of pay and all other identifiable costs of services provided by IWR consistent with the scope of work under any support agreement entered under this MOA. DWR will reimburse IWR for all costs associated with performance of these services. To the

extent permitted by law, IWR and DWR will assume liability for negligent actions of its own employees or agents that are the cause of injuries or damages that occur during the performance of work described in support agreements entered into pursuant to this MOA.

ARTICLE XI - PUBLIC INFORMATION

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

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

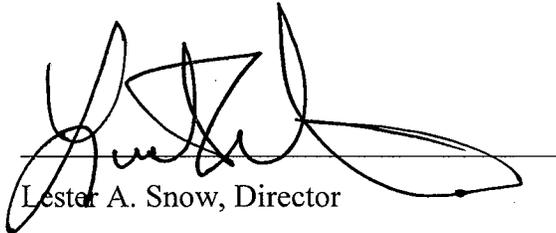
If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, ASSIGNMENT, 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, DWR shall continue to be responsible for all costs incurred by the Department of the Army under this MOA and for the costs of closing out or transferring any on-going contracts.

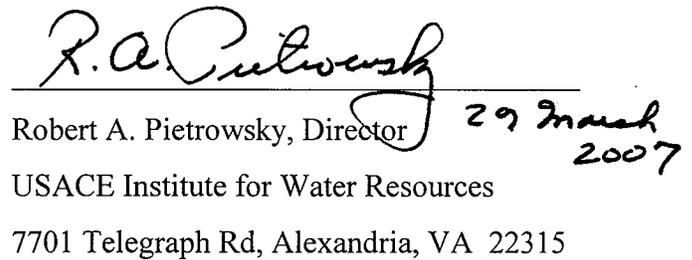
ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both DWR and IWR and will be in force for a period of five years.



Lester A. Snow, Director

CA Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001



Robert A. Pietrowsky, Director 29 March 2007

USACE Institute for Water Resources
7701 Telegraph Rd, Alexandria, VA 22315