

*Document Version Date 7/28/2004*  
MEMORANDUM OF AGREEMENT  
BETWEEN  
LOWER COLORADO RIVER AUTHORITY  
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 ("DA") Corps of Engineers' Hydrologic Engineering Center ("HEC") and the Lower Colorado River Authority ("LCRA") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of the Corps Water Management System ("CWMS") software installation and support. This MOA is entered into pursuant to 31 U.S.C. § 6505 (Intergovernmental Cooperation Act).

ARTICLE II - SCOPE

Goods and services which HEC may provide under this MOA include support in the deployment of CWMS at LCRA, which includes software installation and limited training, software support, software updates and betterments, and other services as may be agreed upon in the future. This MOA does not include the development or support of hydrologic and hydraulic engineering models, outside of software support.

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

ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between HEC and the LCRA, 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 HEC has designated its technical representative to be William Charley, and Diane Cuming as representative for administrative and financial matters. LCRA has designated Brian Good as Principal Representative.

ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from LCRA for assistance from HEC under this MOA, HEC and LCRA shall conclude mutually agreed upon written Support Agreements (SAs). Support Agreements will include:

- a detailed scope of work statement;
- schedules;
- funding ;

- the amount of funds required and available to accomplish the scope of work as stated above; 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.

Goods 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. In the case of conflict between this MOA and a SA, this MOA shall control.

## ARTICLE V - RESPONSIBILITIES OF THE PARTIES

### A. Responsibilities of the Hydrologic Engineering Center

1. HEC shall provide LCRA with goods 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. HEC shall provide goods or services either by contract or by in-house staff.
3. HEC shall provide periodic progress to LCRA as agreed to in the SA.
4. HEC shall inform the LCRA of all contracts entered into under each SA.

### B. Responsibilities of the Lower Colorado River Authority:

1. LCRA shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of OMB Circular A-97.
2. LCRA shall pay all costs associated with HEC's provisions of goods 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. LCRA shall ensure that only authorized LCRA contracting officers sign SAs.
4. LCRA shall obtain for HEC 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

LCRA shall pay all costs associated with HEC's provision of goods or services under this MOA. Funds for the services to be provided by HEC shall be by check made out to "FAO, CEIWR-HEC" and sent by registered mail to:

United States Army Corps of Engineers  
Hydrologic Engineering Center  
Attn: Darryl W. Davis, Director  
609 Second Street, Davis, CA 95616

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

If HEC forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify LCRA of the amount of additional funds necessary to complete the work under that SA. LCRA shall either provide the additional funds to HEC; 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 applied to a subsequent SA or be returned to LCRA.

#### 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 HEC shall be governed by Department of the Army policies and procedures.

#### ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by HEC shall be resolved in accordance with Federal law and the terms of the individual contract. HEC 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 LCRA of any such litigation and afford LCRA 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 LCRA and HEC 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

If liability of any kind is imposed on the United States relating to HEC's provision of goods or services under this MOA, HEC will accept accountability for its actions, but LCRA shall remain responsible as the program proponent for providing such funds as are 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 HEC 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.

## ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of LCRA's programs before other agencies, departments, and offices shall be the responsibility of LCRA. HEC may provide, upon request, any assistance necessary to support LCRA's justification or explanations of LCRA's programs conducted under this MOA. In general, LCRA 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. LCRA and HEC 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 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 LCRA and HEC 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, 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, LCRA 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 on-going contracts.

#### ARTICLE XIV - EFFECTIVE DATE

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

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Karen Bondy, P.E.  
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