

MEMORANDUM OF AGREEMENT
BETWEEN THE
STATE OF WYOMING
AND THE
U.S. ARMY CORPS OF ENGINEERS, OMAHA DISTRICT

1. **Parties.** This Memorandum of Agreement (hereinafter referred to as "MOA") is made and entered into by and between the State of Wyoming acting by and through the State Engineer's Office (hereinafter referred to as "State"), whose address is Herscheler Building 4E, Cheyenne, Wyoming 82002 and the U.S. Army Corps of Engineers, Omaha District (hereinafter referred to as "CENWO"), whose address is 215 North 17th Street, Omaha, NE 68102-4978.

2. **Purpose.** The purpose of this MOA is for establishing respective responsibilities of the parties for delivering and/or sharing digital data which includes geographic information data, services and other such related work as may be agreed upon in the future. The ability to share, exchange, and cooperatively generate digital database information will enable the State and the CENWO to effectively provide the public with a quality digital resource management data library. This MOA will provide the parties with a basis for the development or exchange of digital data on a common need basis. This will decrease the redundant development of the same thematic information between the State and the CENWO, and provide a cost savings to taxpayers.

3. **Term of Agreement.** This MOA shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOA, and shall remain in full force and effect until terminated. This MOA may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by hand or by certified mail.

4. **Payment.** No payment shall be made to either party by the other party as a direct result of this MOA. The State of Wyoming will not be charged for any data currently in possession of CENWO. The parties agree to exchange, without charge, nominal amounts of service and computer time, upon request, to retrieve and process data. For services exceeding these limits, the State of Wyoming and CENWO shall enter into separate individual support agreements (hereinafter referred to as "ISAs"), as further described in Section 8B below, specifying funding limitations, applicable appropriations, scopes of the services and such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested services.

5. **Communications and Coordination.** To provide for consistent and effective communication, the State and CENWO shall each appoint a field representative to discuss and consider activities that may be pursued under this MOA. The parties' field representatives as of April 30, 1999, are set forth in Appendix A of this MOA, which is attached hereto and incorporated herein. The field representatives shall coordinate all requests for assistance under this MOA and shall serve as a point of contact between the State of Wyoming and the CENWO on matters relating to this MOA. The State and CENWO shall each also designate a GIS coordinator. Each parties' GIS coordinator as of April 30, 1999, is set forth in Appendix B of

6. **Project Management Plan.** It is anticipated that numerous requests for assistance and data sharing between the CENWO and State can be fulfilled with a nominal amount of staff labor, reproduction, and computer processing time. These requests can be dealt with verbally between the field representatives. The GIS data sharing requests shall be communicated directly between the GIS coordinators of the respective organizations. The GIS coordinators will then be responsible for monitoring work accomplishment through normal workflow channels. For services exceeding these limits, the State and CENWO field representatives shall prepare agreed upon ISAs pertaining to data and application development and/or data management as described in Section 7B below.

7. **Assistance.** The CENWO shall furnish all assistance under this MOA in accordance with applicable U.S. laws and regulations, and any applicable U.S. executive agreements. Unless otherwise required by law, all contract work undertaken by the CENWO shall be performed in accordance with the CENWO procurement and claims policies and procedures.

8. **Special Provisions.**

A. **Authority** This MOA is entered into pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505), the Chief's Economy in Government Act (10 U.S.C. 3036(d)), and OMB, DoD, DFAS and Corps of Engineers regulations as noted in appendix C. The State of Wyoming is authorized to enter into this MOA pursuant to Executive Order 1994-03.

B. **Individual Support Agreements (ISAs).** For services exceeding a nominal effort, the State of Wyoming and CENWO field representatives shall prepare agreed upon ISAs pertaining to data and application development and/or data management. The ISA shall specify the funding limitations and the applicable appropriation. The ISA shall describe in detail the scope of the services to be provided, schedules, necessary funding arrangements, individual project managers, and such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested services. Charges may include labor, materials and computer usage time to retrieve, organize, reproduce, transmit and otherwise process the requested data. No payment obligation shall be incurred by either party until such time that an ISA has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by A & I Procurement, and approved by the Governor of the State of Wyoming or his designee if required by Wyoming Statute 0-2-1016(b)(iv)(D).

Under the ISA, the State of Wyoming will be charged for all direct and indirect costs attributable to fulfilling any specific request requiring more than a nominal amount of effort. These costs will include labor, material and computer usage time to retrieve, organize, reproduce, transmit and otherwise process the requested data. ISAs will specify the funding limitations. In accordance with federal circulars and regulations cited in appendix C, ISAs will be accompanied by State cash payment in advance of federal obligations being incurred. All advance payments will be accounted for in accordance with normal accounting procedures and federal regulations; excess funds remaining at the completion of any ISA will be returned to the State. The CENWO shall utilize established accounting systems to establish and maintain records and receipts of the

expenditure of all funds provided by the State.

Direct costs are the costs that can be directly identified with and charged to the work under the ISA. Examples of such costs are salaries, wages, technical services, materials, travel and transportation (including permanent change of station costs), communications, and any facilities and equipment expressly approved for purchase under the ISA. In addition, any extraordinary costs such as hiring of outside experts and consultants (including legal support) to analyze claims and/or to testify before a board or court and costs directly identified for termination of the agreement are considered direct costs under this agreement.

Indirect costs are the overhead (including general and administrative and departmental) costs that cannot be directly identified to the work under the provision of assistance and are distributed/charged based on a predetermined rate against direct labor. Examples of such costs are salaries, equipment, materials, etc., of administrative support offices.

Expenditure limits established in the ISA will not be exceeded without prior approval from the State of Wyoming. If the actual cost to the CENWO is forecast to exceed the amount of funds available, the CENWO shall promptly notify the State of the amount of additional funding necessary to pay for the assistance. The State shall either provide the additional funds to the CENWO, or require that the scope of the assistance be limited to that which can be financed by the available funds, or direct termination of the project.

The CENWO shall provide the State with project progress, financial, and related status reports on tasks agreed upon in the ISAs, including providing financial reports on all funds received, obligated, and expended. Records shall be maintained in sufficient detail to permit identification of the nature of expenditures made by the CENWO and shall be made available for inspection by the State upon request. Upon furnishing the assistance contemplated by the ISA, the CENWO shall conduct a final accounting within 100 days of project completion to determine the actual costs of the assistance provided.

C. No Requirement to Use Services. Nothing in this MOA can be or should be construed to require the State to use the services of CENWO, or require the CENWO to accept assignments from the State.

D. No Warranties of Accuracy. No warranty is made by the State or the CENWO as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data.

E. Public Information. Justification and explanation of the State programs shall be the responsibility of the State. The CENWO will make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process.

9. General Provisions.

A. Amendments. Either party may request changes in this MOA. Any changes, modifications, revisions or amendments to this MOA which are mutually agreed upon by and between the parties to this MOA shall be incorporated by written instrument, executed and

signed by all parties to this MOA.

B. Entirety of Agreement. This MOA, consisting of five (5) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreement, whether written or oral, and includes appendices A, B, and C, all consisting of six (6) through nine (9).

C. Prior Approval. This MOA shall not be binding upon either party unless this MOA has been reduced to writing before performance begins as described under the terms of this MOA, and unless this MOA is approved as to form by the Attorney General or his representative.

D. Severability. Should any portion of this MOA be judicially determined to be illegal or unenforceable, the remainder of the MOA shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

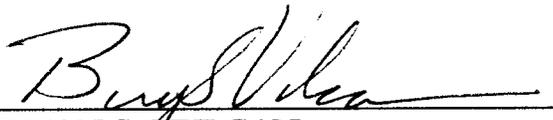
E. Sovereign Immunity. The State of Wyoming, the Wyoming State Engineer, the United States and the U.S. Army Corps of Engineers do not waive their sovereign immunity by entering into this MOA, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOA.

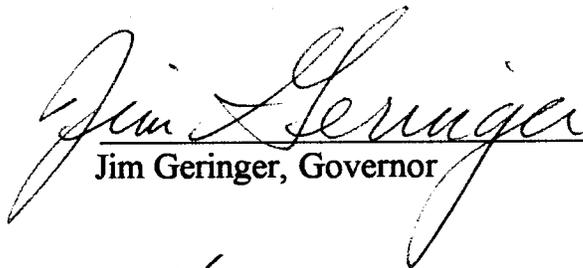
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8. **Signatures.** In witness whereof, the parties to this MOA through their duly authorized representatives have executed this MOA on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOA as set forth herein.

U.S. Army Corps of Engineers
Omaha District

State of Wyoming


BRYAN S. VULCAN
LTC, EN
Deputy Commander


Jim Geringer, Governor

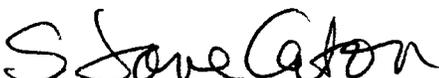
24 May 1999
Date

May 24, 1999
Date


Gordon W. Fassett, State Engineer

MAY 24, 1999
Date

Attorney General's Office Approval as to form


S. Jane Caton, Senior Assistant Attorney General

May 24, 1999
Date

The MOA date is the date of the last signature affixed to this page.

The Field Representatives as of April 30, 1999, are:

Jon E. Kragt
U.S. Army Corps of Engineers, Omaha District
CENWO-IM (KRAFT)
215 North 17th Street
Omaha, NE 68102-4978
Phone: (402) 221-4614
Jon.E.Kragt@usace.army.mil
<http://wwwcenwo.nwo.usace.army.mil>

Nancy McCann
State Engineer's Office
Herschler Building 4E
Cheyenne, WY 82002
Phones: (307)-777-5958
(307)-777-5451 (Fax)

e-mail: nmccan@missc.state.wy.us

The GIS Coordinators as of April 30, 1999, are:

Jon E. Kragt
GIS Coordinator
U.S. Army Corps of Engineers
Omaha District
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(307)-777-5852 (Fax)

e-mail: bsaund@missc.state.wy.us

Governing financial regulations:

- The Intergovernmental Cooperation Act (31 U.S.C. 6505), which authorizes the head of an Executive Agency to provide certain specialized or technical services to a State or local government.
- The Chief's Economy in Government Act (10 U.S.C. 3036(d)) which provides authority for USACE to be the construction contracting agency for a State or local government, provided the work involves Federal funding assistance and the department or agency providing the Federal funding does not object to the provision of those services by USACE.
- Office of Management and Budget (OMB) Circular A-97, "Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968," Jul 69, revised Mar 81.
- Office of Management and Budget (OMB) Circular A-34, "Instructions on Budget Execution," Nov 97, which notes "Revolving funds. - Statutes establishing revolving funds normally authorize repayments to be credited to the revolving fund that performs the work. Revolving funds operate on a reimbursable basis when working capital (undisbursed cash) is available. Otherwise, advance payments must accompany orders. Revolving funds may not disburse into a negative cash position in anticipation of Federal or non-Federal reimbursements." (11.2.d.1.B) and "Payments from the public. -- Normally, obligations may be incurred against 'orders' from the public provided the order is accompanied by an advance, unless otherwise permitted by law, and in a particular case, by longstanding, generally accepted practice." (11.2.d.1.C)
- DoD Instruction 7000.14-R, DoD Financial Management Regulation: Volume 11A, Reimbursable Operations, Policy and Procedures, May 98, Chapter 11, "Special or Technical Services to State and Local Governments." Volume 14, Administrative Control of Funds and Antideficiency Act Violations, Mar 98, Chapter 1, "Administrative Control of Appropriations," which notes, "Orders from the public, including local and State governments and international organizations (e.g. United Nations), provide a budgetary resource only to the extent accompanied by an advance payment of cash which is received and credited to the (revolving fund) account. (8.d.(2)).
- Defense Finance and Accounting Service (DFAS) Regulation 37-1 (formerly Army Regulation 37-1), Sep 95, which notes that DoD agencies must: "Increase funds available upon receipt of orders from state, local, or foreign governments... only when cash is received." (6-22.a.); and "Require prepayments to pay for services requests by private parties and customers outside of the Federal Government (12-5.g).

- Corps of Engineers Regulation 1140-1-211, "Work for Others, Support for Others," June 92. This regulation notes, "12. Funding. As a general principal, USACE should recover all applicable reimbursable costs for SFO work. For non-Federal reimbursable work, funds must be on deposit with the Treasury in advance of USACE Commands incurring obligations for the work, in accordance with AR (now DFAS) 37-1, unless there is specific statutory authority to the contrary."
- Corps of Engineers Regulation 37-2-10, Change 73, Sep 92: "19-3b(7) When work is performed for customers outside the Federal Government, cash advances are required. This requirement in OMB Circular A-34 results in not having to use Federal resource to provide the service, which reduces Federal borrowing. At the same time, this action increases the Revolving Fund current assets to meet the requirements of the work."