

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COEUR D'ALENE DISTRICT, COTTONWOOD FIELD OFFICE
AND
UNITED STATES ARMY CORPS OF ENGINEERS
WALLA WALLA DISTRICT
AGREEMENT# 00000102-0000-000

ARTICLE I

PURPOSE:

This Memorandum of Agreement (MOA) is entered into by and between the United States Army Corps of Engineers, Walla Walla District (CENWW) and the United States Department of Interior, Bureau of Land Management, Coeur D'Alene District, Cottonwood Field Office (BLM-CFO) for the purpose of establishing a mutual framework governing the respective responsibilities of the parties relating to the administration of specialized timber sales conducted on Corps lands.

This MOA also establishes the respective responsibilities of the parties for delivering technical assistance and related services to accomplish specific tasks described in Support Agreement(s) (SA) to be issued by CENWW to BLM-CFO for execution. Additionally, each SA will incorporate this MOA and will be binding when accepted and signed by authorized representatives of both parties. Finally, each SA issued and accepted by the parties to this MOA shall contain a very specific description of the supplies or services, which shall constitute the deliverables, as set forth in the SA Scopes of Work.

Each SA package will contain a Military Interdepartmental Purchase Request (MIPR), a signed Determinations and Finding form, Scope of Work, Work Proposal, and Detailed Budget. The deliverables, funding amount, and period of performance will be clearly stated in each SA.

ARTICLE II.

APPLICABLE LAWS, REGULATIONS, AND AUTHORITIES

1. This MOA is entered into pursuant to the Economy in Government Act, 31 U.S.C. 1535, which authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition if:
 - (a) Funds are available;
 - (b) The ordering agency determines the order is in the best interest of the United States Government;
 - (c) The ordering agency determines ordered goods or services cannot be provided by contract as conveniently or cheaply by a private source (payments must be made on the basis of the actual cost of goods or services provided); and
 - (d) The agency to fill the order is able to provide or acquire through a contract the goods or services ordered.

2. CENWW is the ordering agency and BLM-CFO is the servicing agency
3. CENWW's programmatic legal authority to fund such good/services is pursuant to the Flood Control Act of 1962, P.L. 87-874 (October 23, 1962).
4. BLM-CFO's programmatic legal authority under which it is providing requested goods/services is the Act of July 31, 1947, (61 Stat. 681), as amended, (30 U.S.C. Secs. 601-604), relating to other lands under the jurisdiction of the Bureau of Land Management, and the regulations as set forth in 43 CFR Group 5400.03 (a) (2).
5. For assisted acquisitions, the requirement will be processed in accordance with FAR Part 17, AFARS Part 5117, Section 854 of the Ronald W. Reagan National Defense Authorization Act of 2005 (PL 108-375), the Army Policy memorandum on Proper Use of Non-DoD Contracts, dated 12 July 2005. Any order under this Agreement will be properly funded with Operations and Maintenance appropriation or Timber Sale Proceeds (TSP). All orders shall be compliant with Army procedures for placement of orders on the Army's behalf by a non-DOD organization.
6. 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 BLM-CFO shall be governed by BLM-CFO's policies and procedures.

ARTICLE III
INTERAGENCY COMMUNICATIONS:

To provide for consistent and effective communications the parties have appointed representatives to discuss and consider activities that may be pursued under this MOA. The parties' representatives are as follows:

<p><u>CENWW Project Contact</u> Robert J. Tardif Forester Dworshak Dam and Reservoir P.O. Box 48 Ahsahka, Idaho 83520 Phone: (208) 476-1245 Fax: (208) 476-1219 E-Mail: Robert.J.Tardif@usace.army.mil</p>	<p><u>BLM-CFO Project Contact</u> Robbin Boyce Assistant Field Manager Cottonwood Field Office 1 Butte Drive Cottonwood, Idaho 83522 Phone: (208) 962-3793 Fax: (208) 962-3275 E-Mail: Robbin_Boyce@blm.gov</p>
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ARTICLE IV
PROVISIONS OF ASSISTANCE:

Nothing in this MOA is intended to affect other arrangements between the parties.

A. Responsibilities of CENWW

1. CENWW shall have the responsibility for initiating SAs, developing project concepts, and creating the scope of work statements as well as determining whether the requested assistance

conflicts with another agency's authority or responsibility assigned by law. The SAs will be on ENG FORM 4914-R, which is the Corps of Engineers' approved form for interagency agreements. CENWW will also advise BLM-CFO of all findings of fact, determinations and recommendations made, together with any other actions taken, which may affect an SA accepted by BLM-CFO. CENWW shall also have sole responsibility for determining the basis for acceptance of the performance/supplies.

2. CENWW shall pay all costs associated with BLM-CFO's provision of goods and services under this MOA and certifies at the time of signature of the Military Interdepartmental Purchase Request (MIPR DD Form 448-2) the availability of funds necessary to accomplish the work.
3. If BLM-CFO will be contracting out certain items under this MOA, CENWW will ensure that this MOA conforms to the requirements of FAR subpart 7.3 (Contractor v. Government Performance), as required by FAR 17.502(c). BLM-CFO will provide the assistance necessary to comply with conditions or limitations applicable to the funds provided by CENWW, including special terms and conditions that must be included in any agreement between the BLM-CFO and a contractor.
4. In accordance with Secretary of Defense Memorandum (Oct 29, 2004), the Assistant Secretary of the Army for Acquisition Logistics and Technology (ASAALT) Memorandum on the Proper Use of Non-DoD Contracts (July 12, 2005), and Section 854 of the National Defense Authorization Act (Public Law 108-375), additional CENWW review and approval is required for all work that requires the use of non-DOD contracts. The intent of this guidance is to ensure the use of non-DOD contracts does not circumvent the conditions and limitations of these funds. The CENWW will prepare the justification for approval and the BLM-CFO will provide the appropriate documentation, as necessary, to assist CENWW's review.
5. For all assisted acquisitions over the simplified acquisition threshold (\$150,000), the BLM-CFO will provide CENWW with information on its existing or future contracts so CENWW can ensure the services/supplies requested in the MOA are within the scope of the non-DOD contract being utilized.
6. The CENWW is required to provide an annual report to DOD on service charges for assisted acquisition of services and supplies for amounts greater than the simplified acquisition threshold. The BLM-CFO will assist the CENWW in preparing the annual report by providing documentation on service charges for assisted acquisitions under this MOA, thirty days following the close out of this MOA.

B. Responsibilities of BLM-CFO

1. BLM-CFO will provide CENWW with goods or services in accordance with the purpose, terms, conditions, of this MOA.
2. Cost estimates: Upon receipt of a proposed SA or draft scope of work, the BLM-CFO shall provide a detailed cost estimate, to include direct and indirect costs, and any service or overhead charges.

3. Safety: USFS-CWS shall comply with all requirements of the Corps of Engineers safety manual EM 385-1-1.
4. Contract Documents: BLM-CFO shall identify and explain any third party contracts task orders and/or modifications to existing contracts required for implementation of an MOA prior to their issuance.
5. Acknowledgement: The BLM-CFO hereby acknowledges the CENWW does not have authority to issue grants or funds via grant agreements directly or through use of the other federal agencies via the Economy Act. Therefore, BLM-CFO hereby agrees CENWW funds will not be utilized directly or indirectly in support of any grant or cooperative agreement administered by BLM-CFO. The BLM-CFO further warrants any CENWW funds transferred to a third party will be obligated in accordance with the Competition In Contracting Act (41 U.S.C. 253).

ARTICLE V
PAYMENT AND FUNDING:

A. Payment: CENWW shall pay all costs associated with BLM-CFO’s provision of goods and services under this MOA. Services/supplies under this MOA are paid on a reimbursable basis at the end of each billing cycle. BLM-CFO shall use the Intragovernmental Payment and Collection System (IPAC) to bill CENWW quarterly for costs incurred using the automated Standard Form (SF) 1081, Detailed Billing Report that identifies costs and credits. BLM-CFO will send a cost report (quarterly break down of the costs of actual operations) and accruals to the CENWW representative for each SA within 30 days of the end of each quarter for work performed during the previous quarter. CENWW shall reimburse BLM-CFO within 30 days of receipt of a proper SF 1081.

B. Funding: The IPAC billing document which the USFS-CWF prepares must contain the following information:

BLM-CFO Information

Treasury Symbol: 14X1109
 DUNS/BPN: 153866389
 EIN: 84-0437540
 ALC: 14-11-0008
 OMB Max Code: 010-14
 BETC: COLL

CENWW Information:

Treasury Symbol: 96X3123
 DUNS/BPN: 190639468
 EIN: 91-0828090
 Date Funds Expire: *varied date*
 OMB Max Code: 202-00
 BETC: DISB

1. A DD Form 448-2 will be provided to show acceptance of the Economy Act Order. CENWW shall provide the necessary funds by providing BLM-CFO an executed and signed DD Form 448-2 (MIPR) which will contain an assigned fund citation. Receipt of the MIPR shall constitute receipt of a valid order for reimburseable services under this MOA. BLM-CFO shall prepare and return to CENWW a DD Form 448-2 to verify acceptance of the tasking and funding required. If the actual cost to BLM-CFO is forecast to exceed the amount of funds available, the BLM-CFO shall promptly notify CENWW of the amount of additional funding necessary to pay for the assistance. The CENWW shall either provide the additional funds to the BLM-CFO within thirty (30) calendar days thereafter, or require the scope of the assistance be limited to that which can be financed by the available funds, or CENWW will direct termination of the remaining work under this MOA pursuant to Article XVI. If additional funds are provided to the BLM-CFO or the scope of work is narrowed, the parties shall amend the agreement accordingly

2. BLM-CFO will achieve full cost recovery for the goods and services it provides. The BLM-CFO will utilize the funds issued by CENWW to cover all BLM-CFO expenses including, but not limited to, equipment, salaries, travel, per diem, administrative overhead, and indirect costs pursuant to this MOA. Labor costs shall be identified separate and distinct from other BLM-CFO administrative costs. Established BLM-CFO accounting procedures will be used for establishing and identifying both labor and administrative costs.

3. Within 90 days of completing the work under this MOA, or termination of this MOA, BLM-CFO shall conduct a final accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, BLM-CFO shall return to CENWW any funds advanced in excess of the actual costs as then known, or CENWW shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit CENWW's duty in accordance with Article VII to pay for any costs, such as contract claims or other liability, which may become known after final accounting.

4. Performance by the BLM-CFO or its contractor shall continue until one or more of the following conditions are met:

- a) Completion of the task/project as defined in the scope of work, and within the stated performance period; or
- b) Termination of the MOA by BLM-CFO or CENWW pursuant to Article XVI.

ARTICLE VI **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 BLM-CFO shall be governed by BLM-CFO's policies and procedures.

ARTICLE VII **CONTRACT CLAIMS AND DISPUTES:**

All claims and disputes by contractors arising under or relating to contracts awarded under this MOA shall be resolved in accordance with Federal law and the terms of the individual contract. BLM-CFO shall have dispute resolution authority for these claims and actions. Any contracting officer's decision may be appealed by the contractor to the extent provided by the Contract Disputes Act of 1978 (41 U.S.C. §§601-613).

BLM-CFO and its cognizant counsel shall be responsible for handling all litigation involving contract disputes and appeals, and for coordinating with the Department of Justice, as appropriate. BLM-CFO shall notify CENWW of any such litigation and afford CENWW an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations, as appropriate.

ARTICLE VIII **RESPONSIBILITY FOR COSTS:**

A. If liability of any kind is imposed on the United States relating to BLM-CFO's provision of goods or services under this MOA, BLM-CFO will accept accountability for its actions, but the CENWW

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 CENWW have insufficient funds legally available, including funds that may be made legally through transfer, reprogramming or other means, it remains responsible for seeking additional funds from Congress for such purposes, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

B. Notwithstanding the above, this MOA does not confer any liability upon CENWW for claims payable by the BLM-CFO under the Federal Torts Claims Act. Nothing in this MOA is intended or will be construed to create any rights or remedies for any third party, and no third party is intended to be a beneficiary of this MOA.

ARTICLE IX

RECORDS AND REPORTS:

BLM-CFO shall establish and maintain records and receipts of the expenditure of all funds provided by CENWW. Cost reports, accruals, invoices and records shall be maintained in sufficient detail and provided to the CENWW on a quarterly basis in order to permit identification of the nature of the expenditures made by the BLM-CFO. The BLM-CFO will provide status reports as identified in this MOA

ARTICLE X

EQUIPMENT:

All non-expendable personal property purchased under the direction of the CENWW (specialized equipment determined by CENWW to be necessary and is required to accomplish the work identified in this MOA) by BLM-CFO and through obligation of CENWW, shall remain the property of CENWW. Until the completion of this MOA, identified property will be tracked and inventoried by BLM-CFO under their inventory system and by the laws and regulations to which BLM-CFO is bound.

A copy of procurement documents (invoices) ordering such items will be sent to the CENWW representative. Following receipt of the invoice the CENWW will send BLM-CFO a bar code identification sticker for that equipment. This bar code identifies the equipment as property of CENWW and it shall be placed on the equipment as soon as possible. The BLM-CFO shall be responsible for non-expendable property. Non-expendable property lost, damaged or destroyed by means other than reasonable wear and tear, prior to the completion of the MOA, may be required to be replaced by BLM-CFO, or reimbursement of the fair market value may be paid to CENWW. The BLM-CFO shall immediately notify the CENWW representative who, in turn, will contact the Logistics Management Office in the event of lost, damaged or destroyed property. The CENWW will advise the BLM-CFO on property disposition after accountability processes are complete.

In addition, non-expendable property owned and furnished by CENWW may be loaned to BLM-CFO through use of an official COE sub hand-receipt document for accomplishment of this MOA and the same conditions apply as stated in the preceding paragraph.

ARTICLE XI
DISPUTE RESOLUTION:

The parties agree that, in the event of a dispute between the parties, CENWW and BLM-CFO 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. Should disagreement arise on the interpretation of the provisions in this agreement, the dispute shall be resolved pursuant to the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2011-04, Section VII (Resolving Intragovernmental Disputes and Major Differences).

ARTICLE XII
PUBLIC INFORMATION:

Justification and explanation of CENWW programs before Congress and the Executive Branch shall be the responsibility of CENWW. The BLM-CFO may assist CENWW in responding to Congressional and Executive Branch inquiries by preparing and furnishing CENWW draft responses for review and final disposition. The BLM-CFO further agrees to provide all information required to support contacts with Congress and the Executive Branch.

CENWW will retain all responsibility for CENWW public announcements. Prior to issuing public announcements pertaining to services related to this MOA, CENWW shall coordinate with BLM-CFO. Any public announcements or response to any inquiries relating to any work performed under the terms of this MOA will be coordinated and agreed upon by both parties.

ARTICLE XIII
CONFIDENTIALITY:

To the extent permitted by the law governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV.
SECURITY AND CLASSIFICATION

CENWW will provide to BLM-CFO 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 procedures, policies, and regulations. Before any classified work under this project is initiated, BLM-CFO and CENWW's security representatives will agree that appropriate security requirements/procedures are established.

ARTICLE XV.
MODIFICATIONS:

Modifications within the scope of this agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change. The Corps is not obligated to fund any changes not properly approved in advance.

ARTICLE XVI.
TERMINATION:

This MOA is effective upon the date of the last signature by the parties and shall remain effective until terminated in accordance with the terms set forth herein. This MOA may be modified by mutual consent of both parties.

This MOA may be terminated upon 90 calendar day written notice by either party. If this agreement is cancelled, any implementing contract/order may also be cancelled. If the MOA is terminated, the agencies shall agree to the terms of the termination, including costs attributable to each party and the deposition of the awarded and pending actions. If the Servicing Agency incurs costs due to the Requesting Agency's failure to give the requisite notice of its intent to terminate the MOA, the Requesting Agency shall pay any actual costs incurred by the Servicing Agency as a result of the delay in notification, provided such costs are directly attributable to the failure to give notice.

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

ARTICLE XVII

CONTACTS: *Note: This section maybe placed on the MIPR as long as information is updated/current*

The contacts of each party to this agreement are: [NOTE: include both administrative and technical points of contact.]

<u>CENWW Budget and Billing Contact</u> Shelly West Administrative Officer Dworshak Dam and Reservoir P.O. Box 48 Ahsahka, Idaho 83520 Phone: (208) 476-1254 Fax: (208) 476-1262 E-Mail: Shely.J.West@usace.army.mil	<u>BLM-CFO Budget and Billing Contact</u> Ginny Hoffman Budget Analyst Bureau of Land Management 1387 South Vinnell Boise, Idaho 83709 Phone: (208) 373-4035 Fax: (208) 373-3807 E-Mail: Virginia_Hoffman@blm.gov
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The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

Will Runnoe
Field Manager
Bureau of Land Management, Coeur D' Alene District
Cottonwood Field Office
1 Butte Drive
Cottonwood, Idaho 83522
Phone: (208) 962-3256

Date

Dr. James J. Hearn
Director of Regional Business
U.S. Army Corps of Engineers,
Northwestern Division

Date