

MEMORANDUM OF AGREEMENT
BETWEEN

SAUVIE ISLAND DRAINAGE IMPROVEMENT COMPANY
(COLUMBIA AND MULTNOMAH COUNTIES, OREGON)
AND
THE DEPARTMENT OF THE ARMY

FOR PHASE 1 AND PHASE 2 LEVEE SYSTEM EVALUATION OF CORPS BUILT
LEVEES

PURSUANT TO 44 CFR 65.10(e), 10 USC 3036(d), and EC 1110-2-6067,
CECW-P/CECW-E MEMORANDUM 8/15/2006
AUTHORITY & FUNDING GUIDANCE FOR USACE LEVEE SYSTEM EVALUATION

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and SAUVIE ISLAND DRAINAGE IMPROVEMENT COMPANY ("SIDIC"), COLUMBIA AND MULTNOMAH COUNTIES, OREGON, for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA assistance with the intent of providing information sufficient for SIDIC to submit to the Federal Emergency Management Association (FEMA) for consideration under 44 CFR 65.10 for the purposes of the National Flood Insurance Program. Under the terms of this agreement, the DA will perform any necessary levee evaluations. This MOA is entered into pursuant to 10 U.S.C § 3036(d).

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include technical efforts to perform a Phase 2 levee evaluation studies in accordance with 44 CFR 65.10 and EC 1110-2-6067 with the intent to fully evaluate the SIDIC's Flood Protection Project under 44 CFR 65.10(e), and such other related goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require SIDIC to use the DA or to require the DA to provide any goods or services to SIDIC, except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - INTERGOVERNMENTAL COMMUNICATIONS

To provide for consistent and effective communication between the DA and SIDIC, 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.

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ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from SIDIC for DA assistance under this MOA, the DA and SIDIC shall conclude mutually agreed upon written SAs. Those SAs must be on either Engineer Form 4914-R or similar document containing the same information as Department of Defense Form 1144. SAs must include:

- a) Detailed scope of work statement
- b) Schedules
- c) Funding arrangements [funding must be received in advance of obligation]
- d) Amount of funds required and available to accomplish the scope of work as stated above
- e) SIDIC's fund citation and the date upon which the cited funds expire for obligation purposes
- f) Identification of individual project managers
- g) Types and frequencies of reports
- h) Identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits
- i) Procedures for amending or modifying the SA
- j) 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. Upon signature by each party's representative, a SA shall constitute a valid order under 10 USC 3036(d). 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 Department of the Army

1. The DA shall provide SIDIC 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. The DA shall identify authorized DA representatives to sign SAs.
3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.
4. The DA shall provide detailed periodic progress, financial, and other reports to DD as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures.
5. The DA shall inform SIDIC of all contracts entered into under each SA.

B. Responsibilities of SIDIC:

1. SIDIC shall certify, prior to the execution of each SA under this MOA that the SA complies with the requirements of ER 1140-1-211.
2. SIDIC shall pay all costs associated with the DA'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. SIDIC shall ensure that only authorized SIDIC contracting officers sign SAs.
4. SIDIC shall develop draft SAs to include scope of work statements.
5. SIDIC shall obtain for the DA all necessary real estate interests and access to all work sites and support facilities, 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

SIDIC shall pay all costs associated with the DA's provision of goods or services under this MOA on a 100% advance reimbursable basis. Funds for the services to be provided by the DA shall be deposited to an escrow account at an approved Depository Bank. Funds will be transferred from the escrow account and deposited with the US Treasury prior to incurrence of any obligation by the DA.

Under 10 USC § 3036(d), any reimbursable work to be undertaken by the Corps of Engineers on behalf of non-Federal interests (SIDIC) must involve Federal assistance. For the purposes of this MOA, SIDIC has received Federal funding from the NATIONAL RESOURCES CONSERVATION SERVICE (NRCS), which has approved the use of these funds for the purpose outlined in Article I of this MOA. SIDIC will be responsible for all costs under this MOA including any amount above and beyond funding available to them from NRCS.

The DA shall request transfer of funds from the Escrow Account to the US Treasury in sufficient time to ensure that necessary funds are available within the US Treasury in advance of obligations necessary to the provision of services. Established Federal Government accounting procedures shall be used.

If the DA forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify SIDIC of the amount of additional funds necessary to complete the work under that SA. SIDIC shall either provide the additional funds to the DA, 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.

Within 90 days of completing the work under a SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the

DA shall return to SIDIC any funds advanced in excess of the actual costs as then known, or SIDIC shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit SIDIC's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

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 the DA shall be governed by DA policies and procedures.

ARTICLE VIII - 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 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. §§ 7101-7109). 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 DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify SIDIC of any such litigation and afford SIDIC 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, SIDIC and the DA 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 the SIDIC's Chairman and the District Commander for resolution.

ARTICLE X - RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, SIDIC 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 SIDIC 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 SIDIC's programs before other agencies, departments, and offices shall be the responsibility of SIDIC. The DA may provide, upon request, any assistance necessary to support SIDIC's justification or explanations of SIDIC's programs conducted under this MOA. In general, SIDIC is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. SIDIC or the DA 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 SIDIC and the DA.

B. Survival

Unless the parties agree otherwise, 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, SIDIC 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 SIDIC and the DA.

Sauvie Island Drainage Improvement Company
Columbia and Multnomah Counties
State of Oregon

David Fazio

David Fazio
Chairman
Sauvie Island Drainage Improvement Co.

DATE: 10-29-2015

U.S. Department of the Army

Jose L. Aguilar

Jose L. Aguilar
Colonel, U.S. Army Corps of Engineers
District Commander

DATE: 2015 11 10

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