Department of Energy
Morgantown Energy Technology Center
P.O. Box 880
3610 Collins Ferry Road
Morgantown, West Virginia 26507-0880

August 4, 1995

Mr. Mark Kessinger
U.S. Army Corps of Engineerings
Huntington District
502 8th Street
Huntington, WV 25701-2070

Dear Mark:

Enclosed please find a fully executed copy of the Memorandum of Agreement between the United States Department of Energy, Morgantown Energy Technology Center and the United States Department of Army. We look forward to working with you on this agreement.

If you have any questions regarding the enclosure, contact me.

Sincerely,

R. Diane Manilla
Contract Specialist
Acquisition and Assistance Division

Telephone (304)285-4086 • FAX (304)285-4683 • INTERNET Rmanil@METC.DOE.GOV

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF ENERGY
MORGANTOWN ENERGY OF TECHNOLOGY
AND
THE UNITED STATES 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") and the U.S. Department of Energy, Morgantown Energy Technology Center ("DOE/METC") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties. The DOE/METC will support the DA as requested in the assessment of advanced hazardous waste characterization and remediation technologies. This MOA is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and the National Defense Authorization Act of 1991 (Pub. L. 101-510, § 3132), which authorized laboratory-directed research and development.

ARTICLE II - SCOPE

The DOE/METC shall furnish personnel, materials, and services necessary to provide technical assistance to the DA on the assessment of advanced hazardous waste characterization and remediation technologies. These technologies have been or are being developed under either the DOE/METC Fossil Energy (FE) or Environmental Restoration and Waste Management (EM) Programs for potential application to contaminated sites. Specific support will be requested through individual WOs and the DOE/METC shall assist the DA in determining potential applicability and effectiveness of advanced hazardous waste characterization and remediation technologies. These technologies shall have potential application to the remediation of contaminated ground water and/or soil. This work will include, but not be limited to:

- Coordinating demonstrations of advanced technology at DA designated sites.

- Providing updated information on the status and progress of potentially applicable technologies.

- Coordinating tests of potential technologies so that results will be useful to the DA in its assessment process.

The U.S. Army Corps of Engineers, Huntington District (CEORH) will serve as the point of contact for the DA. The proposed use of DOE/METC's expertise in advanced hazardous waste characterization

and remediation technologies by any Corps office will be coordinated through CEORH. Work Orders (WO), as described below, shall define deliverable requirements.

Nothing in this MOA shall be construed to require the DA to use the DOE/METC or to require the DOE/METC to provide any goods or services to the DA, except as may be set forth in the WO.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the DOE/METC, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The DA Principal Representative will be the Chief of Engineering Division at the Huntington District Corps of Engineers and the DOE/METC Principal Representative will be the Contracting Officer. Additional representatives may also be appointed to serve as points of contact on WOs.

ARTICLE IV - WORK ORDERS

In response to requests from the DA for DOE/METC assistance under this MOA, the DA and the DOE/METC shall conclude mutually agreed upon written WOs, which shall include the following:

- a detailed scope of work statement;

- a schedule for accomplishing the work;

- funding arrangements, including whether payment shall be in advance or by reimbursement;

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

- the DA's fund citation and the date upon which the cited funds expire for obligation purposes;

- identification of individual project managers;

- identification of types of contracts to be used (if known);

- types and frequencies of reports;

- 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;

- procedures for amending or modifying the WO;

- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

The DOE/METC will be issued WOs from the DA on ENG Form 4914-R (U.S. Army Corps of Engineers, Interagency Agreement). These documents also will serve to confirm agreement, understanding, and acceptance of the specific work requirements. No work under this agreement will commence until a properly executed WO is made available to DOE/METC and funds are obligated to cover expenses anticipated for the initial period of performance.

Goods or services shall be provided under this MOA only after an appropriate WO has been signed by a representative of each party authorized to execute that WO. Upon signature by each parties' representative, a WO shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and a WO, this MOA shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of Energy, Morgantown Energy Technology Center

The DOE/METC shall provide the DA with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in the WOs.

The DOE/METC shall identify DOE/METC contracting officers authorized to sign WOs.

The DOE/METC shall use its best efforts to provide goods or services either by contract or by in-house effort.

The DOE/METC shall provide detailed periodic progress, financial and other reports to the DA as agreed to in the WO. Financial reports shall include information on all funds received, obligated and expended, and on forecast obligations and expenditures.

The DOE/METC shall inform the DA of all contracts entered into under each WO.

B. Responsibilities of the Department of the Army

The DA shall certify, prior to the execution of each WO under this MOA, that the WO complies with the requirements of the Economy

in Government Act.

The DA shall pay all costs associated with the DOE/METC's provisions of goods or services under this MOA and shall certify, at the time of signature of a WO, the availability of funds necessary to accomplish that WO.

The DA shall ensure that only authorized DA contracting officers sign WOs.

The DA shall obtain for the DOE/METC 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 WO.

ARTICLE VI - FUNDING

The DA shall pay all costs associated with the DOE/METC's provisions of goods or services under this MOA. For WOs for work estimated to cost more than $250,000 total in contracts and in-house services or $50,000 in contracts, the DOE/METC shall bill the DA in advance and the DA shall provide the necessary funds in advance. For WOs for work valued at less than these amounts, the DA may reimburse the DOE/METC for the goods or services. For these lesser requirements, the DOE/METC shall bill the DA monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and the DA shall reimburse the DOE/METC within 30 days of receipt of an SF 1080.

If the DOE/METC forecasts its actual costs under a WO to exceed the amount of funds available under that WO, it shall notify the DA of the amount of additional funds necessary to complete the work under that WO. The DA shall either provide the additional funds to the DOE/METC, or 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 WO.

Within 90 days of completing the work under a WO, the DOE/METC shall conduct an accounting to determine the actual costs of the work. Within 90 days of completion of this accounting, the DOE/METC shall return to the DA any funds advanced in excess of the actual costs as then known, or the DA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the DA's duty in accordance with Article XI 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 an 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 DOE/METC shall be governed by DOE/METC policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DOE/METC shall be resolved in accordance with Federal law and the terms of the individual contract. The DOE/METC 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 DOE/METC shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DOE/METC shall notify the DA of any such litigation and afford the DA 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 DA and the DOE/METC 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 Office of Management and Budget.

ARTICLE X - LIABILITY

If liability of any kind is imposed on the United States relating to the DOE/METC's provision of goods or services under this MOA, the DOE/METC will accept accountability for its actions, but the DA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the DA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the DA. The DOE/METC may provide, upon request of the DA, any assistance necessary to support the DA's justification or explanations of the DA's programs conducted under this MOA. In general, the DA is responsible for all public information. The DOE/METC may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and the administration process. The DA or the DOE/METC 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 WOs 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 the DOE/METC and the DA.

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, the DA shall continue to be responsible for all costs incurred by the DOE/METC 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 the DOE/METC and the DA.

U.S. Department of Energy Morgantown Energy Technology Center	U.S. Department of the Army
G. William Bolyard Contracting Officer	John H. Zirschky Acting Assistant Secretary of the Army (Civil Works)
DATE: 8/4/95	DATE: 7/6/95