

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. BUREAU OF RECLAMATION
AND
THE INDIAN HEALTH SERVICE TO SUPPORT TECHNICAL SERVICES
ASSOCIATED WITH THE WATER INFRASTRUCTURE PROJECTS SERVING
AMERICAN INDIAN HOMES AND COMMUNITIES**

ARTICLE I – BACKGROUND

WHEREAS, the Bureau of Reclamation (BOR) and the Indian Health Service (IHS), referred to collectively as the “Parties,” have already committed to the common goal¹ to assist Tribes in conserving and improving the public health in Indian communities by providing infrastructure and promoting sustainable practices and resiliency to support the provision of safe drinking water.

WHEREAS, the BOR is authorized pursuant to the Reclamation Act of 1902, as amended and supplemented, and other applicable federal law, to construct, operate, and maintain water resources projects in the 17 Western States, and as applicable, the State of Hawaii.

WHEREAS, the IHS has the programmatic authority to enter into this Memorandum of Understanding (MOU) and subsequent Inter-agency Agreements (IAAs) under the Indian Sanitation Facilities Act, 42 U.S.C. § 2004a, which directs the IHS to enter into contracts to construct, improve, extend, or otherwise provide and maintain essential sanitation facilities for American Indian/Alaska Native (AI/AN) homes, communities, and land.

WHEREAS, the BOR has been appropriated funds through the Inflation Reduction Act of 2022, Public Law 117-169, Title VIII Section 50231, to support the cost of the planning, design, or construction of water projects, the primary purpose of which is to provide domestic water supplies to communities or households that do not have reliable access to domestic water supplies.

WHEREAS, the IHS has been appropriated funds through the Infrastructure Investment and Jobs, Act, Public Law 117-58, for the provision of domestic and community sanitation facilities for AI/AN.

WHEREAS, Section 311 of the Indian Health Care Improvement Act, codified as amended at 25 U.S.C. § 1638e, authorizes the inter-agency transfer of funds, equipment, or other supplies for the planning, design, construction, or operation of water supply, sanitary sewage disposal, and sanitary solid waste systems for AI/AN.

WHEREAS, the BOR has a Technical Service Center (TSC) that provides technical assistance services through engineers and scientists to develop innovative solutions to water resource issues.

WHEREAS, the IHS desires to accelerate planning, design, construction drawing, and technical specification activities needed for the completion of water infrastructure projects to address identified sanitation deficiencies in AI/AN homes and communities.

¹ [MOU Tribal Infrastructure Taskforce](#)

WHEREAS, the Parties believe in leveraging a whole-of-government approach to support AI/AN communities in accessing safe drinking water.

ARTICLE II – SCOPE

NOW, THEREFORE, the Parties enter into this MOU pursuant to 42 U.S.C. § 2004a(a)(3) and Section 50231 of the Inflation Reduction Act to facilitate the completion of studies, planning, design, construction drawing, and/or technical specifications (“technical assistance services”), to be used to complete domestic water infrastructure projects serving AI/AN homes and communities. Because this MOU represents a unique collaboration between the Parties and BOR resources are not immediately available to meet IHS needs at a level ultimately desired by the Parties, the Parties agree to a phased approach outlined below.

Phase I: The Parties will collaborate on a demonstration/pilot project in the following manner:

1. The Parties will identify a project for which BOR has technical resources available to meet project requirements.
2. The Parties will reach an agreement on the scope of services to be provided by BOR in support of the project and a schedule for services to be delivered.
3. BOR will identify funds to pay the cost of providing the identified services.
4. The Parties will jointly prepare a Project Management Plan (PMP).
5. BOR will prepare PMP drafts and provide them to the IHS for review and comment. Each PMP will include the following elements:
 - a. Identify a Team Lead to serve as the primary Point of Contact (POC) for the identified scope of work, as well as Group Leads for other scoped disciplines.
 - b. A detailed description of the technical services (“tasks”) to be provided by BOR.
 - c. Such other particulars as are necessary to clearly describe the obligations of the Parties with respect to the requested services and goods.
 - d. Identify the source of funds.
 - e. A schedule for completion of the technical services to be provided by discipline.
 - f. A schedule of costs associated with each deliverable by discipline.
 - g. Roles and responsibilities for IHS, BOR, and non-Federal partners such as Tribes, Water Districts, etc.
 - h. Exclusions from the scope of work.
 - i. A communication plan.
 - j. A risk management register.
 - k. Attach to the PMP, reference to the applicable IHS Project Summary and Memorandum of Agreement and any related information including but not limited to, data needed to support services to be provided by BOR.
6. The IHS will use products generated by BOR as an in-kind contribution to complete the project identified in the PMP.

Phase II: Upon successful completion of the initial demonstration/pilot project described above, the Parties will review the processes and outcomes to incorporate lessons learned into future

projects. This MOU may be amended to account for significant modifications needed for all future projects.

ARTICLE III – RESPONSIBILITIES OF THE PARTIES

The BOR agrees to:

- 1) Ensure that only authorized BOR representatives sign the PMP.
- 2) Assign a designated project manager as the primary point of contact for the PMP.
- 3) Provide a quarterly progress report to the IHS describing work completed. Progress reports shall include the status of activities covered by the PMP, activities planned for the following quarter, and any problems or delays that may be anticipated.
- 4) Provide other reports to the IHS as agreed to within the PMP. The format and content of any other reports will be described in the PMP.
- 5) Provide design-level support (quantifying volumes, areas, etc.) to the IHS in support of its responsibilities under the National Environmental Policy Act (NEPA) as requested and funded under the PMP.
- 6) Provide all computer-aided drafting (CAD) files used for the creation of the technical assistance services in AutoCAD drawing format unless otherwise defined in the PMP. Specifications will be provided using Construction Specification Institute formatted specifications.
- 7) Provide all Geographic Information System (GIS) files used for the creation of the technical assistance services using the IHS National GIS Standards unless otherwise defined in the PMP.
- 8) Complete all hydraulic modeling analysis completed using standard IHS software that includes: WaterGEMS and SewerCAD.
- 9) Perform all services under the PMP in a skillful and competent manner, consistent with industry standards.

The IHS agrees to:

- 1) Ensure that only authorized IHS representatives sign PMPs.
- 2) Assign a designated project manager for each order as the primary point of contact for the IHS.
- 3) Obtain all necessary rights-of-way (ROW) and access to all work sites and support facilities

and perform all coordination with and obtain any permits from state, Tribal, and local agencies, as necessary during the execution of each PMP. BOR may perform such work on the IHS's behalf when requested and as agreed in the PMP.

- 4) Ensure compliance with the requirements of the NEPA and any applicable cultural, historical and archeological laws.

The provision of services and goods beyond such description shall require the modification of the PMP by appropriate officials of each Party.

Nothing in this MOU shall be construed to require the IHS to use BOR or to require BOR to provide any services to the IHS, except as may be set forth in the PMP.

ARTICLE IV – INTERAGENCY COMMUNICATIONS

The Principal Representative listed below will serve as its central point of contact on matters relating to this MOU. Additional representatives may also be appointed to serve as points of contact. The Principal Representatives are as follows:

- 1) Mr. Kelly Titensor
Native American Affairs Advisor
Native American and International Affairs Office
Office of the Commissioner
U.S. Bureau of Reclamation
1849 C Street NW, Mailstop 7069
Washington, DC 20240
Email: ktitensor@usbr.gov
Phone: 202-578-5144
- 2) Mr. Richard LaFond
Director, Technical Service Center
U.S. Bureau of Reclamation
Denver Federal Center, Building 67 Mailcode 86-68000
Denver, CO 80225
Email: rlafond@usbr.gov
Phone: 303-445-3226
- 3) CAPT David Harvey
Deputy Director, Division of Sanitation Facilities Construction (DSFC)
Indian Health Service
5600 Fishers Lane, Mailstop 10N-14C
Rockville, MD 20857
Email: david.harvey@ihs.gov
Phone: 301-443-1059

- 4) CDR Jeffrey Allen
Assistant Director, DSFC
Indian Health Service
5600 Fishers Lane, Mailstop 10N-14C
Rockville, MD 20857
Email: jeffrey.allen@ihs.gov
Phone: 301-443-1345

ARTICLE V – FUNDING

BOR will pay all costs associated with the provisions of services and goods under this MOU and certify, at the time of signature, the availability of funds necessary to accomplish the PMP tasks, so as to not be in conflict with the Anti-Deficiency Act. Nothing in this MOU shall be construed as obligating BOR to expend any sum in excess of appropriations made by Congress for this agreement.

ARTICLE VI – APPLICABLE LAWS

This MOU 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 work undertaken by BOR shall be governed by BOR policies and procedures unless otherwise modified by agreement with the IHS.

ARTICLE VII – CONTRACT CLAIMS AND DISPUTES

The Parties anticipate that the products of BOR design and engineering services will be incorporated into contracts awarded or administered by IHS for the construction of domestic water supply facilities and related services.

All claims and disputes by contractors arising under or relating to contracts awarded or administered by the IHS shall be resolved in accordance with applicable Federal or other law and the terms of the individual contract.

BOR shall provide support and assistance to the IHS in resolving claims and disputes arising under or relating to services or goods related thereto provided by BOR. The IHS shall notify BOR of any such disputes and litigation and afford BOR an opportunity to review and comment on the proceedings and any resulting settlement negotiations. However, as provided above, IHS shall be the dispute resolution authority and will make all decisions regarding contractor claims and disputes, including whether to accept or propose any settlement. The IHS shall be responsible for all such settlement costs as provided in Article IX.

ARTICLE VIII – DISPUTE RESOLUTION

The Parties shall use their best efforts to resolve any disputes between themselves in an informal fashion through consultation and communication. In the event such measures fail to resolve the dispute, the Parties shall elevate the issue through their respective chains of command and, if needed, refer the matter to the respective executive agency of each Party for resolution.

ARTICLE IX – RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to BOR's provision of services and any goods related thereto under this MOU, BOR will accept accountability for its actions, but the IHS shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs, to include any litigation expenses incurred by BOR in defending a claim or dispute associated with the work. 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 the IHS have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, the IHS remains responsible for seeking additional funds from Congress for such purposes, subject to OMB approval. Nothing in this MOU shall be construed to imply that Congress will, at a later date, appropriate funds sufficient to meet any such deficiencies.

Notwithstanding the above, this MOU does not confer any liability upon the BOR for claims payable by IHS under any applicable federal law. Provided further that nothing in this MOU 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 MOU.

ARTICLE X – PUBLIC INFORMATION

Justification and explanation of the IHS's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the IHS. BOR may provide, upon request, any assistance necessary to support the IHS's justification or explanations of the IHS's programs conducted under this MOU. In general, the IHS is responsible for all public information. BOR may make public announcements and respond to all inquiries relating to the services and goods it provides to IHS. The IHS or BOR 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 this MOU.

ARTICLE XI – MISCELLANEOUS

- 1) Other Relationships or Obligations: This MOU shall not affect any pre-existing or independent relationships or obligations between the IHS and BOR.
- 2) Survival: Subject to outstanding PMPs, the provisions of this MOU that require

performance after the expiration or termination of this MOU shall remain in force notwithstanding the expiration or termination of this MOU.

- 3) Severability: If any provision of this MOU 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.
- 4) Transferability: This MOU is not transferable except with the written consent of the Parties.

ARTICLE XII – AMENDMENT, MODIFICATION, AND TERMINATION

This MOU may be modified or amended only by written, mutual agreement of the Parties. Either Party may unilaterally terminate this MOU by providing at least 60 days written notice to the other Party. In the event of termination, the BOR shall continue to be responsible for all costs incurred by BOR under this MOU and to complete any active work covered by an executed PMP unless otherwise negotiated by the Parties.

ARTICLE XIII – EFFECTIVE DATE

This MOU takes effect beginning on the day after the last Party signs.

ARTICLE XIV – EXPIRATION DATE

This MOU shall remain in effect until such time as the Parties agree or the MOU is terminated in accordance with Article XXII.

For Indian Health Service

Roselyn Tso, Director
Indian Health Service

Date

For Bureau of Reclamation

Camille Calimlim Touton, Commissioner
Bureau of Reclamation

Date