

**AGREEMENT BETWEEN
THE DEPARTMENT OF THE ARMY OF THE UNITED STATES OF AMERICA AND THE
PANAMA CANAL AUTHORITY OF THE GOVERNMENT OF THE REPUBLIC OF PANAMA
CONCERNING PROVISION OF EQUIPMENT, MATERIAL, TRAINING AND SERVICES
TO THE PANAMA CANAL AUTHORITY
ON AN ADVANCE OF FUNDS AND REIMBURSABLE BASIS**

The Department of the Army of the United States of America (DA) and the Panama Canal Authority of the Republic of Panama (PCA), hereinafter referred to as "the Parties",

Desiring to establish a framework governing the provision of equipment, material, training, and services by the Corps of Engineers of the Department of the Army of the United States of America (COE) to the PCA;

Have agreed as follows:

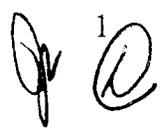
**ARTICLE I
PURPOSE**

The purpose of this Agreement is to establish the terms pursuant to which the Parties shall cooperate, as appropriate, to support the provision of COE equipment, material, training, and services to the PCA on an advance of funds or reimbursable basis.

**ARTICLE II
SCOPE**

1. Equipment, material, training, and services which DA may provide under this Agreement include delivery of technical assistance involving planning, engineering, construction, procurement, project management and contract management related to water resources development, canal operations, infrastructure development and environmental compliance protection, safety, and such other related work as may be agreed upon in the future.

2. Nothing in this Agreement shall be construed to require the PCA to seek assistance from DA or to require DA to provide any equipment, material, training or services to the PCA except as may be set forth in individual Implementing Agreements relating to Project Work Orders (IAPWOs) to be agreed to by the PCA and DA.



**ARTICLE III
COMMUNICATIONS BETWEEN THE PARTIES**

To provide for consistent and effective communication between the Parties, the PCA and DA shall each designate in writing a Principal Representative to serve as the central point of contact on matters relating to this Agreement. Additional representatives may also be appointed as necessary to serve as points of contact on specific IAPWOs.

**ARTICLE IV
IMPLEMENTING AGREEMENTS RELATING TO PROJECT WORK ORDERS (IAPWOs)**

1. In response to requests from the PCA for DA assistance under this Agreement, the PCA and DA shall enter into IAPWOs, which shall include the following:

- (a) a detailed scope-of-work statement;
- (b) schedules;
- (c) the amount of funds required and available to accomplish the scope of work stated;
- (d) arrangements for payments in advance of work;
- (e) identification of individual project managers;
- (f) procedures for coordinating representatives of the PCA and the COE;
- (g) identification of types of contracts to be used by the COE in completing the work, if such contracts will be necessary and are known;
- (h) types and frequencies of reports;
- (i) a statement concerning any intellectual property rights granted to the PCA by the COE as appropriate;
- (j) identification of the party that will be responsible for contract administration, records maintenance, and contract audits;
- (k) procedures for amending, modifying, or terminating the IAPWO; and
- (l) such other particulars as are necessary to describe clearly the obligations of the Parties with respect to the requested equipment, material, training, and services.

2. Equipment, material, training, and services may be provided under this Agreement only after an appropriate IAPWO has been signed by a representative of each Party authorized to execute that IAPWO. In the case of any inconsistency between



this Agreement and an IAPWO, the provisions of this Agreement shall prevail.

**ARTICLE V
RESPONSIBILITIES OF DA**

1. DA may provide the PCA with equipment, material, training, and services in accordance with the purpose, terms, and conditions of this Agreement and under the specific requirements set forth in IAPWOs to be agreed to by the PCA and DA.

2. DA shall ensure that only authorized COE representatives sign IAPWOs.

3. DA may provide detailed periodic progress, financial, and other reports to the PCA, as agreed to in IAPWOs. Financial reports shall include information on all funds received, obligated, and expended and on anticipated obligations and expenditures.

4. DA shall inform the PCA of all contracts entered into under each IAPWO.

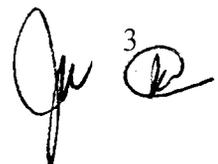
**ARTICLE VI
RESPONSIBILITIES OF THE PCA**

1. The PCA shall identify in writing PCA officials authorized to sign IAPWOs and shall draft IAPWOs in coordination with DA to include scope of work statements.

2. The PCA shall pay all costs associated with the provision of equipment, material, training, and services by the DA to the PCA under this Agreement.

3. The PCA shall ensure access by DA to all work sites and support facilities.

4. Except as otherwise agreed in an IAPWO, the PCA shall be primarily responsible for performing all coordination with and obtaining any permits from agencies of the Government of the Republic of Panama, as necessary during the execution of each IAPWO.

 3

5. The PCA shall ensure that any material, equipment, and data available to the PCA is available to DA to expedite work under this Agreement.

6. The PCA shall assist DA in obtaining logistical and administrative services to include office space, housing, transportation, and similar services.

7. The PCA shall provide the security protection necessary at the work sites, to protect the material, equipment, and COE personnel and contractors performing work pursuant to this Agreement. The PCA shall pay all costs related to reasonable requests by DA for security protection of material, equipment, DA personnel and contractors, and property. If DA determines that reasonable security protection cannot be provided by the PCA, DA shall provide the same and the PCA shall reimburse DA for the costs.

ARTICLE VII FUNDING

1. The PCA shall, on an advance of funds or reimbursable basis, be responsible for all costs associated with DA's provision of equipment, material, training, and services. All funds advanced shall be in United States currency and such funds shall be delivered by check payable to "FINANCE AND ACCOUNTING OFFICER, USAED, MOBILE." The PCA shall advance funds for the services requested in the amount agreed upon in the applicable IAPWO and in accordance with the schedule agreed upon pursuant to the individual IAPWO. If, during DA's provision of services, the actual cost to DA for the services is expected to exceed the total amount of funds available under the IAPWO or payment period set out in the individual IAPWO, DA shall promptly notify the PCA of the amount of the additional funding that is necessary. The PCA shall then provide the additional funds to the DA within 30 days, require that the scope of the services be limited to that which can be financed by available funds, or direct termination of the IAPWO.

2. Within 90 days of completing the work under an IAPWO, DA shall conduct a final accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, DA shall return to the PCA any funds advanced in excess of the actual costs as then known or the PCA shall provide to DA any

 4 

additional funds necessary to cover the actual costs as then known. Such a final accounting shall in no way limit the PCA's obligations to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

3. The PCA shall remain responsible as the program proponent for providing such funds or other appropriate relief as is necessary to discharge the liability for any duties, taxes, or charges levied upon DA and for all other related costs.

ARTICLE VIII DISPUTE RESOLUTION

Any disagreements or disputes concerning the interpretation or implementation of this Agreement shall be resolved solely through consultation between the Parties, and shall not be referred to any court, international tribunal or third party for settlement.

ARTICLE IX LIABILITY

1. The PCA waives any claims (other than contractual claims) against DA for damage, loss or destruction of government property arising out of activities related to this Agreement, or for injury or death suffered by personnel while engaged in performance of activities related to this Agreement.

2. The Government of Panama shall, with respect to legal proceedings and claims, indemnify DA and its personnel, contractors, and contractors' personnel, against damages to property, or death or injury to any persons in the Republic of Panama, arising out of activities under this Agreement.

3. DA makes no express or implied warranty as to any matter whatsoever regarding technology developed by DA and shall not be responsible for any damages of any kind resulting from utilization of such technology.

4. Nothing in this Article shall be interpreted to prevent legal proceedings or claims against citizens of the Republic of Panama or against persons with permanent residence in the Republic of Panama.

 5


ARTICLE X
STATUS OF UNITED STATES GOVERNMENT EMPLOYEES

The Parties hereby agree that, until such time as the Government of the Republic of Panama and the Government of the United States of America conclude an agreement on the appropriate privileges and immunities to be granted United States military and civilian personnel and contractors performing work in Panama pursuant to this Agreement, no United States military or civilian personnel shall perform work in the Republic of Panama pursuant to this Agreement. However, this will not affect any of the activities contemplated in the Agreement that may be carried out within the United States.

ARTICLE XI
ADVERSE CONDITIONS

In the event DA determines that due to war, armed conflict, insurrection, civil or military strife, force majeure or other adverse condition, the safety, health or welfare of DA officials, employees, or contractor personnel is threatened, the PCA shall be responsible for any additional costs incurred by DA to retain such personnel or secure replacements. In lieu of retention or replacement, DA may elect to terminate the services being provided by those personnel, including any applicable IAPWO. Whether to retain, replace or terminate services of such personnel under the foregoing circumstances shall be within the sole discretion of DA.

ARTICLE XII
INTELLECTUAL PROPERTY

1. Unless otherwise prohibited by law, DA shall have the sole right and responsibility to apply for, obtain, and maintain protection in the United States of America or other countries for technology or intellectual property developed by DA employees or under contracts awarded by DA pursuant to this Agreement. "Intellectual Property" shall have the meaning set forth in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967.

2. The COE shall retain and distribute any royalties or other income from any such protection to the extent allowed by law.

 6


3. Unless otherwise prohibited by law, DA may grant nonexclusive, exclusive or partially-exclusive licenses under any form of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions determined by DA as appropriate in the public interest; however, DA shall grant to PCA a non-exclusive, royalty-free right to utilize the documents and work products produced under the applicable IAPWO.

**ARTICLE XIII
PUBLIC INFORMATION**

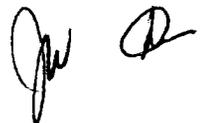
In general, the PCA is responsible for disseminating all public information relating to this Agreement. DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The PCA and DA shall make their best effort to give each other reasonable advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAPWOs under this Agreement.

**ARTICLE XIV
MISCELLANEOUS**

1. This Agreement shall not affect any international agreements currently in force between the United States of America and the Republic of Panama.

2. On a bi-annual basis, the parties shall review the work executed under this Agreement. Access to U.S. Government information will be in accordance with and pursuant to U.S. federal disclosure statutes as implemented through U.S. government regulations.

3. To the extent that items including plans, designs, specifications, technical data or information furnished in connection with a specific IAPWO may later be classified for security purposes by the U.S. Government, the PCA certifies that it will comply with the General Security of Military Information Agreement Between the Republic of Panama and the United States of America, done at Panama on August 17, 1984. The PCA will maintain a level of classification equivalent to that assigned by the United States and employ measures necessary to preserve such security, equivalent to those employed by DA and commensurate with any security agreements between DA and the PCA. If such security

7


agreements do not exist, the PCA agrees that classified items will be provided only to those individuals having an adequate security clearance and a specific need to know in order to carry out the project and that it will promptly notify the DA of the decision to disclose such information to those individuals. The PCA further agrees that it will promptly and fully inform DA of any compromise or possible compromise of classified information.

**ARTICLE XV
AMENDMENT, MODIFICATION, AND TERMINATION**

This Agreement shall enter into force upon signature by both Parties and shall remain in effect for a period of five years. This Agreement may be extended by mutual written agreement of the Parties for each succeeding five-year period. This Agreement may be modified or amended only by mutual written agreement of the Parties. Either Party may terminate this Agreement by providing written notice to the other Party. The termination shall be effective upon the sixtieth calendar day following the date of notice, unless a later date is set forth in the notice. In the event of termination of this Agreement or an IAPWO hereunder, the PCA shall nevertheless continue to bear responsibility for all costs, including liabilities, that the COE has incurred under this Agreement or the terminated IAPWO, and for the costs of closing out or transferring any on-going contracts.

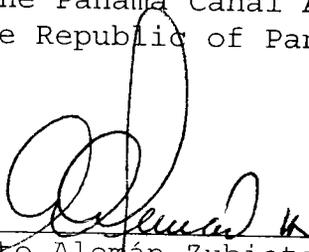
Signed this thirteenth day of December, 2000.

For the Department of the Army
of the United States of America:



Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

For the Panama Canal Authority
of the Republic of Panama:



Alberto Alemán Zubieta
Administrator

