MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES SECTION OF
THE INTERNATIONAL JOINT COMMISSION
AND
THE 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 United States Section of the International Joint Commission (hereinafter "U.S. Section") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties regarding the detail of U.S. Army Corps of Engineers ("USACE") employees to the U.S. Section. This MOA is entered into pursuant to 10 U.S.C. § 3036(d) and 36 Stat. 2448. For purposes of 10 U.S.C. § 3036(d) the U.S. Section is an instrumentality of the United States.

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include the detail of USACE employees to the U.S. Section. A detail is defined as the assignment of a military member or DoD civilian employee to perform duties in an agency outside the Department of Defense with the intent of returning to the Department of Defense upon completion of those duties. DODD 1000.17, "Detail of DoD Personnel to Duty Outside the Department of Defense," February 24, 1997.

Nothing in this MOA shall be construed to require the U.S. Section to use the DA or to require the DA to provide any detail to the IJC, except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the U.S. Section, 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.

ARTICLE IV – SUPPORT AGREEMENTS

In response to requests from the U.S. Section for DA assistance under this MOA, the DA and the U.S. Section 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 description of the work and responsibilities of the detailed employee;
- duration of the detail;
- 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 U.S. Section's fund citation and the date upon which the cited funds expire for obligational purposes;
- identification of individuals responsible for supervising the detailed employee;
- types and frequencies of reports, if any;
- identification of which party is to be responsible for records maintenance; rights to data, and intellectual property;
- procedures for amending or modifying the SA; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested detail.

ARTICLE V – RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. The DA shall provide the U.S. Section with details of USACE employees 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 provide detailed financial and other reports to the U.S. Section as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

B. Responsibilities of the U.S. Section

1. The U.S. Section shall pay all costs associated with the DA's provision of details of USACE employees under this MOA and shall certify, at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

2. The U.S. Section shall identify authorized U.S. Section representatives to sign SAs.

3. The U.S. Section shall develop draft SAs to include descriptions of the nature and duration of the requested details.

ARTICLE VI – FUNDING

The U.S. Section shall pay all costs associated with the DA's provision of details of USACE employees under this MOA. For SAs for details, the U.S. Section may

reimburse the DA for the details. The DA shall bill the U.S. Section monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and the U.S. Section shall reimburse the DA within 30 days of receipt of an SF 1080.

If at any time the DA or the U.S. Section forecasts that costs for a detail under a SA will exceed the amount of funds available under that SA, the DA and the U.S. Section shall promptly notify each other of the amount of additional funds necessary to complete the work under that SA. The U.S. Section shall either provide the additional funds to the DA or direct termination of the detail under that SA.

Within 90 days of the end of a detail under a SA, 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 the U.S. Section any funds advanced in excess of the actual costs as then know, or the U.S. Section shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the U.S. Section's duty in accordance with Article IX to pay for any costs 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.

ARTICLE VIII – DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the U.S. Section and 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 Office of Management and Budget.

ARTICLE IX – RESPONSIBILITY FOR COSTS

The parties agree that DA has no appropriations which may legally be made available for the services to be performed by DA under this agreement, other than funds provided by the U.S. Section. If the actual costs for DA's provision of services exceeds the amount of funds provided by the U.S. Section, the U.S. Section shall remain responsible as the program proponent for providing such funds as are necessary to discharge this responsibility, subject to available appropriations. If the U.S. Section has no funds legally available to discharge this responsibility, including such funds as may legally be made available through transfers, reprogramming, or other means, they remain responsible for requesting the Department of State seek additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the deficiency.

The U.S. Section's liability for costs resulting from claims filed under the Federal Tort Claims Act is limited to $2,500.00 per claim.

ARTICLE X – PUBLIC INFORMATION

Justification and explanation of the U.S. Section's program before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the U.S. Section. The DA may provide, upon request, any assistance necessary to support the U.S. Section's justification or explanations of the U.S. Section's programs conducted under this MOA. In general, the U.S. Section is responsible for all public information relating to USACE programs conducted under this MOA. The U.S. Section 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 this MOA.

ARTICLE XI – MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the U.S. Section 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 XII – 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 U.S. Section shall continue to be responsible for all costs incurred by the DA under this MOA.

ARTICLE XII - EFFECTIVE DATE

This MOA shall become effective when signed by both the U.S. Section and the DA. The undersigned agree to the terms and conditions of this MOA.

U.S. International Joint Commission - United States Section

GERALD E. GALLOWAY
Secretary

Date: Sep 30 2000

U.S. Department of the Army

HANS A. VAN WINKLE
Major General, USA
U.S. Army Corps of Engineers
Deputy Commanding General for Civil Works

Date: SEP 25 2000