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MEMORANDUM OF AGREEMENT
BETWEEN THE
U.S. DEPARTMENT OF THE ARMY
AND
U.S. DEPARTMENT OF STATE

This Memorandum of Agreement (MOA) is made by and between the U.S. Department of State and the U.S. Department of the Army.

AUTHORITY

a. The Economy Act in Government (31 U.S.C. 1535).

b. 10 U.S.C. 3036(d).

c. Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4801).

d. The Foreign Service Buildings Act of 1926, as amended. (22 U.S.C 294 et seq.).

e. The State Department Basic Authorities Act. (22 U.S.C. 2669 et seq.).

PURPOSE

The Department of State and its Office of Foreign Buildings Operations are undertaking new embassy construction and upgrading existing embassies for diplomatic security purposes and have asked the Department of the Army and its Corps of Engineers to assist in this effort. This MOA sets forth the framework for providing requested assistance.

POLICY

To the extent mutually agreed by the Department of State and the Department of the Army, planning, engineering, design, construction, real estate, and other related services will be provided on a project specific basis as requested and funded by the Department of State. Nothing in this MOA shall be construed to require the Department of State to use the services of the Department of the Army nor to require the Department of the Army to accept the assignments of the Department of State.

PROCEDURE

The Office of Foreign Buildings Operations and the Army Corps of Engineers shall complete a separate Management Plan which designates the roles, responsibilities, methods and procedures to be followed in all projects involving requests for assistance. The Management Plan shall provide for Support Agreements that define scope, schedule, estimated cost, and other requirements for specific projects. The Support Agreements shall cover any administrative and logistical support to be provided by the Department of State and the responsibilities of the parties in the event of termination.

INTERGOVERNMENTAL RELATIONS

The Department of the Army activities in foreign countries shall be in accordance with any intergovernmental agreements for embassy construction. The Department of State shall provide copies of any relevant intergovernmental agreements to the Department of the Army. Provisions covering Department of the Army activities in specific countries will be detailed in the Support Agreement executed prior to project commencement.

FUNDING

The Department of State shall fund all support managed, supervised, or performed by the Department of the Army related to this MOA. After execution of a Support Agreement and prior to the initiation of any work covered by that Support Agreement, the Department of State shall provide funds for that project. If the actual cost to the Department of the Army is forecast to exceed the amount of funds so provided, the Department of the Army shall promptly notify the Department of State of the amount of additional funding necessary to complete the project. The Department of State shall arrange for the additional funds to be provided to complete the project or require that the scope of the project be limited to the amount of work that can be financed by the available funds; otherwise, the Department of State shall direct termination of the work on the project. Following the project's completion, the Department of the Army shall conduct a final accounting to determine the actual costs of the work and services provided. The Department of the Army shall return any funds advanced by the Department of State in excess of the actual costs within 90 days of the final accounting.

PROJECT MANAGEMENT AND EXECUTION

The Department of State has full responsibility for determining the scope and priority of embassy projects, site acquisition, and access thereto for all projects assigned under this MOA.

The Department of the Army and the Department of State shall each appoint a program manager to act as the primary point-of-contact between the two parties within the United States.

The Department of the Army shall provide the requested services either directly through the Corps of Engineers in-house forces or indirectly by contract. The Department of the Army recognizes the importance of executing projects within authorized scope, budget, and schedule as mutually agreed to by the Office of Foreign Buildings Operations and the Corps of Engineers. The Corps of Engineers shall submit for review and prior approval all conceptual, preliminary, and final drawings, specifications, and cost estimates for each project to be undertaken by the Corps of Engineers to the Office of Foreign Buildings Operations before proceeding with any work. The Corps of Engineers shall provide progress reports each month to the Office of Foreign Buildings Operations reflecting the status of ongoing projects. The Corps of Engineers shall take necessary precautions to ensure that all drawings, specifications, reports, and other documents originated or used by consultants, contractors, and subcontractors in the performance of the work remain physically vested solely in the government of the United States of America and the Department of State.

PROCUREMENT

All work assigned to Department of the Army shall be performed in accordance with the Omnibus Diplomatic Security and Antiterrorism Act of 1986, including the preferences for U.S. persons as specified in Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, the Federal Acquisition Regulation as implemented by the Department of Defense Supplement to the Federal Acquisition Regulation, and Department of the Army policies and procedures descending therefrom.

CLAIMS

Claims on contracts awarded by the Department of the Army shall be adjudicated by the Armed Services Board of Contract Appeals. Except as further provided in this article, the Department of the Army shall be

responsible for the conduct of litigation and the resolution of contract claims arising out of the contracts entered into pursuant to this agreement.

The Corps of Engineers shall promptly notify the Department of State of meritorious claims and shall submit requests for funds to cover such claims. The Department of State shall promptly provide such funds subject to any project allocations ceilings established in Support Agreements. Should the amount of the claims and the cost of the remaining work to be accomplished exceed any project allocation ceiling established in a Support Agreement, the Corps of Engineers shall promptly advise the Department of State and request a determination as to whether the allocation ceiling will be raised and additional funds made available or whether work on the project should be terminated. For completed or terminated projects, the Department of State shall be responsible for the cost of claims regardless of the project allocation ceiling. The Department of State shall, for projects where construction is complete, have the option, upon providing written notice to the Department of the Army, of assuming contracting officer responsibilities.

CHIEF OF MISSION

Nothing in this agreement is intended to affect the responsibility of the Chief of Mission under Section 207 of the Foreign Services Act of 1980 (22 U.S.C. 3927).

HOST NATION RELATIONS

The Department of State shall be responsible for resolving all issues related to conflicts between the laws of the United States and the laws of foreign countries.

EMPLOYEE PROTECTION

The Department of State will seek accreditation for Corps of Engineers personnel at the same level that would be sought for Department of State employees performing similar functions and duties in the country of assignment. The Department of State will notify the Department of Army in any case where Corps of Engineers personnel will not be accredited as members of the administrative and technical staff of the diplomatic mission of the United States in the country to which they are assigned for purposes of supporting a Department of State project.

In certain instances, it may be possible for the Corps of Engineers to operate within the subject country under existing agreements to provide similar

support; and, if so, to elect to operate under these agreements. When such a possibility does not exist, and the Department of State cannot secure necessary accreditation, then the Corps of Engineers will have the option of not accepting the assignment.

SECURITY

The Department of the Army shall comply with Diplomatic Security requirements specified by the Department of State in contracting and executing work for the Department of State under this agreement, including obtaining necessary security clearances, safeguarding of classified information and materials, and providing proper orientation and training. Details of security arrangements shall be set forth in the management plan and support agreements for individual projects.

SAFETY

The provisions of EM 385-1-1, U.S. Army Corps of Engineers Safety and Health Requirements Manual, and the safety clause for construction contracts contained in the Federal Acquisition Regulation shall be incorporated by reference into the Corps of Engineers construction contract procurements.

PUBLIC INFORMATION AND COORDINATION

The Department of State shall be responsible for congressional liaison and public announcements concerning embassy construction projects, except that the Department of the Army remains responsible for public announcements related to solicitation and contract awards. Upon request of the Department of State, the Department of the Army shall assist the Department of State in responding to congressional inquiries related to the Department of the Army activities by preparing and furnishing to the Department of State draft responses for review and final disposition.

WORKLOAD SCHEDULING

The Department of the Army and the Department of State shall meet at least annually to discuss future program support requirements. To the extent practicable, the Department of State shall give the Department of the Army advance notice of requests for assistance to facilitate Department of Army planning.

MANPOWER AND OTHER RESOURCES

The Department of the Army shall make available and commit such resources as necessary to complete activities contemplated in each Support Agreement. The Department of State shall verify the level of assistance in connection with individual projects upon request of the Department of the Army.

AMENDMENT AND TERMINATION

The Department of State and the Department of the Army may modify or amend this MOA only by written agreement. Either party may terminate this MOA by providing 120 days written notice. In the event of termination, the Department of State shall remain responsible for the costs of closing out or transferring ongoing contracts covered by specific Support Agreements. The Department of the Army shall retain contract administration responsibilities for contracts awarded by the Department of the Army until such contracts have been financially closed or contracting officer responsibilities have been transferred to the Department of State.

ENTIRETY OF AGREEMENT

This MOA contemplates that there shall be a Management Plan and Support Agreements between the Office of Foreign Buildings Operations and the Corps of Engineers. These documents will constitute the entire agreement between the Department of the Army and the Department of State with respect to the matters dealt with herein. There are no other oral or written understandings, representations or commitments of any kind, express or implied, not set forth herein. All amendments to, or other modification of this MOA, shall be in writing and executed in the same manner as this MOA. Amendments to the Management Plan and Support Agreements shall be executed in the same manner as the original execution of those documents.

EFFECTIVE DATE

This MOA shall become effective on signature by Department of State and Department of the Army.

U.S. DEPARTMENT OF THE ARMY

/s/ Nancy P. Dorn

NAME: Nancy P. Dorn

TITLE: Assistant Secretary of the Army (Civil Works)

DATE: 18 March 1992

U.S. DEPARTMENT OF STATE

/s/ Arthur W. Fort

NAME: Arthur W. Fort

TITLE: Assistant Secretary of State (Administration)

DATE: 18 March 92