
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
FOR
JOINT RESEARCH AND DEVELOPMENT INVESTIGATIONS RELATED TO
CAPACITY BUILDING AND WATER RESOURCE MANAGEMENT ISSUES
BETWEEN
US ARMY ENGINEER RESEARCH AND DEVELOPMENT CENTER,
ENVIRONMENTAL LABORATORY
AND
IRAQ FOUNDATION

This Cooperative Research and Development Agreement (CRADA), is entered into by and between the US Army Engineer Research and Development Center, Environmental Laboratory, 3909 Halls Ferry Road, Vicksburg, MS 38180-6199, hereinafter referred to as ERDC and the Iraq Foundation, 1012 14th Street NW, Suite 1110, Washington, DC 20005, hereinafter referred to as PARTNER, pursuant to the authority contained in the Federal Technology Transfer Act (15 U.S.C. 3710a), as amended, and Army Regulation 70-57.

WHEREAS, the United States Congress in enacting the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986, Public Law No. 99-502, October 20, 1986, and the National Technology Transfer and Advancement Act of 1995, Public Law No. 104-113, March 7, 1996, has found that Federal Laboratories' developments should be made accessible to private industry, state and local Governments, and has declared that one of the purposes of such Act is to improve the economic, environmental and social well-being of the United States by stimulating the utilization of federally funded technology developments by such parties; and,

WHEREAS, the Federal Technology Transfer Act of 1986, among other technology transfer improvements, has provided each Federal agency with the authority to permit the Director of Government-operated Federal Laboratories to enter into Cooperative Research and Development Agreements (CRADAs) with Federal or non-Federal entities, including private firms and organizations, for the purposes of providing to, or obtaining from, collaborating parties, personnel, services, property, facilities, or equipment toward the conduct of specified research and development efforts which may include the disposition of patent rights in the inventions which may result from such collaborations; and,

WHEREAS, ERDC has performed substantial research and development with respect to marsh restoration and development, hereinafter referred to as "the Technology"; and,

WHEREAS, ERDC possesses certain advanced scientific skills, facilities, special equipment, information, computer software, and know-how pertaining to the Technology and is interested in the utilization of the Technology in the private and public sectors; and

WHEREAS, PARTNER is a non-profit, non-governmental organization in the United States having expertise in the Technology and,

WHEREAS, PARTNER has a need for access to specific engineering, technological, and advisory capabilities uniquely available at ERDC, and

WHEREAS, PARTNER is willing to collaborate with the ERDC on projects of mutual interest and,

WHEREAS, it is the intention of the parties hereto that research and development activities conducted under this CRADA should be to their mutual benefit and the benefit of the people of the United States; and,

WHEREAS, the cooperative research to be conducted under this CRADA will be cooperatively planned and conducted;

NOW, THEREFORE, the parties hereby agree as follows:

Article I. Definitions. As used in this CRADA, the following terms shall have the following meanings and such meanings should be equally applicable to both the singular and plural forms of the terms defined.

1.1 "CONFIDENTIAL" as used in this Agreement refers to PROPRIETARY INFORMATION and/or data given or imparted in confidence by either PARTY.

1.2 "CLASSIFIED" means all information and/or data classified in accordance with the national security laws of the United States.

1.3 "CONTROLLED UNCLASSIFIED" means unclassified information to which access or distribution limitations have been applied according to national laws, policies, and regulations of the United States Government.

1.4 "CRADA" means this cooperative research and development agreement, including any appendices.

1.5 "FOREIGN NATIONAL" means a private individual, not representing either a foreign government or a firm or person sponsored by a foreign government, who is not a citizen of the United States or its territories. This does not include permanent United States residents, formerly immigrant aliens, resident aliens, or intending U.S. citizens. (Source: AR 380-10, *Foreign Disclosure and Contacts With Foreign Representatives*, 6 June 2003)

1.6 "PARTY" means any signatory to this CRADA.

1.7 "INTELLECTUAL PROPERTY" means patents, copyrights, trade secrets, and trademarks protected by Federal Law and foreign counterparts.

1.8 "INVENTION" means and is limited to any INVENTION or discovery that is or may be patentable under Title 35 of the United States Code or the patent laws of any foreign country or any novel variety of plant that is or may be protected under the Plant Variety Protection Act (7 U.S.C. 7321 et seq.).

1.9 "MADE with respect to inventions that are patentable" means conception or first actual reduction to practice during the performance of a work statement under the CRADA by one of the parties to the CRADA (35 U.S.C §201(g)).

1.10 "PARTNER" means any signatory to this CRADA.

1.11 "PROPRIETARY INFORMATION" means information which embodies trade secrets developed at private expense or which is business or financial information which is privileged or CONFIDENTIAL under the Freedom of Information Act (5 U.S.C. § 552 (b) (4)), provided that such information:

- a. Is not generally known or available from other sources without obligations concerning their confidentiality;
- b. Has not been made available by the owners to others without obligation concerning its confidentiality; and
- c. Is not already available to the Government without obligation concerning its confidentiality.

1.12 "SUBJECT DATA" means all recorded information first produced in the performance of a work statement under this AGREEMENT, both processed and unprocessed generated from modeling and prototype implementation, and can be either numeric, alphanumeric, text, photographs, or other recorded forms.

1.13 "PROTECTED CRADA INFORMATION" means SUBJECT DATA which is marked as being PROTECTED CRADA INFORMATION by a PARTY to this CRADA and which would have been PROPRIETARY INFORMATION had it been obtained from a non-federal entity.

1.14 "SUBJECT INVENTION" means any INVENTION conceived or first actually reduced to practice in the performance of a work statement under this CRADA.

Article 2. Cooperative Research.

2.1 The purpose and object of this collaborative effort is to provide for the sharing of information and joint conduct of research and development investigations related to the restoration of the Mesopotamian marshes in IRAQ. The scope and obligations of the PARTIES pursuant to this

cooperative research and development program are itemized in Appendix A. Each PARTY hereto agrees to utilize whatever personnel, facilities, equipment, skills, know-how, and information as they consider necessary, consistent with their own policies, missions, requirements, and available resources.

2.2 Work Statements. Specific collaborative studies consistent with the scope and obligations set forth in Appendix A shall be documented in work statements executed as amendments to this Agreement as set forth in Article 8.7 and shall be subject to the terms and conditions of this Agreement. The work statement shall include a description of the tasks to be performed by each PARTY, the products to be delivered, schedule, and any other particulars deemed necessary by the PARTIES. If any services to be performed by the ERDC require reimbursement, the work statement shall also specify the estimated cost of the work to be performed. PARTNER understands and agrees that 15 U.S.C. 3710a permits federal laboratories to provide personnel, services, facilities, equipment, intellectual property, and other resources toward the conduct of research under a CRADA, but specifically prohibits the transfer of funds to the non-federal PARTNER. Work statements will be amended to this agreement as needed and documented in Appendix B. Article 2.6 refers to all financial obligations associated with such work statements.

2.3 Review of Work. Periodic discussions shall be held between ERDC and PARTNER personnel for the purpose of reviewing the progress of work as required. It is understood that the nature of this sponsored research is such that completion within the period of performance specified, or within the limits of financial support allocated, cannot be guaranteed. Accordingly, it is agreed that all sponsored research is to be performed on a best efforts basis.

2.4 Technical Management. To provide for consistent and effective communications between ERDC and PARTNER, each party shall appoint a Technical Representative to serve as its central point of contact on matters relating to this agreement. The work will be performed under the supervision of the Technical Representatives named in Appendix A, who each have the responsibility for their respective organizations for the scientific and technical conduct of this project. If any of the Technical Representatives are unable to serve as technical managers during the term of the CRADA, PARTNER or ERDC will advise the other in writing of a successor.

2.5 Scope Change. If at any time either technical representative determines that the research data dictate a substantial change in the direction of the work, the party shall promptly notify the other party and the parties shall make a good faith effort to agree on any necessary change to the SOW.

2.6 Financial Obligations.

2.6.1 The cost of labor, supplies, materials, equipment, overhead, and other expenses, direct and indirect, computed in accordance with ERDC standard accounting procedures which are incurred by ERDC in connection with this Agreement, necessary to the performance of specific work as agreed to by both PARTIES, are chargeable to Iraq Foundation. Prior to the commencement of any agreed upon work by ERDC, Iraq Foundation will deposit with the ERDC Disbursing Officer sufficient funds to cover the estimated cost of the specific work to be performed. In order for the work effort to be commenced in time, funds must be mailed thirty (30) days in advance. Progressive deposits may be made during the course of this Agreement according to the schedule agreed upon in the work statement; however, at no time shall the costs incurred by the ERDC

exceed the funds deposited by Iraq Foundation. Any funds on deposit over and above the total cost incurred will be refunded within 90 days after determination of final costs.

2.6.2 There are three ways funds may be sent to ERDC.

(1) Check - In order for the work effort to be commenced in time, funds must be mailed thirty days in advance. Checks should be made payable to "Treasury of the United States - ERDC" and forwarded by registered mail or express mail to:

US Army Engineer Research and Development Center
ATTN: CEERD-RM-FA/~~XXXXXXXXXXXX~~
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

The following information must be included with the check.

ERDC- Point of Contact: ~~XXXXXXXXXXXX~~ CEERD-EE-W

Purpose of funds: Joint Research and Development Investigations Related to Capacity Building and Water Resources Management Issues.

(2) EFT - In order for the work effort to be commenced in time, EFT funds must be received two weeks in advance. For EFT information, email ~~XXXXXXXXXXXX~~@erdc.usace.army.mil and ~~XXXXXXXXXXXX~~@erdc.usace.army.mil.

(3) Wire Transfer - In order for the work effort to be commenced in time, wire transfer funds must be received two weeks in advance. For wire transfer information, email ~~XXXXXXXXXXXX~~ and ~~XXXXXXXXXXXX~~army.mil.

Article 3. Data Rights and Publication.

3.1 Rights. PARTNER understands and agrees that ERDC shall not disclose to PARTNER Subject Data or any other information developed or compiled by ERDC that is identified as classified or controlled unclassified. Uncontrolled unclassified Subject Data that is developed or compiled under this CRADA shall be prepared, analyzed, shared, and mutually interchanged by the parties. However, such uncontrolled unclassified Subject Data shall not be disclosed to any third party without mutual consent of the parties to this CRADA, except that ERDC may disclose non-proprietary Subject Data when required to do so for government purposes.

3.2 All PROPRIETARY INFORMATION exchanged between the PARTIES (e.g., documents, descriptions, drawings, photographs, tapes, e-mail, or other media), will be clearly identified and marked with an appropriate notice, such as "Proprietary Property of the U.S. Government" or "Proprietary Property of PARTNER," with each confidential page or item of such information exchanged marked or stamped with the appropriate notice.

3.3 Information imparted orally shall not be protected under this paragraph, unless such information is subsequently reduced to tangible form within fifteen (15) days of disclosure and a copy thereof furnished to the party receiving the PROPRIETARY INFORMATION.

3.4 Proprietary Information. ERDC agrees that any proprietary or confidential information furnished by PARTNER to ERDC under this CRADA, or in contemplation of this CRADA, shall be used, reproduced, and disclosed by ERDC only for the purpose of carrying out this CRADA, unless written consent to such release is obtained from PARTNER.

3.5 Publications. ERDC and PARTNER agree that the results of research under this CRADA may be published jointly or separately by either party, but they will confer and consult prior to the publication of Subject Data to assure that no proprietary or confidential information is released and that patent rights are not jeopardized. It is agreed that prior to either party submitting a manuscript for review or publication containing results of research under this CRADA, a copy of the manuscript will be submitted to the other party at least ninety (90) days prior to publication.

3.6 Protected CRADA Information. Pursuant to 15 USC § 3710a (c) (7) (B), with respect to information resulting from the performance of this CRADA that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from the PARTNER, ERDC may provide appropriate protection against the dissemination of such information, including exemption from subchapter II of Chapter 5 of Title 5 of the United States Code.

a. Each party may designate as Protected CRADA Information any Subject Data produced by its employees; and with the agreement of the party initially developing the information, mark any Subject Data produced by that party's employees. All such designated Protected CRADA Information shall be appropriately marked.

b. For a period of five years from the date Protected CRADA Information is produced, the parties agree not to further disclose such information except:

(1) as necessary to perform this CRADA;

(2) as provided in Article 3, Data Rights and Publication;

(3) as requested by ERDC to be provided to other government facilities for government use only with the same protection in place; or

(4) as mutually agreed by the parties in advance.

c. The obligations of (b.) above shall end sooner for any information which shall become publicly known without the fault of any party, shall come into a party's possession without breach by that party of the obligations of (b.) above, or shall be independently developed by a party's employees who did not have access to Protected CRADA Information.

3.7 ERDC shall have unlimited rights in all Subject Data produced or provided by the parties under this CRADA, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection or marked as being copyrighted, Protected CRADA Information, or Proprietary Information.

Article 4. Patent and Other Intellectual Property Rights

4.1 Limited Scope. The United States Government shall retain ownership in any intellectual property prior to this agreement. Likewise, PARTNER shall retain ownership in any technology to which it has title prior to this agreement.

4.2 Reporting. ERDC shall report to PARTNER within 90 days of Subject Invention relevant to this CRADA reported to ERDC by its employees. PARTNER shall report to ERDC within 90 days each Subject Invention reported to PARTNER by any of its employees.

4.3 PARTNER Employee Inventions. ERDC, on behalf of the U.S. Government, waives any ownership rights the U.S. Government may have in Subject Inventions Made by PARTNER employees and agrees that PARTNER shall have the option to retain title in any such employee Subject Invention and to obtain patents therein. PARTNER shall notify ERDC within ninety (90) days of reporting the invention to ERDC this option and shall have the right to timely file patent applications on such Subject Invention at its own expense. PARTNER agrees to grant to the U.S. Government on PARTNER's employee's Subject Inventions a non-exclusive, irrevocable, paid-up license in the patents covering such Subject Inventions to practice or have practiced, throughout the world by or on behalf of the U.S. Government. Such non-exclusive license shall be evidenced by a Confirmatory License Agreement prepared by PARTNER. With regard to Subject Inventions to which Partner retains right and title and files applications, such applications shall be filed prior to the running of any statutory bar period, priority period or any applicable filing deadline which will bar the granting of a patent or other statutory rights in the invention.

4.4 ERDC Employee Inventions. ERDC, on behalf of the U.S. Government, shall have the initial option to retain title to each Subject Invention Made by its employees and to obtain patents therein. ERDC shall notify PARTNER within ninety (90) days of reporting the invention to PARTNER of this option and shall have the right to timely file patent applications on such Subject Invention at its own expense. Partner shall have the option to negotiate a license on any such inventions. Any exclusive license shall be subject to the reservation by the U.S. Government of an irrevocable, paid-up right to practice or have practiced the Subject Invention on behalf of the U.S. Government for government purposes. Such exclusive license shall be evidenced by a Confirmatory License Agreement prepared by ERDC.

4.5 PARTNER Employee/ERDC Employee Joint Inventions. Joint Subject Inventions shall be jointly owned. PARTNER shall be responsible for filing U.S. Patent Applications for joint Subject Inventions in a timely manner. If PARTNER does not file a U.S. Patent Application on a joint Subject Invention within six (6) months after disclosure to either party, and ERDC desires to file a patent application, PARTNER agrees to assign its rights in the invention to ERDC at no cost and ERDC will file a U.S. Patent Application on such joint Subject Invention. ERDC, in turn, agrees to grant PARTNER a royalty-free non-exclusive license or to negotiate an exclusive license for a reasonable fee as set forth in paragraph 4.8 below. The non-filing Party shall reasonably cooperate and assist the filing Party in perfecting the patent application, and the Filing Party shall have the right to control the prosecution of the U.S. Patent Application. ERDC retains an associate power of attorney on joint Subject Inventions filed as patent applications by PARTNER.

4.6 Patent Applications. Patent applications and other intellectual property applications on SUBJECT INVENTIONS shall be filed prior to the running of any statutory bar period, priority period, or applicable filing deadline that would bar the granting of a patent or other intellectual property right on a SUBJECT INVENTION.

4.6.1 PARTNER shall enter into agreements with employee, contractor, and sublicensee inventors to ensure assign their Subject Inventions to PARTNER and to ensure cooperation with preparation and filing of patent applications on their inventions.

4.6.2 Each PARTY shall cooperate with the other PARTY in preparation, filing, and prosecution of applications under Article 4.5 for jointly-developed SUBJECT INVENTIONS.

4.6.3 The PARTY filing an application under Article 4.5 shall provide the other PARTY with copies of the application within thirty (30) days of filing, and shall use best efforts to provide the other PARTY the right to inspect and copy documents relevant to the application in the files of the applicable national government.

4.6.4 A PARTY having rights in a SUBJECT INVENTION may elect not to file patent applications statutory registration applications thereon in particular country(ies), provided it so notifies the other PARTY in writing within ninety (90) days from the date it reports the SUBJECT INVENTION to the other PARTY or such later date on which it acquires such rights in the SUBJECT INVENTION, provided that such notice shall be provided in a reasonable time to permit the other PARTY to establish rights in the SUBJECT INVENTION. Thereafter, the other PARTY may elect to file such applications on the SUBJECT INVENTION in the identified countries, and the first PARTY shall assign its interests in the SUBJECT INVENTION in those identified countries to the other PARTY. This assignment shall be subject to the retention by the first PARTY of a non-exclusive, irrevocable, paid-up license to practice, or have practiced, the SUBJECT INVENTION in the identified countries in the case of PARTNER and throughout the world in the case of ERDC.

4.7 Patent and Other Intellectual Property Expenses. The expenses attendant to the filing, prosecution, issuance, and maintenance of patent and intellectual property applications as specified above shall be borne by the party filing the application. Each party shall provide the other party with copies of the applications it files on any subject invention along with the power to inspect and make copies of all documents retained in the official patent and intellectual property application files by the applicable patent office.

4.8 Royalties to ERDC. In this or any foreign country in which PARTNER obtains title to a patent or other intellectual property rights grant, on any Subject Invention made solely by ERDC employees or made jointly by ERDC and PARTNER employees, PARTNER shall pay to ERDC a royalty based on a reasonable rate applied to a royalty base. Both the royalty rate and the royalty base shall be negotiated in good faith. The royalty rate and the royalty base shall fairly reflect the relative contributions of the parties to the making of the Subject Invention and to the work under this CRADA, patent prosecution expenses, the risks incurred by PARTNER, and the costs of subsequent research and development needed to bring the Subject Invention to the point of practical application. Any such royalty payments should be made payable to "DFAS – Rock Island" and forwarded to:

DFAS – Rock Island OPLOC
ATTN: DFAS-RI-FD
Building 68
Rock Island, IL 61299-8300

A report shall accompany each payment identifying this CRADA and stating the manner in which the amount of the funds was calculated. Copies of the report should also be provided to:

U.S. Army Research Laboratory
ATTN: AMSRL-CS-TT (Mr. Wanko)
2800 Powder Mill Road
Adelphi, MD 20783-1197

U.S. Army Eng. R&D Ctr./ERDC
ATTN: CEERD-OT/Bea Shahin
2902 Newmark Drive
Champaign, IL 61822-1076

4.9 March In Rights. ERDC has the right to require PARTNER, its assignees, or its exclusive licensee to grant a non-exclusive or exclusive license under any patent and intellectual property covering a Subject Invention in any field of use to a reasonable applicant(s) upon reasonable terms upon a determination by the ERDC that (1) PARTNER has not taken, or is not expected to take, within a reasonable time, effective steps to bring the Subject Invention to the point of practical application in such field of use; (2) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by PARTNER, its assignees or licensees; or (3) such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by PARTNER, its assignees or licensees.

4.10 Prosecution of Patent and Intellectual Property Applications. Both parties agree to cooperate with the other in the preparation, filing and prosecution of patent or other intellectual property applications on any Subject Invention in this or any foreign country. Each party shall provide the other party with a copy of any patent or other intellectual property application on any Subject Invention filed in this or a foreign country within sixty (60) days after filing, along with the power to inspect the patent or other intellectual property application. In the case of Subject Inventions made jointly by ERDC and PARTNER employees, the ERDC will be granted a power of attorney on any patent or other intellectual property application filed on such inventions by PARTNER.

4.11 Transfer of Rights to Inventors. In this or any foreign country where none of the parties to this CRADA elects to file a patent or other intellectual property rights application on a Subject Invention, any or all of the parties may transfer their patent or other intellectual property rights to the employee inventor(s) with the reservation of a non-exclusive, non-transferable, irrevocable, world-wide, paid-up license to practice or have practiced the invention by or on behalf of the parties.

4.12 Maintenance Fees. The fees payable to a patent office in order to maintain intellectual property will be paid by the Party owning the patent, at its option. If that Party decides not to pay the maintenance fees, it shall notify the other Party, who may pay the maintenance fees if it desires. If neither party wishes to pay maintenance fees, the inventors will be given a timely notice and opportunity to do so.

Article 5. Representations and Warranties.

5.1 Representations and Warranties of ERDC. ERDC hereby represents and warrants to PARTNER as follows:

5.1.1 Organization. ERDC is a research and development center of the Department of Army and is wholly owned by the U.S. Government whose substantial purpose is the performance of research, development, or engineering by employees of said Government.

5.1.2 Mission. The performance of the activities specified by this CRADA is consistent with the mission of ERDC.

5.1.3 Power and Authority. Except as indicated in Article 10 (Agency Review), all prior reviews and approvals required by regulations or law have been obtained by ERDC prior to the execution of this CRADA. The ERDC official executing this CRADA has the requisite authority to do so.

5.2 Representations and Warranties of PARTNER. PARTNER hereby represents and warrants to ERDC as follows:

5.2.1 Corporate Organization. PARTNER, as of the date hereof, is a non-profit, (501 (C) 3 corporation duly organized, validly existing and in good standing under the laws of United States.

5.2.2 Power and Authority. PARTNER has the requisite power and authority to enter into this CRADA and to perform according to the terms thereof.

5.2.3 Due Authorization. The Board of Directors of PARTNER have taken all actions required to be taken by law, PARTNER's Certificate or Articles of Incorporation, its bylaws or otherwise, to authorize the execution and delivery of this CRADA.

5.2.4 No Violation. The execution and delivery of this CRADA does not contravene any material provision of, or constitute a material default under any material Agreement binding on Partner or any valid order of any court, or any regulatory agency or other body having authority to which Partner is subject.

Article 6. Termination.

6.1 Termination by Mutual Consent. PARTNER and ERDC may elect to terminate this CRADA, or portions thereof, at any time by mutual consent. In such event the parties shall specify the disposition of all property, intellectual property and other results of work accomplished or in progress, arising from or performed under this CRADA.

6.2 Termination by Unilateral Action.

6.2.1 Written Notice. Either party may unilaterally terminate this entire CRADA at any time by giving the other party written notice not less than thirty (30) days prior to the desired termination date; provided, however, that no party shall have the right to terminate its obligation under Article 3, Data Rights and Publication.

6.2.2 Data Rights. If either party unilaterally terminates this CRADA pursuant to Clause 6.2.1, each party shall return any and all Subject Data developed by the other party which it may have in its possession and will retain no rights to publish said Subject Data developed by the other party after the effective date of the unilateral termination.

6.2.3 New Commitments. ERDC shall make no new commitments after receipt of a written termination notice from PARTNER and shall, to the extent feasible, cancel all outstanding commitments and contracts by the termination date.

Article 7. Liability.

7.1 To the extent permitted by law, each PARTY assumes liability for the negligent actions of its employees or agents that are the cause of the injuries or damages that occur during the performance of this CRADA.

7.2 No Warranty. Except as specifically stated herein, neither party makes any express or implied warranty as to any matter whatsoever, including the conditions of the research or any invention or project.

7.3 Force Majeure. Neither party shall be considered in default for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this CRADA (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civic disturbance or disobedience, strikes, labor dispute, or failure, threat or failure, or sabotage, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

7.4 Indemnification. PARTNER holds the U.S. Government harmless and indemnifies the Government for all liabilities, demands, expenses and losses arising out of the use by PARTNER, or any party acting on its behalf or under its authorization, of ERDC's research and technical development or out of any use, sale or other disposition by PARTNER, or others acting on its behalf or with its authorization, of products made by the use of ERDC's technical developments. This provision shall survive termination of this CRADA.

Article 8. Miscellaneous.

8.1 Officials Not to Benefit. No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this CRADA, nor to any benefit that may arise therefrom; but this provision shall not be construed to extend to this CRADA if made with a corporation for its general benefit.

8.2 Governing Law. The technical validity, performance and effect of this CRADA for all purposes shall be governed by the laws applicable to the Government of the United States.

8.3 Export Control Laws. The Parties understand that information and technology resulting from the performance of this CRADA may be subject to export control laws and regulations, and each Party is responsible for its own compliance with such laws and regulations. Consideration has been given to the provisions of Executive Order 12591. If it is determined that under the International Traffic Arms Regulation (ITAR) or Export Administration Regulation (EAR) regulations controls are required on technology which may be transferred under this CRADA, such determination(s) shall be included in the CRADA or amendments. Nothing in this CRADA waives any such statutory or regulatory requirement.

8.4 Entire CRADA. This CRADA constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

8.5 Headings. Titles and headings of the sections and subsections of this CRADA are for the convenience of references only and do not form a part of this CRADA and shall in no way affect the interpretation thereof.

8.6 Waivers. None of the provisions of this CRADA shall be considered waived by any party hereto unless such waiver is given in writing to all other parties. The failure of any party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

8.7 Severability. The illegality or invalidity of any provisions of this CRADA shall not impair, affect or invalidate the other provisions of this CRADA.

8.8 Amendments. If either party desires a modification in this CRADA, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the parties hereto by their representatives duly authorized to execute such amendment. All amendments will be considered integral parts of this CRADA and will be included in an appendix specifically for said amendments.

8.9 Title to Property. The purchase or use of any property to carry out this CRADA does not affect the ownership rights that would otherwise apply. All equipment developed or acquired under this CRADA shall be the property of the Party developing or acquiring such equipment. However, property directly provided under this CRADA by either party, regardless of who uses the property in the performance of the work, shall remain the property of the providing party unless other disposition is mutually agreed upon in writing by the parties. The party holding the title to the equipment utilized in carrying out this CRADA is responsible for the maintenance of the equipment and the costs of transportation to and from the site where it will be used.

8.10 Assignment. Neither this CRADA nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party. In no event shall any rights or obligations of this CRADA be assigned or transferred to a party not a citizen and resident of the United States of America.

8.11 Notices. Official notices pertaining to disputes, termination, and work statements shall be signed by an authorized representative and shall be delivered by U.S. Certified mail, or other form of express mail service. All such official notices shall be addressed as follows:

If to PARTNER:

Rend Rahim, Chief Executive Officer
Iraq Foundation
1012 14th Street NW, Suite 1110
Washington, DC 20005

If to ERDC:

Director
U.S. Army Engineer Rsch. & Dev. Ctr.
ATTN: CEERD-OT ~~XXXXXXXXXXXX~~
2902 Newmark Drive
Champaign, IL 61822-1076

Any party may change such address by notice given to the other party in the manner set forth above.

8.12 General written notices pertaining to or required by this AGREEMENT, such as progress reports, may be signed by the representatives named below and delivered by hand or sent by U.S. mail or an express service.

For ERDC:

ERDC
Environmental Laboratory
Wetlands Research and Technology Center
Attn: CEERD-EE-W ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

Telephone: (601)634-4674

For PARTNER:

Azzam Alwash Ph.D., Eden Again Project Manager
Iraq Foundation
1012 14th Street NW, Suite 1110
Washington, DC 20005

Telephone: (202)347-4662

Either PARTY may change its authorized representative by giving notice to the other PARTY in this manner.

8.13 Independent Contractors. The relationship of the parties to this CRADA is that of independent contractors and not as agents of each other or as joint venturers or partners. Each party shall maintain sole and exclusive control over its personnel and operations.

8.14 Use of Name or Endorsements. PARTNER shall not use the name of ERDC or the U.S. Army Corps of Engineers, or the U.S. Government on any product or service which is directly or indirectly related to either this CRADA or any patent license or assignment agreement which implements this CRADA unless permission has been obtained from the appropriate Public Affairs approving authority. ERDC shall assist in obtaining such approval as appropriate. By entering into this CRADA, ERDC does not directly or indirectly endorse any product or service provided, or to be provided, by PARTNER, its successors, assignees, or licensees. PARTNER shall not in any way imply that this CRADA is an endorsement of any such product or service.

8.15 Covenant Against Contingent Fees. PARTNER warrants that no person or selling agency has been employed or retained to solicit or secure this CRADA upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by PARTNER for the purpose of securing business. For breach or violation of this warranty, ERDC shall have the right to annul this CRADA without liability, or, in its discretion, to add to the CRADA price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.16 Preference for U.S. Industry. The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy. Accordingly, PARTNER agrees that any product made or produced under this CRADA, used or sold by PARTNER or any licensee or sublicensee shall be manufactured substantially in the United States.

8.17 Foreign National Participation. Travel and/or visits by foreign nationals to ERDC facilities related to CRADA coordination, negotiation or execution will be governed by the provisions of Army Regulation 380-10, Disclosure of Information and Visits of Foreign Nationals. Travel and/or visits by foreign nationals will be coordinated and approved through Headquarters, United States Army Corps of Engineers, Foreign Disclosure Office (CEMP-OI-FL) and follow procedures issued by that office. Foreign nationals who may be involved in any work performed under this agreement must be identified by PARTNER and approved by ERDC before participating in this agreement. Accordingly, PARTNER agrees to furnish the name of any foreign national who may be involved in any work performed under this agreement, along with documentation to verify that each was legally admitted into the United States and has authority to work and/or attend school in the United States. This information should be forwarded to:

Director
U.S. Army Engineer Research and Development Center
ATTN: CEERD-SE ~~XXXXXXXXXXXX~~
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

8.18 Access to Government Automated Information Systems. Both Parties agree that any non-Government persons working under this agreement (including U.S. citizens) who require access to Government Automated Information Systems (stand alone computers, network computers/systems, email) shall, at a minimum, be designated into a ADP-III position (non-sensitive) in accordance with DoD Regulation 5220-22-R, Industrial Security.

Article 9. Alternative Dispute Resolution.

9.1 Settlement. In the event that a dispute arises under this CRADA which cannot be readily resolved, it shall be submitted jointly to the signatories of this CRADA. The Parties shall seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative disputes resolution mutually acceptable to the parties. A joint decision of the signatories or their designees shall be the disposition of such dispute. No action in law or equity shall be brought until the provisions of this paragraph 9.1 have been carried out.

9.2 Continuation of Work. Pending the resolution of any dispute or claim pursuant to this Article, the parties agree that performance of all obligations shall be pursued diligently.

Article 10. Agency Review.

10.1 Secretary of Army Review. Notwithstanding the delegation of authority to execute this CRADA to the individual designated, the Secretary of the Army has reserved to the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (ASA(ALT)) the opportunity provided by 15 USC § 3710a (c) (5) (A), to disapprove or require the modification of this CRADA and all subsequent amendments within 30 days of the date it is presented to him or her by ERDC under specific conditions. This review will be incurred if the non-Federal partner is a foreign entity as defined in Executive Order 12591 or the CRADA involves the receipt of more than \$1 million in funds in any one fiscal year from the non-Federal partner.

10.2 Ratification. In the event that the ASA(ALT) exercises the authority reserved by paragraph 10.1, PARTNER shall have thirty (30) days from notification of the required modification to ratify the modifications or terminate the CRADA.

Article 11. Duration of CRADA and Effective Date.


11.1 It is mutually recognized that the development program cannot be rigidly defined in advance, and that the contemplated time periods for completion of each phase are good faith guidelines subject to adjustment by mutual agreement, to fit circumstances as the development program proceeds. In no case will this CRADA extend beyond September 30, 2008, unless it is revised in accordance with Article 8, paragraph 8.19 of this CRADA.

It is further agreed that the provisions of Articles 3 (Data Rights and Publication), 4 (Patent and Other Intellectual Property Rights), 7 (Liability) and paragraphs 8.3 (Export Control Laws), and 8.13 (Use of Name or Endorsements) of Article 8 shall survive the termination of this CRADA.

11.2 Effective Date. This CRADA shall enter into force following final partner signature or agency review as specified in Article 10.

IN WITNESS WHEREOF, the parties have caused this CRADA to be executed by their duly authorized representatives as follows:

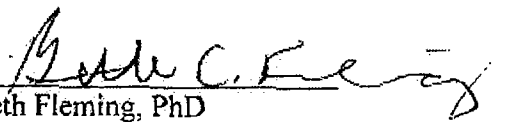
For The IRAQ FOUNDATION:



Azzam Alwash, Ph.D.
Eden Again Project Manager

5/16/06
Date

For the U S ARMY ENGINEER RESEARCH AND DEVELOPMENT CENTER,
ENVIRONMENTAL LABORATORY:



Beth Fleming, PhD
Acting Director, Environmental Laboratory

5/9/06
Date

Appendix A
**COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
FOR
JOINT RESEARCH AND DEVELOPMENT INVESTIGATIONS RELATED TO
CAPACITY BUILDING AND WATER RESOURCE MANAGEMENT ISSUES
BETWEEN
U S ARMY ENGINEER RESEARCH AND DEVELOPMENT CENTER,
ENVIRONMENTAL LABORATORY
AND
IRAQ FOUNDATION**

Scope of Cooperative Research and Development Program

The purpose of this cooperative research and development agreement is to provide for the joint conduct of research and development investigations related to water resource management issues including panel participation, master planning, capacity building, and technology transfer. This agreement is to include activities intended to address restoration of the Mesopotamian marshlands. The respective obligations of the PARTIES in performing the cooperative research and development program are as follows:

ERDC:

Note: Travel to Iraq by ERDC personnel may be restricted. Any activity under this CRADA requiring travel by ERDC staff to Iraq will be contingent on receiving Department of Defense and State Department approvals.

- (1) Shall provide research personnel to conduct laboratory and field studies to develop and evaluate the condition of the marshes.
- (2) Shall provide technical assistance in the form of research and development scientists for the development of the master plan and specific efforts as requested by the Iraq Foundation.
- (3) Support the Iraq Foundation with technical assistance in working with other entities on the restoration of the marshes, reviewing progress, and providing project guidance.
- (4) Participate in international panel for the restoration of the marshes.
- (5) Participate in the development and implementation of programs to develop Iraqi capacity related to marsh restoration and/or water resource management issues as agreed upon with the Iraq Foundation.

IRAQ FOUNDATION:

- (1) Provide the necessary permits and coordination with other entities for the restoration of the marshes.
- (2) Provide assistance in the development and implementation of the master plan for the restoration of the marshes.
- (3) Participate in international panel for the restoration of the marshes.
- (4) Participate in the development and implementation of programs to develop Iraqi capacity related to marsh restoration and/or water resource management issues as agreed upon with the ERDC.
- (5) Shall supply funds for technical assistance provided by ERDC pursuant to the terms and conditions set forth in Article 2;
- (6) Shall neither transfer nor assign this CRADA nor grant any use, privilege, or license whatsoever in connection with this CRADA without permission in writing from or through the ERDC point of contact.

APPENDIX B
WORK STATEMENT
PURSUANT TO
COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
BETWEEN
U S ARMY ENGINEER RESEARCH AND DEVELOPMENT CENTER,
ENVIRONMENTAL LABORATORY
AND
IRAQ FOUNDATION

Pursuant to Article 2.2 of the subject AGREEMENT, this Work Statement defines a particular research activity (consistent with the scope and obligations set forth in Appendix A) to be conducted under the AGREEMENT.

Purpose: To conduct joint research and development investigations and technical assistance with the IRAQ Foundation (IF) to address water resource management issues including restoration of the Mesopotamian marshes in IRAQ.

Background: The Mesopotamian Marshes represent a unique component of heritage and resources (UNEP, 2001). They cover over 20,000 square kilometers of interconnected lakes, mudflats, and wetlands within modern day IRAQ. The marshes play a key role in the intercontinental migratory birds, support endangered species, and sustain fisheries of the Persian Gulf. Over 90% of the marshes have been dewatered for over 10 years. The marshes play a significant role as a cultural center for the half a million marsh Arabs who have lived in this region for centuries, as a massive filtering system for the sediment and salt laden water for the Tigris and Euphrates, as a primary nesting area for water fowl and wading birds as well as a prime center for biodiversity, and is responsible for the microclimate of southern Iraq and Kuwait.

I.1 Partner:

Name: Rend Rahim, Chief Executive Officer
Address: Iraq Foundation
1012 14th Street NW, Suite 1110
Washington, DC 20005

Telephone: (202) 347-4662
Email: iraq@iraqfoundation.org

1.2 ERDC

Name: ~~Barbara A. Kleiss~~
Address: Commander
ERDC
Wetlands Research and Technology Center
CEERD-EE-W (Attn: Dr. Barbara A. Kleiss)
Vicksburg, MS 39180-6199

Telephone: (601)634-4674
Email: ~~Barbara.A.Kleiss~~@erdc.usace.army.mil

1.3 ERDC Administrative

TTO Name: ~~Bea Shahin~~
Address: U.S. Army Eng. R&D Ctr./ERDC
ATTN: CEERD-OT/Bea Shahin
2902 Newmark Drive
Champaign, IL 61822-1076

Telephone: (217)373-7234
Email: ~~Bea.Shahin~~@erdc.usace.army.mil