

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
AND THE
U. S. DEPARTMENT OF THE ARMY

Jun 92

ARTICLE I: PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is entered into by and between the United States Section, International Boundary and Water Commission, United States and Mexico (United States Section) and the U. S. Department of the Army (DA) for the purpose of establishing the respective responsibilities of the parties for delivering studies and other services as may be agreed upon in the future. This MOA is entered into pursuant to the Economy in Government Act, 31 U.S.C. 1535 and 22 U.S.C. 277 et seq.

ARTICLE II: BACKGROUND

The International Boundary and Water Commission, United States and Mexico (hereinafter the Commission) is an international organization created by treaties between the United States of America (hereinafter the United States) and the United Mexican States (hereinafter Mexico), principle among those treaties being the Convention of March 1, 1889 (TS 232, 26 Stat. 1512) and the Treaty of February 3, 1944 (TS 994, 59 Stat. 1219), and was so created for the purpose of exercising the rights and obligations of those two nations as set forth in those and other treaties and international agreements.

The responsibilities of the Commission include demarcation and preservation of the international boundary, regulation and distribution of waters and international rivers and streams, construction and operation of international dams and reservoirs, international hydroelectric generation, international flood protection, international issues of sanitation and water quality, and other matters related to the border region of the United States and Mexico.

The Commission is composed of two national sections, the United States Section and Mexican Section, each of which is an agency of its respective Federal Government.

In accordance with the Commission's jurisdiction under said treaties and other international agreements, the United States Section has numerous projects associated with the United States-Mexico border for which it has continuing responsibilities, and it will be called upon to develop and carry out additional projects in the future. In planning and managing such projects, the United States Section finds that it would be beneficial to seek the comments and opinions of an independent source which also has the expertise with similar projects.

The United States Section recognizes the expertise of the DA with projects similar to those of the United States Section. The DA recognizes that it is in the best interests of the United States to assist the United States Section in carrying out the U. S. responsibilities under its treaties and international agreements with Mexico.

ARTICLE III. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the United States Section, the DA and the United States Section shall each appoint a representative to discuss and consider activities that may be pursued under this MOA.

The DA and the United States Section representatives shall coordinate all requests for assistance under this MOA and shall serve as the points of contact between the DA and the United States Section on matters relating to this MOA.

The DA and the United States Section representatives shall conclude mutually agreed upon individual work orders (IWOs) pertaining to the requests. Services will be furnished in accordance with the terms and conditions of the IWOs. The IWOs shall describe in detail the scope of the services to be provided, schedules, all costs and necessary funding arrangements, and such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested services.

It is the sense of the United States Section that all services involving the exercise of professional judgment or sensitive matters between the United States and Mexico shall be performed by DA personnel. All services or functions to be performed or provided by contract shall be identified in IWOs.

The United States Section shall submit a draft IWO, describing the scope and proposed schedule of services to be provided, and shall request a proposal from the DA. The DA shall upon receipt of an IWO and a Request for Proposal, submit a written estimate of costs associated with performance of the IWO, which will include direct labor by type, number of hours and rate for each labor type, labor overhead rate, and other direct costs, such as travel, per diem, equipment, and materials. The authorized representative of each party shall agree to the final IWO prior to the initiation of services by the DA.

ARTICLE IV: PROVISION OF ASSISTANCE

Nothing in this MOA is intended to affect ongoing arrangements between the parties. Nothing in this MOA can be or should be construed to require the United States Section to use the services of the DA, or to require the DA to accept assignments from the United States Section, except as agreed upon in IWOs.

A. Responsibilities of the DA:

1. The DA will perform studies of current and future projects pursuant to the IWOs issued by the United States Section. Generally, these studies will evaluate the subject projects for the purposes of identifying resources required for successful design, construction and management of each project.

2. The DA also may provide other services pursuant to the IWOs issued by the United States Section, including developing and providing conceptual plans, scopes of work, and similar products related to its studies and recommendations, for use by the United States Section.

3. The DA will make personnel available as necessary for discussions and meetings with the United States Section personnel in conjunction with the subject studies.

4. The DA will proceed to execute each IWO only upon written notification by the United States Section. No costs will be incurred prior to receiving the written notification, except costs associated with developing responses to Requests for Proposals.

B. Responsibilities of the United States Section:

1. The United States Section will issue IWOs, on a project by project basis, for each study or service that the DA is asked to provide. Each work order will identify the project to be studied, define the specific parameters of that study, identify any particular issues upon which the study should focus, specify the type and range of information to be produced by the study, and identify any specific topics for which recommendations are desired.

2. The United States Section shall assist the DA in obtaining access to sites, rights of entry and support facilities as required.

3. The United States Section will, if required by the Office of Management and Budget, confirm the DA manpower requests for tasks assigned in the IWOs.

4. The United States Section will provide the DA with such information as it may have pertaining to the subject of the assistance.

5. The United States Section will make its personnel available as necessary for discussions and meetings with the DA personnel regarding the subject assistance.

6. If any contact with Mexican officials is necessary in relation to the assistance provided, such contact will be made only by the United States Section.

ARTICLE V: FUNDING

The United States Section will provide funding resources for all costs associated with the DA's provision of assistance, including the cost of any meritorious contract claims or awards. Major funding transfers, of \$250,000 or more, will be accomplished by using SF 1151, Nonexpenditure Transfer Authorization. The SF 1151 will be prepared and forwarded to the DA's designated representative for allotment. For IWOs involving estimated costs of less than \$250,000 or contract awards of less than \$50,000, the DA's designated representative will submit a request for payment to the Chief of the Financial Services Branch of the United States Section, using the Online Payment and Collection (OPAC) billing system, along with a detailed breakdown of the actual costs incurred under that work order for that billing period separated according to

fiscal year. Upon receipt of the proper payment documents specified above, the United States Section will reimburse the DA for the full costs related to the assistance provided in accordance with the IWOs. If the actual cost to the DA is forecast to exceed the amount of the additional funding necessary to pay for the assistance, the DA shall notify the United States Section. The United States Section shall either provide the additional funds to the DA, or require that the scope of the assistance be limited to that which can be financed by the available funds, or direct termination of the project. Upon furnishing the assistance specified by the IWOs, the DA shall conduct a final accounting within 120 days of project completion to determine the actual costs of the assistance provided. The DA shall return any funds advanced by the United States Section in excess of the actual costs within 90 days of the final accounting.

ARTICLE VI: APPLICABLE LAWS

The DA shall furnish all assistance under this MOA in accordance with U. S. laws and regulations. Unless otherwise required by law, any contract work undertaken by the DA shall be performed in accordance with the DA procurement and claims policies and procedures.

ARTICLE VII: RECORDS AND REPORTS

The DA will produce a report of the information resulting from each study. Reports will conform to the information needs identified in each IWO. Reports will include recommendations, when requested in the IWO. Reports will be provided only to the appropriate officials of the United States Section as identified in the IWOs.

The DA shall establish and maintain records and receipts of the expenditure of all funds provided by the United States Section. Records shall be maintained in sufficient detail to permit identification of the nature of expenditures made by the DA and shall be made available for inspection by officials of the United States Section upon request.

The DA shall provide the United States Section with project progress, financial and related status reports on tasks agreed upon in the IWOs, including providing financial reports on all funds received, obligated and expended. Frequency of reports will be agreed upon in the IWOs.

The DA and the United States Section both acknowledge that the activities agreed to in this MOA are contingent upon the availability of appropriations proper for the activities contemplated.

ARTICLE VIII: CLAIMS AND DISPUTES

Claims submitted by contractors arising under or relating to any contracts awarded by the DA shall be resolved in accordance with United States law and the terms of the individual contract. The DA has dispute resolution authority for these claims. Any contracting officer's final decision pursuant to such a claim may be appealed pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). The Corps of Engineers Board of Contract Appeals (ENGBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ENGBCA, the

contractor may bring an action directly to the United States Claims Court. The DA shall consult with the United States Section regarding any settlement negotiations.

The DA shall notify the United States Section of meritorious claims or appeals and shall submit requests to the United States Section for funds to cover such claims or appeals. The United States Section shall promptly provide such funds as are necessary to pay the costs of meritorious claims or appeals.

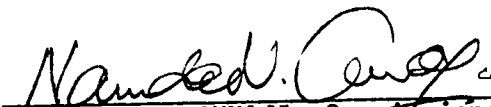
ARTICLE IX: PUBLIC INFORMATION

Justification and explanation of the United States Section program before Congress and the Executive Branch shall be the responsibility of the United States Section. The DA will provide, upon request of the United States Section, information to support contacts with Congress and the Executive Branch. The DA will make any public announcements that are required and respond to any inquiries relating to the procurement and contract award and administration process. The DA shall refer all other requests for reports or information to the United States Section for appropriate coordination and disposition.


ARTICLE X: EFFECTIVE DATE, AMENDMENT AND TERMINATION

This MOA is effective upon the date of the last signature by the parties. This MOA may be modified or amended only by written agreement.

Either the DA or the United States Section may terminate this MOA by providing sixty calendar days written notice. In the event of termination, the DA and the United States Section shall consult with each other concerning all claims for termination costs; however, the United States Section shall continue to be responsible for all costs incurred by the DA under this MOA, or under the IWOs, and for the costs of closing out or transferring any ongoing contracts.



NARENDRA N. GUNAJI, Commissioner
United States Section
International Boundary and Water Commission



NANCY P. DORN
Assistant Secretary of the Army
(Civil Works)

Date: 5/22/92

Date: 1 June 92