

AGREEMENT  
BETWEEN  
THE MINISTRY OF ENVIRONMENT  
OF THE GOVERNMENT OF COLOMBIA  
AND  
CORPS OF ENGINEERS  
THE DEPARTMENT OF THE ARMY  
OF THE UNITED STATES OF AMERICA

Dec 96

**ARTICLE I - PURPOSE AND AUTHORITY**

This Agreement is entered into by and between the Ministry of the Environment, Government of Colombia (GOC) and the Department of the Army, U.S. Army Corps of Engineers, Mobile District (COE) for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of COE technical and professional services. This Agreement is entered into pursuant to Section 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2357).

**ARTICLE II - SCOPE AND COST**

Goods and services the COE will provide under this Agreement include:

- An abbreviated outline of the general causes and effects of sedimentation.
- A general summary of possible processes and methods for remediation of the causes and effects of sedimentation in order to assist in the development of an environmentally sustainable program for the Canal del Dique.
- Terms of Reference for a comprehensive evaluation of sedimentation causes and effects and potential remedial/restoration measures.
- A determination of whether the COE is capable of performing the comprehensive evaluation.

The cost of this work effort shall be \$20,000 (U.S.).

Nothing in this MOA shall be construed to require or allow the GOC to use the COE or to require the COE to provide any goods or services to the GOC except as may be set forth in this Agreement.

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the GOC and the COE, each party shall appoint in writing a Principal Representative to serve as its central point of contact on matters relating to this Agreement.

**ARTICLE IV - RESPONSIBILITIES OF THE PARTIES****A. Responsibilities of the COE:**

The COE shall provide the GOC with goods or services in accordance with the purpose, terms, and conditions of this Agreement.

The COE shall be responsible for U.S. Government furnished equipment.

**B. Responsibilities of the GOC**

The GOC shall pay in advance all costs associated with the COE provisions of goods or services under this Agreement.

The GOC shall obtain for the COE access to all work sites and support facilities.

The GOC shall be primarily responsible for performing all coordination with and obtaining any permits from GOC agencies, as necessary, during the execution of this Agreement.

The GOC shall make any material, equipment and data available to the GOC available to the COE to expedite work described in this Agreement.

The GOC shall assist the COE in obtaining logistical and administrative services to include office space, housing, transportation, and similar services.

The GOC shall provide security necessary to protect the work site, material, equipment, and COE personnel present in the GOC to perform work pursuant to this Agreement. The GOC shall pay all costs related to reasonable requests by the COE for special protection of personnel and property. If it determines that adequate protection is not provided by the GOC, the COE shall provide the same and the GOC shall pay the costs.

**ARTICLE V - FUNDING**

The GOC shall, on an advance of funds basis, be responsible for all costs associated with the COE's provision of services. All funds advanced shall be in U.S. currency and such funds shall be delivered by check payable to "FINANCE AND ACCOUNTING OFFICER, USAED, MOBILE." The GOC shall advance funds for the services requested in the amount specified in Article II no later than 15 days following the effective date of this Agreement. If during COE's provision of services the actual cost to the COE for the

services is forecast to exceed the total amount of funds available under this Agreement, the COE shall promptly notify the GOC of the amount of the additional funding that is necessary. The GOC shall either provide the additional funds to the COE within 30 days, require that the scope of services be limited to that which can be financed by available funds, or direct the termination of this Agreement.

Within 90 days of completing the work under this Agreement, the COE shall conduct a final accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the COE shall return to the GOC any funds advanced in excess of the actual costs as then known. Such a final accounting shall in no way limit the GOC's duty in accordance with Article VIII to pay for any costs which may become known after the final accounting.

#### ARTICLE VI - APPLICABLE LAWS

This Agreement and all documents and actions pursuant to it shall be governed by the applicable statutes, regulation, directives, and procedures of the United States. In the event applicable U.S. law conflicts with GOC law, the COE may terminate this Agreement.

#### ARTICLE VII - DISPUTE RESOLUTION

The parties agree that in the event of a dispute between the parties, the GOC and the COE 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. In the event that such informal efforts are unsuccessful, the parties agree that the only forum for dispute resolution will be the Federal Courts of the United States applying United States laws and other requirements described in Article VI. The parties further recognize that the services to be performed under this Agreement are of a commercial nature; consequently, the parties agree not to invoke the Act of State Doctrine as a defense to dispute resolution in the Federal Courts of the United States.

#### ARTICLE VIII - LIABILITY

The GOC will hold and save the COE harmless and free from all damages arising from the assistance provided by the COE under this Agreement.

If liability of any kind is imposed on the United States relating to the COE's provision of goods or services under this Agreement, the GOC shall remain responsible as the program

proponent for providing such funds as are necessary to discharge the liability and all related costs.

#### ARTICLE IX - ADVERSE CONDITIONS

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

#### ARTICLE X - INTELLECTUAL PROPERTY

Unless otherwise prohibited by law, the COE shall have the sole right and responsibility to apply for, obtain, and maintain protection in the United States or other countries for technology or intellectual property developed by COE employees pursuant to this Agreement.

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

Unless otherwise prohibited by law, the COE 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 the COE as appropriate in the public interest; however, the COE shall grant to GOC a non-exclusive, royalty-free right to utilize the documents and work products produced under this Agreement.

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

#### ARTICLE XI - PRIVILEGES AND IMMUNITIES

The GOC will provide privileges and immunities equivalent to those received by the administrative and technical staff of the United States Embassy located in Colombia for all COE personnel performing services under this Agreement. In the event that the GOC does not provide such aforesaid privileges and immunities for the COE personnel, the GOC shall notify the COE of such and

event, and the COE may terminate all services under this Agreement.

#### ARTICLE XII - MISCELLANEOUS

**Other Relationships or Obligations:** This Agreement shall not affect any pre-existing or independent relationships of obligations between the GOC and the COE.

**Survival:** The provisions of this Agreement which require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of the Agreement.

**Severability:** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by United States law and regulation.

**Public Information:** In general, the GOC is responsible for all public information. The COE may make public announcements and respond to all inquiries relating to ordinary procurement and contract award/administration processes. The GOC or the COE shall make best efforts to give the other party advance notice before making any public statements regarding work contemplated, undertaken, or completed pursuant to this Agreement.

**Justification and explanation of the COE program before the US Congress and other agencies, departments, and offices of the US Federal Executive Branch shall be the responsibility of the COE. The GOC may provide, upon request, any assistance necessary to support the COE justification or explanations of the COE program conducted under this Agreement.**

**Language:** The English language text and Spanish language text are equally authentic. It has been certified that the English language text and the Spanish language text are in conformity with each other and that both texts have the same meaning in all substantive respects. Nonetheless, the English language text of this Agreement shall be considered by the parties as the governing text in case of conflict between the different language texts.

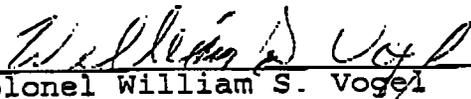
#### ARTICLE XIII - AMENDMENT, MODIFICATION, AND TERMINATION

This Agreement may be modified or amended only by written, mutual 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 notice, unless a later date is set forth.

ARTICLE XIV - EFFECTIVE DATE

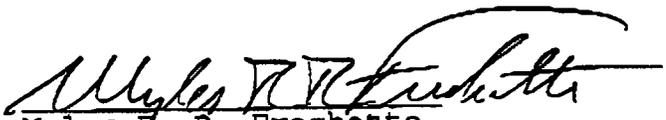
This Agreement shall become effective when signed by both the GOC and the COE.

  
Jose Vicente Mogollon Velez  
Ministry of the Environment  
Government of Colombia

  
Colonel William S. Vogel  
Corps of Engineers  
Department of the Army  
United States of America

Date: 04 August 1996

Date: 17 Aug 96

Witnessed By:   
Myles R. R. Frechette  
Ambassador of the United  
States of America

FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE MINISTRY OF ENVIRONMENT OF THE GOVERNMENT OF COLOMBIA AND CORPS OF ENGINEERS THE DEPARTMENT OF THE ARMY OF THE UNITED STATES OF AMERICA DATED 24 AUGUST 1996.

I Amendment

Reference the Agreement Between the Ministry of Environment of the Government of Colombia and Corps of Engineers the Department of the Army of the United States of America dated 24 August 1996 (Basic Agreement). This amendment (Amendment) is authorized by Article XIII of the Basic Agreement and concluded by representatives of the Government of Colombia, represented by the Minister of the Environment, and the Government of the United States (USG), represented by the Commander of the Mobile District, U.S. Army Corps of Engineers (the Corps).

II Purpose

This amendment is for the addition of \$4,600 to the original \$20,000 authorized in Article II, Scope and Cost, of the Basic Agreement. The funds will be furnished by the Government of Colombia in accordance with Article IV B of the Basic Agreement. The additional funds will be used by personnel of the Corps of Engineers to participate as members of a Panel of Experts with the purpose of revising the Terms of Reference for the study and definitive design of the best solution to the problem of sedimentation of the Bay of Cartagena and its surroundings, caused by the sediments that flow through the Canal del Dique.

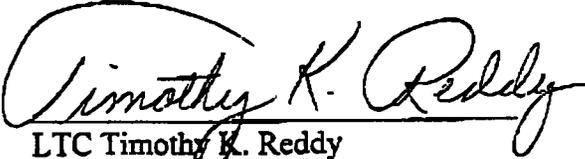
III Changes

All terms and conditions of the above referenced basic agreement not modified by this amendment remain unchanged.

IV Effective Date

This Amendment shall become effective when signed by representatives of both the Government of Colombia and the Corps of Engineers.

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Jose Vicente Mogollon Velez  
Ministry of the Environment  
Government of Colombia

  
\_\_\_\_\_  
LTC Timothy K. Reddy  
Corps of Engineers  
Department of the Army  
United States of America

Date: \_\_\_\_\_

12 Dec 96

Date: \_\_\_\_\_

12 Dec 96