

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
GOVERNMENT OF THE  
COMMONWEALTH OF THE BAHAMAS  
AND  
THE DEPARTMENT OF THE ARMY  
OF THE UNITED STATES OF AMERICA

95

*May*

**ARTICLE I - PURPOSE AND AUTHORITY**

This Memorandum of Agreement (MOA) is entered into by and between the Department of the Army of the United States of America (DA) and the Government of the Commonwealth of The Bahamas (GCOB) acting by and through the Minister of Foreign Affairs for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA technical and professional services. This MOA is entered into pursuant to Section 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Section 2357).

**ARTICLE II - SCOPE**

Goods and services which the DA may provide under this MOA include delivering technical assistance involving studies, planning, engineering, construction, project management, and contract management related to, surface water drainage, water resource development, infrastructure development, and environmental protection and such other related work as may be agreed upon in the future.

Nothing in this MOA shall be constructed to require the GCOB to use the DA to provide any goods or services to the GCOB except as may be set forth in work orders (WO(s)).

**ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between the DA and the GCOB, each party shall appoint in writing 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 WOs.

#### ARTICLE IV - WORK ORDERS

In response to requests from the GCOB for DA assistance under this MOA, the DA and the GCOB shall conclude mutually agreed upon written WOs, which shall include the following:

- a detailed scope of work statement;
- schedules;
- the amount of funds required and available to accomplish the scope of work as stated above;
- payments arrangements;
- identification of individual project managers;
- procedures for coordinating with representatives of the GCOB;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- a statement concerning any intellectual property rights granted to the GCOB by the DA, as appropriate;
- identification of which party is to be responsible for contract administration, records maintenance, and contract audits;
- procedures for amending or modifying the WO; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods and services shall be provided under this MOA only after an appropriate WO has been signed by a representative of each party authorized to execute that WO. In the case of conflict between this MOA and a WO, this MOA shall control.

**ARTICLE V - RESPONSIBILITIES OF THE PARTIES**

**A. Responsibilities of the Department of the Army**

The DA shall provide the GCOB with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in WOs.

The DA shall ensure that only authorized DA representatives sign WOs.

The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

The DA shall provide detailed periodic progress, financial and other reports to the GCOB as agreed to in the WO. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The DA shall inform the GCOB of all contracts entered into under each WO.

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

**B. Responsibilities of the GCOB**

The GCOB through its Ministry of Foreign Affairs shall identify in writing GCOB official(s) authorized to sign WOs and shall draft WOs to include scope of work statements.

The GCOB shall pay all costs associated with the DA's provisions of goods or services under this MOA. The GCOB may audit the costs involved in the DA's provision of goods and services under this Agreement on a continuing basis upon

reasonable notice.

The GCOB shall obtain for the DA both necessary real estates interests and access to all work sites and support facilities.

Except as otherwise agreed in a WO, the GCOB shall be primarily responsible for performing all coordination with and obtaining any permits from Bahamian national and local agencies, as necessary during the execution of each WO.

The GCOB shall obtain in an expeditious manner duty free import of materials, equipment, supplies, and services, and other items that may be provided by the DA or its contractors for the purposes of work performed under WOs. The GCOB shall reimburse the DA for any duties or other charges imposed. The DA shall provide to the GCOB evidence of any duty imposed.

The GCOB shall ensure exemption for any U.S. or third country contractors that may be employed by the DA for purposes of this MOA and subsequent WOs from Bahamian corporate and personal tax liabilities and shall ensure that all contractors are exempt from all direct or indirect taxes including Value Added Taxes. The GCOB shall reimburse the DA for any taxes or other charges imposed.

The GCOB shall make any material, equipment and data available to the GCOB available to the DA to expedite individual WOs.

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

Unless existing agreements otherwise provide for the

status of DA personnel, the GCOB shall seek accreditation for DA personnel, including contractor personnel, as members of the administrative and technical staff of the diplomatic mission of the United States in the Commonwealth of The Bahamas (COB). The GCOB shall notify the DA in any case where the DA personnel, including contractor personnel, cannot be accredited, at a minimum, as members of the administrative and technical staff of the diplomatic mission of the United States in the COB. In the event the GCOB is unable for any reason to secure such accreditation for the DA personnel or contractor personnel, the DA may terminate the applicable WO.

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

#### **ARTICLE VI - FUNDING**

The GCOB shall, on an advance of funds basis, be responsible for all costs associated with the DA'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 GCOB shall advance funds for the services requested in the amount agreed upon in the approved WO and in accordance with the following schedule: No later than 15 days prior to the DA's initiation of goods or services under a WO, the GCOB shall furnish the funds required for the first 3-month period. If during DA's provision of services, the actual cost to the DA for the services is forecast to exceed the total amount of

funds available under the WO or the amount advanced for the quarter in question, the DA shall promptly notify the GCOB of the amount of the additional funding that is necessary. The GCOB shall either provide the additional funds to the DA within 30 days, require that the scope of the services be limited to that which can be financed by available funds, or direct termination of the WO.

Within 90 days of completing the work under a WO, the DA shall conduct a final accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the GCOB any funds advanced in excess of the actual costs as then known or the GCOB shall provide any additional funds necessary to cover the actual costs as then known. Such a final accounting shall in no way limit the GCOB's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

#### **ARTICLE VII - APPLICABLE LAWS**

To the extent allowed by Bahamian law, this MOA and all documents and actions pursuant to it shall be governed by the statutes, regulations, directives, and procedures of the United States. To the extent consistent with U.S. law, all work performed under this MOA shall also conform to applicable Bahamian law. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures. In the event applicable U.S. law conflicts with applicable Bahamian law, the DA or the GCOB may terminate any affected WO(s).

#### **ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES**

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in

accordance with U.S. federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any Contracting Officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. sections 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals (ENG BCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for litigating all disputes and appeals arising under or related to contracts awarded by the DA and for coordinating with the U.S. Department of Justice as appropriate. The DA shall notify the GCOB of any such litigation and afford the GCOB an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

#### **ARTICLE IX - DISPUTE RESOLUTION**

The parties agree that in the event of a dispute between the parties, the GCOB and the 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.

#### **ARTICLE X - LIABILITY**

The GCOB holds and saves the DA harmless and free from all damages arising from the assistance provided by the DA.

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the GCOB shall remain responsible as the program proponent for providing such funds as are necessary

to discharge the liability and all related costs.

#### **ARTICLE XI - ADVERSE CONDITIONS**

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

#### **ARTICLE XII - INTELLECTUAL PROPERTY**

Unless otherwise prohibited by law, the DA 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 DA employees or under contracts awarded by the DA pursuant to this MOA.

The DA 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 DA 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 DA as appropriate in the public interest; however, the DA shall grant to GCOB a non-exclusive, royalty-free right to utilize the documents

and work products produced under said WO.

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

#### **ARTICLE XIII - PUBLIC INFORMATION**

In general, the GCOB is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The GCOB or the DA shall make its best effort to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this MOA.

Justification and explanation of the DA's programs before the U.S. Congress and other agencies, departments, and offices of the U.S. Government shall be the responsibility of the DA. The GCOB may provide, upon request, any assistance necessary to support the DA's justification or explanations of the DA's programs conducted under this MOA.

#### **ARTICLE XIV - MISCELLANEOUS**

**Other Relationships or Obligations:** This MOA shall not affect any pre-existing or independent relationships or obligations between the GCOB and the DA.

**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 the MOA.

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.

WO Review: On a tri-annual basis, the parties shall review the work executed under this MOA.

**ARTICLE XV - 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 of this MOA or a WO hereunder, the GCOB shall continue to be responsible for all costs, including liabilities, the DA incurs under this MOA or the terminated WO and for the costs of closing out or transferring any on-going contracts.

**ARTICLE XVI - EFFECTIVE DATE**

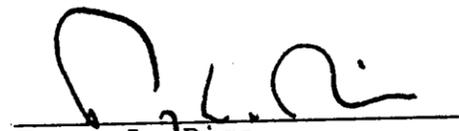
This MOA shall become effective when signed by both the GCOB and the DA.

GOVERNMENT OF THE COMMONWEALTH  
OF THE BAHAMAS

  
Joshua Sears  
Permanent Secretary  
Ministry of Foreign Affairs

Date: 30<sup>th</sup> May 1995

UNITED STATES OF AMERICA  
DEPARTMENT OF THE ARMY

  
Terry L. Rice  
Colonel, U.S. Army  
District Engineer

Date: 30 May 95