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MEMORANDUM OF AGREEMENT
BETWEEN
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
AND
U.S. ARMY ENGINEER DIVISION, PACIFIC OCEAN

SUBJECT: Design, Engineering, and Construction Services

This AGREEMENT entered into by and between the United States Army Engineer Division, Pacific Ocean (hereinafter referred to as Division), acting through the Division Engineer and the Commonwealth of the Northern Mariana Islands (hereinafter referred to as Commonwealth), acting through the Governor of the Commonwealth.

WHEREAS, the Commonwealth periodically has requirements for design, engineering, and construction services related to water resources and related land resources projects;

WHEREAS, Section 13 of Public Law 98-213 authorizes and directs the Secretary of Army acting through the Chief of Engineers, in cooperation with the Commonwealth, to study and draft plans for development, utilization and conservation of water and related land resources from monies appropriated for such purposes;

WHEREAS, Section 603 of Public Law 96-205 authorizes the Division on a cost reimbursable basis to furnish, to the extent practicable, to the Commonwealth, services, facilities and equipment of the Division;

WHEREAS, Section 1 of Public Law 80-487 authorizes the Division, upon the request of the Secretary of the Interior, to furnish to the Commonwealth on a cost reimbursable basis scientific, technical and other assistance under any program administered by the Division;

WHEREAS, Section 6505 of Title 31 of the United States Code authorizes the Division to provide on a cost reimbursable basis statistical and other studies, and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services to the Commonwealth.

NOW THEREFORE, it is mutually agreed as follows:

I. INTRODUCTION

This Memorandum establishes responsibilities and procedures under which the Division in accordance with the cited authorities shall furnish to the Commonwealth design, engineering, and construction services in connection with water and related land resources projects and land use planning as may be designated by the Governor of the Commonwealth. This Memorandum of Agreement is not applicable to activities in the Commonwealth authorized pursuant to the various Civil Works authorities of the U.S. Army Corps of Engineers nor is it applicable to military construction projects.

II. POLICY OF THE DIVISION

The Division Engineer will, within the capabilities of the Division, make available the facilities and services of the Division to perform water and related land use planning, engineering, design and construction services, as desired by the Commonwealth.

III. POLICY AND AUTHORITIES OF COMMONWEALTH

It is the policy of the Commonwealth to designate the Division as its agent to perform water and related land use planning, engineering, design and construction services whenever this will promote efficiency and economy.

IV. IMPLEMENTATION

The Governor may make requests for services directly to the Division Engineer. Requests shall be in writing, shall describe the scope of the services desired, the proposed location of the project, the funding limitations, and shall designate the Commonwealth individual or office responsible for furnishing criteria for the services desired. The Division Engineer shall promptly acknowledge the request in writing. The Division Engineer and the Governor, respectively, shall authorize the offices in the Division and in the Commonwealth responsible for furnishing services and

providing funds to enter into agreements, by exchange of letters or otherwise, implementing this general agreement with respect to the specific services requested. Implementing agreements will provide in detail the guidance under which the project will be accomplished.

V. WATER RESOURCES AND RELATED LAND USE PLANNING

Based upon specific requests by the Commonwealth, the Division will furnish specialized planning services and technical assistance in accordance with Commonwealth's detailed needs.

VI. ENGINEERING AND DESIGN SERVICES AND CRITERIA

1. Engineering Services. Based upon specific requests by the Commonwealth, the Division shall furnish specialized engineering and technical assistance in accordance with Commonwealth's detailed needs.

2. Design Standards and Criteria. The Commonwealth shall furnish design standards and criteria and any descriptive material or sketches needed to define the general quality, location, space allocation, functional layout, and operating characteristics to be incorporated into the design of a project.

3. Plans and Specifications. Based upon the design standards and criteria furnished by the Commonwealth, the Division shall cause designs to be prepared by contract or Division personnel; and shall, if desired by the Commonwealth, submit for approval concept drawings and outline specifications indicating the general quality of construction, proposed space allocation, functional layout, and operating characteristics, on completion of no more than 25% of total design. Subsequent development of project drawings and specifications shall be accomplished by the Division so as to comply fully with the requirements of the Commonwealth.

4. Solicitation. Based upon specific requests, the Division shall solicit offers for construction of the project. At least thirty (30) days prior to the solicitation of proposals or advertisement for bids for construction, the Division shall submit the proposal or bid documents to the Commonwealth for approval. Upon receipt of written approval of the Commonwealth, the Division shall proceed with solicitation based upon the approved documents.

VII. CONSTRUCTION

1. Contracting. The Division shall be responsible for contracting for construction of projects if these services are requested by the Commonwealth. Contracts will be based upon plans and specifications prepared in accordance with paragraph VI above, or upon plans and specifications and such other requirements as may be set forth by the Commonwealth in the construction request. Division contracts shall include special provisions approved by the Commonwealth for work in the Commonwealth.

2. Supervision, Inspection and Acceptance of Work. The Division shall be responsible for supervision and inspection of the construction under such contracts to insure that the project is built in accordance with the plans and specifications. If desired, the Commonwealth may perform general surveillance of the construction in progress, but will report all comments or desired changes to the Division for necessary action. Final acceptance of the work will be accomplished by the Division. It is understood that the Commonwealth may have similar contracts going on simultaneously for which supervision, inspection and acceptance are solely managed by the Commonwealth.

3. Changes. Changes during construction within the scope of the contract made necessary by conditions encountered in the work will be directed by the Division within the limits of available funds. Changes not within the scope of the contract and any design changes whether or not within the scope of the contract will be made by the Division only upon the request or approval in writing of the Commonwealth.

4. Transfer of Completed Construction. Upon completion of a project constructed under a Division administered contract and prior to final acceptance, the Commonwealth and the Division shall make a joint inspection of the work. The Division shall cause to be corrected, by appropriate action under the contract, any construction deficiencies resulting from failure to comply with the plans and specifications. Transfer of accountability from the Division to the Commonwealth shall be by execution of ENG Form 290, DD Form 1354, or comparable accountability documents. Deficiencies in construction at the time of transfer, if any, shall be listed on the reverse of the form for necessary corrective action by the

contractor on order of the Division. Minor deficiencies shall not be cause to delay transfer of projects which are substantially completed and usable provided that transfer prior to final completion can be accomplished under the terms of the contract.

5. "As Built" Plans, Shop Drawings, and Operating Instructions. Within ninety (90) days after completion of the construction project the Division shall furnish to the Commonwealth the original plans annotated to show the facility "as built," final approved shop drawings, copies of the construction contract, and other pertinent documents including such information on operation and maintenance of the equipment as has been furnished by the construction contractor under the provisions of the contract.

VIII. PROGRESS REPORTING

The Division shall furnish such information on progress of design and construction at such frequency as may be requested in writing by the Commonwealth.

IX. FUNDING

The Commonwealth shall reimburse the Division for its actual costs incurred in performing the requested services. Prior to the commencement of any work by the Division, the Commonwealth shall provide such funds to cover the estimated cost of the requested services. The amount will be based on cost estimates prepared by the Division which will include costs for planning, concept, and other preliminary requirements, all contract costs and Corps' actual costs which include applicable design, engineering and construction services, supervision and inspection, any other services provided, and applicable indirect costs. Labor costs include surcharge rates established to cover employees' leave and Division contributions for insurance, health benefits and retirement. Except for claims, the Commonwealth shall provide any additional funds required prior to the Division commencing any additional work. The Commonwealth shall also be responsible for providing funds for payment of meritorious claims and appeals which arise under the provisions of any contract awarded pursuant to this Agreement.

X. GENERAL

Subject to the foregoing provisions, the contracting and administrative procedures used during design and construction will be, to the maximum extent feasible, in accordance with normal Division's procurement standards, procedures and responsibilities with every possible effort exercised to minimize the time required for administrative procedures and approvals. The Contracting Officer authorized by the Corps to execute and administer contracts for engineering, design and construction will execute such contracts on behalf of the Commonwealth and not for the United States of America. Disputes arising under contracts entered into on behalf of the Commonwealth shall be heard and decided by the Corps of Engineers Board of Contract Appeals and in accordance with the procedures of that Board. The Engineer Trial Attorney shall consult with the Commonwealth before agreeing to settle any claim.

XI. RELEASE OF CLAIMS

The Division and its officers, agents, and employees shall not be liable in any manner to the Commonwealth for or on account of damage, related to, caused by, or resulting from the design, engineering or construction services provided. The Commonwealth hereby releases the Division and agrees to indemnify and hold harmless the Division from all damages, claims, suits or demands that may result from the design, engineering or construction services provided, whether by act or omission of the Division, its officers, or employees.

XII. OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

XIII. COVENANT AGAINST CONTINGENT FEES

Commonwealth warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement 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 the Commonwealth for the purpose of securing business. For breach or violation of this warranty, the Division shall have the right to annul this Agreement without liability or in its discretion to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

XIV. CHOICE OF LAW

This Agreement and all rights and duties hereunder shall be interpreted in accordance with the applicable statutes, regulations, executive orders, and decisions of the United States of America, its branches, departments and agencies, and instrumentalities.

XV. AMENDMENT AND TERMINATION

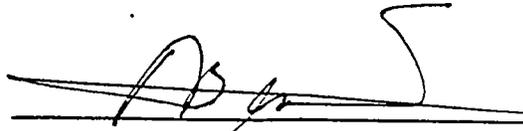
1. This Agreement may be modified or amended by written agreement between the Commonwealth and the Division.

2. In the event circumstances are such that either the Commonwealth or the Division deems it necessary or desirable to terminate this Agreement before completion of any services initiated hereunder, the Commonwealth and the Division will consult in advance of such terminations and will, insofar as possible, fix a termination date sufficiently in advance so that the parties may make personnel and other adjustments in their operations in light of such termination.

XVI. EFFECTIVE DATE

This Agreement shall be effective immediately upon signature of both parties involved.

11/8/84
Date



PEDRO P. TENORIO
Governor
Commonwealth of the Northern
Mariana Islands

1/25/85
Date



R. M. BUNKER
Brigadier General, USA
Division Engineer
US Army Engineer Division, Pacific
Ocean

CERTIFICATE OF AUTHORITY

I, Bob O'Connor, do hereby certify that I am the Attorney General of the Commonwealth of the Northern Mariana Islands, that the Commonwealth of the Northern Mariana Islands is a legally constituted public body with full authority and capability to perform the terms of the agreement between the United States of America and the Commonwealth of the Northern Mariana Islands and that the person who executed the contract on behalf of the Commonwealth of the Northern Mariana Islands has acted within his statutory authority.

In Witness Whereof, I have made and executed this Certificate this 7th day of November, 1984.

Bob O'Connor
ATTORNEY GENERAL
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS