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MEMORANDUM OF AGREEMENT
BETWEEN THE
ENVIRONMENTAL PROTECTION AGENCY
AND THE
DEPARTMENT OF THE ARMY
FOR TECHNICAL SERVICES RELATING
TO THE CITY OF
KRAKOW, POLAND

SHORT TITLE

This memorandum of agreement (MOA) may be referred to as the "Krakow Water and Wastewater Treatment Project."

AUTHORITY

- a. The Economy in Government Act, P.L. 97-258, as amended by P.L. 98-216.
- b. The Defense Technical Corrections Act, P.L. 100-26.
- c. The Support for Eastern European Democracies Act of 1989, P.L. 101-179.

PURPOSE

Pursuant to Section 502(c)(2) of the Support for Eastern European Democracies Act of 1989, the Administrator of the Environmental Protection Agency (EPA) is cooperating with Polish officials and experts to improve the quality of water and the availability of drinking water in the Krakow metropolitan area. As part of this cooperative effort, the EPA intends to provide the City of Krakow with certain water and wastewater treatment equipment, laboratory equipment, and related supplies and services. The EPA has asked the Department of the Army (Army) to assist in this effort. This MOA sets forth the framework for furnishing the requested assistance, which includes procurement, shipping, on-site review of the equipment, and other related services.

PROVISION OF TECHNICAL SERVICES

The Army shall provide the EPA with such technical services as are requested by the EPA to assist it in its cooperative program with Poland to improve the quality and quantity of drinking water in the City of Krakow. Such technical services will be provided in accordance with the general terms and conditions of this MOA and the specific provisions of individual support agreements.

PROCEDURE

To provide for consistent and effective communication between the Army and the EPA, the Army and the EPA shall appoint a program manager to coordinate on all requests for technical services under this MOA and to serve as the primary point of contact between the Army and the EPA on all matters relating to this MOA. The initial program manager for the Army shall be Ronald Eller. The initial program manager for the EPA shall be Ed Gross.

The EPA shall submit requests for technical services under this MOA to the Army program manager. Such requests for technical services shall be in writing and shall describe the scope of the services desired and the proposed location of the project or facility to which the services relate; and shall designate for purposes of further communications relating to the request an individual or office authorized to represent the EPA on all matters relating to the request, including the obligation of funds.

Upon receipt of such a request for technical service, the Army program manager shall provide the individual or office authorized to represent the EPA with an acknowledgment in writing of the request for technical service and shall designate for purposes of further communications relating to that request an individual or office designated to represent the Army on all matters relating to the request.

The program managers or their designees shall conclude individual support agreements pertaining to the requests. Technical services will be furnished in accordance with the terms and conditions of such individual support agreements. The support agreements shall describe in detail the scope of services to be provided, necessary funding arrangements, and such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested services.

Any services performed shall be in accordance with a scope of work set forth in individual support agreements.

RESPONSIBILITIES

It is expected that the Army will provide certain procurement services under the framework of this MOA, including preparing solicitations for equipment, supplies, or parts to be purchased on behalf of the EPA; analyzing bids or proposals received; awarding contracts; taking delivery of equipment, supplies, and parts and assuring that they meet applicable specifications; arranging for transportation of purchased equipment, supplies, and parts to Krakow when necessary; assuring secure storage of such equipment, supplies and parts until installed; providing limited on-site review services related to the installation of the equipment, supplies, and parts purchased; and coordinating with the EPA to insure that necessary documents are prepared to transfer title from EPA to the appropriate Polish officials. The technical services provided by the Army will, at times, supplement services being provided by EPA's engineering consultant, Engineering Science, Inc., which is preparing the specifications for the water and wastewater treatment equipment and laboratory equipment proposed for purchase.

The EPA shall be responsible for:

- (1) Identifying any equipment, supplies, or parts to be purchased and developing specifications relating to the purchase of such equipment, supplies, or parts;
- (2) Maintaining liaison with appropriate Army and Polish officials to insure that any equipment, supplies, or parts that are proposed for purchase are suited for their intended purposes and places of installation;
- (3) Maintaining liaison with appropriate Polish officials to insure that Polish personnel are afforded any training that is necessary to provide for proper operation of equipment;
- (4) Maintaining liaison with appropriate Army and Polish officials to insure that the purchase of equipment, supplies, and parts is properly coordinated with efforts managed by Polish officials relating to the installation of such equipment, supplies, and parts;
- (5) Obtaining in Poland any permits or real estate interests that may be necessary to allow the Army to provide the requested technical services; and
- (6) Providing the Army with a proposed schedule for furnishing the requested technical services.

The Army shall be responsible for:

- (1) Providing requested technical services in a timely and professional manner;
- (2) Maintaining records and providing the EPA with periodic reports on the status of individual support agreements; and
- (3) Assisting the EPA, upon request, in responding to congressional inquiries relating to Army activities under this MOA and individual support agreements.

FUNDING

The EPA shall fund all costs associated with the Army's provision of technical services. Each support agreement shall specify a funding procedure. The EPA may reimburse the Army for costs incurred or pay the Army in advance of the provision of technical services. In the event a support agreement specifies that technical services shall be paid for in advance, the EPA shall provide such funding as is necessary to cover the anticipated costs of the requested services. If the actual cost to the Army is forecast to exceed the amount of funds so provided, the Army shall promptly notify the EPA of the amount of additional funding necessary to pay for the services requested. The EPA shall either provide additional funds for the services, require that the scope of the services be limited to that which can be financed by the available funds, or direct termination of the services. Upon furnishing the services contemplated by a support agreement, the Army shall conduct a final accounting to determine the actual costs of the services provided. The Army shall return any funds advanced by the EPA in excess of the actual costs within 90 days of the final accounting.

PROCUREMENT

The Army will acquire all equipment, supplies, and parts envisioned under this MOA and individual support agreements in accordance with applicable United States laws and regulations.

RECORDS AND REPORTS

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

The Army shall provide the EPA with a report summarizing the expenditure of funds on individual support agreements on a quarterly basis.

CLAIMS

All claims submitted by contractors arising under or relating to contracts awarded by the Army shall be resolved in accordance with the terms of the contract. Any decision issued pursuant to such a claim may be appealed to the Corps of Engineers Board of Contract Appeals. In lieu of appealing to the Board of Contract Appeals, the contractor may bring an action directly to the United States Claims Court. The Army shall be responsible for litigating all such appeals or actions. The Army will consult with the EPA during any settlement negotiations.

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

EFFECTIVE DATE, AMENDMENT, AND TERMINATION

This MOA shall become effective when signed by the EPA and the Army.

The MOA may be modified or amended only by written agreement.

Either the EPA or the Army may terminate this MOA by providing sixty calendar days written notice. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the Army shall consult with the EPA concerning all claims for termination costs; however, the EPA shall continue to be responsible for all costs incurred by the United States under individual support agreements pursuant to this MOA, for other costs incurred by the United States to terminate individual support agreements, and for the costs of closing out or transferring any ongoing contracts that may have been entered into pursuant to individual support agreements.

Department of the Army
Name: [Signature]
Title: ASA (CW)
Date: 7/30/90

Environmental Protection Agency
Name: [Signature]
Title: Administrator, U.S. EPA
Date: July 31, 1990

Robert W. Page
Assistant Secretary of the Army
(Civil Works)