

No. 11277

**UNITED STATES OF AMERICA
and
PANAMA**

**Agreement for cooperation in the construction of the Panama
segment of the Darien Gap Highway. Signed at
Washington on 6 May 1971**

Authentic texts : English and Spanish.

Registered by the United States of America on 4 August 1971.

**ÉTATS-UNIS D'AMÉRIQUE
et
PANAMA**

**Accord de coopération pour la construction du tronçon de la
route du Darien au Panama. Signé à Washington le
6 mai 1971**

Textes authentiques : anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 4 août 1971.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PANAMA FOR COOPERATION IN THE CONSTRUCTION OF THE PANAMA SEGMENT OF THE DARIEN GAP HIGHWAY

This agreement entered into as of the sixth day of May, 1971, by and between the Republic of Panama represented by its Minister of Public Works and the United States of America represented by its Secretary of Transportation is for the purpose of carrying into effect Section 216 of Title 23, United States Code. For the purpose of this Agreement, the following definitions shall be understood: *a*) Government: that of the Republic of Panama; *b*) Ministry: that of the Ministry of Public Works, Republic of Panama; *c*) FHWA: The Federal Highway Administration, United States Department of Transportation; *d*) Highway: The Darien Gap Highway.

Section I

PROGRAM DESIGNATION AND LOCATION

The Highway route in the Republic of Panama begins at a point near Tocumen east of Panama City and extends southeasterly approximately 320 kilometers through Chepo, Cañitas, Sante Fe and Yaviza to a crossing of the Panama-Colombia border at Palo de Las Letras.

Section II

The FHWA and the Government agree to cooperate in the construction of the segment of Highway designated in Section I above in accordance with the following understanding:

A. The FHWA, on its part, undertakes:

1. As funds become available, to set aside specific sums in accordance with this Agreement for preliminary engineering, design, supervision and construction of specific parts, or sections of the designated Highway in

¹ Came into force on 6 May 1971 by signature, in accordance with its provisions.

accordance with the provisions of Section 216 of Title 23, United States Code, said sums being based on approved plans, specifications and estimates; and these sums to become available only as allotted under Project Agreements hereafter executed by the FHWA and the Government and to be expended only for work actually performed in accordance with said plans, specifications and estimates and within the terms and conditions of this Agreement.

2. To exercise authority, as provided in Section 216 of Title 23 United States Code, to administer the funds allotted under Project Agreement as subsequently executed; to approve locations, surveys, plan, specifications and estimates for all work to be done under said Project Agreements; to approve the method of performing the work, whether by force account or by contract; and if by contract, to authorize advertising, to concur in the award, to check the quality of the work performed and to reimburse the Government for the FHWA's share of the cost of approved completed work by means of Form PR-20 revised, of the FHWA.

3. To provide a Division Engineer and support staff personnel who shall act under the direction of the Federal Highway Administrator, in carrying out the responsibilities of the FHWA under this agreement. The compensation and the other expenses thereof shall be paid by the FHWA from Highway funds reserved by the FHWA for this purpose. When the volume of work makes this desirable, officials may be assigned to represent the FHWA in more than one country. When so requested by the Government, the Division Engineer and staff will furnish technical advice and assistance and at all times will cooperate with the Government to achieve and maintain rapid and economical construction and to secure the early completion of the work.

4. To secure any additional personnel required to perform the duties of the FHWA as outlined in this Agreement. The compensation and other expenses of project employees, other than the Division Engineer and staff referred to above, shall be charged to project funds.

5. To act for the Government, at its request, as purchasing agent in the United States, without charge for this service, for the purchase of supplies, materials and equipment for use on the Highway not produced and obtainable in the Republic.

Such purchases shall be made only on the basis of requisitions approved by the Minister of Public Works and the Division Engineer of the FHWA.

B. The Government, on its part, undertakes:

1. To provide from its own funds not less than one-third ($\frac{1}{3}$) of the total participating cost of the work, as provided by Section 216 (a) of Title 23, United States Code, and as may be provided in any other agreement and/or condition pertaining to the Highway and embodied in this Agreement, or in any subsidiary Project Agreement.

2. At the sole expense of the Government to provide the rights-of-way required for the construction of the Highway, which rights-of-way shall have a minimum width of 100 meters in rural areas and 50 meters in municipalities, except where the FHWA Division Engineer agrees that these widths are impracticable. The Government agrees that encroachment on the approved right-of-way will not be permitted except that, in the event permission is given to use the right-of-way for pole lines, pipe lines or other structures determined to be necessary to promote the safe and efficient utilization of the highway in the public interest, such use will be limited to portions of the right-of-way which lie well beyond the outer edge of cut and fill slope areas.

3. To provide and maintain within the Ministry a competent highway department or unit which has as its sole function the administration and supervision of the work covered by this Agreement and which, as to organization, personnel and operation, is continuously satisfactory to the FHWA in carrying out the Government obligations in an economical and expedient manner. Central office expenditures for general administration, supervision and any other overhead cost of such department or unit shall not be eligible as a participating project cost.

4. To maintain the Highway in a manner satisfactory to the FHWA. This applies to any project on the Highway which is constructed under the provisions of this Agreement or was constructed under the provisions of prior agreements. Failure to do so will relieve the FHWA of its responsibility for any further reimbursement to the Government under this agreement.

5. To establish a revolving fund for use solely to finance Highway construction costs under this Agreement. All reimbursements made

by the FHWA shall be immediately credited to this revolving fund.

6. To make surveys and to prepare and furnish for approval, plans, specifications and estimates.

7. To construct by force account, or to cause to be constructed by contract on the basis of public competitive bids, all parts, or sections, of the Highway, as hereinabove described, in accordance with the plans and specifications which have been previously approved by the FHWA under the terms of Section II, paragraph A, 2, provided, however, that the construction by force account shall be on an agreed unit price basis unless otherwise authorized.

8. To advertise in the United States and in the Republic, all construction projects which are to be constructed by contract for a mutually agreed period of time and to award contracts pursuant to such advertisements.

9. To make contract awards only to lowest acceptable bidders who fulfill the following requirements:

- a) Able to meet all financial requirements for carrying out the work to completion;
- b) Have an adequate organization, machinery and equipment to do this work, and
- c) Can provide surety bonds satisfactory both to the Government and to the FHWA.

10. Not to take any action, without prior concurrence of the FHWA, which will in the any way alter the terms and conditions of an approved contract for a project.

11. To furnish sufficient competent engineering personnel on each project to assure that the construction work is being carried out in accordance with the approved plans and specifications.

12. Prior to authorizing work beyond the scope of the contract, to issue change orders, extra work orders or other directives, as required, for all changes or extra work; and to obtain approval of the FHWA prior to authorizing any change or extra work.

13. To incorporate in the contract for each project constructed under this Agreement the FHWA "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-61", unless the use

of other specifications is specifically approved by the FHWA. This also applies to work performed by force account.

14. To exempt contractors from the payment of all import and export duties and taxes on materials, equipment and supplies necessary exclusively for construction of the Project and to incorporate in all contracts a clause to the effect that contractors engaged in work on the Darien Gap Highway in Panama will be reimbursed for any and all increase in costs caused by changes in the International Payment, Social Security or Labor Laws of Panama which are promulgated on or after the date of the invitation to bid for a project.

15. To permit the use, free of charge to contractors, and without participation of project funds, of natural deposits of stone, gravel, sand, earth or other materials necessary for the execution of the project where such materials occur on the right-of-way or on public domain. Also to provide free of charge to contractors, and without participation of project funds, materials and any easements that may be necessary to gain access to like materials required to be used in the execution of the work but which are not available within the right-of-way or on public domain.

16. To furnish for use on those portions of any project for which the force account method of construction may be authorized, equipment which is satisfactory, and which is new or has been placed in good operating condition. Charges to the project for the use of such equipment will be on the basis of rental rates approved in advance by the FHWA. Such rates will cover the initial cost of the equipment as well as all operating and repair costs and will not exceed the rate charged by the owning department to other Government agencies.

17. To conduct all work and to handle all accounts in accordance with the provisions of this Agreement and with the understanding that additional requirements as to the conduct of the work and as to the accounts and records to be kept may be required by the FHWA because of the requirements of the United States affecting the disbursement of funds furnished by the Government of the United States.

18. To maintain accounts which shall at all times be open to inspection, examination and audit by any authorized representative of the Government of the United States, and to accept audit on the basis of the Acts of Congress of the United States as hereinbefore mentioned, and which are not contrary to Panama law, and all other agreements pertinent

to the work, and to facilitate the checking of all claims submitted for payment by the FHWA.

Records and documents maintained under this section shall be available at all reasonable times for inspection by any authorized representative of the FHWA and copies thereof shall be furnished when requested.

All of said accounts, records and documents shall be retained for a period of not less than three years from the date of the final payment by the United States to Panama with respect to the particular project.

19. To hold the United States and its employees harmless against claims of third parties for personal injuries or property damage which may occur in connection with any operations pertaining to the work.

20. To exempt all property to be used in connection with this Agreement by the FHWA from any taxes or assessments on ownership or use, purchase or disposition, tariffs, customs duties, import and export or other taxes, or any other taxes or similar charges in Panama.

21. To exempt the FHWA from the payment of recording fees, purchase of legal paper and stamps and other similar charges in connection with its transactions.

22. To exempt the FHWA and its employees from the provisions of local labor codes and other social and special laws in order to permit the FHWA to compensate its U.S. citizen employees in accordance with the required applicable U.S. Government laws and regulations, and to compensate all Panamanian employees of the FHWA in accordance with the Foreign Service Local Salary plan established by the American Embassy for locally hired employees.

23. To exempt all United States citizens employed by the FHWA in Panama in connection with the Highway from income and social security taxes levied under the laws of Panama and from taxes on the purchase, ownership, use or disposition of personal movable property (including automobiles) intended for their own use. Such persons and members of their families shall receive the same treatment with respect to payment of customs and import and export duties on personal movable property (including automobiles), imported into Panama for their own use, as is accorded by the Government of Panama to diplomatic personnel of the American Embassy in Panama.

24. To furnish, in case of death of United States citizens employed by the FHWA or their dependents, documents necessary to permit the return to the United States of their remains.

25. To exclude funds made available for the purpose of this Agreement from any financial administration law which permits the use of such funds for other purposes.

Section III

The FHWA will participate in payment of construction engineering costs for the projects in the following manner: not to exceed 10% of the FHWA approved total cost of construction items for bridge and surfacing (subbase, base and pavement) projects, and not to exceed 15% of the approved total cost of construction items for grading and drainage projects. Where a project involves work corresponding to different stipulated percentages, FHWA participation will be on the basis of cost of each type of work at the applicable percentage rate.

FHWA participation in construction engineering costs, in any case, will be limited to the period of time called for in the contract for completion of the work plus time extensions approved by the FHWA.

Section IV

The procedures to be followed in administering funds obtained as a consequence of this Agreement are:

1. Prior to the execution of a Project Agreement as provided for in Section II, Paragraph A, 1, the Government will submit to the FHWA for approval a program of projects recommended for construction in order to complete the Highway in the country. The projects will be shown in order of priority for construction, showing termini, type of construction and length. A brief explanation will be made of the standards which will apply and an estimate of the total cost of each project.

2. Where it is necessary to develop plans, specifications and estimates, a Project Agreement will be executed, following program approval, for each project to cover preliminary engineering expenses corresponding to this work. Where plans, specifications and estimates for a project are already prepared, they will be submitted for the FHWA's final approval. Acceptance

by the FHWA will constitute a commitment to finance not to exceed two-thirds of the total cost of construction and of engineering based on Section III of this Agreement. Authorization to proceed with advertisement of the work for contract will be given at the time the FHWA approves the plans, specifications and estimates.

3. Following approval of a contract or force account method by the FHWA in accordance with Section II, Paragraph A, 2, of this Agreement, a Project Agreement will be entered into based on cost determined by contract unit prices or agreed force account unit prices plus the engineering cost, as limited under Section III. In a case where a Project Agreement has been entered into for preliminary engineering, a new project Agreement shall be executed for the construction cost.

4. Following satisfactory completion of a project the Government will, as rapidly as possible, complete all final measurements and prepare a final estimate which will cover all costs. Upon review and acceptance of this final estimate by the FHWA and after payment to the contractor is effected, final reimbursement of the United States share will be made by the FHWA in accordance with the terms and limitations of this Agreement. Such final reimbursement will fulfill all FHWA obligations under the Project Agreement and close the FHWA's accounts therefor.

Section V

Upon execution hereof, the Inter-American Regional Project Statement and Memorandum of Understanding heretofore entered into between the Republic and the Bureau of Public Roads, date and effective May 31, 1951, and Supplemental Agreement No. 1 of February 3, 1960, shall be null and void.

Section VI

This agreement shall be subject to any and all provisions of the Act of the United States Congress entitled Federal Aid Highway Act of 1970 dated December 31, 1970, including those referred to hereinbefore, and any subsequent amendments to the provisions thereof.

Section VII

It is mutually agreed that all disputes relating to this agreement shall be resolved based on the English version and intent thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by the affixing of the signature of their respective officers hereunder. This Agreement shall become effective as of the day and year first above written.

For the Government
of the United States of America :

[Signed]

JOHN A. VOLPE

For the Government
of Panama :

[Signed]

EDWIN FABREGA