

File: South Africa

Signed Mar 1995

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE FEDERAL HIGHWAY ADMINISTRATION AND THE
FEDERAL TRANSIT ADMINISTRATION OF THE
DEPARTMENT OF TRANSPORTATION OF THE
UNITED STATES OF AMERICA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
THROUGH THE DEPARTMENT OF TRANSPORTATION,
INFRASTRUCTURE, ENERGY AND TECHNOLOGY**

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THROUGH THE DEPARTMENT OF TRANSPORT
ON TRANSPORTATION RESEARCH AND TECHNOLOGY
TRANSFER

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) of the Department of Transportation of the United States of America, on the one hand, and The Government of the Republic of South Africa through the Department of Transport, on the other hand, hereinafter referred to as the "Parties",

Desiring to encourage the exchange and the transfer of transportation technologies between their countries;

Recognizing the value inherent in sharing knowledge through cooperation which will enhance public safety and welfare by improving highway and transit infrastructures;

Therefore agree as follows:

Article IPurpose

The purpose of this Memorandum of Understanding ("MOU") is to provide a framework for cooperative activities including, but not limited, to collaboration on the following subjects:

1. Pavements;
2. Highway and transit structures;
3. Materials;
4. Highway and transit maintenance;
5. Highway and transit traffic;
6. Highway and transit information systems;
7. Low volume road technology;
8. Transportation management and strategic planning; and
9. Recycled wastes in transportation construction.

Article IIScope of Cooperative Activities

The Parties may pursue cooperation through one or several methods, including, but not limited to:

1. Free exchange of technical information such as databases, publications, drawings, and photographs;
2. Joint research, conferences, exhibits, and academic discussions on topics of mutual interest;
3. Joint development of personnel exchanges and twinning programs for all sectors, including but not limited to, governmental agencies, universities, laboratories, and private industry;
4. Joint establishment of Technology Exchange Centers in South Africa for the purpose

5. Joint development of cooperative projects and studies with third countries to facilitate the exchange of transportation technologies.

Each Party may allow the participation of other individuals and entities from all sectors, including, but not limited to, international organisations, governmental agencies, universities, laboratories, and private industry in these cooperative activities. Since such individuals and entities are not party to this MOU and are therefore not bound by its terms and conditions, the Parties shall ensure through contracts and other legal means, that the participation of such individuals and entities is subject to and in accordance with the provisions of this MOU and any subsequent individual project agreements concluded by the Parties.

Article III

Administration of Cooperative Activities

Each cooperative activity shall be defined in an individual project agreement between the Parties. Each project agreement shall cover the general scope of cooperation between the Parties and, if applicable, any funding arrangements. A project agreement may detail project managers, dispute procedures, allocation of resources or personnel, and other appropriate matters for the cooperative activity.

Each cooperative activity shall comply with the laws and regulations of the Parties and is subject to the availability of funds. Funds may be transferred between the Parties for each cooperative activity only in accordance with the terms and conditions of the relevant project agreement under this article.

Each Party shall designate a Project Manager for each cooperative activity. The Parties may conduct joint annual reviews and evaluations of the progress of cooperative activities.

Article IV

Intellectual Property

Each Party shall ensure that intellectual property which is created or furnished by it or by participating individuals or entities as described in Article II in the course of cooperative activities under this MOU, including the protection and distribution of intellectual property and information or equipment identified as requiring protection for national security reasons by either Party, shall be subject to the provisions of Annex I of this MOU, which is an integral part of this MOU.

Article V
Information Transfer

Scientific and technological information transmitted by one Party to the other Party shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the scientific and technological information transmitted for any particular use or application by the receiving Party or by any third party.

Article VI
Agreement Interpretation

Any difference concerning the interpretation or implementation of this MOU, unless otherwise provided for, shall be resolved through consultations between the Parties.

A Party's liability for any claims arising from the cooperative activities conducted under this MOU shall be determined by reference to the national laws and regulations governing that Party.

This MOU does not modify, amend, or affect in any way other bilateral arrangements between the Government of the United States of America and the Government of the Republic of South Africa, or any multilateral agreement to which both are party to or may become party to. Nor does this MOU affect any existing or subsequent arrangements relating to transportation research and technology transfer that are entered into by individuals or entities as defined in Article II separately from and independent of this MOU.

Article VII
Entry Into Force and Termination

This MOU shall enter into force on the date on which each Party has notified the other in writing through diplomatic channels of the completion of its own national requirements for the entry into force of this MOU. This MOU shall remain in force until terminated through diplomatic channels by either Party with 180 days written notice. Any termination shall not affect the completion of ongoing cooperative activities unless the Parties so agree in writing. Any provisions, terms of conditions set forth herein may be amended by an Exchange of Notes between the Parties.

In witness whereof the undersigned being duly authorized thereto by their respective governments, have signed and sealed this MOU.

Done at Washington, D.C. this 25th day of March 1995,
in duplicate in the English Language.

Gregory S. Steer

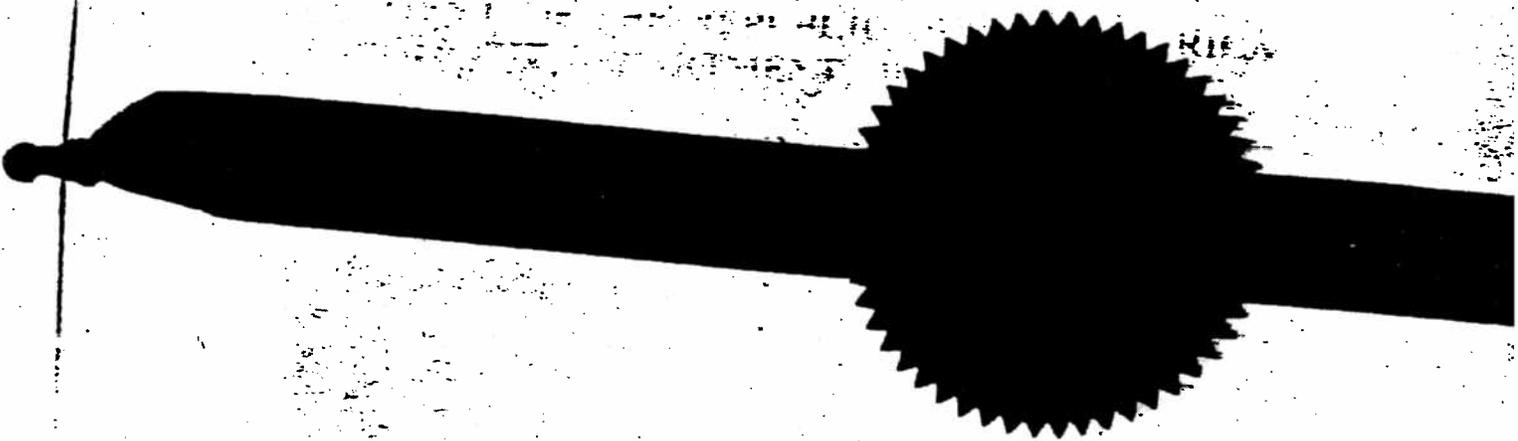
K. G. Goolbsy

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Pretoria 1 March 1995

for THE FEDERAL HIGHWAY
ADMINISTRATION
AND FEDERAL TRANSIT
ADMINISTRATION
OF THE DEPARTMENT OF
TRANSPORTATION OF THE
UNITED STATES OF AMERICA

for THE GOVERNMENT OF
THE REPUBLIC OF
SOUTH AFRICA



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Annex I

Pursuant to Article IV of this MOU,

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this MOU and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this MOU and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. Scope

- A. This Annex is applicable to all cooperative activities undertaken pursuant to this MOU, except as otherwise specifically agreed by the Parties or their designees.
- B. For purposes of this MOU, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.
- C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain its rights to intellectual property allocated in accordance with this Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.
- D. Disputes concerning intellectual property arising under this MOU should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Each Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.
- E. Termination or expiration of this MOU shall not affect the rights or obligations under this Annex.

II. Allocation of Rights

- A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this MOU. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.
- B. Rights to all forms of intellectual property, other than those rights described in the paragraph II.A above, shall be allocated as follows:
- (1) Visiting researchers participating under this MOU, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each such visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.
 - (2) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interest in its own territory. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research" in the relevant implementing arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II.B (1) above. In addition, each person participating under this MOU that is named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.
 - (3) Notwithstanding the provisions in paragraph II.B (2) above, if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all such rights and interests worldwide. Persons participating under this MOU that are named as inventors of the property shall nonetheless be entitled to royalties as provided in paragraph II.B (1) above.

III. Business-Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this MOU, each Party shall ensure that it and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as "business confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.