

**PROJECT COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
and**

**for
REHABILITATION OF FLOOD CONTROL WORKS
or
FEDERALLY AUTHORIZED HURRICANE OR SHORE PROTECTIVE
STRUCTURES**

THIS AGREEMENT, entered into this _____ day of _____,
19_____, by and between THE DEPARTMENT OF THE ARMY (hereinafter
referred to as the "Government") acting by and through the District Engineer, [SPECIFY
APPROPRIATE DISTRICT] _____, U.S. Army Corps of Engineers, and the
_____, [LOCAL SPONSOR],
(hereinafter referred to as the "Local Sponsor"), acting by and through _____
[TITLE OF PERSON SIGNING THIS AGREEMENT].

WITNESSETH THAT:

WHEREAS, the Government is authorized to assist in the repair or restoration of
flood control improvements threatened or destroyed by recent floods pursuant to Public
Law 99, 84th Congress, and,

WHEREAS, the Sponsor has requested, in writing, the Government to repair or
restore certain flood control works or Federally authorized hurricane or shore protective
structure damaged by recent flooding or coastal storms in accordance with Public Law
99, 84th Congress and established policies of the U.S. Army Corps of Engineers; and,

WHEREAS, the work to be undertaken (hereinafter referred to as the Project) is
described in a report entitled _____ [SPECIFY THE REPORT] prepared by
the District Engineer, U.S. Army Engineer District _____, dated _____
and approved by the Division Engineer on _____; and

WHEREAS, the Local Sponsor hereby represents that it has the authority and legal
capability to furnish the non-Federal cooperation hereinafter set forth and is willing to
participate in the Project in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Local Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Project" shall mean [DESCRIBE THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN SUFFICIENT DETAIL AS IS NECESSARY TO AVOID ANY CONFUSION OVER WHAT WORK IS OR IS NOT INCLUDED.]

B. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include but not necessarily be limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA.; but shall not include any costs for operation and maintenance; any increased costs for betterments; or the costs of lands, easements, rights-of-way, borrow, or relocations.

C. The term "betterment" shall mean the design and construction of a Project feature accomplished on behalf of, or at the request of, the Local Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Project.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND LOCAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Local Sponsor, shall expeditiously construct the Project, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. The Contracting Officer will, in good faith, consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Local Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Project.

C. As further specified in Article IV, the Local Sponsor shall contribute in cash, in-kind services, or a combination thereof, a contribution toward construction of the Project in an amount equal to 20 percent of total project costs.

D. No Federal funds may be used to meet the Local Sponsor's share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

E. The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Local Sponsor agrees to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program.

G. The Local Sponsor may request the Government to accomplish betterments. The Local Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Local Sponsor in accordance with Article IV.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Local Sponsor with a description of the anticipated real estate requirements and relocations for the Project. Thereafter, the Local Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Project. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, and performing relocations for construction, operation, and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Local Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Local Sponsor's obligations under Article II of the Agreement. Total project costs are currently estimated to be \$_____ and the Local Sponsor's share (cash and services in kind) of total project costs is currently estimated to be \$_____. In order to meet Local Sponsor's cash payment requirements, the Local Sponsor must provide a cash contribution estimated to be \$_____. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of the total project costs including the Local Sponsor's estimated share of the costs attributable to the Project incurred prior to the initiation of construction. Within five calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED _____" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as Project costs incurred by the Government. In the event that total project costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet the Local Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total project costs and status of contributions made by the Local Sponsor. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs.

1. In the event the total contribution by the Local Sponsor is less than the Local Sponsor's required share of total project costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Local Sponsor's required share of the total project costs.

2. In the event total contribution by the Local Sponsor is more than the Local Sponsor's required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Local Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Local Sponsor for excess contributions provided.

ARTICLE V - OPERATION AND MAINTENANCE

A. After the Contracting Officer has determined that construction of the Project is complete and provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate and maintain the completed Project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto.

B. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Local Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If, after 30 calendar days from receipt of such notice, the Local Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Local Sponsor of responsibility to meet the Local Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VI - FEDERAL AND STATE LAWS

In the exercise of the Local Sponsor's rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Local Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE VIII - 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.

ARTICLE IX - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor 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 Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE X - TERMINATION OR SUSPENSION

If at any time the Local Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Project, unless the District Engineer determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Local Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XI - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Local Sponsor to identify the existence and extent of any hazardous substances regulated

under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total project costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article X of this Agreement.

D. The Local Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Local Sponsor, the Local Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Local Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing

and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Local Sponsor:

If to the Government:

District Engineer

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

THE [NAME OF LOCAL SPONSOR]

BY: _____
[SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

BY: _____
[SIGNATURE]
[TYPED NAME]
[TITLE IN FULL]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____ do hereby certify that I am the principal legal officer of the [LOCAL SPONSOR], that the [LOCAL SPONSOR] is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the [LOCAL SPONSOR] in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the [LOCAL SPONSOR] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 19_____.

_____ [SIGNED]

_____ [TITLE]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this _____ day of _____, 19_____.

[SIGNATURE OF PCA SIGNATORY]

[TYPED NAME]

[TYPED TITLE]