



MOORHEAD CITY COUNCIL MEETING AGENDA
March 16, 2010 - 3:00 PM
City Hall Council Chambers

The Moorhead City Council welcomes and encourages public input on issues listed on the agenda or of general community interest. Advertised public hearings are scheduled as such so that the public is afforded an opportunity to speak. Citizens wishing to address the Mayor and Council regarding specific agenda items, other than public hearings, should indicate so and will be afforded an opportunity during the discussion of said item, Council willing and time permitting. Citizens wishing to speak on matters not listed on the agenda (or items on the agenda that did not include an opportunity to speak) are always afforded the opportunity to do so under the headings "Citizens Addressing the Council", usually scheduled at the beginning and end of the agenda. Presentations are limited to three (3) minutes. *In any case, citizens are asked to complete a 'Request to Speak Card'.*

City Council Meeting

1. Resolution to Approve USACE Flood Emergency Assistance and Cooperation Agreement
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Upon request, accommodations for individuals with disabilities, language barriers, or other needs to allow participation in City Council meetings will be provided. To arrange assistance, call the City Clerk's office at 218.299.5166 (voice) or 711 (TDD/TTY).

Visit our website at www.cityofmoorhead.com

REAL ESTATE DIVISION (CEMVP-RE)

CONTACT INFORMATION:

Kevin Sommerland, Realty Specialist
(651) 290-5593
(651) 357-8576 (Blackberry)
kevin.j.sommerland@usace.army.mil

Ken Peterson, Realty Specialist
(651) 290-5359
kenneth.j.peterson@usace.army.mil

ADDRESS:

U.S. Army Corps of Engineers, St. Paul District
ATTN: RE-AM
190 Fifth Street East
St. Paul, Minnesota 55101-1638

FAX: (651) 290-5255

EMERGENCY FLOOD ASSISTANCE
UNDER PUBLIC LAW 84-99

RESOLUTION AND COOPERATION AGREEMENT:

1. Fill in Public Sponsor information on the Resolution and Cooperation Agreement. The Corps of Engineers will provide all Exhibits or examples of Exhibits.
2. Inform the Public Sponsor of their obligations to provide the Government all lands, easements, right of way, relocations, and borrow and dredged or excavated material disposal areas (LERRD's) necessary for the authorized work.
3. Advise the Public Sponsor that **they are responsible for removal of temporary emergency works**, at no cost to the Corps, under Public Law 84-99. The Public Sponsor can seek financial assistance from other sources for temporary levee removal work.
4. The Resolution provides assurance that the governing board understands the Cooperation Agreement and authorizes its Chief Executive Officer; i.e., City Mayor, to sign the Cooperation Agreement on its behalf. **Two representatives of the Public Sponsor's governing board must sign the Resolution. Generally, the representatives that sign the Resolution cannot sign the Cooperation Agreement.**
5. The Public Sponsor's authorized representative, per the Resolution, must sign duplicate originals of the Cooperation Agreement. The Public Sponsor must have statutory authority to execute contracts with the United States. Generally levee districts, drainage districts, cities and counties have such authority.
6. Deliver the signed Resolution and Cooperation Agreement to the St. Paul District's Real Estate Division for administrative processing and execution on behalf of the Government. Delivery methods, in order of preference, are:
 - a. Fax documents directly to the Emergency Operations Center at (651) 290-5212, ATTN: Ken Peterson. Mr. Peterson will coordinate final delivery to the Real Estate Office.
 - b. Scan and email PDF files to Kevin Sommerland at kevin.j.sommerland@usace.army.mil. Ken Peterson should be copied on the email at kenneth.j.peterson@usace.army.mil.

Faxed or emailed copies will serve as originals until the originals are received by mail. The original documents must be received by the Real Estate Office as soon as possible.

7. After execution on behalf of the Government, a signed copy of the Cooperation Agreement will be returned to the Public Sponsor.

PUBLIC SPONSOR LERRD REQUIREMENTS:

Under the terms of the Cooperation Agreement, the Public Sponsor must provide, without cost to the Federal Government, all lands, easements, and right 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.

In the interest of time, the Public Sponsor may acquire "Rights of Entry for Construction" from record title owners or persons in apparent possession of lands upon which flood control work will be conducted.

Rights of Entry provide:

- a. Permission from a landowner to enter upon his/her property to perform a specific type of work
- b. Ingress and egress to work sites
- c. Usually granted at no cost because the work is typically of benefit to the landowner

Rights of Entry do not provide:

- a. Conveyance of property interest
- b. Indemnification. Public Sponsor may be responsible to reimburse the landowner for property damage that may occur as a result of construction. Note: although the Right of Entry signed by the landowner may not provide indemnification by the landowner to the Public Sponsor or the Corps, the Cooperation Agreement between the Corp and the Public Sponsor DOES contain indemnification language that requires the Sponsor to indemnify the Corps for damages caused during construction of emergency flood control works.

If the Public Sponsor intends to turn temporary flood control structures into permanent structures, fee acquisition or permanent easements, rather than rights-of-entry, will be necessary from the landowner. Acquisition of any interest in real property must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (The Uniform Act). Among other things, P.L. 91-646 **requires** that the Public Sponsor:

- a. Must offer at least the full-appraised value of the real estate interest being acquired
- b. Pay all reasonable closing costs
- c. Provide relocation assistance

The Public Sponsor is not authorized to retain temporary measures in place after the emergency has passed unless approved by the Corps. Such approval will not be granted unless the works are upgraded to meet all Corps criteria for permanent projects.

Title 33 – Navigation and Navigable Waters
Chapter II – Corps of Engineers, Department of the Army
Part 203 – Emergency Employment of Army and Other Resources, Natural Disaster Procedures

Subpart C – Emergency Operations

§ 203.31 Authorities

This authority applies to flood response and post flood response activities. Flood response activities include flood fighting and rescue operations. Flood fighting measures are applicable to any flood control structure (Federal, state, local, and private) where assistance is supplemental to state and local efforts. Corps assistance is not appropriate to protect flood control structures constructed and/or maintained by other Federal agencies where those agencies have emergency authority.

(a) *Flood Response.* Corps assistance in support of other Federal agencies or state and local interests may include the following: technical advice and assistance; loaning of flood fight supplies, e.g., sandbags, polyethylene sheeting, lumber, stone; loaning of Corps-owned equipment; hiring of equipment and operators for flood fight operations; emergency contracting.

(b) *Post Flood Response.* Corps Divisions/Districts are provided authority to furnish assistance for a period not to exceed 10 days in response to a Governor's request. This assistance may include the following: Provision of technical advice and assistance; clearing of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; removal of minimum debris necessary to reopen critical transportation routes; temporary construction to restore critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or public property.

§ 203.32 Policy

During or immediately following a flood, emergency operations may be undertaken by the Corps to supplement state and local activities. Corps assistance is limited to the preservation of life and improved property, i.e., residential/commercial developments and public facilities/services. Direct assistance to individual homeowners or businesses is not permitted. Assistance will be temporary, meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Office of Emergency Services or equivalent. Reimbursement of state or local emergency costs is not authorized. The assurances required for the provision of Corps assistance apply only to the work performed under Pubic Law 84-99, and will not prevent state or local governments from receiving other Federal assistance.

(a) *Flood Response.* Request for Corps assistance will be in writing from the Governor or his/her authorized representative. When time does not permit a written request, a verbal request from either a responsible state or local official will be accepted followed by a written confirmation from the state. Corps assistance may include operational control of flood response activities, if requested by the responsible state official. However, legal responsibility remains with state and local officials. Corps assistance will be terminated when the floodwaters recede below bankfull. Removal of ice jams is a local responsibility; however, Corps technical advice and assistance, as well as assistance with flood fight operations can be provided to supplement state and local efforts. The Corps will normally not perform ice jam blasting operations.

(b) *Post Flood Response.* A written request from the Governor to the district or operating division commander is required to receive Corps assistance. Corps assistance will be limited to major flood disasters resulting in life threatening situations. The Governor's request should include: verification that the Federal Emergency Management Agency (FEMA) has been requested to initiate Preliminary Damage Assessments (PDA); statement that assistance required is beyond the State's capability; specific damage locations; extent of Corps assistance required to supplement state and local efforts. The Governor's request should be transmitted concurrently with the request to FEMA for PDA. Corps assistance is limited to 10 days following receipt of the Governor's written request or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period or trigger a new 10-day period. The Corps will deny a Governor's request if it is received subsequent to a Presidential declaration or denial. Shoreline or beach erosion damage reduction/prevention will not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or Issue of Supplies and Equipment.* Issuance of Government-owned equipment or materials to non-Federal interests is authorized only in actual emergencies. Providing Government supplies is authorized only after local resources have been fully committed. Equipment which is loaned should be returned to the Corps immediately after the flood operation ceases in a fully maintained condition, or with funds to pay for such maintenance. Expendable supplies such as sandbags will be replaced in kind or paid for by local interests. The Corps may waive the local interest's replacement/payment if a Stafford Act Presidential disaster declaration has been made for the affected locality, and the waiver is considered feasible and reasonable. All unused expendable supplies will be returned to the Corps when the operation is terminated.

RESOLUTION OF THE

(BOARD OF COUNTY COMMISSIONERS or CITY or TRIBAL COUNCIL or VILLAGE COUNCIL)

OF

(SPONSOR)

REQUEST FOR FLOOD EMERGENCY ASSISTANCE

WHEREAS, Public Law 84-99, as amended, (33 U.S. Code, Section 701n) provides a means of preparing for and combating damage by floods and flood waters; and

WHEREAS, _____ has exhausted all resources available to it for flood fighting and rescue operations; and
(NAME OF PUBLIC SPONSOR)

WHEREAS, on the date of this Resolution, flood fighting is needed and assistance required for the purpose of rescue operations;

NOW, THEREFORE, BE IT RESOLVED that the U.S. Army Corps of Engineers be, and is hereby, requested to furnish assistance in flood fighting and rescue operations.

BE IT FURTHER RESOLVED that in consideration of such assistance the above-named Governmental body agrees to:

- a. Provide to the United States all lands, easements and rights-of-way for the emergency work, including, but not limited to, levee, borrow, spoil and access rights-of-way.
- b. Hold and Save the United States free from all claims for damages attributable to the construction works except for damages due to the fault or negligence of the United States or its Contractors.
- c. Operate and maintain the emergency construction works for the duration of the flood emergency.
- d. Provide common labor.
- e. Provide as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
- f. Remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency works constructed for the flood emergency, with the initiation of the removal within 30 days of the conclusion of the flood event as determined by the U.S. Army Corps of Engineers.

BE IT FURTHER RESOLVED that the (Chairman of the County Board of _____) or (Mayor of the City of _____) or (Head/Chief/Chairman of _____)

Council) be authorized to enter into agreements with the Corps of Engineers in furtherance of this Resolution and as to the means of supplementing the local flood emergency preparation and flood fighting and rescue operations.

Date: _____

Member: _____

Member: _____

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

for
EMERGENCY FLOOD ASSISTANCE (33 CFR 203.31 et seq.)

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Engineer, St. Paul District, U.S. Army Corps of Engineers, and the _____, (hereinafter referred to as the "Public Sponsor"), acting by and through _____.

PUBLIC SPONSOR

TITLE OF PERSON SIGNING THIS AGREEMENT

WITNESSETH THAT:

WHEREAS, 33 USC 701n authorizes the Chief of Engineers to flood fight and perform rescue operations; and

WHEREAS, the Public Sponsor has requested assistance under 33 USC 701n, and the Public Sponsor qualifies for such assistance in accordance with the established policies of the U.S. Army Corps of Engineers; and

WHEREAS, the Public 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 with the terms of this agreement;

NOW, THEREFORE, the parties agree as follows:

1. The Government will perform the work described in its scope of work (Exhibit A) that is made a part of this agreement.
2. Pursuant to 33 CFR 203.82, the Public Sponsor will:
 - a. Provide without cost to the Government all lands, easements, rights-of-ways, relocations, and borrow and dredged or excavated material disposal areas necessary for the work. All land acquisition shall comply with Public Law 91-646, as amended by Title IV of Public Law 100-17 and 49 CFR Part 24.
 - b. Hold and save the Government free from damages arising from construction, operation, maintenance, repair, replacement, and rehabilitation of the work, except damages due to the fault or negligence of the Government or its contractors.
 - c. Operate, maintain, repair, replace, and rehabilitate the completed work in a manner satisfactory to the Government.
 - d. Remove, at no cost to the Corps of Engineers under Public Law 84-99, all temporary work constructed by the Government when the emergency has passed as determined by the Government.
3. The Public Sponsor does hereby agree and pledge that it will truly and faithfully perform the following conditions, to wit:
 - a. If the Government provides sandbags to the Public Sponsor for use in flood fighting activities, the Public Sponsor will use these sandbags in accordance with Government standards and guidelines. The Public Sponsor may want to consider building backup levees where sandbag structures are used in the construction of closures, main levees, or other flood protection structures.
 - b. All work completed will be restricted from the designated floodway, which the parties to this agreement will determine prior to the construction of any flood protection works.
 - c. The Public Sponsor will be held accountable for possession, maintenance and return of all Government equipment provided for use in flood fighting activities. Government equipment damaged, destroyed or lost while in the Public Sponsor's possession, including equipment incorporated into temporary emergency construction, will be repaired or restored by the Public Sponsor and at the Public Sponsor's expense to its condition prior to the Public Sponsor's obtaining possession of the Government equipment.

- d. The Public Sponsor has established a flood response organization and designated an Incident Commander. The Public Sponsor's Incident Commander is identified at the end of this agreement.
- e. The Public Sponsor will operate and maintain the emergency flood construction works for the duration of the flood emergency.
- f. The Public Sponsor will provide common labor.
- g. The Public Sponsor will provide, as required under the applicable provisions of Public Law 91-646, relocation assistance payments to those eligible because of dislocation of persons or property from their dwellings, farms or businesses due to the acquisition of rights-of-way for the emergency flood construction work.
- h. The Public Sponsor will remove, after the flood emergency, without cost to the U.S. Army Corps of Engineers, any temporary emergency flood works constructed for the flood emergency. In removing temporary emergency works, the Public Sponsor will avoid damage to non-expendable Government equipment (such as HESCO baskets) incorporated into construction.

4. ATTACHMENTS:

- a. Exhibit A - Government Scope of Work.
- b. Exhibit B - Resolution (certifies the person executing this document on behalf of the Public Sponsor has the authority to sign).

The Public Sponsor, as part of the aforesaid consideration, does hereby agree to indemnify, hold harmless, and release and forever discharge the Government, its officers, employees, contractors, agents and assigns, in the prosecution of the proposed emergency flood control work herein contemplated, from all claims, demands, and causes of action whatsoever, which may arise by reason of, or in any manner have grown out of or alleged to have grown out of, the construction of the said flood control work as herein contemplated, except to the extent to the such claims, demands, or causes of arise from the negligence or fault of the Government or its contractors..

The Public Sponsor by execution of this document, assures that it has obtained or will obtain the necessary lands and right-of-way needed for the purpose of performing the emergency flood control work herein contemplated and hereby grants PERMISSION to the Government, its officers, employees, agents, and assigns, and the Government contractors, their officers, employees, subcontractors, agents, and assigns to enter upon Public Sponsor's lands, and rights-of-way acquired by it, for the purpose of performing the emergency flood control work hereinabove described.

It is hereby certified that the undersigned have the legal authority to execute the above agreement, that the assistance herein requested is beyond the capability of local authorities, and that every possible effort shall continue to be made at the local level to accomplish effective protection from the flood.

Public Sponsor Incident Commander:

Name: _____
 Phone: _____
 Office Address: _____

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE DEPARTMENT OF THE ARMY

 NAME OF PUBLIC SPONSOR

BY: _____
 Jon L. Christensen
 Colonel, Corps of Engineers
 District Engineer
 ADDRESS: 190 Fifth Street East
 St. Paul, Minnesota 55101-1638

BY: _____
 (Signature)

 (Type Name and Title)

ADDRESS: _____

Government Scope of Work for Emergency Flood Assistance

The work contemplated for Emergency Flood Assistance consists of the construction of emergency levees for flood protection. Specific levees to be constructed will be determined and agreed upon in writing by the Public Sponsor's designated Incident Commander and the U.S. Army Corps of Engineers' Flood Engineer. If requested and approved in accordance with 33 CFR 203.31(b) and 203.32(b), work may also include post flood response assistance from the Corps, to include some or all of the following: provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, where the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or significant damage to public property. Work performed by the Government will not exceed funds appropriated for emergency response and allocated to the emergency efforts covered by the Cooperation Agreement between the Government and the Public Sponsor.

EXHIBIT A