



REPLY TO  
ATTENTION OF

**U.S. ARMY CORPS OF ENGINEERS  
NORTH ATLANTIC DIVISION  
FORT HAMILTON MILITARY COMMUNITY  
GENERAL LEE AVENUE  
BROOKLYN, NEW YORK 11252-6700**

**MEMORANDUM OF AGREEMENT (MOA)  
BETWEEN  
NORTH ATLANTIC DIVISION, US ARMY CORPS OF ENGINEERS  
AND  
NORTHEAST REGIONAL OFFICE, INSTALLATION MANAGEMENT AGENCY**

**SUBJECT: Memorandum of Agreement (MOA) Between North Atlantic Division, US Army Corps of Engineers and Northeast Regional Office, Installation Management Agency**

**1. References:**

- a. Authority for this MOA is as provided by the Inter Service Activity Heads, as per DoD Instruction 4000.19 "Interservice and Intragovernmental Support".
- b. Authority to respond to any disaster to save human life, prevent immediate human suffering, or lessen major property damage or destruction is as provided under Army Regulation 500-60, Emergency Employment of Army and Other Resources, Disaster Relief.
- c. Additional authority to plan, prepare, and respond to emergency and immediate Army Installation requirements with reimbursement to NAD is as provided under Army Regulations that concern Army Operation and Maintenance funds and Military Construction funds. These are listed here:
  - (1) Army Regulation 37-7, Funding for First and Second Destination Transportation under the appropriation "OPERATION AND MAINTENANCE, ARMY" dated 15 December 1982.
  - (2) Army Regulation 37-49, Budgeting, Funding, and Reimbursement for Base Operations Support of Army Activities, dated 15 October 1978.
  - (3) Army Regulation 415-15, Army Military Construction Program Development and Execution, dated 4 September 1998.
- d. When planning, preparing, and responding to emergency Army Installation requirements under the listed authorities in paragraph 1. c., the following guidance will be utilized:
  - (1) Army Pamphlet 415-3, Economic Analysis: Description and Methods, dated 10 August 1992.
  - (2) Army Pamphlet 210-6, Economic Analysis of Army Housing Alternatives – Concepts, Guidelines and Formats, dated 8 October 1990.

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(3) Army Technical Manual 5-800-4, Programming Cost Estimates for Military Construction, dated May 1994.

2. Purpose: This MOA is entered into by and between the Installation Management Agency, Northeast Region (NER) and the Corps of Engineers, North Atlantic Division (NAD) for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of NAD Planning, Preparing, and Response and Recovery Assistance related to catastrophic disasters at Army Installations within the NER Area of Responsibility (AOR).

3. Background: In response to requests from NER for NAD Planning, Preparing, and Response and Recovery Services related to catastrophic disasters, this MOA has been written and mutually agreed upon.

4. Scope: Emergency Planning, Preparing, and Response and Recovery Assistance to NER that may be provided by NAD under this MOA will include development of joint operation plans, exercise planning, exercises, after action review and lessons learned, response personnel training, award and maintenance of capacity supply contracts, and provision of impending storm damage models; and in the event of an emergency, emergency delivery of ice, water, temporary power, debris removal, structural safety, temporary roofing and housing, and sustained rehabilitation planning and estimating. NER intends to make use of NAD Regional Assets to provide these services to Army Installations within the NER AOR.

5. Understandings, Agreements, Support, and Resource Needs:

a. Inter-Agency Communications: To provide for consistent and effective communication, NAD and NER shall designate a Principal Representative to serve as its central point of contact on all matters related to this MOA. Additional representatives of the two parties may also be appointed as points of contact for Support Agreements issued for emergency Planning, Preparing, and Response and Recovery requirements.

b. Support Agreements: In response to requests from NER for NAD Planning, Preparing, and Response and Recovery Services under this MOA, NAD and NER shall execute mutually agreed upon Support Agreements (SA). SA will be recorded on DD Form 1144, SUPPORT AGREEMENT. In cases when emergency conditions preclude transmittal of a completed and signed Form 1144, the information required to sufficiently complete the 1144 will be provided by telephone or electronically as capabilities allow, and recorded by the designated Principal Representatives. Future SAs will provide services in the following areas, as needed:

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(1) Planning and preparing for response to disasters. These efforts will include recurring coordination conferences to develop NER-NAD joint operation plans, exercises and after action reviews, will include training and exercises as required for response personnel, and will include award and maintenance of emergency equipment supply-capacity contracts.

(2) Transmittal of impending Hurricane modeling information from the USACE Readiness Support Center. These models will include predicted Hurricane paths, any associated flooding and debris predictions, the resulting predicted needs for ice and water, and any predicted damage to structures.

(3) Emergency Flood Control inspections to evaluate structural integrity, and to make any flood fighting recommendations.

(4) Deployment of material, supporting logistic personnel, and subject matter experts for emergency delivery of ice, water, temporary power, debris removal, roofing, and temporary housing as recommended from any predictive modeling, or as determined by on-site assessment.

(5) Deployment of subject matter experts to expeditiously provide rough order magnitude cost estimates of damage rehabilitation (typically within three days of on-site arrival).

(6) Deployment of subject matter experts to expeditiously (typically within 30 days) provide planning and funds program documentation to include a completed DD Form 1391 and parametric program estimates based on a 15% design of the rehabilitation construction.

c. Responsibilities of the Parties: This MOA will be supported by the two parties, NER and NAD. The two parties will work jointly and in coordinated effort to deploy USACE personnel and material to installations in the NER AOR as needed in response to a natural or man-made disaster.

(1) NAD shall be responsible for performance in the following areas:

a. NER shall reimburse to NAD all costs associated with the provision of Planning, Preparing, and Response and Recovery Services to NER Installations, including preparation efforts such as training, coordination conferences, and contracted ordering agreements for emergency equipment supply.

b. NAD shall provide NER emergency Planning, Preparing, and Response and Recovery Services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

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c. NAD shall Plan and Prepare as requested for catastrophic disasters through training, coordination conferences, exercises, and contracted ordering agreements for emergency equipment supply.

d. NAD shall use its best efforts to provide requested Response and Recovery Services either by in-house personnel or by contract.

e. The NAD Emergency Manager, or authorized designate, shall be the Principal Representative for this MOA that will be responsible for the overall coordination and support of performance under this MOA.

f. NAD shall identify authorized representatives to accept work and assigned missions and funding, and to sign SAs as required.

g. NAD shall provide detailed periodic situation and progress reports, financial and other reports as required by the SA.

h. NAD shall inform NER of all contracts entered into to support Planning, Preparing, and Response and Recovery Services.

(2) NER shall be responsible for performance in the following areas:

a. NER shall reimburse to NAD all costs associated with the provision of Planning, Preparing, and Response and Recovery Services to NER Installations, including preparation efforts such as training, coordination conferences, and contracted ordering agreements for emergency equipment supply.

b. NER shall provide adequate funding to NAD as soon as possible for all work performed under authority of this MOA.

c. The NER Chief of DPW Division, or other authorized designate, is the person responsible for signing SAs and requesting emergency Planning, Preparing, and Response and Recovery services in accordance with this MOA.

d. NER shall develop draft SAs that will include scope of work, and requested services.

e. NER shall ensure installation access and situational orientation such that USACE personnel can perform duties and requested services in a safe manner.

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f. NER shall provide installation and facility subject matter experts to coordinate with USACE deployed on-site personnel for access, locating areas of damage, and identifying user and tenant requirements.

**d. Funding:**

(1) NER shall pay actual costs incurred by NAD relative to the provision of Planning, Preparing, and Response and Recovery services. NER shall transmit funds in advance to the work being performed using DD Form 448 MILITARY INTERDEPARTMENTAL PURCHASE REQUEST at the same time the SA Form 1144 is completed and forwarded. In cases where NER believes emergency conditions preclude the transmittal of funds, NAD shall proceed to provide services as described in this MOA under existing authorities and appropriate funding until such time that any available funding can be reimbursed.

(2) Planning and preparing for inevitable storm related disasters requires labor and contract related expenses to be reimbursed by NER to NAD. Planning and preparing services such as coordination conferences to develop NER-NAD joint operation plans, exercises and after action reviews, training and exercises as required for response personnel, and award and maintenance of emergency equipment supply-capacity contracts will be recurring yearly requirements. Expenses related to these services may fluctuate from one year to the next and will be dependant on expertise of personnel, status of lessons learned from exercises or response and recovery actions, and contract status. It is estimated at this time that these expenses will be between \$35,000 and \$50,000 per year.

(3) If NAD forecasts that costs will exceed funds made available under an SA, NAD shall promptly notify NER of the additional funds necessary to cover the actual costs as then known. NER shall provide the additional funds, limit the scope of the SA to funds available, or direct termination of the SA.

(4) Within 90 days of completing work under an SA, NAD shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, NAD shall return to NER funds advanced in excess of the actual costs as then known, or NER shall advance additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NER duty to pay for any costs, such as contract claims or other liabilities, which may become known after the final accounting.

**e. Contract Claims and Disputes:**

(1) All claims and disputes by contractors arising under or relating to contracts awarded by NAD shall be resolved in accordance with Federal law and the terms of the individual contract. NAD shall have dispute resolution authority for these claims. Any contracting

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officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring action directly to the United States Court of Federal Claims.

(2) NAD shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. NAD shall notify NER of any such litigation and afford NER the opportunity to review and comment on the litigation and any resulting settlement negotiations.

f. **Dispute Resolution:** The parties agree that, in the event of a dispute between parties, NER and NAD shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it to their respective higher headquarters offices for resolution.

g. **Responsibility for Costs:**

(1) If liability of any kind is imposed on the United States Army, or the United States relating to NAD's provision of Planning, Preparing, and Response and Recovery services under this MOA, NAD will accept accountability for its actions, but NER shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs. Should NER have insufficient funds legally available through transfer, reprogramming or other means, either through their own office or through IMA Headquarters, NER and it's headquarters remains responsible for seeking additional funds from Congress for such purpose.

(2) Notwithstanding the above, this MOA does not confer any liability upon NER for claims under the Federal Torts Claims Act. Provided further that nothing in this MOA is intended or will be construed to create rights or remedies for any third party and no third party is intended to be a beneficiary of this MOA.

6. **Effective Date:** This MOA becomes effective upon the date of the last approving signature and remains in effect until superseded or cancelled. This MOA will be reviewed annually or at the request of either party to determine its applicability and the need for continuation, modification, or termination. All parties to the MOA must agree in writing to changes/modifications or termination.



DIANE M. DEVENS  
Northeast Region Director  
Installation Management Agency

20 Apr. 05

(Date)



MERDITH W. B. TEMPLE  
Brigadier General, USA  
Commanding  
North Atlantic Division

28 Mar 05

(Date)