

MEMORANDUM OF AGREEMENT

Commerce BETWEEN
THE ECONOMIC DEVELOPMENT ADMINISTRATION
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the Economic Development Administration of the Department of Commerce ("EDA") ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA support to EDA's Levee Restoration Program.

EDA finds that it would be useful in alleviating or preventing conditions of excessive unemployment or underemployment to provide funds to the DA, acting through the U.S. Army Corps of Engineers ("USACE"), and has requested the DA to provide technical assistance, so as to enable EDA to invite applications for projects that will be designed, constructed and maintained in accordance with USACE standards for construction of Federal levees. This MOA seeks to establish a flood-related technical assistance program which enhances coordination between departments and agencies of the Federal Government and simplifies the process for State and local governments involved with flood related levee restoration activities associated with the Midwest Floods of 1993.

This MOA is entered into pursuant to §§ 301(a) and 708(c) of the Public Works and Economic Development Act of 1965 (42 U.S.C. §§ 3151(a) and 3218(c)); the "Chief of Engineers' Economy Act" (10 U.S.C. § 3036(d)(2); § 219 of Public Law 89-298); and, the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 (Public Law 103-75).

ARTICLE II - SCOPE

Technical assistance which the DA may provide under this MOA includes goods and services required to: ensure and support effective levee restoration programs in connection with flood recovery activities; render engineering reports and analyses; make timely resource allocation decisions; ensure uniformity and consistency in the execution of Federally-assisted levee restoration programs; enable States and local governments to more effectively utilize Federal disaster assistance resources; and,

ENCLOSURE 2

provide such other related goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require the DA to provide any additional technical assistance beyond the scope of the services set forth in Attachment "A".

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and EDA, each party shall appoint a Principal Representative at Headquarters to serve as central points of contact on matters relating to this MOA. Additional representatives at USACE Engineer Districts and EDA Regional Offices shall also be appointed to serve as points of contact.

ARTICLE IV - TECHNICAL ASSISTANCE

In response to written notification from EDA pursuant to this MOA, the DA shall provide technical assistance generally in accordance with the scope of work established in Attachment "A" of this MOA. Such notifications shall specify the applicants for which the DA is to provide the items listed in Attachment "A". The DA shall determine the specific contents of the items to be provided.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

Upon notification from EDA, the DA shall provide technical assistance in accordance with the purpose, terms, and conditions of this MOA including Attachment "A".

The DA shall use its best efforts to provide technical assistance either by contract or by in-house effort.

The DA shall provide detailed periodic progress, financial and other reports to EDA as agreed to in this MOA. Project activities shall be reported on a weekly basis and overall program summaries shall be provided on a quarterly basis. The reports and summaries shall provide sufficient detail to enable meaningful analysis to be performed and resource allocations to be made. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

The DA shall be responsible for any government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, or contract audits related to this MOA.

The DA may enter into agreements with EDA's grantees for design and construction assistance. Regardless of whether the grantee chooses to enter into such an agreement, the DA shall review and evaluate, at the grantee's expense, each grantee's plans and specifications and shall advise EDA and the grantee of the results of that review.

The DA shall conduct a final inspection of the grantees' levees to determine whether the levees have met and are in conformity with USACE standards for construction of Federal levee for incorporation into the USACE Public Law 84-99 levee program. The DA shall fund this final inspection.

B. Responsibilities of EDA

EDA shall retain responsibility for overall management and implementation of the EDA Levee Restoration Program.

EDA shall retain responsibility for coordinating discussions with the appropriate Federal, state and local entities, and with potential and eligible EDA applicants in the implementation of EDA's Levee Restoration Program.

EDA shall conduct an initial evaluation of potential applicants for eligibility in EDA's Levee Restoration Program.

EDA shall be responsible for notifying potential applicants that all EDA-funded levee projects must be constructed and maintained in accordance with USACE standards for construction of Federal levees so as to be incorporated into the USACE Public Law 84-99 levee program.

EDA shall determine which potential applicants are to receive the technical assistance identified in Attachment "A" and shall so notify the DA in writing.

EDA shall require eligible applicants to obtain for the DA any necessary real estate interests and access to all work sites and support facilities, and to perform all coordination with and obtain any permits from Federal, state and local agencies, as necessary during the execution of the work set forth under this MOA.

EDA shall pay all costs associated with the DA's provision of technical assistance under this MOA. Post-award grant costs for services performed, including final inspections, by the DA for EDA grantees are outside of this MOA.

EDA shall identify the highest priority levee repairs and inform eligible applicants that they may make a formal application to EDA for assistance. This identification shall be based on EDA's review of the items identified in Attachment "A", the applicant's original request for assistance, and field inspections conducted by EDA personnel, if any.

EDA shall ensure that eligible applicants are aware of alternative Federal programs that may be available in lieu of repair and restoration of levees.

EDA shall sign necessary agreements with its grantees to award them seventy-five percent (75%) of the estimated cost of repair and restoration. EDA shall require the grantees to provide to the DA all levee plans and specifications for levee repair and restoration so that the DA may review those plans and specifications prior to the commencement of any repair and rehabilitation work. In cases where a grantee does not enter into an agreement with the DA for design and construction assistance, EDA shall ensure that the grantee's repair and restoration activities conform to the submitted plans and specifications and any DA requirements.

EDA shall require all grantees to pay the DA for the DA's review of their levee repair and rehabilitation plans and specifications. This payment is in addition to any payments for costs incurred by the DA for work performed under this MOA.

ARTICLE VI - FUNDING

EDA shall pay all pre-grant award costs associated with this MOA. Upon signature of this MOA by the parties, EDA shall transfer an initial lump sum of \$500,000 to the DA to provide the technical assistance services set forth in this MOA.

This funding transfer shall occur using Standard Form ("SF") 1151, Nonexpenditure Transfer Authorization. The SF 1151 shall be prepared and forwarded by EDA through the U.S. Treasury to CDR HQUSACE (CERM-FC) Washington, D.C. 20314-1000 for allotment.

If the DA forecasts that its actual costs will exceed the amount of funds available, it shall promptly notify EDA of the amount of additional funds necessary to complete the work under this MOA. EDA, at its option, shall either provide the additional funds to the DA, as specified above, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work.

Within 90 days of completing the work under this MOA, the DA shall conduct a final accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the

DA shall return to EDA any funds advanced in excess of the actual costs as then known, or EDA shall provide any additional funds necessary to cover the actual costs as then known. Such a final accounting shall in no way limit EDA's duty in accordance with Article X to pay for any costs which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting 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 U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for litigating all disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify EDA of any such litigation and afford EDA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, EDA and the DA shall use their best efforts to resolve that 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 for resolution to the Office of Management and Budget.

ARTICLE X - LIABILITY

EDA will hold and save the DA harmless and free from all damages arising from the assistance provided to EDA by the DA under this MOA, except for damages that specifically arise from any agreements between grantees and the DA. The DA will accept accountability for its actions, but EDA shall remain responsible as the program office for providing such funds as are necessary to discharge the liability, and all related costs.

ARTICLE XI - PUBLIC INFORMATION COORDINATION

In general, EDA is responsible for all public information. Justification and explanation of EDA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of EDA. The DA may provide, upon request, any assistance necessary to support EDA's justification or explanation of the EDA's programs conducted under this MOA. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. EDA or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to this MOA.

ARTICLE XII - MISCELLANEOUS

Other Relationships or Obligations: This MOA shall not affect any pre-existing or independent relationships or obligations between EDA and the DA.

Survival: The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

Severability: If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

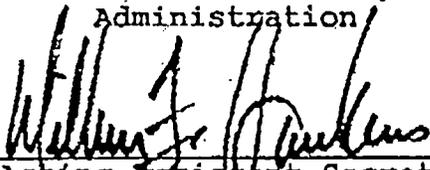
This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, EDA shall continue to be responsible for all

costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both EDA and the DA.

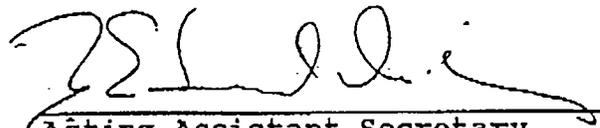
U.S. Economic Development Administration



Acting Assistant Secretary for Economic Development

Date: 1/31/94

U.S. Department of the Army



Acting Assistant Secretary of the Army (Civil Works)

Date: 1/26/94

TECHNICAL ASSISTANCE

SCOPE OF WORK

1. Project Information Reports

The primary output from the Corps' technical assistance will be Project Information Reports on each levee identified by EDA as a potential applicant. In general, the DA will:

- Provide EDA a Final Project Information Report on each proposed project within sixty (60) days of EDA's technical assistance request, which (1) summarizes the technical and programmatic activities identified below and (2) provides findings and recommendation(s) to EDA sufficient to determine whether or not the EDA-proposed project is suitable for further processing by EDA.
- In some cases, the DA may conclude after preliminary analysis that the proposed project is unlikely to compete successfully with other applicants. In those cases, the DA may submit a preliminary Project Information Report detailing the basis for this conclusion. Decisions about awarding grants nonetheless remain an EDA responsibility and EDA may direct the DA in these cases to prepare a final report as well.

2. Report Contents

Project Information Reports will contain analysis and conclusions based on DA technical and programmatic reviews and evaluations as described herein.

a. Technical Review and Evaluation

- Perform project site reconnaissance and related data gathering activity as necessary.
- Perform Damage Survey Analyses in accordance with DA standards.
- Identify any apparent deferred maintenance and estimate costs of performing deferred maintenance.
- Prepare estimated project costs for levee repair.
- Perform project economic cost/benefit analysis.

- Perform an analysis of operation and maintenance costs required after the proposed project is completed.
 - Perform the necessary environmental review.
- b. Programmatic Review and Evaluation
- Evaluate the EDA applicant and determine whether or not this applicant would be a bona fide public sponsor in accordance with DA standards.
 - Evaluate and determine the applicant's capability to operate and maintain the levee upon project completion.
 - Evaluate and determine, in accordance with DA criteria, the suitability of the proposed project for inclusion in the DA levee system.