



FACSIMILE HEADER SHEET

**US Army Corps
of Engineers**

U.S. ARMY CORPS OF ENGINEERS
LOWER MISSISSIPPI VALLEY DIVISION
P.O. BOX 80
VICKSBURG, MISSISSIPPI 39181-0080

| DELIVER TO | | FROM | |
|---------------|---------------------|---------------|---------------------|
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| Date | No. of Pages (including cover sheet) | Precedence (P or R) | If you do not receive all pages, please telephone: |
| <u>14 Dec 92</u> | <u>7</u> | <u>P</u> | |

REMARKS:

As we discussed this agreement will supplement the local assurances.

It's my understanding that the Division Engineer approved a similar mitigation on New Orleans to Venice or Larose to Golden Meadow.

This doesn't require purchase of land. Please check ER 1105-2-100, Para. 2-17.a.

AGREEMENT FOR MITIGATION

ON THE

LAKE PONTCHARTRAIN HURRICANE PROTECTION PROJECT

THIS AGREEMENT, entered into this _____ day of _____, 1991, by and between the United States Government, represented by the United States Army Corps of Engineers, New Orleans District (referred to as "Corps"); the State of Louisiana, represented by the Department of Natural Resources (referred to as "DNR"); the State of Louisiana represented by the Board of Commissioners of the Lake Borgne Basin Levee District, the St. Bernard Parish Police Jury, the Orleans Levee District, the East Jefferson Levee District, and the Pontchartrain Levee District (collectively referred to as "Levee Districts").

WITNESSED, THAT:

WHEREAS, the Corps and the Levee Districts are presently building the Lake Pontchartrain Hurricane Protection Project, authorized by Congress in P.L. 89-298 (referred to as the "Project"); and

WHEREAS, the Fish and Wild Life Coordination Act (16 U.S.C. 661, et seq.; P.L. 58-624) requires that any Federal Project controlling or modifying bodies of water over 10 acres in size for any purpose, requires mitigating damages to the environment and/or wildlife habitats (16 U.S.C. 662(a)); and

WHEREAS, the Levee Districts have all signed agreements with the Corps to bear 30% of the cost of the Project's first cost and the mitigation of the project is included as first cost, by Federal law; and

WHEREAS, the damages to be mitigated include all constructed features of the Project, and the 30% non-Federal share for mitigation is to be cost-shared among the assurers in accordance with the formula used for proportioning construction costs of the Barrier Plan.

WHEREAS, the selected Mitigation Plan for the Project consists of shoreline protection along a 5-mile reach of the Manchac Wildlife Management Area (referred to as the "Mitigation Plan"); and

WHEREAS the DNR has expressed an intention to participate financially in the Mitigation Plan and has agreed to:

- a. Provide a non-federal cost share contribution up to 30% of the basic project cost for renewable wetland resources mitigation features of the project, providing the project construction commences no later than 2 years from this agreement;
- b. Subject to appropriation of funds, maintain and replace the mitigation features in accordance with the provisions of the Mitigation Cost-Sharing Agreement, of which the Federal government will bear an amount equal to 70% of the maintenance and replacement costs;
- c. Provide lands, easements, and rights-of-way, including dredged material disposal areas required for construction and maintenance of the mitigation features;
- d. Perform the necessary relocations required for the construction of the mitigation features;
- e. Comply with applicable provisions of the Uniform Relocations Assistance and Real Property Acquisitions Policies Act of 1970 (P.L. 91-646);
- f. Comply with Section 601 of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) that no person shall be excluded from participation in connection with the project on the grounds of race, creed or natural origin; and

WHEREAS, although, the DNR is willing to participate financially in the Mitigation Plan, DNR will assume no other obligations or responsibilities of the Levee Districts with respect to mitigation of the Project, specifically the DNR will not assume

the Levee Districts' obligation to hold and save the United States free from damages due to the construction, operation and maintenance of the mitigation plan of the Project, nor will DNR participate beyond the scope of the proposed mitigation plan as described in the Draft mitigation study dated March 1988 and known as the Manchac Foreshore Protection Plan, of which DNR's 30% cost-share is presently estimated to be \$1,227,000 for construction and \$42,000 in average annual cost of the maintenance and replacement. In the event the actual costs exceed the estimated costs, and DNR's cost-share exceeds the amount estimated (\$1,227,000 construction, \$42,000 average annual maintenance and replacement), additional expenditures shall require written approval by the DNR and the Louisiana Division of Administration. The estimated figures may be adjusted with such approval.

NOW, THEREFORE, the parties agree as follows:

THE CORPS AGREES TO:

1. Build and construct the Mitigation Plan (Plan O) as outlined in the Lake Pontchartrain, Louisiana, and Vicinity Hurricane Protection Project: Draft Mitigation Study (March 1988) and in accordance with the plans and specifications;
2. Provide 70% of the cost of the construction of the Mitigation Plan;
3. Subject to the availability of appropriations from Congress, provide its 70% share of maintenance and replacement cost to the DNR in the same year as the maintenance or replacement is required;
4. Allow DNR to review and comment on the plans and specifications for the mitigation plan at least 30 days prior to advertisement for bids.

THE DNR AGREES TO:

1. Provide a non-federal cost share contribution up to 30% of the basic project cost for renewable wetland resources mitigation features of the project;
2. Subject to appropriation of funds, maintain and replace

- the mitigation features in accordance with the Mitigation Plan and as outlined in the March 1988 Lake Pontchartrain, Louisiana, and Vicinity Hurricane Protection Project mitigation study and in accordance with the plans and specifications and provide the non-Federal cost-share of 30%;
3. Provide lands, easements, and rights-of-way, including dredged material disposal areas required for construction and maintenance of the mitigation features;
 4. Perform the necessary relocations required for the construction of the mitigation features;
 5. Comply with applicable provisions of the Uniform Relocations Assistance and Real Property Acquisitions Policies Act of 1970 (P.L. 91-646);
 6. Comply with Section 601 of Title VI of the Civil Rights act of 1964 (P.L. 88-352) that no person shall be excluded from participation in connection with the project on the grounds of race, creed or natural origin;
 7. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the legislature of the State of Louisiana when obligating future appropriations would be inconsistent with the State's constitutional or statutory limitations.

THE LEVEE BOARDS AGREE TO:

1. Remain primarily, jointly and collectively responsible for the non-federal share of the Project and any mitigation necessary for the Project, whether or not such mitigation is covered by and included in the Mitigation Plan;
2. Provide to the Corps all of the 30% non-federal cost share not provided by the DNR for the construction of Mitigation Plan;

- 3. Provide to the DNR all of the 30% non-federal cost share not provided by the DNR for the maintenance or replacement of the Mitigation Plan in the same year as the maintenance or replacement is required;
- 4. In accordance with their present agreements, hold and save the Corps free from damages due to the construction, operation, and maintenance of the Mitigation Plan, except where such damages are due to the fault or negligence of the Corps or its contractors;
- 5. Hold and save the DNR free from damages due to the construction, operation, maintenance, or replacement of the Mitigation Plan, except where such damages are due to the fault or negligence of the DNR or its contractors.

RELATIONSHIP OF PARTIES:

The parties in this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and none of the parties are to be considered the officers, agents, or employees of the others.

UNITED STATES ARMY
CORPS OF ENGINEERS
NEW ORLEANS DISTRICT

STATE OF LOUISIANA
DEPARTMENT OF NATURAL RESOURCES

BY: _____

BY: _____

DATE: _____

DATE: _____

BOARD OF COMMISSIONERS
LAKE BORGNE BASIN LEVEE DISTRICT

BY: _____

DATE: _____

ST. BERNARD PARISH POLICE JURY

BY: _____

DATE: _____

BOARD OF COMMISSIONERS
ORLEANS LEVEE DISTRICT

BY: _____

DATE: _____

BOARD OF COMMISSIONERS
EAST JEFFERSON LEVEE DISTRICT

BY: _____

DATE: _____

BOARD OF COMMISSIONERS
PONTCHARTRAIN LEVEE DISTRICT

BY: _____

DATE: _____