

**PLANNING ASSISTANCE TO STATES AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CHITIMACHA TRIBE OF LOUISIANA
STORM WATER DRAINAGE AND WATERSHED MASTER PLAN**

THIS AGREEMENT is entered into this 14 day, of Oct, 2008, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Chitimacha Tribe of Louisiana (hereinafter the "Sponsor"), represented by the Chairman, Chitimacha Tribe of Louisiana, executing the Agreement.

WITNESSETH, that

WHEREAS, Section 22 of the Water Resources Development Act ("WRDA") of 1974 (Public Law 93-251), as amended, authorizes the Secretary of the Army, acting through the Chief of Engineers, to assist the States, as therein defined, in the preparation of comprehensive plans for the development, utilization and conservation of water and related resources of drainage basins, watersheds or ecosystems located within the boundaries of such State;

WHEREAS, Section 319 of the WRDA of 1990 (Public Law 101-640) authorizes the Secretary of the Army to collect fees from States and other non-Federal governmental entities for the purpose of recovering 50 percent of the cost of the program providing assistance to States as established by WRDA of 1974, Section 22;

WHEREAS, the Sponsor is a non-Federal public body or Federally recognized Indian Tribe that has reviewed the State of Louisiana's comprehensive water plans and has identified the need for planning assistance as described in the Scope of Work, which is attached hereto as **Appendix A** and incorporated into this Agreement;

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in the study cost-sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, Section 208(1) of WRDA of 1992, Public Law 102-580 (codified at 42 U.S.C. Section 1962d-16(b) (2)), authorizes the Sponsor to contribute up to one-half (1/2) of the non-Federal contribution for preparation of the Scope of Work incorporated into this Agreement by the provision of services, materials, supplies or other in-kind services necessary to prepare the Scope of Work.

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study" shall mean the "Storm Water Drainage and Watershed Master Plan" study conducted pursuant to this Agreement, in accordance with the Scope of Work and the Planning Assistance to States Program as authorized by Section 22 of WRDA 1974, as amended, and Section 208 of WRDA 1992.

B. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

C. The term "Estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

D. The term "Study Period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers New Orleans District of initial Federal funds following the execution of this Agreement and ending when the New Orleans District provides the final planning report to the Sponsor.

E. The term "Scope of Work"(SOW) means a description of the work to be performed. The SOW is attached to this Agreement as **Appendix A**, but shall not be binding on either party, and is subject to change by the Government, without the agreement of the Sponsor.

F. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

G. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the SOW.

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, subject to receiving funds appropriated by the Congress of the United States (Congress), and using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III.A., III.B. and III.C. of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of the Study Costs. If agreeable to all parties, in-kind services may comprise fifty (50) percent of the Sponsor's contributions. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to

be provided are specified in the Scope of Work. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the Sponsor's obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

D. If, the award of any contract or the performance of any in-house work for the Study by the Government, would result in the cumulative financial obligations of the Government and the Sponsor exceeding One Hundred Thousand Dollars (\$100,000.00), the parties agree to defer: (1) the award of that contract, (2) the award of all remaining or subsequent contracts, and (3) the continued performance of any in-house work for the Study by the Government, until such time that the parties agree in writing to proceed with further contracts or the continued performance of any in-kind work for the Study by the Government. However, notwithstanding the foregoing, in no event shall the award of contracts or the continued performance of any in-house work for the Study by the Government be deferred or suspended for more than six (6) months. In the event the Government and the Sponsor fail to reach an agreement to proceed with the award of contracts or the continued performance of any in-kind work for the Study by the Government, by the end of the 6-month period, this Agreement may be terminated by the Government pursuant to Article X.

E. No Federal funds may be used to meet the Sponsor's share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

F. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of this Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal laws and regulations.

G. Notwithstanding any provision of this Agreement contained herein, this Agreement and the Government's obligations hereunder shall not be effective and will not commence until Federal funds have been appropriated and allocated to the District Engineer, U.S. Army Corps of Engineers New Orleans District for the performance of the SOW. In the event that Federal funds are allocated to the District Engineer for the SOW after this Agreement has been fully executed, the effective date of this Agreement shall be the date on which the funding approval is provided to the District Engineer.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs. At least quarterly, the Government shall provide the Sponsor a written report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are One

Hundred Thousand Dollars (\$100,000.00) The Sponsor's share of the Estimated Study Costs is Fifty Thousand Dollars (\$50,000.00). The Sponsor shall provide at least one-half, but up to 100%, of the Sponsor's share of the actual total Study Costs in cash. The Sponsor may provide up to one-half of the Sponsor's share of actual Study Costs in in-kind services. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the Study described in the SOW, projected costs, price-level changes, and anticipated inflation. The Study Costs are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. No later than 30 days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its share of Study Costs. No later than 15 days thereafter, the Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "FAO-B2", New Orleans District to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

2. The Government shall withdraw dollar amounts from the funds provided by the Sponsor as the Government deems necessary to cover the Sponsor's share of Study Costs as they are incurred.

3. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than 60 days after issuance of such notice, the Sponsor shall provide the Government with a check or an Electronic Funds Transfer for the full amount of the additional required funds.

C. Within 90 days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within 30 days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs.

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

To provide for consistent and effective communication, the Government's Project Manager for the Study and the Sponsor's designated representative shall communicate regularly until the end of the Study Period.

ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute

through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of design and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any state or local elected or appointed official, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsor shall have any further obligations hereunder, except as provided in

Article III.C.; provided, that prior to such time and upon 30 days written notice, either party may terminate or suspend this Agreement. In addition, the Government may terminate this Agreement immediately and without advance notice, if after the Agreement has been held in suspense for a six (6) month period, the parties are unable to reach an agreement to proceed with the award of contracts or the continued performance of any in-kind work for the Study by the Government pursuant to Article II.D. of this Agreement, or upon the failure of the Sponsor to fulfill its obligations under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

ARTICLE XI – LIMITATION ON GOVERNMENT EXPENDITURE

In accordance with Section 22 of WRDA of 1974, as amended, Government financial participation in the cooperative preparation of comprehensive plans for development, utilization, and conservation of water and related resources pursuant to said authority shall be limited to the expenditure of not more than \$500,000 in any one year in any one State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which, subject to the provisions of Article II.G. of this Agreement, shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, New Orleans District.

DEPARTMENT OF THE ARMY

BY: 

Edward R. Fleming
Colonel, US Army
District Commander

CHITIMACHA TRIBE OF LOUISIANA

BY: 

John Darden
Chairman of the Chitimacha
Tribe of Louisiana

CERTIFICATE OF AUTHORITY

I, John Paul Darden, do hereby certify that I am the principal legal officer of the Chitimacha Tribe of Louisiana and that the Chitimacha Tribe of Louisiana 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 Chitimacha Tribe of Louisiana, in connection with the Storm Water Drainage and Master Plan and that the person who has executed this Agreement on behalf of the Chitimacha Tribe of Louisiana has acted within his/her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 30 day of September, 2010.


Signature

John Paul Darden
Typed Name

Chairman of the Chitimacha Tribe of Louisiana
Title in Full

APPENDIX A
SCOPE OF WORK
For
CHITIMACHA TRIBE OF LOUISIANA
STORM WATER DRAINAGE AND WATERSHED MASTER PLAN
On the Chitimacha Reservation
In
Charenton, Louisiana

The United States Army Corps of Engineers (USACE) will provide technical assistance to the Chitimacha Tribe of Louisiana in Charenton, Louisiana through the preparation of a storm water drainage master plan, which will include among other things, environmental and ecosystem enhancement, and the best use of the watershed and land use improvements. The proposed Study Area is zoned residential, and requires planning for future growth. The master plan will be completed to determine the best use within the Study Area. .

This assistance is offered to the Chitimacha Tribe of Louisiana through the Planning Assistance to States Program (Section 22 of the Water Resources Development Act of 1974). The Planning Assistance to States Program (Program) provides funding and authority to USACE for the provision of technical assistance necessary to prepare comprehensive plans for the development, utilization, and conservation of water and related land resources of drainage basins, watersheds or ecosystems in the State of Louisiana. This Program can be used to facilitate decision making aimed at striking a balance between the natural and man-made water and related land environments. This is a cost shared Program where the Government provides 100 percent of the technical expertise and 50 percent of the total Study Costs, and the Sponsor, the Chitimacha Tribe of Louisiana, provides 50 percent of the total Study Costs.

The Study consist of the formulation of a master plan which takes into consideration improvements for the tribal lands of the Chitimacha Reservation located along approximately .5 miles of Creek Drive in Charenton, Louisiana. The Study Area is bounded by Mohawk Street and E. Martin Luther King Rd. The Tribe is currently considering implementation of several flood risk management measures to improve drainage in the area including: swales to direct the flow of water, ditches, storm sewers, and retention or detention ponds. The Study will utilize planning and technical assistance including hydrologic and environmental data analysis to evaluate the proposed improvements impacts on the 100-Year floodplain, water supply and demand, environmental enhancement, and land use.

Deliverables

The final deliverables shall consist of a final Study report which shall include but is not limited to, a master storm water drainage plan together with concept renderings, maps, drawings, concept cross sections identifying major features (drainage facilities, signage, trails, etc.), a survey for the proposed Study Area and project site, impacts to the study area, and a cost estimate and schedule for implementation of the recommended final master plan.

The timeframe to complete the above work is estimated at 12-months. This includes a total period of four-weeks for the Sponsor to review the 50% and 95% draft Study report submittals.

Cost Estimate

Corps of Engineers Contribution (cash):	\$ 50,000
Local Sponsor Contribution (cash or WIK):	\$ 50,000
Total Study Cost:	\$ 100,000