

**Emergency Council Meeting
Re-Convened Meeting
Tuesday, June 25, 2024
City Council Chambers
1:00 p.m.
AGENDA**



Call to Order
Pledge of Allegiance

1. Emergency Flood Assistance
 - Resolution
 - Agreement
2. New Business
3. Adjourn



EMERGENCY FLOOD ASSISTANCE

PUBLIC LAW 84-99

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 Authority.

Emergency operations under Public Law 84-99 apply to Flood Response and Post Flood Response activities. Flood Response activities include flood fighting, rescue operations, and protection of Corps-constructed hurricane/shore protection projects. Post Flood Response activities include certain limited activities intended to prevent imminent loss of life or significant public property, or to protect against significant threats to public health and welfare, and are intended to bridge the time frame between the occurrence of a disaster and the provision of disaster relief efforts under authority of The Stafford Act.

(a) Flood Response. Flood Response measures are applicable to any flood control work where assistance is supplemental to tribal, State, and local efforts, except that Corps assistance is not appropriate to protect flood control works constructed, previously repaired, and/or maintained by other Federal agencies, where such agencies have emergency flood fighting authority. Further, Flood Response measures (except technical assistance) are not appropriate for flood control works protecting strictly agricultural lands. Corps assistance in support of other Federal agencies, or State and local interests, may include the following: technical advice and assistance; lending of flood fight supplies, e.g., sandbags, lumber, polyethylene sheeting, or stone; lending of Corps-owned equipment; hiring of equipment and operators for flood operations; emergency contracting; and similar measures.

(b) Post Flood Response. The Corps may furnish Post Flood Response assistance for a period not to exceed 10 days (the statutory limitation) from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. Requests for Post Flood Response assistance must be made by the Governor of the affected State, except that requests for assistance on lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. Assistance from the Corps may include 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 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, or to protect against significant threats to public health and welfare. Post Flood Response assistance is supplemental to the maximum efforts of non-Federal interests.

§ 203.32 Policy

Prior to, during, or immediately following flood or coastal storm activity, emergency operations may be undertaken to supplement State and local activities. Corps assistance is limited to the preservation of life and property, i.e., residential/commercial/industrial developments, and public facilities/services. Direct assistance to individual homeowners, individual property owners, or businesses is not permitted. Assistance will be temporary to meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Emergency Management Agency or equivalent. Reimbursement of State or local emergency costs is not authorized. The local assurances required for the provision of Corps assistance apply only to the work performed under Public Law 84-99, and will not prevent State or local governments from receiving other Federal assistance for which they are eligible.

(a) Flood Response. Requests for Corps assistance will be in writing from the appropriate requesting official, or his or her authorized representative. When time does not permit a written request, a verbal request from a responsible tribal, State, or local official will be accepted, followed by a written confirmation.

- 1) Corps assistance may include operational control of flood response activities, if requested by the responsible tribal, State, or local official. However, legal responsibility always remains with the tribal, State, and local officials.
- 2) Corps assistance will be terminated when the flood waters recede below bank-full, absent a short term threat (e.g., a significant storm front expected to arrive within a day or two) likely to cause additional flooding.
- 3) Removal of ice jams is a local responsibility. 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 not perform ice jam blasting operations for local interests.

(b) Post Flood Response. A written request from the Governor is required to receive Corps assistance. Corps assistance will be limited to major floods or coastal storm disasters resulting in life threatening situations. The Governor's request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's capability; specific damage locations; and the extent of Corps assistance required to supplement State and local efforts. 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 any Governor's request for Post Flood Response if it is received subsequent to a Stafford Act Presidential disaster declaration, or denial of such a declaration. Shoreline or beach erosion damage reduction/prevention actions under Post Flood Response will normally not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) Loan or Issue of Supplies and Equipment.

- 1) Issuance of Government-owned equipment or materials to non-Federal interests is authorized only after local resources have been fully committed.
- 2) Equipment that is lent will be returned to the Corps immediately after the flood operation ceases, in a fully maintained condition, or with funds to pay for such maintenance. The Corps may waive the non-Federal interest's responsibility to pay for or perform maintenance if a Stafford Act Presidential emergency or disaster declaration has already been made for the affected locality, and the waiver is considered feasible and reasonable.
- 3) Expendable supplies that are lent, 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.

PUBLIC SPONSOR RIGHT-OF-WAY REQUIREMENTS:

Emergency assistance requires the Public Sponsor and the Corps to enter into a Cooperation Agreement (CA). Under the terms of the CA, the Public Sponsor must provide, without cost to the Federal Government, all lands, easements, rights-of-way, relocations, excavated material disposal areas, and suitable borrow material(s), 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 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 the work
- b. Ingress and egress to work sites, including construction and borrow 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 by the Corps or the United States to property owners or the Public Sponsor. The terms of the right-of-entry may establish whether the Public Sponsor is 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 or may not address liability of the Public Sponsor to the landowner, 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.

ALL TEMPORARY STRUCTURES AND/OR FLOOD DAMAGE REDUCTION MEASURES CONSTRUCTED OR PUT IN PLACE DURING EMERGENCY OPERATIONS ARE TO BE REMOVED BY THE PUBLIC SPONSOR. REMOVAL WORK MUST BEGIN WITHIN 30 DAYS OF THE CONCLUSION OF THE EVENT.

INSTRUCTION FOR COMPLETION
Public Sponsor Resolution and Cooperation Agreement

1. Inform the Public Sponsor of their obligations to provide the necessary right-of-way, to include all lands, easements, rights-of-way, relocations, borrow material, and excavated material disposal areas necessary for the authorized work.
2. Inform 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 may seek financial assistance from other sources for temporary levee removal work.
3. The Public Sponsor will need to provide the U.S. Army Corps of Engineers with a signed Resolution, issued by its governing body, prior to entering into a Cooperation Agreement (CA) with the Federal Government.
4. The Resolution provides assurance that the governing body understands the CA and authorizes a single individual (Mayor, Chairman, Chief, etc.) to sign the CA on behalf of the Public Sponsor, thereby obligating the Public Sponsor to the terms and conditions contained therein. **Two representatives of the Public Sponsor's governing body must sign the Resolution.** Generally, the person identified as the individual authorized to execute the CA on behalf of the Public Sponsor, should not be one of the governing body representatives that has signed the Resolution.
5. The Public Sponsor must identify an Incident Commander in the CA. The Incident Commander will be the single point of contact between the Government and Public Sponsor. It is imperative that valid contact information, to include address and phone number, be provided for the Incident Commander.
6. A Scope of Work (Exhibit A) that details the extent of work to be performed under the CA and a map and/or drawing that identifies the location of all proposed temporary structures the must be attached to each CA.
7. All signed originals (Resolution and Cooperation Agreement) should be emailed to: CEMVP-EOC@usace.army.mil
8. A fully executed copy of the CA will be returned to the Public Sponsor.

Any questions related to the proper completion and submittal of the Resolution and/or Cooperation Agreement, should be directed to:

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

or

Kevin Sommerland
(651) 290-5253
kevin.j.sommerland@usace.army.mil

CITY OF WINDOM
(PUBLIC SPONSOR)
RESOLUTION #2024-26

INTRODUCED:

SECONDED:

VOTED: **Aye:**
 Nay:
 Absent:

REQUEST FOR EMERGENCY FLOOD ASSISTANCE

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

WHEREAS, City of Windom, MN (hereinafter the "Public Sponsor") has exhausted all
(PUBLIC SPONSOR)
resources available to it for flood fighting and rescue operations; and,

WHEREAS, on the date of this Resolution, flood fighting and emergency assistance is required for the purposes of preserving life and public property;

NOW, THEREFORE, BE IT RESOLVED that 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, is hereby requested to furnish assistance in flood fighting and rescue operations.

BE IT FURTHER RESOLVED that in consideration of such assistance the Public Sponsor agrees to:

- a. Provide without cost to the Government all lands, easements, rights-of-way, relocations, borrow material, and borrow and dredged or excavated material disposal areas, determined to be necessary by the Government for purposes of providing the requested assistance.
- b. Hold and save the United States free from all claims for damages attributable to the flood fighting and rescue assistance provided by the Government (to include construction, operation, maintenance, repair, replacement, and rehabilitation of emergency work), except for damages due to the fault or negligence of the Government or its contractors.
- c. Operate, maintain, repair, replace, and rehabilitate all completed emergency work in a manner satisfactory to the Government for the duration of the flood emergency, as determined by the Government.
- 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 permanent relocation of persons or property from their dwellings, farms, or businesses due to the acquisition of rights-of-way for the emergency work.
- f. Remove, after the flood emergency, without cost to the Government, 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 Government.

BE IT FURTHER RESOLVED that Steve Nasby, City Administrator be authorized to enter into agreements with the Government in
(PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE)

furtherance of this Resolution, as a means of supplementing the local flood emergency preparation and flood fighting and rescue operations, and that such agreements shall be binding upon the Public Sponsor.

Date: 6/25/2024

Resolution Approval Signature: _____

Printed Name and Title: Dominic Jones, Mayor

Date: 6/25/2024

Resolution Approval Signature: _____

Printed Name and Title: Steve Nasby, City Administrator

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

City of Windom

(PUBLIC SPONSOR)

for

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

THIS AGREEMENT is entered into 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 City of Windom, MN (hereinafter referred to as the "Public Sponsor") acting by and through

(PUBLIC SPONSOR)

Dominic Jones, Mayor

(TITLE OF PERSON SIGNING COOPERATION AGREEMENT)

WITNESSETH THAT:

WHEREAS, 33 U.S.C. § 701n, authorizes the Chief of Engineers to flood fight and perform rescue operations; and,

WHEREAS, the Public Sponsor has requested assistance under 33 U.S.C. § 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 in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. The Government will perform the work described in the Scope of Work (SOW), attached hereto and made a part of this Agreement as Exhibit A.
2. The Public Sponsor will:
 - a. Provide without cost to the Government all lands, easements, rights-of-ways, relocations, borrow material, and disposal areas for dredged or excavated material, as determined by the Government to be necessary for the work.
 - b. Hold and save the United States 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 for the duration of the flood emergency, as determined by the Government.
 - d. Remove, at no cost to the Government, all temporary work constructed by the Government, with initiation of the removal to be conducted within 30 days of the conclusion of the flood event, as determined by the Government.
3. The Public Sponsor does further agree and pledge that it will:
 - a. Use sandbags provided by the Government in accordance with Government standards and guidelines.
 - b. Return equipment and unused supplies, loaned to the Public Sponsor by the Government, and reimburse the Government for expended supplies, unless the requirement for reimbursement is waived by the Government. Loaned equipment damaged, destroyed, or lost while in the Public Sponsor's possession, including property or equipment incorporated into temporary emergency construction, will be repaired or restored by the Public Sponsor at the Public Sponsor's expense to its condition prior to the Public Sponsor's obtaining possession of the property or equipment. Reimbursement for supplies may be in the form of: (a) replacement in kind with an equivalent quality to those issued; or (b) paying the cost for the Government to replace the supplies with those of an equivalent quality; or (c) returning in good, usable condition those supplies not used; or (d) any combination of the above. The Public Sponsor will be billed for supplies not replaced and will

remit payment within 30 days of the bill date. As used in this paragraph, the term "equipment" includes, but may not be limited to: pumps, generators, and sandbag filling machines. The term "supplies" includes expendable items such as sandbags and polyethylene sheeting.

- c. Establish a flood response organization and designate an Incident Commander prior to the Government conducting any work under this Agreement. The Public Sponsor's Incident Commander is identified at the end of this Agreement.
- 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 permanent relocation 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. Take steps to avoid damage to non-expendable Government equipment during all removal operations.

4. ATTACHMENTS:

- a. Exhibit A - Scope of Work
- b. Exhibit B - Resolution

5. The Public Sponsor, by execution of this document, agrees and warrants 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 work.

6. By signing below, the undersigned certify that they have the legal authority to execute this Agreement and to bind the parties to the terms and conditions herein contained.

Public Sponsor Incident Commander:

Printed Name: Paul Johnson

Home / Office Phone: 507-832-8255

Cell Phone: 507-822-2976

Home / Office Address: 900 3rd Avenue

Windom, MN 56101

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall be effective when signed below or in counterpart, and photocopy, facsimile, electronic, or other copies shall have the same effect for all purposes as a signed original.

THE DEPARTMENT OF THE ARMY

(NAME OF PUBLIC SPONSOR)

BY: _____
Eric R. Swenson
Colonel, Corps of Engineers
District Commander

Date

BY: _____
(AUTHORIZED REPRESENTATIVE) Date

Print Name: _____

Title: _____

Scope of Work

The work contemplated for Emergency Flood Assistance consists of the construction of emergency levees for flood protection and related flood protection work. 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 of Engineers, to include some or all of the following:

1. Provision of technical advice and assistance.
2. 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.
3. Removal of debris blockages of critical water supply intakes, sewer outfalls, etc.
4. Clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities.
5. Other assistance required to prevent imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare.