

COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE COASTAL PROTECTION AND RESTORATION AUTHORITY OF
LOUISIANA
FOR
REHABILITATION OF THE GRAND ISLE AND VICINITY, LOUISIANA PROJECT

THIS AGREEMENT is entered into this 27 day of March, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, New Orleans District (hereinafter the "District Engineer") and the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Non-Federal Sponsor"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, the Section 201 of the Flood Control Act of 1965, Public Law 89-298, as amended (hereinafter the "FCA of 1965") authorized construction of the Grand Isle and Vicinity, Louisiana Project for hurricane protection and beach erosion (hereinafter the "*Project*", as defined in Article I.A. of this Agreement);

WHEREAS, in accordance with FCA of 1965, the *Project* was approved by resolutions adopted by the Committees on Public Works of the House of Representatives and the Senate on September 23, 1976 and October 1, 1976, respectively;

WHEREAS, as authorized by Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n) and using funds provided under the Flood Control and Coastal Emergencies (FC&CE) heading, Chapter 3 of Title I, Division B of Public Law 109-148 (119 Stat. 2762 – 2763) and under the FC&CE heading, Chapter 3, Division B of Public Law 110-329 (122 Stat. 3590) (hereinafter collectively referred to as the "FC&CE Supplementals") the Secretary of the Army, acting through the Chief of Engineer, is directed to restore the flood damage reduction and hurricane and storm damage reduction projects, and related works, to provide the level of protection for which they were designed, at full Federal expense;

WHEREAS, on March 10, 1983, the Government, the Louisiana Department of Transportation and Development (hereinafter the "DOTD"), and the Town of Grand Isle, Louisiana entered into an agreement for construction of the *Project*;

WHEREAS, on May 21, 2007, the Government, the DOTD, and the Town of Grand Isle, Louisiana entered into a Cooperation Agreement for repair and rehabilitation of the *Project* using funds provided under the FC&CE heading, Chapter 3 of Title I, Division B of Public Law 109-148 (119 Stat. 2762 – 2763) (hereinafter the "Initial 3rd Supplemental Rehabilitation Work");

WHEREAS, the Non-Federal Sponsor plans to enter into a Cooperative Endeavor Agreement or other sub-agreements, in accordance with the Constitution and laws of the State of Louisiana, with the Town of Grand Isle for the performance of the Non-Federal Sponsor's obligations under this Agreement;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for construction of the *Rehabilitation Work*, as defined in Article I.B. of this Agreement;

WHEREAS, the purposes of this Agreement are to set forth the obligations of the Government and the Non-Federal Sponsor regarding the construction and the operation, maintenance, repair, rehabilitation, and replacement of the *Rehabilitation Work*; to establish a cooperative relationship that promotes full and timely communication and sharing of information; to foster a harmonious relationship that promotes reaching mutually agreeable sound decisions expeditiously; to create and maintain a working environment where trust and teamwork facilitates the resolution of issues and minimizes disputes; and to achieve the shared goals of the parties to complete expeditiously the *Rehabilitation Work* necessary to provide the level of protection for which the *Project* was designed;

WHEREAS, pursuant to La. R.S. 49:213.1 and in accordance with the requirements of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, the Non-Federal Sponsor was established, authorized, and empowered by the State of Louisiana on May 25, 2006 to carry out any and all functions necessary to serve as the single state entity responsible to act as the local sponsor for construction, operation, and maintenance of all of the hurricane, storm damage reduction, and flood control projects in areas under its jurisdiction, including the greater New Orleans and southeast Louisiana area, and pursuant to La. R.S. 49:213.4(A)(1), represents the State of Louisiana's position in policy implementation relative to the protection, conservation, and restoration of the coastal area of the state through oversight of coastal restoration, hurricane protection, and infrastructure projects and programs;

WHEREAS, the Non-Federal Sponsor has determined that the Government's established peer review process has met the requirements of La. R.S. 38:247(D) and (E) and La. R.S. 49:213.4(E) enacted by the Legislature of Louisiana; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean the Grand Isle and Vicinity, Louisiana Project to provide hurricane protection and beach erosion for the Town of Grand Isle, Louisiana authorized under the FCA of 1965 including any repair and rehabilitation work performed for the *Project* under the authority of Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n). The *Project* consists of numerous features including but not limited to a berm and vegetated sand dune extending the length of Grand Isle’s gulf shore; pedestrian and emergency vehicle crossovers; segmented offshore breakwaters; and a stone jetty to stabilize the western end of Grand Isle at Caminada Pass.

B. The term “*Rehabilitation Work*” shall mean repair and rehabilitation of the *Project* using funds provided under the FC&CE Supplementals except for the Initial 3rd Supplemental Rehabilitation Work covered by the May 21, 2007 Cooperation Agreement. The *Rehabilitation Work* includes the repair and rehabilitation of numerous *Project* features including but not limited to sand berm and dune work consisting of placement of a sand filled GEOTUBE core, topped by a vegetated sand cap not to exceed an elevation of 13.5 feet NGVD; scour protection; breakwaters; jetty; crossovers; pier; fencing; and beach re-nourishment to the authorized level of protection for which they were designed as generally described in the “Project Information Report, PL109-148, Rehabilitation of Damaged Hurricane/Shore Protection Projects, Grand Isle and Vicinity, Louisiana” (hereinafter the “PIR”) dated October 2008 and approved by the U.S. Army Engineer, Mississippi Valley Division (hereinafter the “Division Engineer”) on December 1, 2008. It is understood and agreed that this PIR is subject to change by the Government, at the Government’s sole discretion, in consultation with the Non-Federal Sponsor.

C. The term “*total costs of the Rehabilitation Work*” shall mean the sum of all costs incurred by the Government in accordance with the terms of this Agreement directly related to design and construction of the *Rehabilitation Work* and the *pre-Agreement planning and design costs* incurred by the Government. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Rehabilitation Work*; any costs to correct deferred or deficient maintenance; any costs for *betterments* under Article II.E. of this Agreement; or any costs incurred by the Non-Federal Sponsor.

D. The term “*period of construction*” shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Rehabilitation Work* or the effective date of this Agreement, whichever is earlier, to the date that construction of the *Rehabilitation Work* is complete, as determined by the District Engineer after consultation with the Non-Federal Sponsor, or the date that construction under this Agreement is terminated in accordance with Article XI or Article XII of this Agreement, whichever is earlier.

E. The term “*functional portion of the Rehabilitation Work*” shall mean a portion of the *Rehabilitation Work* for which construction has been completed, can function

independently, and meets the 50-year event design criteria as determined in writing by the District Engineer after consultation with the Non-Federal Sponsor, although the remainder of the *Rehabilitation Work* is not complete.

F The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

G. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term “*pre-Agreement planning and design costs*” shall mean all costs that were incurred by the Government prior to the effective date of this Agreement for planning and design of the *Rehabilitation Work*.

I. The term “*betterment*” shall mean a difference in the construction of an element of the *Rehabilitation Work* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for items of work not included in the *Rehabilitation Work* as defined in paragraph B. of this Article.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government using the funds appropriated by the Congress of the United States (hereinafter the “Congress”), shall design and construct the *Rehabilitation Work* (including the performance of necessary *relocations*) at 100 percent Federal expense, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor and provide timely responses thereto using the Government’s existing or comparable record keeping system for comment documentation and management but the contents of

solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Rehabilitation Work* shall be exclusively within the control of the Government.

2. The Government shall require in any contract concerning the *Rehabilitation Work* that the contractor shall comply with all approved designs in constructing any element thereof. The Government shall not release any contractor for the *Rehabilitation Work* or issue any notification in accordance with paragraph E. of this Article, until the construction complies fully with all Government approved designs, as determined by the Government. For any component of the *Rehabilitation Work* covered by a warranty, in the event of failure or deficiency of such component, the Non-Federal Sponsor may request the Government to demand the contractor to correct the failure or deficiency. Upon receiving such a request and if the Government agrees that there is a failure or deficiency under the warranty clause, the Government shall make such demand and exercise all authority possessed by the Government to ensure that the contractor corrects any such failure or deficiency. The Government shall consider in good faith the comments and requests of the Non-Federal Sponsor regarding any failure or deficiency under the warranty clause, but the determination of whether a failure or deficiency exists shall be exclusively the Government's.

3. Prior to the determination by the District Engineer that the *Rehabilitation Work* or functional portion thereof is complete, the Government and Non-Federal Sponsor shall conduct a joint walk-through inspection and each may note any additional items as a punch-list.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Rehabilitation Work*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. In accordance with the provisions of Article III of this Agreement, the Non-Federal Sponsor shall provide, at no cost to the Government, the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Rehabilitation Work*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, that are owned, claimed, or controlled by the Non-Federal Sponsor and such lands, easements, and rights-of-way that are owned by any other non-Federal governmental entity. All other lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Rehabilitation Work* shall be provided by the Government or the Non-Federal Sponsor in accordance with the provisions of Article III of this Agreement.

C. When the District Engineer determines that the entire *Rehabilitation Work*, or a *functional portion of the Rehabilitation Work*, is complete and meets the 50-year design criteria, after following the procedures of Article II.A.3. of this Agreement, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal

Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Rehabilitation Work* or such functional portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Rehabilitation Work* or such functional portion if such drawings are available. Not later than 60 calendar days after such notification by the Government that the entire *Rehabilitation Work* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Rehabilitation Work*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Rehabilitation Work* cannot be completed within the 60 calendar days, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of construction for the *Rehabilitation Work*, copies of all of the Government's Written Notices of Acceptance of Completed Work for construction items that have not been provided previously shall be provided to the Non-Federal Sponsor.

D. Upon notification from the District Engineer in accordance with paragraph C. of this Article, after following the procedures of Article II.A.3. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Rehabilitation Work*, or the *functional portion of the Rehabilitation Work* as the case may be, in accordance with Article VII of this Agreement.

E. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, the *betterments* described in this paragraph. Such requests shall be in writing and shall describe the *betterments* requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested *betterments* or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. In the event the Government elects to include any such *betterments*, the Government shall not include the costs of such *betterments* in the *total costs of the Rehabilitation Work*. The Non-Federal Sponsor shall be solely responsible for all costs of the *betterments* performed or provided by the Government under this paragraph and shall pay all such costs in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for *betterments*, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the *betterments*. No later than 30 calendar days prior to the Government incurring any financial obligation for *betterments*, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such *betterments* by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal

Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such *betterments* as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such *betterments*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph E.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for *betterments* incurred and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of *betterments* from being conducted in a timely manner, the Government shall conduct an interim accounting of *betterments* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of *betterments* to complete the final accounting of *betterments* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for *betterments* and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for *betterments* exceed the total contribution of funds provided by the Non-Federal Sponsor for such *betterments*, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for *betterments* exceeds the total obligations for such *betterments*, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor are due a refund and funds are not available to refund the excess amount

to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

F. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of *total costs of the Rehabilitation Work*; the Government's total financial obligations incurred to date for the *Rehabilitation Work*; the Government's total financial obligations incurred to date for *betterments* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement.

1. As of the effective date of this Agreement, *total costs of the Rehabilitation Work* are currently estimated to be \$46,100,000 and the Government's total financial obligations for the *betterments* to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement is currently estimated to be \$0.

2. On April 15, 2009 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth the current projections of the following: *total costs of the Rehabilitation Work*; the Government's total financial obligations incurred to date for the *Rehabilitation Work*; the Government's total financial obligations incurred to date for *betterments* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement.

G. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the *Project*.

H. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and coastal storm damage protection provided by the *Project*. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Project*.

K. The Non-Federal Sponsor, by prescribing and enforcing regulations or other means, shall prevent obstructions, encroachments, new developments, or the addition of facilities on the *Project*, or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation and maintenance of such work, that could reduce the level of protection for the *Project* or hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

L. Upon request, each party shall provide the other with any information or documents concerning the *Project* as soon as possible, consistent with applicable State or Federal laws, regulations, and guidance.

M. The Non-Federal Sponsor shall not use *Federal Program funds* to meet any of its obligations under this Agreement unless the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the *Project or Rehabilitation Work*.

N. The Non-Federal Sponsor agrees to continue to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program and the agreement dated March 10, 1983, cited above.

O. The Non-Federal Sponsor shall assure that water pollution that would endanger the health of bathers shall not be permitted.

P. The Non-Federal Sponsor shall not be entitled to credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

ARTICLE III - LANDS, EASEMENTS, AND RIGHTS-OF-WAY

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Rehabilitation Work*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall determine the schedule for acquisition and provision thereof. As soon as practicable, the Government shall provide the Non-Federal Sponsor with written descriptions, including appropriate maps, of such required lands, easements, and rights-of-way, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this Article. The maps provided by the Government shall depict the boundaries of such required lands, easements, and rights-of-way if boundary information is reasonably available to the Government. After the Government provides the Non-Federal Sponsor such written descriptions and maps, such lands, easements, and rights-of-way shall be obtained, acquired, and provided in accordance with the provisions of this Article.

1. Except as provided in paragraph A.2. of this Article, prior to the issuance of the solicitation for any other Government contract for construction of a

portion of the *Rehabilitation Work*, or prior to the Government initiating construction of a portion of the *Rehabilitation Work* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Rehabilitation Work*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto.

2. Private Lands Exception to General Acquisition Responsibility for the *Rehabilitation Work*. Not later than 30 calendar days after the Government provides to the Non-Federal Sponsor the written descriptions and maps of the lands, easements, and rights-of-way determined by the Government to be required solely for the construction, operation, and maintenance of the *Rehabilitation Work*, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such lands, easements, and rights-of-way that are owned by private interests. Upon such request, the Government shall acquire such lands, easements, and rights-of-way applying Federal laws, policies, and procedures.

3. For all lands, easements and rights-of-way required for the construction, operation, and maintenance of the *Rehabilitation Work* that are acquired by the Government in accordance with the provisions of this Agreement, the Government shall acquire such lands, easements, and rights-of-way in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds.

4. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way acquired by the Non-Federal Sponsor or the Government for the *Project* as well as those lands, easements and rights-of-way that the Non-Federal Sponsor provided through an authorization for entry are retained in public ownership for uses compatible with the authorized purposes of the *Project* for the duration of the required interest as determined by the Government in accordance with Article III of this Agreement.

B. Acquisition of lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Rehabilitation Work*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, shall be in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, and the party acquiring the real estate interest shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Coordination Team. Thereafter, the Coordination Team shall meet regularly until the end of the *period of construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterparts shall keep the Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Coordination Team on matters that the Coordination Team generally oversees.

C. Until the end of the *period of construction*, the Coordination Team shall generally oversee the *Rehabilitation Work*, including matters related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the investigations to identify the existence and extent of hazardous substances in accordance with Article XII.A. of this Agreement; the Government's cost projections; final inspection of the entire *Rehabilitation Work* or *functional portions of the Rehabilitation Work*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Rehabilitation Work* including issuance of permits; and other matters related to the *Rehabilitation Work*. This oversight of the *Rehabilitation Work* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Coordination Team may make recommendations to the District Engineer on matters related to the *Rehabilitation Work* that the Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Coordination Team. The Government, having the legal authority and responsibility for construction of the *Rehabilitation Work*, has the discretion to accept or reject, in whole or in part, the Coordination Team's recommendations.

E. All comments submitted to the Coordination Team by the Non-Federal Sponsor's representatives, the resolution of such comments by the Coordination Team, or when applicable, the Coordination Team's recommendation on such comments and the District Engineer's decision related thereto shall be entered into the Government's existing or comparable record keeping system for comment documentation and management. For any comment submitted by the Non-Federal Sponsor that was not resolved by the Coordination Team, the Government shall consult with the Non-Federal Sponsor prior to the District Engineer's decision regarding the Coordination Team's recommendation.

F. The Government's costs of participation in the Coordination Team shall be included in *total costs of the Rehabilitation Work* and the Non-Federal Sponsor shall pay for its own costs of Coordination Team participation.

G. The Government and the Non-Federal Sponsor acknowledge that in certain instances it may be beneficial to designate certain Non-Federal Sponsor personnel to the Project Delivery Team, previously established by the Government, in order to obtain Non-Federal Sponsor input on select issues. To the extent that both parties agree that certain Non-Federal Sponsor personnel should participate on the Project Delivery Team, the Non-Federal Sponsor shall pay for its own costs of Project Delivery Team participation.

ARTICLE V – ISSUE RESOLUTION AND DISPUTE AVOIDANCE

A. The parties recognize that full communication and sharing of information to the extent practicable, consistent with applicable Federal or State law, regulations, and guidance, together with ongoing coordination and consultation, are key to expeditious and sound decision-making. The parties further recognize that decisions are made on a daily basis and issues should be resolved at the lowest organizational level to the extent possible. Similarly, the parties recognize that issue resolution under this Article may be a costly and time consuming process and should be utilized only for resolving significant issues.

B. In the event that the parties are unable to resolve an issue at a lower organizational level, at the request of the Chairman of the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Chairman"), the Division Engineer shall submit the matter to a mutually acceptable, qualified, independent third party for non-binding review and written comment within 14 calendar days. Each party shall pay an equal share of the costs for the services provided by the independent third party. Upon receipt of comments from the independent third party, the Division Engineer and Chairman shall carefully consider those comments with a view to resolving the issue.

C. In the event that the Division Engineer and the Chairman are unable to resolve the issue within 7 calendar days following receipt of written comments from the independent third party, either the Division Engineer or the Chairman may elect to submit the issue for resolution to the Director of Civil Works of the U.S. Army Corps of Engineers (hereinafter the "Director"). The submission of an issue for resolution to the Director shall include a joint memorandum from the Division Engineer and Chairman explaining the issue and why the parties were unable to reach resolution. The Director shall carefully consider all information provided by the Division Engineer and Chairman as well as the comments from the independent third party. Within 14 calendar days of the receipt of the joint memorandum from the Division Engineer and Chairman, the Director shall render a written decision with a full explanation of the reasons for the decision.

D. Nothing in this Article alters or amends any applicable Federal or State law, regulation, or guidance, nor shall it negate the responsibility of each party to comply with

any applicable Federal or State law, regulation, or guidance. Nothing in this Article excuses either party from performance pursuant to this Agreement.

ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties 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 the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. As the single state entity responsible to act as the non-Federal sponsor for construction, operation, and maintenance of all hurricane, storm damage reduction, and flood control projects in the greater New Orleans and southeast Louisiana area, the Non-Federal Sponsor, at no cost to the Government and for so long as the *Project* remains authorized, shall operate, maintain, repair, rehabilitate, and replace all portions of the Project including any subsequent beach re-nourishment, that the District Engineer determines or determined to be complete in accordance with the provisions of the agreement with a non-Federal interest under which such work was constructed. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in such agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto. Nothing in this paragraph is intended to affect eligibility under Public Law 84-99 (33 U.S.C. 701n).

B. In the case of the *Rehabilitation Work* being implemented pursuant to this Agreement, upon receipt of the notification from the District Engineer in accordance with Article II.C. of this Agreement and after following the procedures of Article II.A.3. of this Agreement, the Non-Federal Sponsor, pursuant to Article II.D. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Rehabilitation Work* or *functional portion of the Rehabilitation Work*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article IX of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

C. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor.

ARTICLE VIII – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, which may include, but are not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”; all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)); and, as it relates to the Non-Federal Sponsor, the Louisiana Public Bid Law (La. R.S. 38:2211 *et seq.*).

ARTICLE X - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate construction under this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *Rehabilitation Work* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Rehabilitation Work*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Rehabilitation Work* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Rehabilitation Work* through the upcoming *fiscal year*, is not sufficient, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Rehabilitation Work* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Rehabilitation Work*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to continue construction of the *Rehabilitation Work*, or the Government elects to terminate further construction under this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XII of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate construction under this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XII of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate construction under this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge responsibilities under Article XII of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate construction under this Agreement; 2) the Non-Federal Sponsor provide funds necessary to pay for cleanup and response costs and otherwise discharge its responsibilities under Article XII of this Agreement; 3) the Government continues work on the *Rehabilitation Work*; or 4) the Government terminates construction under this Agreement in accordance with the provisions of Article XII of this Agreement.

D. In the event that construction under this Agreement is terminated pursuant to this Article or Article XII of this Agreement, the parties shall conclude their activities relating to further construction of the *Rehabilitation Work*. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Rehabilitation Work* as a contingency to pay costs of termination, including any costs of

resolution of real estate acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any termination of construction under this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XII of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. Investigations. The Government shall be responsible for all general investigations and costs to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Rehabilitation Work* and such costs shall be included in *total costs of the Rehabilitation Work*.

B. Discovery of Hazardous Substances Prior to Land Acquisition. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Rehabilitation Work*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and shall not proceed with the acquisition of the real property interests until the parties agree that acquisition should proceed.

1. If, pursuant to agreement by the Non-Federal Sponsor and the Government under this paragraph, the Non-Federal Sponsor acquires lands, easements, or rights-of-way that are required for the construction, operation, and maintenance of the *Rehabilitation Work*, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response determined to be necessary by the environmental regulator with jurisdiction, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on such lands, easements, or rights-of-way. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the Rehabilitation Work*.

2. If the Non-Federal Sponsor does not agree to acquire such lands, easements, or rights-of-way but requests the Government to perform the acquisition

pursuant to Article III.A.2. of this Agreement, the Government, in its sole discretion, may proceed with acquisition of such lands, easements, or rights-of-way or may either terminate construction of the *Rehabilitation Work* under this Agreement for the convenience of the Government, or suspend future performance under this Agreement.

C. Discovery of Hazardous Materials After Land Acquisition. In the event it is discovered after acquisition of lands, easements, or rights-of-way required for the construction, operation, and maintenance of the *Rehabilitation Work* that hazardous substances regulated under CERCLA exist therein, thereon, or thereunder, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and shall not initiate construction of the *Rehabilitation Work*, or, if already in construction, shall not continue with construction of the *Rehabilitation Work*, until the parties agree that construction should be initiated or continued.

1. Lands Acquired or Provided by the Non-Federal Sponsor. If hazardous substances regulated under CERCLA are discovered to exist in, on, or under lands, easements, or rights-of-way required for the *Rehabilitation Work* after they have been acquired by the Non-Federal Sponsor, the Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Rehabilitation Work*, or, if already in construction, whether to continue with construction of the *Rehabilitation Work*, suspend future performance under this Agreement, or terminate construction under this Agreement for the convenience of the Government. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Rehabilitation Work* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response determined to be necessary by the environmental regulator with jurisdiction, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Rehabilitation Work* that were acquired or provided by the Non-Federal Sponsor. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the Rehabilitation Work*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate construction under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate construction under this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue with construction of the *Rehabilitation Work*.

2. Private Lands Provided by the Government. In any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any privately owned lands, easements, or rights-of-way that are required for construction, operation, and maintenance of the *Rehabilitation Work* and that were acquired by the Government after request by the Non-Federal Sponsor in accordance with Article III.A.2. of this Agreement, the Government, in its sole discretion, may either terminate construction of the

Rehabilitation Work under this Agreement for the convenience of the Government, suspend future performance on the *Rehabilitation Work* under this Agreement, or continue with construction of the *Rehabilitation Work*.

D. Consultation Regarding Responsible Parties. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article IV of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph D. of this Article shall not relieve any third party from any liability that may arise under CERCLA. Except as between the Government and the Non-Federal Sponsor, nothing herein shall constitute, nor be deemed to constitute, a waiver by either party of any defense, immunity, entitlement to contribution, or exception to any environmental law, regulation, or liability.

E. Operator Status. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA. Upon the District Engineer's notification in accordance with Article II.C. of this Agreement that the *Rehabilitation Work*, or a *functional portion of the Rehabilitation Work*, is complete and meets the 50-year design criteria, if hazardous substances regulated under CERCLA thereafter are found to exist in, on, or under any lands, easements, or rights of way required for OMRR&R of the *Project*, or such functional portion, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response determined to be necessary by the environmental regulator with jurisdiction, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination.

ARTICLE XIII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Chairman
Coastal Protection and Restoration Authority of Louisiana
1501 North 3rd Street
Capitol Annex Building
Baton Rouge, LA 70802

If to the Government:
District Engineer
U.S. Army Corps of Engineers
New Orleans District
P.O. Box 60267
New Orleans, LA 70160-0267

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XIV - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XVI - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana, where creating such an

obligation would be inconsistent with Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date of the last signature to this Agreement.

DEPARTMENT OF THE ARMY

BY: Alvin B. Lee
ALVIN B. LEE
Colonel, Corps of Engineers
District Engineer

COASTAL PROTECTION AND RESTORATION AUTHORITY OF LOUISIANA

BY: Garret Graves
GARRET GRAVES
Chairman

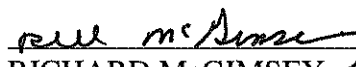
DATE: 27 MAR 09

DATE: 23 march 2009

CERTIFICATE OF AUTHORITY

I, James D. "Buddy" Caldwell, do hereby certify that I am the principal legal officer of the Coastal Protection and Restoration Authority of Louisiana and that the Coastal Protection and Restoration Authority of Louisiana is a legally constituted public body with full authority under La. R.S. 49:213.4 to enter into the Agreement between the Department of the Army and the Coastal Protection and Restoration Authority of Louisiana in connection with the Rehabilitation of the Grand Isle and Vicinity, Louisiana Project. I hereby further certify that the Executive Assistant for Coastal Activities, who is statutorily designated as the Chairman of the Coastal Protection and Restoration Authority, has the authority under La. R.S. 49:213.3 and 49:213.4 to coordinate the powers, duties, and functions of state agencies relative to flood damage reduction and coastal protection and restoration and to use the contracting authority of any agency to implement plans relating to infrastructure, flood damage reduction, and coastal protection, including hurricane protection, and coastal wetlands conservation and restoration, and that the person who has executed this Agreement on behalf of the Coastal Protection and Restoration Authority of Louisiana has acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
24th day of March 2009.



RICHARD MCGIMSEY
Director of Civil Division

FOR

JAMES D. "BUDDY" CALDWELL
Attorney General
State of Louisiana

CERTIFICATION REGARDING LOBBYING

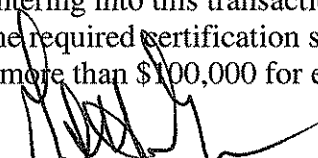
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



GARRET GRAVES

Chairman

Coastal Protection and Restoration Authority of Louisiana

DATE: 23 March 2009