

AMENDMENT NO. 1  
TO THE  
PROJECT PARTNERSHIP AGREEMENT  
AND TO THE  
DEFERRED PAYMENT AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE COASTAL PROTECTION AND RESTORATION AUTHORITY OF  
LOUISIANA  
FOR  
THE LAKE PONTCHARTRAIN AND VICINITY,  
LOUISIANA PROJECT

THIS AMENDMENT NO. 1 (hereinafter the "Amendment") is entered into this 12<sup>th</sup> day of March, 2010, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, New Orleans District and the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Non-Federal Sponsor"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, on September 22, 2008, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement (hereinafter the "PPA") for the Lake Pontchartrain and Vicinity, Louisiana Project;

WHEREAS, on January 16, 2009, the Government and the Non-Federal Sponsor entered into a Deferred Payment Agreement for the Lake Pontchartrain and Vicinity, Louisiana Project that permits the Non-Federal Sponsor to defer payment of the required non-Federal contribution of funds for the work to be implemented under the original PPA dated September 22, 2008;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the PPA and the Deferred Payment Agreement to address the modifications of the 17<sup>th</sup> Street, Orleans Avenue, and London Avenue drainage canals and installation of pumps and closure structures at or near the lakefront (hereinafter the "PCCP Work", as defined in paragraph 5 of this Amendment) authorized under the FC&CE heading, Chapter 3, Title II of Public Law 109-234 (120 Stat. 454-455) and under the FC&CE heading, Chapter 3, Title III of Public Law 110-252 (122 Stat. 2349-2350) (hereinafter collectively referred to as the "FC&CE Supplementals");

WHEREAS, section 4302 of Public Law 110-28 (121 Stat. 154) (hereinafter the "5<sup>th</sup> Supplemental") further authorizes the Secretary of the Army to reallocate unobligated funds that were provided under FC&CE heading, Chapter 3, Title II of Public Law 109-234 (120 Stat. 454-455) for projects in the greater New Orleans area to prosecute

those projects in a manner which promotes the goal of continuing work at an optimal pace, while maximizing, to the greatest extent practicable, levels of protection to reduce the risk of storm damage to people and property, subject to approval of such reallocation by the House and Senate Committees on Appropriations;

WHEREAS, pursuant to the 5<sup>th</sup> Supplemental, the reallocation of \$430,000,000 from the *PCCP Work* to the Inner Harbor Navigation Canal Hurricane Protection Work was approved on February 24, 2008, thus reducing the funds available for the *PCCP Work* to \$804,000,000 as of the effective date of this Amendment;

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 Jefferson Parish, the Sewerage and Water Board of New Orleans, and the Southeast Louisiana Flood Protection Authority - East for performance of the Non-Federal Sponsor's obligations under this Agreement and these other non-Federal entities plan to participate on the Project Delivery Team for the *PCCP Work* pursuant to Article V.G. of the PPA;

WHEREAS, the Non-Federal Sponsor has determined that the Government's established peer review process has met the requirements of La. R.S. 49:214.6.3(B)(4) and La. R.S. 49:214.5.2(D) enacted by the Legislature of Louisiana;

WHEREAS, the Government will design and construct the *PCCP Work* taking into consideration other Federally authorized hurricane and storm damage risk reduction and flood damage risk reduction projects for which the Government and non-Federal interests have executed Project Partnership Agreements as of the effective date of this Amendment;

WHEREAS, the Non-Federal Sponsor desires to reserve its rights to seek the enactment of Federal law or to seek a change of the Government's interpretation of law regarding which entity or entities shall be the Non-Federal Sponsor(s); whether Non-Federal Sponsor's concurrence is required in all design and construction decisions made by the Government relative to the *PCCP Work*; the Government funding a study to evaluate and analyze the potential options available for the *PCCP Work*; the Non-Federal Sponsor's responsibility for the costs of operation, maintenance, repair, rehabilitation, and replacement of the *PCCP Work*; modification and replacement of all existing floodwalls and retaining walls along the 17<sup>th</sup> Street, Orleans Avenue, and London Avenue drainage canals to meet the current 100-year event design criteria regardless of levee protection or a safe water elevation equal to the height of the wall; whether the pumps constructed for the *PCCP Work* should be electric rather than diesel; the pumping capacity of the *PCCP Work*; whether the *PCCP Work* affects when payments must begin under the Deferred Payment Agreement; whether certain features should be included in the Project Description Document, Request for Proposals, or design of the *PCCP Work* to make it adaptable to future conditions; and other obligations or responsibilities related to this work; and the Government and the Non-Federal Sponsor acknowledge that the Government and the Non-Federal Sponsor shall amend the PPA as necessary in the event Federal law is modified or the Government changes its interpretation of law after the effective date of this Amendment

to reflect such modification; and the execution of this Amendment will not be construed as a precedent precluding future amendment to the PPA or any corresponding clarification, amendment or change, or interpretation of any other present or future agreement by the parties concerning these same issues; and

Whereas, the Government will conduct a detailed engineering feasibility study of Options 2 and 2a, as generally described in the Report to Congress for the *PCCP Work*, dated August 30, 2007, with an estimated cost of \$15.6 million and a completion schedule of approximately 36 months, if the Congress provides the additional appropriations required for such study.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the PPA and the Deferred Payment Agreement as follows:

1. Article I.B. of the PPA is hereby amended in its entirety to read as follows:

“B. The term “*New Work*” shall mean all work authorized to be implemented under the FC&CE Supplementals and Construction Supplementals consisting of raising levees where necessary; constructing floodwalls; armoring of critical elements; providing other measures as necessary to enhance the *Original Project* to provide the levels of protection necessary to achieve the certification required for participation in the NFIP; and constructing the *PCCP Work*; including the *Full Federal Work* defined in paragraph D. of this Article and the *Cost-Shared Work* defined in paragraph E. of this Article, but excluding the Inner Harbor Navigation Canal Hurricane Protection Work and Storm-Proofing Work for interior drainage pump stations implemented or to be implemented under separate agreements between the Government and a non-Federal interest.”

2. Article I.D. of the PPA is hereby amended in its entirety to read as follows:

“D. The term “*Full Federal Work*” shall mean that portion of the *New Work* implemented at full Federal expense for armoring of critical elements; constructing the *PCCP Work*; and reinforcing or replacing floodwalls as necessary to improve performance of the *Original Project*; and providing other measures, as necessary. The specific features of this work will be further described in subsequent Project Description Documents (hereinafter “PDDs”) for the *Modified Project* prepared by the U.S. Army Engineer, New Orleans District (hereinafter the “District Engineer”) in consultation with the Non-Federal Sponsor and approved by the U.S. Army Engineer, Mississippi Valley Division (hereinafter the “Division Engineer”) prior to implementation of the work described in such PDDs. In the event of a conflict between an approved PDD and this Agreement, this Agreement shall control.”

3. Article I.H. of the PPA is hereby amended in its entirety to read as follows:

“H. The term “*total costs of the New Work*” shall mean the sum of all costs for the work authorized to be implemented under the FC&CE Supplementals and Construction Supplementals consisting of raising levees where necessary; constructing floodwalls;

armoring of critical elements; providing other measures as necessary to enhance the *Original Project* to provide the levels of protection necessary to achieve the certification required for participation in the NFIP; and constructing the *PCCP Work*; including the *total costs of the Full Federal Work* as defined in paragraph F. of this Article and the *total costs of the Cost-Shared Work* as defined in paragraph G. of this Article, but excluding the costs of Inner Harbor Navigation Canal Hurricane Protection Work and the Storm-Proofing Work for interior drainage pump stations implemented or to be implemented under separate agreements between the Government and a non-Federal interest.”

4. Article I.I. of the PPA and Article I.A. of the Deferred Payment Agreement are hereby amended by adding the following sentence to the end of the definition of *period of construction*:

“For the sole purpose of establishing when payments must begin under the Deferred Payment Agreement, the *period of construction* does not include completion of: (a) the *PCCP Work*; or (b) the reinforcing or replacing of floodwalls that may be constructed along the 17<sup>th</sup> Street, Orleans Avenue, and London Avenue drainage canals as separate features under the *Full Federal Work*, if the Government, after consultation with the Non-Federal Sponsor, determines that such floodwall work is necessary to maintain applicable safe water elevations.”

5. Article I of the PPA is hereby amended by adding new paragraph “U.” as follows:

“U. The term “*PCCP Work*” shall mean that portion of the *Full Federal Work* authorized by the FC&CE Supplementals that consists of implementation of the modifications of the 17<sup>th</sup> Street, Orleans Avenue, and London Avenue drainage canals; installation of pump stations for 17<sup>th</sup> Street, Orleans Avenue, and London Avenue canals, with minimum design operating capacities for 100-year storm surge events of 12,500, 9,000, and 2,700 cubic feet per second, respectively, and with appropriate pump station adaptability measures, as determined by the Government in accordance with Article II.A.5 of this Agreement; and closure structures at or near the lakefront; as generally described in the initial PDD as Alternative 2 for the *PCCP Work* dated July 2009 and approved by the Division Engineer on August 24, 2009, and any subsequent PDD that is approved by the Division Engineer, after consultation with the Non-Federal Sponsor.”

6. Article II.A. of the PPA is hereby amended by adding new paragraph “5.” as follows:

“5. *PCCP Work* Obligations.

a. The Government, in collaboration with the Non-Federal Sponsor, shall design and construct the *PCCP Work* with pump station adaptability measures, which measures, unless otherwise agreed to in writing by the District Engineer and the Chairman, shall include intake sill elevations for substructure adaptable to a deepened canal and lower water surface elevation; substructure sized for deepened canals and lower water surface elevations without the need for removal; substructure sized to

accommodate larger electric driven pumps, motors, and gear boxes; general site development with access and footprint necessary to accommodate future expansion and upgrades; channel transitions adaptable to deepened canals and lower water surface elevations; expandable generating station; bridge and crane rails and supports as necessary for deepened canals and lower water surface elevations; trash racks to suction basin elevations that correspond to deepened canals and lower water surface elevations. The Government may include additional applicable adaptability measures, if the Government, after consultation with the Non-Federal Sponsor, determines that such adaptability measures are appropriate to facilitate future modification of the 17<sup>th</sup> Street, Orleans Avenue, and London Avenue drainage canals in the event that a plan to provide gravity drainage to the lakefront is later authorized and funded for construction.

b. The Government and the Non-Federal Sponsor shall collaborate in developing the Request for Proposals (hereinafter “RFP”) for procurement of the *PCCP Work*, and the Government shall seek input on technical requirements from the Non-Federal Sponsor, which the Government in good faith shall consider for inclusion in the RFP in the interest of developing an RFP that sufficiently describes the physical and operational features of the *PCCP Work*, including pump station adaptability measures as set forth in Article II.A.5.a. of this Agreement, and that will facilitate responsive proposals from prospective offerors. The parties shall continue such collaboration throughout the design and construction of the *PCCP Work* and the Government shall afford the Non-Federal Sponsor a reasonable opportunity to provide review and comment on Government actions regarding the design and construction of the *PCCP Work*. The Government shall consider in good faith the comments of the Non-Federal Sponsor on the RFP, design, and construction of the *PCCP Work*, in accordance with Article II.A. of this Agreement.”

7. Article II.L. of the PPA is hereby amended in its entirety to read as follows:

“L. The Government shall commission independent peer reviews of the *New Work*, including the *PCCP Work*, in accordance with existing Federal laws, regulations, policies, and the Project Delivery Team shall be engaged in such reviews. The independent peer review commissioned for the *PCCP Work* shall be accomplished through a Safety Assurance Review of the design and construction of the 17th Street, Orleans Avenue, and London Avenue pump stations and closure structures.”

8. Article V of the PPA is amended by adding new paragraph “H.” as follows:

“H. To facilitate the collaborative process set forth in Article II.A.5.b. of this Agreement, and in order to expand participation of affected non-Federal interests, the Government shall allow the Sewerage and Water Board of New Orleans, the Southeast Louisiana Flood Protection Authority – East, and Jefferson Parish to participate as members on the Project Delivery Team established for the *PCCP Work* pursuant to paragraph G of this Article. Such participation shall be in addition to any participation on the Project Delivery Team by the Non-Federal Sponsor. All final engineering decisions of the Government regarding the *PCCP Work* shall be made in consultation with the

Project Delivery Team for the *PCCP Work*. The non-Federal interests shall pay for their own costs of Project Delivery Team participation for the *PCCP Work*.”

9. Article VI.A.1. of the PPA is hereby amended to replace “\$3,850,000,000” with “\$4,654,000,000” and replace “\$1,593,000,000” with “\$2,397,000,000”.

10. All other terms and conditions of the PPA and the Deferred Payment Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall become effective on the last signature to this Amendment.

DEPARTMENT OF THE ARMY

COASTAL PROTECTION AND  
RESTORATION AUTHORITY OF  
LOUISIANA

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

BY: [Signature]  
GARRET GRAVES  
Chairman

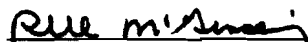
DATE: 12 MARCH 2010

DATE: 03/12/2010

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. 49:214.5.2 to enter into the Amendment No. 1 to the Project Partnership Agreement and the Deferred Payment Agreement between the Department of the Army and the Coastal Protection and Restoration Authority of Louisiana in connection with the Lake Pontchartrain and Vicinity, Louisiana Project, as modified. 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. 49:214.3.1 to coordinate the powers, duties, and functions of state agencies relative to integrated coastal protection, and that the person who has executed this Amendment on behalf of the Coastal Protection and Restoration Authority of Louisiana has acted within their statutory and delegated authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
12<sup>th</sup> day of March 2010.

  
RICHARD McGIMSEY  
Director of Civil Division

FOR

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

CERTIFICATION REGARDING LOBBYING

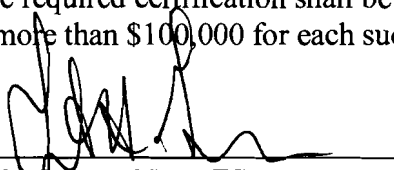
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

  
A handwritten signature in black ink, appearing to read 'Garret Graves', is written over a horizontal line.

GARRET GRAVES  
Chairman  
Coastal Protection and Restoration Authority of Louisiana

DATE: 03/12/2010