

AMENDMENT NUMBER 2
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
AND
CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE
AND
AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT
FOR THE
COMITE RIVER DIVERSION PROJECT,
AMITE RIVER AND TRIBUTARIES, LOUISIANA

This Amendment Number 2 is entered into this 15th day of February, 2019 by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for New Orleans District and the Louisiana Department of Transportation and Development (hereinafter "LA DOTD"), represented by the Secretary of LA DOTD, the City of Baton Rouge and the Parish of East Baton Rouge (hereinafter "CITY-PARISH"), represented by the Mayor-President, and the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District (hereinafter "ARBC"), represented by the President, (LA DOTD, CITY-PARISH and ARBC being collectively referred to hereinafter as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Comite River Diversion Project, Amite River and Tributaries, Louisiana for flood risk management at a location between the Comite River and the Mississippi River, north of the City of Baker, Louisiana, and south of the City of Zachary, Louisiana was authorized by Section 101(11) of the Water Resources Development Act of 1992, Public Law 102-580, as amended and reauthorized by Section 301(b)(5) of the Water Resources Development Act of 1996, Public Law 104-303, and as amended by Section 371 of the Water Resources Development Act of 1999, Public Law 106-53, with technical corrections to Section 371 of WRDA 1999 in Section 6 of Public Law 106-109;

WHEREAS, the Government and the Non-Federal Sponsors entered into a Project Cooperation Agreement on October 1, 2001 (hereinafter referred to as the "Agreement") for construction of the Comite River Diversion Project (hereinafter the "Project", as defined in Article I.A. of the Agreement);

WHEREAS, on August 18, 2006, the Agreement was amended to allow LA DOTD to accelerate its provision of funds to the Government in an amount not to exceed the current estimate of LA DOTD's required cash contribution for the Project, less any funds previously contributed, for the immediate use by the Government for construction of the Project;

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213) and Section 371 of the Water Resources Development Act of 1999, which specify the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;

WHEREAS, in addition to providing its cost-share for the cost shared portion of the Project, the LA DOTD will contribute funds in the amount of \$10,000,000 (hereinafter the “Contributed Funds”) for use by the Government in constructing the Project, as authorized pursuant to 33 U.S.C. 701h; and

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for completing construction of the Project.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to further amend the Agreement as follows:

1. Insert after the third WHEREAS clause the following:

“WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213) and Section 371 of the Water Resources Development Act of 1999, which specify the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose; and”

2. Add to the end of the penultimate WHEREAS clause the following:

“, except any funds provided in the BBA 2018 that are used for the construction of the Project are not included in calculating the maximum amount; and”

3. Add a new paragraph K. to Article I as follows:

“K. The term “Contributed Funds” shall mean those funds above any statutorily required non-Federal cost share that are provided by LA DOTD for funding the Project, with no credit or repayment authorized for such funds. Such funds are not included in total project costs for cost-sharing purposes nor in the calculation of the maximum total project cost pursuant to Article XIX.”

4. Add a new paragraph Q. to Article II as follows:

“Q. In addition to providing the funds required pursuant to paragraphs D. and O. of this Article, the LA DOTD will provide Contributed Funds in the amount of \$10,000,000 for use by the Government in constructing of the Project. Not later than 60 calendar days after the effective

date of Amendment No. 2 to this Agreement, LA DOTD will provide the full amount of such funds to the Government by delivering a check payable to “FAO, USAED, New Orleans (B2)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. No credit or repayment is authorized, nor shall be provided, for any Contributed Funds provided by the LA DOTD that are obligated by the Government.”

5. Insert as the last two Articles the following:

“ARTICLE XXI – COMPLETION OF CONSTRUCTION OF THE PROJECT USING
FUNDING PROVIDED IN BBA 2018

Notwithstanding any other provisions of this Agreement, the Government and Non-Federal Sponsors agree to the following terms and conditions for completion of construction of the Project to the extent BBA 2018 funds are available and used for such purpose:

A. As of the effective date of Amendment Number 2 to this Agreement, the amount of available BBA 2018 funds is estimated at \$343,000,000. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes.

B. Except for relocation of the Highway 61 bridge and the Kansas City Southern railroad bridge, LA DOTD shall be responsible for providing the lands, easements, and rights-of-way; performing all relocations, including highway and railroad relocations; and making improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required to complete construction of the Project.

1. For lands, easements, and rights-of-way acquired from private owners after the effective date of Amendment Number 2 to this Agreement, the Government shall reimburse LA DOTD, subject to the availability of BBA 2018 funds, for costs it incurs in acquiring such lands, easements, and rights-of-way, except as provided in Article XXI.I. The crediting procedures in Article IV.B. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by LA DOTD, the Government, in its sole discretion, may agree to acquire any lands, easements, or rights-of-way on LA DOTD’s behalf, using BBA 2018 funds.

2. Any publicly owned lands, easements, and rights-of-way required for completing construction of the Project will be provided by LA DOTD at no cost to the Government and without credit or reimbursement, except as provided in Article XXI.I.

3. Except for relocation of the Highway 61 bridge and the Kansas City Southern railroad bridge, which will be designed and constructed by the Government using other than BBA 2018 funds and cost shared as otherwise provided in this Agreement, for relocations performed after the effective date of Amendment Number 2 to this Agreement, the Government shall reimburse LA DOTD, subject to the availability of BBA 2018 funds, for costs it incurs in performing such relocations, except as provided in Article XXI.I. For such relocations, the Government, in its sole discretion, may reimburse LA DOTD upon completion of discrete segments of work that are identified in the plans and specifications prepared by LA DOTD and

approved by the Government. The crediting procedures in Article IV.C. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by LA DOTD, the Government, in its sole discretion, may agree to perform any relocations on LA DOTD's behalf, using BBA 2018 funds.

4. For improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material made after the effective date of Amendment Number 2 to this Agreement, the Government shall reimburse the LA DOTD, subject to the availability of BBA 2018 funds, for costs it incurs in making such improvements, except as provided in Article XXI.I. The crediting procedures in Article IV.D. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by LA DOTD, the Government, in its sole discretion, may agree to make any improvements on the LA DOTD's behalf, using BBA 2018 funds.

C. Subject to the availability of BBA 2018 funds, the Government shall reimburse LA DOTD for costs, documented to the satisfaction of the Government, that LA DOTD incurs, after the effective date of Amendment Number 2 to this Agreement, for investigations for hazardous substances conducted pursuant to Article XV.A.

D. LA DOTD shall be responsible solely for any costs it incurs, after the effective date of Amendment Number 2 to this Agreement, for participation in the Project Coordination Team and for conducting audits, without credit or reimbursement by the Government.

E. The provisions of Article XIX regarding the Section 902 project cost limits do not apply to the funds provided in BBA 2018 that are used for completing construction of the Project.

F. In the event that there are insufficient BBA 2018 funds to complete construction of the Project, such completion shall be subject to cost-sharing as otherwise provided for in this Agreement.

G. Nothing in this Article affects the responsibility of the CITY-PARISH for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided by LA DOTD, CITY-PARISH, and ARBC in Article IX.

H. Except as provided in Article XXI.C., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XV.

I. As soon as practicable, the Government shall perform an interim accounting of work that has or will be completed with other than BBA 2018 funds on a cost-shared basis and furnish LA DOTD with the results of such interim accounting.

1. If the Government determines that LA DOTD has not met its minimum required cash contribution for the cost-shared work, LA DOTD shall provide funds in the amount necessary to meet the required minimum cash contribution.

2. If the Government determines that LA DOTD owes an additional amount to meet the required minimum non-Federal share of the cost-shared work, the amount owed by LA DOTD may be reduced by the estimated value of publicly owned lands, easements, and rights-of-way that LA DOTD must provide after the date of Amendment Number 2 to this Agreement.

3. If the Government determines the estimated value of publicly owned lands, easements, and rights-of-way that LA DOTD must provide after the date of Amendment Number 2 to this Agreement is less than the additional amount necessary to meet the required minimum non-Federal share of the cost-shared work, LA DOTD shall either provide the required amount in cash or elect to waive reimbursement of the required amount for privately owned lands, easements, and rights-of-way, relocations, and improvements to enable the disposal of dredged or excavated material to be acquired, provided, or made after the date of Amendment Number 2 to this Agreement.

4. The determinations made as a result of the interim accounting shall be verified during the final accounting. The crediting procedures in Article IV.B. shall be used to verify the value of any publicly owned lands, easements, and rights-of-way used to reduce the amount owed by LA DOTD for the cost-shared work.

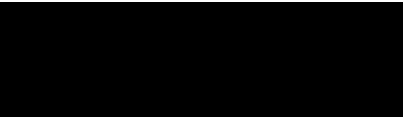
ARTICLE XXII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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 a party to this Agreement.”

6. All other terms and conditions of this Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 2 which shall become effective upon the date it is signed by the District Commander for New Orleans District.

DEPARTMENT OF THE ARMY

BY: 
MICHAEL N. CLANCY
Colonel, U.S. Army
District Commander

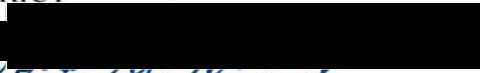
DATE: 15 Feb 19

LOUISIANA DEPARTMENT
OF TRANSPORTATION AND
DEVELOPMENT

BY: 
SHAWN WILSON
Secretary

DATE: 2/15/19

BOARD OF COMMISSIONERS
AMITE RIVER BASIN DRAINAGE
AND WATER CONSERVATION
DISTRICT

BY: 
BEN B. BABIN, SR.
President

DATE: 2-15-19

CITY OF BATON ROUGE
AND PARISH OF
EAST BATON ROUGE

BY: 
SHARON WESTON BROOME
Mayor-President

DATE: 2/15/19

CERTIFICATE OF AUTHORITY

I, Joshua G. Hollins, do hereby certify that I am the principal legal officer for the Louisiana Department of Transportation and Development, that the Louisiana Department of Transportation and Development is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 2 between the Department of the Army and the Louisiana Department of Transportation and Development in connection with the Comite River Diversion Project, Amite River and Tributaries, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment Number 2, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Amendment on behalf of the Louisiana Department of Transportation and Development acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
15th day of February 2019.



JOSHUA G. HOLLINS
Executive Counsel

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.

[Redacted Signature]

SHAWN WILSON
Secretary
Louisiana Department of Transportation and Development

DATE: 2/15/19

CERTIFICATE OF AUTHORITY

I, Larry Bankston, do hereby certify that I am the principal legal officer for the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District, that the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 2 between the Department of the Army and the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District in connection with the Comite River Diversion Project, Amite River and Tributaries, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment Number 2, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Amendment Number 2 on behalf of the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

15th day of February 2019.


LARRY BANKSTON
General Counsel

CERTIFICATION REGARDING LOBBYING

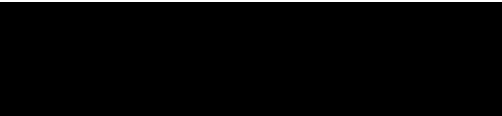
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

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BEN B. BABIN, SR.
President
Board of Commissioners
Amite River Basin Drainage and Water Conservation District

DATE: 2-15-19

CERTIFICATE OF AUTHORITY

I, Andy Dotson, do hereby certify that I am the principal legal officer for the City of Baton Rouge and the Parish of East Baton Rouge, that the City of Baton Rouge and the Parish of East Baton Rouge is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 2 between the Department of the Army and the City of Baton Rouge and the Parish of East Baton Rouge in connection with the Comite River Diversion Project, Amite River and Tributaries, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment Number 2, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Amendment Number 2 on behalf of the City of Baton Rouge and the Parish of East Baton Rouge acted within her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

15th day of February 2019.



ANDY DOTSON
Interim Parish Attorney

CERTIFICATION REGARDING LOBBYING

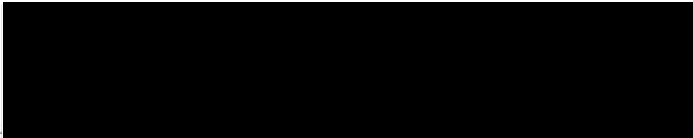
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

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SHARON WESTON BROOME
Mayor-President
City of Baton Rouge and the Parish of East Baton Rouge

DATE: 2/15/19