

**AMENDMENT OF ASSURANCE AGREEMENTS
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE BOARD OF COMMISSIONERS OF THE
PONTCHARTRAIN LEVEE DISTRICT
FOR THE ACCELERATED CONSTRUCTION AND THE OPERATION,
MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION OF THE
LAKE PONTCHARTRAIN AND VICINITY, LOUISIANA HURRICANE
PROTECTION PROJECT
ST. CHARLES PARISH, LOUISIANA**

THIS AMENDMENT OF ASSURANCE AGREEMENTS (hereinafter referred to as the "Amendment") is entered into by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the Commander, Mississippi Valley Division, U.S. Army Corps of Engineers (or his designee), and the BOARD OF COMMISSIONERS OF THE PONTCHARTRAIN LEVEE DISTRICT (hereinafter referred to as the "Public Sponsor"), represented by the President of the Board of Commissioners of the Pontchartrain Levee District.

WITNESSETH THAT:

WHEREAS, the Government constructed a Hurricane/Shore Protection Project for the Lake Pontchartrain, Louisiana and Vicinity, Louisiana Hurricane Protection Project, authorized by the Flood Control Act of 1965, Public Law 298 of the 89th Congress, approved October 27, 1965, as amended (hereinafter referred to as the "Project"), and governed by the following Agreements of Local Assurance, all of which remain in full effect (hereinafter referred to as "Assurance Agreements"): Act of Assurance by the Board of Commissioners of the Pontchartrain Levee District (PLD) signed on October 7, 1971 by the President of the Board of Commissioners of the PLD; Agreement between the Board of Commissioners of the Pontchartrain Levee District and the Secretary of the Army of the United States signed on September 20, 1976 by the President of the Board of Directors of the PLD and executed by the Acting District Engineer Contracting Officer and approved on December 7, 1977 by the Acting Director of Real Estate for the Secretary of the Army; Agreement between the United States of America, the Board of Commissioners of the Pontchartrain Levee District, and the State of Louisiana, Department of Public Works, whereby the Department of Public Works agreed that it would lend financial assistance to the PLD as necessary, signed by the President of the Board of Directors of the PLD on September 20, 1976, and by the Director of the Louisiana Dept. of Public Works on November 3, 1976, and executed the Acting District Engineer Contracting Officer on February 15, 1977 and approved on December 7, 1977 by the Acting Director of Real Estate for the Secretary of the Army; and a Supplemental Agreement for Local Cooperation signed by the President of the Board of Directors of the PLD on April 20, 1987, and executed by the District Engineer on August 7, 1987;

WHEREAS, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006, Public Law 109-148 (the 3rd Supplemental Appropriation) authorized accelerated completion of the Project at full Federal expense insofar as the accelerated completion of the Project is implemented utilizing funds appropriated by the said Act for accelerated completion and reprogrammed thereunder, and/or any additional funds appropriated in the future in support of the accelerated completion authority of the said 3rd Supplemental Appropriation Act;

WHEREAS, as between the Government and the Public Sponsor, the above referenced project assurance agreements set forth the respective obligations of the parties therein named, including, but not limited to the obligation of the Public Sponsor, without costs to the Government, to provide all interior drainage and pumping plants required for reclamation and development of the protected areas, to maintain and operate levees, floodgates, approach channels, drainage structures, drainage ditches or canals, floodwalls, and stoplog structures in relation to the Project, including the Accelerated Project herein described in Article I.A. of this Amendment within the geographical jurisdiction of the Public Sponsor;

WHEREAS, on July 3, 2006 an Abbreviated Project Information Report was approved authorizing the accelerated construction of features in that portion of the Lake Pontchartrain, Louisiana and Vicinity, Louisiana Project situated in St. Charles Parish, Louisiana (hereinafter the "Accelerated Project") in the amount of \$39,000,000;

WHEREAS, the Government and the Public Sponsor desire to enter into an Amendment of the above referenced Assurance Agreements for the accelerated construction and for the operation, maintenance, repair, replacement and rehabilitation (hereinafter "OMRR&R") of the Project, insofar and only insofar as that portion of the project is defined as the Accelerated Project in Article I.A. of this Amendment;

WHEREAS, all existing Assurance Agreements entered into by the parties remain in full force and effect except to the extent as supplemented or amended herein;

WHEREAS, the Government and the Public Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in the construction and OMRR&R of the Project in accordance with the terms of this Amendment.

NOW, THEREFORE, the Government and the Public Sponsor agree to amend the above referenced Assurance Agreements as follows:

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Amendment:

A. The term "Accelerated Project" shall mean the accelerated construction of levees, floodwalls, floodgates and any and all other appurtenant facilities on the East Bank of St. Charles Parish, Louisiana, as may be necessary to achieve that level of protection for the Lake Pontchartrain, LA and Vicinity Hurricane Protection Project as authorized by the Flood Control Act of 1965, Public Law 298 of the 89th Congress, approved October 27, 1965, as amended, said Accelerated Project being as generally described in the following report: "Abbreviated Project Information Report (APIR) Department Of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf Of Mexico and Pandemic Influenza Act, 2006 (Public Law 109-148), for Accelerated Completion of Construction of that Portion of the Lake Pontchartrain and Vicinity, Louisiana Project Located in St. Charles Parish, Louisiana," prepared by the District Commander, U. S. Army Engineer District, New Orleans and approved by the Division Commander on July 3, 2006. It is understood and agreed that the APIR is subject to change by the Government in consultation with the Public Sponsor. For purposes of this Amendment, the Accelerated Project shall be limited to those portions of the Project in St. Charles Parish, Louisiana that are constructed in accordance with the provisions, funding, and programming authority provided by the 3rd Supplemental Appropriation for the accelerated completion of the Project, as may be supplemented by reprogramming and/or future appropriations in support of the accelerated completion work described in the 3rd Supplemental Appropriation.

B. The term "Accelerated Project costs" shall mean all costs incurred by the Government directly related to construction of the Accelerated Project. Such term shall include, but is not necessarily limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; the costs of lands, easements, rights of way, borrow, and relocations that are not owned, claimed or controlled by the Public Sponsor or any other non-Federal governmental entity; and the cost of investigations to identify the existence of the hazardous substances as identified in Article XII.A. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor-preferred alternatives; or the costs of lands, easements, rights-of-way, borrow, or relocations that are owned, claimed, or controlled by the Public Sponsor or any other non-Federal governmental entity.

C. The term "betterment" shall mean the design and construction of an Accelerated Project feature accomplished on behalf of, or at the request of, the Public Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Accelerated Project.

D. The term "functional portion of the Project" shall mean a portion of the Project for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, New Orleans District (hereinafter the "District Commander") in writing, although the remainder of the Project is not complete.

E. The term "fiscal year" shall mean one year beginning on October 1 and ending on September 30.

F. The term “period of construction” shall mean the time from the date the Government issues the solicitation for the first construction contract for the Project or commences construction of the Project using the Government’s own forces, whichever is earlier, to the date that construction of the Project is complete, as determined by the Government, or the date that the above described Assurance Agreements and this Amendment are terminated, whichever is earlier.

G. The term “relocation” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the Accelerated Project or any report referenced therein. 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.

ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States, shall expeditiously construct the Accelerated Project, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Public Sponsor shall be afforded the opportunity to review and comment on all such solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations.

1. The District Commander will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Accelerated Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the District Commander.

2. At the time the District Commander furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the Accelerated Project, the District Commander shall furnish a copy thereof to the Public Sponsor.

B. As further specified in Article III, the Public Sponsor shall provide right of entry to all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, determined by the Government to be necessary for construction, operation, maintenance, repair, replacement and rehabilitation of the Accelerated Project.

1. As further specified in Article III, after receiving the rights of entry to the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas (hereinafter "LERD") from the Public Sponsor, the Government, subject to the availability of appropriations, shall identify and pay just compensation to the owners of compensable interests in the LERD described in Article III.A.3.

2. As further specified in Article III.A.(1) and III.A.(2), the Government may elect to acquire certain private third party interests in LERD owned, claimed or controlled by the Public Sponsor or other non-Federal governmental entities, and in such event, shall identify the private third party interest owners and, subject to the availability of appropriations, shall pay just compensation to the owners of a compensable private third party interest.

C. When the District Commander determines that the entire Project, or a functional portion of the Project, is complete, the District Commander shall so notify the Public Sponsor in writing and furnish the Public 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 Project or such completed portion. Upon such notification, the Government also shall furnish to the Public Sponsor a copy of all final as-built drawings for the entire Project or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire Project is complete, the Government shall furnish the Public Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire Project. In the event the final OMRR&R Manual or all final as-built drawings for the entire Project cannot be completed within the 6 month period, the Government shall provide written notice to the Public Sponsor, and the Government and the Public Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the Project, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project that have not been provided previously shall be provided to the Public Sponsor.

D. Upon notification from the District Commander in accordance with paragraph C. of this Article, the Public Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire Project, or the functional portion of the Project as the case may be, in accordance with Article VI of this Amendment.

E. The Public Sponsor shall not use Federal funds to meet their share of Accelerated Project costs under this Amendment unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

F. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Accelerated Project and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor requesting said betterment shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the requesting Public Sponsor in accordance with Article IV.

H. The Public Sponsor shall prevent future encroachments on lands, easements, and rights-of-way, including, but not limited to, ponding areas, provided by and/or acquired on behalf of the Public Sponsor for the Accelerated Project which may interfere with the proper functioning of the Accelerated Project, as determined by the Government. Said real estate interests shall be retained in public ownership for uses compatible with the authorized purposes of the Accelerated Project.

I. The Public Sponsor shall provide all interior drainage and pumping plants required for reclamation and development of the areas protected by the Project, including, but not limited to the Accelerated Project.

ARTICLE III – LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Accelerated Project. Thereafter, the Public Sponsor shall, at no cost to the Government, provide right of entry to all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, (hereinafter “LERD”) as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Accelerated Project, in the manner hereinafter discussed.

1. The Public Sponsor shall provide right of entry to all LERD that it owns, claims, or controls (hereinafter “Public Sponsor LERD”) in a manner that is free and clear of any liens, defects of titles, or encumbrances, including the release or subordination to the Accelerated Project of any third party interests, as determined by the Government to be necessary for the construction, operation and maintenance of the Accelerated Project; provided however, that in the event that the Public Sponsor cannot terminate or subordinate, or cause the termination or subordination, of third party private interests, after having exhausted all available remedies in contract, law, and/or regulation, then the Government may, within its sole discretion, elect to acquire the requisite interest from the private third party interest owner. Before the Government commences the actions necessary to acquire the requisite interest from the third party interest owner, the Public Sponsor must first secure, or cause to be secured, an executive commandeering order or orders in accordance with powers set forth in La. R.S. 29:721, et seq, and shall provide the Government with a right of entry thereto.

2. The Public Sponsor shall provide right of entry to LERD that any other non-Federal governmental entity owns, claims, or controls (hereinafter "Other Non-Federal Governmental LERD") in a manner that is free and clear of any liens, defects of titles, or encumbrances, including the release or subordination to the Accelerated Project of any third party interests within such Other Non-Federal Governmental LERD, as determined by the Government to be necessary for the construction, operation and maintenance of the Accelerated Project; provided however, that in the event that the Public Sponsor cannot terminate or subordinate, or cause the termination or subordination, of a third party private interest, after having exhausted all available remedies in contract, law, and/or regulation, then the Government may, within its sole discretion, elect to acquire the requisite interest from the private third party interest owner. Before the Government commences the actions necessary to acquire the requisite interest from the third party private interest owner, the Public Sponsor must first secure, or cause to be secured, an executive commandeering order or orders in accordance with powers set forth in La. R.S. 29:721, et seq, and shall provide the Government with a right of entry thereto.

3. The Public Sponsor shall provide right of entry to all other LERD not owned, claimed, or controlled by the Public Sponsor or other non-Federal governmental entities (hereinafter "Private LERD") as follows:

a. The Public Sponsor shall secure, or cause to be secured an executive commandeering order or orders which said order or orders shall commandeer Private LERD, in accordance with powers set forth in La. R.S. 29:721, et seq, including all privately owned third party interests, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Accelerated Project.

b. After securing an executive commandeering order, the Public Sponsor shall tender to the Government a right of entry to the Private LERD.

4. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Government shall perform, or cause to be performed, such relocations as it determines to be necessary for the construction, operation, and maintenance of the Accelerated Project.

C. The Government shall identify and provide just compensation to the owners of compensable interests in the Private LERD and in certain private third party interests described in Article III.A.1. and III.A.2, all in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended, and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Accelerated Project, including those necessary for relocations,

borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

1. The Government shall obtain a deed or servitude agreement, as appropriate, in the name of the Public Sponsor for those interests described in the Commandeering Order referenced in Paragraph A.3.a. of this Article and for certain compensable private third party interests as described in Paragraphs A.1. and A.2. of this Article.

2. Where the Government is unable to obtain free and unencumbered title on behalf of the Public Sponsor or to reach an agreement with the interest owners in Private LERD under Paragraph A.3. of this Article or with the owners of certain private third party interests as described in Paragraphs A.1. and A.2. of this Article, the Government shall obtain such interests, in the name of the United States of America, through the exercise of eminent domain authority.

3. After the Accelerated Project is complete and the acquisition and eminent domain proceedings finalized, the Government shall transfer and assign to the Public Sponsor, through quitclaim deed, all of the interests acquired in the name of the United States of America, which said transfer, quitclaim, and assignment the Public Sponsor hereby agrees to accept when tendered by the United States.

ARTICLE IV – METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II. Accelerated Project costs are currently estimated to be \$39,000,000. In order to meet the Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be \$0.0 (zero dollars). The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated cash contribution required to meet the Public Sponsor's obligation under Article II.G. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, B2, New Orleans" to the District Commander of the U. S. Army Engineer District, New Orleans. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Public Sponsor's obligations under Article II.G. as they are incurred by

the Government. In the event that total costs of the Public Sponsor's obligations under Article II.G. are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the additional required contribution. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the Project costs and status of contributions made by the Public Sponsor. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the Project costs, including, but not limited to the Accelerated Project costs, and tender to the Public Sponsor a final accounting of the Public Sponsor's obligations under Article II.G of this Amendment, as well as the Public Sponsor's obligations pursuant to the above described Assurance Agreements.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's obligations under Article II.G. of this Amendment, as well as the Public Sponsor's obligations pursuant to the above described Assurance Agreements, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's obligations under Article II.G of this Amendment, as well as the Public Sponsor's obligations pursuant to the above described Assurance Agreements.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required obligation under Article II.G. of this Amendment, as well as the Public Sponsor's obligations pursuant to the above described Assurance Agreements, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V. CREDITING AND REIMBURSEMENT

The Public Sponsor shall not be entitled to receive a credit or reimbursement for any costs incurred by the Public Sponsor in association with obligations or contributions for the Accelerated Project.

ARTICLE VI – OPERATION AND MAINTENANCE

A. Upon receipt of the notification from the District Commander in accordance with Article II.C. of this Amendment and for so long as the Project remains authorized, the Public Sponsor, pursuant to Article II.D. of this Amendment, shall operate, maintain, repair, rehabilitate, and replace the entire Project or functional portion of the Project, at no cost to the Government. The Public 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 VII of this Amendment and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto, including, but not limited to, the obligation to maintain the floodwalls, levees, and other appurtenant facilities free of woody vegetation and roots.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project, including, but not limited to the Accelerated Project, for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Accelerated Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Amendment without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project, including, but not limited to, the Accelerated Project, for the purposes of completing, operating, and maintaining the Accelerated Project. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor's obligations as set forth in this Amendment, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Amendment.

ARTICLE VII – FEDERAL AND STATE LAWS

In the exercise of the rights and obligations of the Public Sponsor hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII – RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Amendment, and none of the parties are to be considered the officer, agent, nor employee of the other parties.

ARTICLE IX – OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Amendment, or to any benefit that may arise therefrom.

ARTICLE X – COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Amendment upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Amendment without liability, or, in the Government's discretion, to add to the Amendment or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI – TERMINATION OR SUSPENSION

A. If at any time the Public Sponsor fails to fulfill its obligations under this Amendment, the Assistant Secretary of the Army (Civil Works) shall terminate this Amendment or suspend future performance under this Amendment unless he determines that continuation of work on the Accelerated Project 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 Accelerated Project.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the Accelerated Project through the then-current fiscal year, or the amount of Federal funds the Government will make available for the Accelerated Project through the upcoming fiscal year, is not sufficient to meet the Federal share of Accelerated Project costs, the Government shall notify the Public 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 Accelerated Project will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the Accelerated Project, future performance under this Amendment shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Public Sponsor in writing that sufficient Federal funds are available to meet the Federal share of Accelerated Project, or the Government or the Public Sponsor elects to terminate this Amendment.

C. In the event that the Government and the Public Sponsor determine to suspend future performance under this Amendment in accordance with Article XII.C. of this Amendment, such suspension shall remain in effect until the Government and the Public Sponsor agree to proceed or to terminate this Amendment. In the event that the Government suspends future performance under this Amendment in accordance with Article XII.C. of this Amendment due to failure to reach agreement with the Public

Sponsor on whether to proceed or to terminate this Amendment, or the failure of the Public Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Public Sponsor's responsibilities under Article XII.C. of this Amendment, such suspension shall remain in effect until: 1) the Government and Public Sponsor reach agreement on how to proceed or to terminate this Amendment; 2) the Public Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XII.C. of this Amendment; 3) the Government continues work on the Accelerated Project; or 4) the Government terminates this Amendment in accordance with the provisions of Article XII.C. of this Amendment.

D. In the event that this Amendment is terminated pursuant to this Article or Article XII.C. of this Amendment, both parties shall conclude their activities relating to the Accelerated Project; provided however, that the final accounting for the Accelerated Project shall be conducted during the final accounting of the Project in accordance with Article IV.C. of this Amendment. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the Project, including, but not limited to, the Accelerated Project, and an equal percentage of the total funds contributed by the Public Sponsor in accordance with Article II.G. of this Amendment and in accordance with the above-described Assurance Agreements, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Amendment or suspension of future performance under this Amendment in accordance with this Article or Article XII.C. of this Amendment shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Public 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. After execution of this Amendment, the Government shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government to identify the existence and extent of hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601-9675, on lands necessary to Accelerated Project construction, operation, and maintenance.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Accelerated Project contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other and shall not proceed with the commandeering and/or acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Accelerated Project, or, if already in construction, to continue with construction of the Accelerated Project, or to terminate construction of the Accelerated Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Accelerated Project. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination located in, on, or under the Public Sponsor's LERD, the Other Non-Federal Governmental LERD, and the Private LERD. Such costs shall not be considered a part of the Accelerated Project costs as defined in this Amendment. In the event the Public Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the responsibilities of the Public Sponsor under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Accelerated Project or proceed with further work as provided in Article XI of this Amendment.

D. The Public Sponsor and the Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the Accelerated Project for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Accelerated Project in a manner that will not cause liability under CERCLA.

ARTICLE XIII – NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Amendment shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Pontchartrain Levee District:

President
Pontchartrain Levee District
P.O. Box 426
Lutcher, Louisiana 70071

If to the Government:

District Commander
U. S. Army Corps of Engineers
P. O. Box 60267
New Orleans, Louisiana 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 such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

ARTICLE XIV - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Amendment, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. 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 Amendment.

ARTICLE XV - 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 XVI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Amendment 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 Amendment.

ARTICLE XVII - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Public 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 Amendment 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.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which may be executed in counterparts and having full force and effect as a whole, and which shall become effective upon the date it is signed by the Commander, Mississippi Valley Division.

THE DEPARTMENT OF THE ARMY

BY:



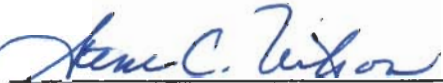
Richard P. Wagenaar
Colonel, U. S. Army
District Commander

Date:

8-23-06

**BOARD OF COMMISSIONERS OF
THE PONTCHARTRAIN LEVEE
DISTRICT**

BY:



Steve C. Wilson
President, Board of
Commissioners of the Pontchartrain
Levee District

Date:

8-23-06

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 Section 1352, Title 31, U.S. Code. 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.



Steve C. Wilson
President, Board of Commissioners
Pontchartrain Levee District

DATE: 8-22-06

CERTIFICATE OF AUTHORITY

I, Dwight Poirrier, do hereby certify that I am an attorney for the Board of Commissioners for the Pontchartrain Levee District, that the Board of Commissioners of the Pontchartrain Levee District is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment of Assurance Agreements between the United States of America and the Board of Commissioners of the Pontchartrain Levee District, in connection with the Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project Accelerated Project, and to my best information and belief able to pay damages in accordance with the terms of this Amendment, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who has executed this Amendment, on behalf of the Board Of Commissioners of the Pontchartrain Levee District has acted within his or her authority.

IN WITNESS WHEREOF, I have made and executed this certification this
22 day of August 2006.



Dwight Poirrier
Counsel for the Board of Commissioners
of the Pontchartrain Levee District