

**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND THE FOURTH JEFFERSON DRAINAGE DISTRICT AND  
THE SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST  
ON BEHALF OF THE EAST JEFFERSON LEVEE DISTRICT  
FOR REHABILITATION OF A FEDERAL HURRICANE/SHORE  
PROTECTION PROJECT**

**THIS COOPERATION AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between **THE DEPARTMENT OF THE ARMY** (hereinafter referred to as the "Government") represented by the District Engineer, New Orleans District, U. S. Army Corps of Engineers (or his designee), and the **FOURTH JEFFERSON DRAINAGE DISTRICT** (hereinafter referred to in the singular person as "Fourth District"), represented by the Chairman of the Jefferson Parish Council and **THE SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST ON BEHALF OF THE EAST JEFFERSON LEVEE DISTRICT**, (hereinafter referred to as the "Non-Federal Sponsor"), represented by the President of the Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East.

**WITNESSETH THAT:**

**WHEREAS**, the Government constructed a Hurricane/Shore Protection Project (HSPP) for the Lake Pontchartrain, Louisiana and Vicinity, Louisiana, Project, authorized by the Flood Control Act of 1965, Public Law 298 of the 89<sup>th</sup> Congress, approved October 27, 1965, as amended, and governed by the following Agreements of Local Assurance, all of which remain in full effect: "Agreement between the United States of America and the Board of Commissioners of the Pontchartrain Levee District for the Lake Pontchartrain and Vicinity, Louisiana, Project," signed by Pontchartrain Levee District on September 20, 1976, and approved on December 7, 1977; "Agreement between the United States of America and the State of Louisiana, Department of Public Works and the Board of Commissioners of the Pontchartrain Levee District for the Lake Pontchartrain and Vicinity, Louisiana Project, signed on November 3, 1976 and approved on December 7, 1977, as amended by "Agreement for Division Between Pontchartrain Levee District and Jefferson Levee District," dated January 9, 1979; "Supplemental Agreement between the United States of America and the Jefferson Levee District for Local Cooperation at Lake Pontchartrain and Vicinity High Level Plan," signed on January 16, 1987 and approved on December 21, 1987; "Supplemental Agreement between the United States of America, the Orleans Levee District, the East Jefferson Levee District and the Sewerage and Water Board of New Orleans," signed by all four parties on February 18, 1997, in which the Sewerage and Water Board of New Orleans agreed to provide all lands, easements, and rights-of-way and to operate and maintain "fronting protection" for Pumping Station No. 6 located in the 17th Street Canal, and

Orleans Levee District and East Jefferson Levee District agreed to continue their respective obligations for the project;

WHEREAS, in response to the damages to and the impacts upon Jefferson Parish, Louisiana as a result of the 2005 Hurricane Katrina, the Government and the East Jefferson Levee District have entered into various agreements, as follows, all of which remain in full force and effect: "Supplemental Agreement No. 2, Cooperation Agreement between the United States of America and the Board of Commissioners of the East Jefferson Levee District, the Sewerage and Water Board of New Orleans, the Fourth Jefferson Drainage District, the Sub-District A of the Fourth Jefferson Drainage District, the Parish of Jefferson, and the City of New Orleans for Rehabilitation of a Federal Hurricane/Shore Protection Project," signed by the parties on January 27, 2006, for repair and rehabilitation of the 17<sup>th</sup> Street Canal, including certain bank stabilization measures and the construction of interim gated closure structures and integrated pumping capacity, and "Cooperation Agreement between the United States of America and the Board of Commissioners of the East Jefferson Levee District for Rehabilitation of a Federal Hurricane/Shore Protection Project," fully executed on April 18, 2006, for repair and rehabilitation of damaged levees and floodwalls within the east bank portion of Jefferson Parish, including the 17<sup>th</sup> Street Outfall Canal and the lakefront levees and the interim protection of the damaged I-wall of the Kenner Return Levee; "Cooperation Agreement between the United States of America and the Board of Commissioners of the East Jefferson Levee District", fully executed on June 19, 2006 for the first phase removal of trees; and "Cooperation Agreement ; "Amendment of Assurance Agreements between the United States of America and the Board of Commissioners of the East Jefferson Levee District and the Fourth Jefferson Drainage District for the Accelerated Completion and the Operation, Maintenance, Repair, Replacement and Rehabilitation of the Lake Pontchartrain and Vicinity, Louisiana Hurricane Protection Project, Jefferson Parish, Louisiana,' fully executed on August 23, 2006, and "Supplemental Agreement No. 2-A Cooperation Agreement between the United States of America and the Board of Commissioners of the Orleans Levee District, the Board of Commissioners of the East Jefferson Levee District, the Sewerage and Water Board of New Orleans, the Fourth Jefferson Drainage District, the Sub-District A of the Fourth Jefferson Drainage District, the Parish of Jefferson, and the City of New Orleans for Rehabilitation of a Federal Hurricane/Shore Protection Project," fully executed on December 29, 2006;

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 3<sup>rd</sup> Supplemental Appropriation) authorized the restoration of the Project to provide the level of protection for which the Project was designed, at full Federal expense, insofar as the restoration of the Project is implemented utilizing funds appropriated by the said Act for restoration and reprogrammed thereunder, and/or any additional funds appropriated in the future in support of the restoration authority of the said 3<sup>rd</sup> Supplemental Appropriation Act;

WHEREAS, the Rehabilitation Effort includes the restoration of the Jefferson Parish portion of the Lake Pontchartrain and Vicinity, Louisiana to provide the level of

protection for which the project was designed, all as generally described in the Project Information Report for the restoration effort, prepared by the District Engineer, U. S. Army Engineer District, New Orleans, dated December 2006 and approved by the Division Engineer on December 20, 2006;

**WHEREAS**, as between the Government and the Non-Federal Sponsor, the above referenced project assurances and agreements set forth the respective obligations of the parties therein named, including, but not limited to, the obligation of the Non-Federal 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 and approach channels, drainage structures, drainage ditches or canals, floodwalls, and stoplog structures in relation to this HSPP and to the Rehabilitation Efforts herein described, except as expressly provided within this Agreement;

**WHEREAS**, the Fourth Jefferson Drainage District is the entity that has the jurisdictional mission of interior drainage for that portion of the Greater New Orleans Metropolitan Area situated on the East Bank of the Parish of Jefferson, including operation and maintenance of canal bottoms and interior pumping stations on property under the control of or within the geographical jurisdiction of the Parish of Jefferson;

**WHEREAS**, pursuant to Act 1 of the 2006 First Extraordinary Session of the Louisiana legislature, the Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East became the successor to the Board of Commissioners of the East Jefferson Levee District; with all the powers and duties provided by law for boards of commissioners of levee districts, and the additional powers and duties authorized by said Act; including the authority to execute this Agreement on behalf of the East Jefferson Levee District;

**WHEREAS**, the Non-Federal Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the HSPP Rehabilitation Effort in accordance with the terms of this Agreement;

**WHEREAS**, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the Rehabilitation Effort; and

**WHEREAS**, to that end, a committee comprised of representatives of the New Orleans Engineer District of the United States Army Corps of Engineers and the Southeast Louisiana Flood Protection Authority - East will meet on a periodic basis to draft and execute a Program Management Plan (PgMP) concerning procedures among the parties to deliver the Rehabilitation Effort. Objectives of this PgMP are to eliminate

barriers to excellence and promote continuous improvement by monitoring progress, resources and funding.

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

## **ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this Agreement:

A. The term “Rehabilitation Effort” shall mean the restoration of the Jefferson Parish features of the Lake Pontchartrain, LA and Vicinity Hurricane Protection Project to provide the level of protection for which the project was designed, all in accordance with project authority therefor, as generally described in the following report: “Project Information Report (PIR), Restoration Effort for Lake Pontchartrain, La And Vicinity Hurricane Protection Project, Jefferson Parish, Louisiana,” prepared by the District Engineer, U. S. Army Engineer District, New Orleans, dated December 2006 and approved by the Division Engineer on December 20, 2006. The work specifically included in this Rehabilitation Effort is the interim work at the west return floodwall (LPV-03c.1); the tie-ins at Bonnabel Pumping Station (LPV-09.1); the re-curve I-wall in northwest Kenner, including tie-ins at Causeway, Bonnabel, and Williams (LPV-13.1); and restoring the lakefront levee to the originally authorized elevation (LPV-20.2). It is understood and agreed that the PIR is subject to change by the Government in consultation with the Non-Federal Sponsor.

B. The term “Rehabilitation Effort costs” shall mean all costs incurred by the Government directly related to construction of the Rehabilitation Effort. 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 Non-Federal Sponsor or a 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 Non-Federal Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations that are owned, claimed, or controlled by the Non-Federal Sponsor or a non-federal governmental entity.

C. The term “betterment” shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Non-Federal Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States, shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Non-Federal 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. To the extent possible, the Government shall afford the Non-Federal Sponsor the 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 the opportunity to review and comment on all contract claims prior to resolution thereof. The District Engineer will, in good faith, consider the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the District Engineer. 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 Effort, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. As further specified in Article III, the Non-Federal Sponsor shall provide an authorization for entry or a right of entry to all lands, easements, and rights-of-way required for the construction, operation and maintenance of the Rehabilitation Effort, including those required for relocations, the borrowing of material and the disposal of dredged or excavated material. As further specified in Article III, the Government, subject to the availability of appropriations, may acquire all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material and the disposal of dredged or excavated material and perform all relocations on behalf of the Non-Federal Sponsor.

C. The Non-Federal Sponsor shall not use Federal funds to meet its share of Rehabilitation Effort costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

D. The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the construction, operation and maintenance of the Rehabilitation Effort and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors. The rights set forth in this Article II.D. and the benefits that derive therefrom, shall inure only to the United States of America,

and may not be asserted by, or provide a benefit to, any other person or entity, whether or not a party to this Agreement.

E. The Non-Federal Sponsor may request the Government to accomplish betterments. The Non-Federal 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 Non-Federal Sponsor in accordance with Article IV.

F. The Non-Federal Sponsor shall prevent future encroachments on the Rehabilitation Effort to the extent of its authority under state law, excluding expropriation (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as new developments on project lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the flood damage reduction features afford, hinder operation and maintenance of the project, or interfere with the Rehabilitation Effort's proper function.

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

A. The Government shall determine the lands, easements, and rights of way required for the construction, operation and maintenance of the Rehabilitation Effort, including those required for relocations, the borrowing of material and the disposal of dredged or excavated material (hereinafter "LERRD") and shall provide the Non-Federal Sponsor with the general written descriptions, including maps as appropriate, of the lands, easements and rights-of-way and the relocations required for the Rehabilitation Effort.

B. Prior to the issuance of the solicitation for each Government contract for construction of the Rehabilitation Effort, the Non-Federal Sponsor shall provide an authorization for entry on all lands, easements and rights-of-way that are owned, claimed or controlled by the Non-Federal Sponsor as necessary for the construction, operation and maintenance of the project. In addition, the Non-Federal Sponsor shall obtain the necessary rights for construction, operation and maintenance over lands, easements, and rights-of-way owned by any other non-federal governmental entity, as determined necessary by the Government, and provide right of entry for construction thereto.

C. Prior to the issuance of the solicitation for each Government contract for construction of the Rehabilitation Effort on lands, easements, and rights of way that are not owned, claimed or controlled by the Non-Federal Sponsor or other non-federal governmental entities, the necessary rights for construction, operation and maintenance over LERRD, as determined necessary by the Government, shall be acquired by use of the following options or combinations of options, such option(s) to be determined by the Government in consultation with the Non-Federal Sponsor:

1. For so long as commandeering is legally available under state law, the Non-Federal Sponsor is expected to obtain and provide right of entry to private lands by securing executive commandeering order(s) in accordance with La. R.S. 29:721, et seq. to accommodate current schedules for the Rehabilitation Effort; commandeering will be followed by federal acquisition of the required real property interests by the Government in a timely manner.
2. The Non-Federal Sponsor may elect not to commandeer, even though commandeering is legally available, if the Non-Federal Sponsor can acquire necessary real estate interests consistent with project schedules and prior to the solicitation of any contract for which the real estate interests are needed. Such acquisition will be at its expense for which no reimbursement or credit will be afforded in accordance with Article V of this agreement. If the Non-Federal Sponsor elects not to commandeer but then cannot acquire necessary real estate interests in accordance with current schedules and prior to the solicitation of any contract for which the real estate interests are needed, then the Non-Federal Sponsor must notify the Government immediately in writing so that those schedules and solicitations can be adjusted.
3. When commandeering is no longer legally available under state law, acquisition will be made by the Government using federal acquisition methods in accordance with Section D of this Article.

If LERRD is acquired by the Non-Federal Sponsor, then the Non-Federal Sponsor shall provide the Government with right of entry thereto for construction. Whenever right of entry required for the construction of the Rehabilitation Effort is acquired by commandeering on behalf of the Non-Federal Sponsor the Government shall determine the permanent and/or temporary estate(s) to be acquired over the temporary use of property commandeered and shall provide the Non-Federal Sponsor with the written descriptions, including maps as appropriate of the estates that the Government will acquire through federal acquisition methods.

D. Should the Government federally acquire lands, easements and rights-of-way, it shall do so in the name of East Jefferson Levee District or, if acquired by eminent domain, the Government shall convey all of its right, title and interest to East Jefferson Levee District by quitclaim deed or deeds. East Jefferson Levee District shall accept delivery of such deed or deeds.

E. Acquisition of lands, easements, and rights-of-way required for construction, operation, and maintenance of the Rehabilitation Effort, 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 Non-Federal Sponsor or Government, whichever entity is acquiring real estate interests, shall inform all affected persons of applicable benefits, Policies, and procedures in connection with said Act.

F. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way acquired by the Government on behalf of the Non-Federal Sponsor for the Rehabilitation Effort, as well as those lands, easements and rights-of-way that the Non-Federal Sponsor provided through an authorization for entry or right of entry, are retained in public ownership for uses compatible with the authorized purposes of the Rehabilitation Effort.

#### **ARTICLE IV - METHOD OF PAYMENT**

A. The Non-Federal Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Non-Federal Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs for the work identified in Article I.A. are currently estimated to be \$13,912,000.00. In order to meet the Non-Federal Sponsor's cash payment requirements, the Non-Federal Sponsor must provide a cash contribution estimated to be \$0.0. 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 to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor. (The Non-Federal Sponsor has no cash contribution for the above Rehabilitation Effort as set forth above in this Article IV.A.)

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 Non-Federal Sponsor of the Non-Federal Sponsor's estimated cash contribution required to meet the Non-Federal Sponsor's obligation under Article II.E. Within five calendar days thereafter, the Non-Federal 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 Engineer of the U.S. Army Engineer District, New Orleans. The Government shall draw on the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Non-Federal Sponsor's obligations under Article II.E. as they are incurred by the Government. In the event that total costs of the Non-Federal Sponsor's obligations under Article II.E. are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Non-Federal Sponsor of the additional contribution the Non-Federal Sponsor will be required to make to meet the additional required contribution. Within ten calendar days thereafter, the Non-Federal 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 total Rehabilitation Effort costs and status of contributions made by the Non-Federal Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall

compute the Rehabilitation Effort costs and tender to the Non-Federal Sponsor a final accounting of the Non-Federal Sponsor's obligations under Article II.E.

1. In the event the total contribution by the Non-Federal Sponsor is less than the Non-Federal Sponsor's obligations under Article II.E., the Non-Federal 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 Non-Federal Sponsor's obligation under Article II.E.

2. In the event total contribution by the Non-Federal Sponsor is more than the Non-Federal Sponsor's required obligation under Article II.E., 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 Non-Federal Sponsor; however, the Non-Federal Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Non-Federal Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Non-Federal Sponsor for excess contributions provided.

#### **ARTICLE V - CREDITING OF IN-KIND SERVICES**

The Non-Federal Sponsor shall not be entitled to receive credit or reimbursement for any costs incurred by the Non-Federal Sponsor.

#### **ARTICLE VI – OPERATION AND MAINTENANCE**

A. The Non-Federal Sponsor maintains responsibility for operating and maintaining that portion of the subject HSPP at all times, except for the active period of construction for the functional portion of the Rehabilitation Effort. After the District Engineer has determined that construction of the Rehabilitation Effort is complete and provided the Non-Federal Sponsor with written notice of such determination, The Non-Federal Sponsor shall operate and maintain the HSPP, to include those areas restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific direction prescribed by the Government in the interim or final OMRR&R manual and any subsequent amendments thereto and other applicable authorities including the obligation to keep the floodwalls and levee sections free of woody vegetation and roots.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Non-Federal Sponsor owns or controls for access to the HSPP for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the HSPP. If an inspection shows the Non-Federal Sponsor for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such notice, the Non-Federal 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 Non-Federal Sponsor owns or controls for access to the HSPP for the purposes of completing, operating, and maintaining the HSPP, or to deny further assistance. No action by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### **ARTICLE VII - FEDERAL AND STATE LAWS**

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

#### **ARTICLE VIII – RELATIONSHIP OF PARTIES**

The Government and the Non-Federal Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is 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 Agreement, or to any benefit that may arise therefrom.

#### **ARTICLE X - COVENANT AGAINST CONTINGENT FEES**

The Non-Federal Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement 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 Non-Federal Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XI - TERMINATION OR SUSPENSION**

If at any time the Non-Federal Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort 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 this Rehabilitation Effort and HSPP. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Non-Federal Sponsor elects to proceed with further construction or terminate this Agreement.

## **ARTICLE XII - HAZARDOUS SUBSTANCES**

A. After execution of this Agreement, 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 any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Sections 9601-9675, on lands necessary to Rehabilitation Effort 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 HSPP or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Non-Federal Sponsor and the Government shall provide prompt notice to each other, and the Non-Federal Sponsor or Government 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 Non-Federal Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort 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 Rehabilitation Effort. Should the Government and the Non-Federal Sponsor determine to proceed or continue with the construction 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 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. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Non-Federal Sponsor and 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 Non-Federal Sponsor, the Non-Federal Sponsor, shall be considered the operator of the HSPP (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate and maintain the HSPP in a manner that will not cause liability to arise under CERCLA.

### **ARTICLE XIII – NOTICES**

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement 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 Government:

District Engineer  
U. S. Army Corps of Engineers  
P. O. Box 60267  
New Orleans, Louisiana 70160-0267

If to the Fourth Jefferson Drainage  
District:

Jefferson Parish Council Chairman  
200 Derbigny Street  
Gretna, Louisiana 70053

If to Southeast Louisiana Flood  
Protection Authority - East

President  
203 Plauche Court  
Harahan, Louisiana 70123

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 - PROJECT 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 Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the

Rehabilitation Effort. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

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

C. Until the end of the Rehabilitation Effort, the Project Coordination Team shall generally oversee the Rehabilitation Effort, including matters related to: plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 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)) for relocations and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XII.A. of this Agreement; historic preservation activities; the Government's cost projections; final inspection of the entire Rehabilitation Effort or functional portions of the Rehabilitation Effort; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the Rehabilitation Effort including issuance of permits; and other matters related to the Rehabilitation Effort. This oversight of the Rehabilitation Effort shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

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

E. The Government's costs of participation in the Project Coordination Team shall be included in Rehabilitation Effort Costs and shared in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, 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 District Engineer, New Orleans District, U. S. Army Corps of Engineers.

**THE DEPARTMENT OF THE ARMY**

BY: 

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

Date: 4-23-07

**BOARD OF COMMISSIONERS FOR THE SOUTHEAST  
LOUISIANA FLOOD PROTECTION AUTHORITY – EAST  
(on behalf of East Jefferson Levee District)**

BY: 

Thomas Jackson  
President

Date: April 19, 2007

**FOURTH JEFFERSON DRAINAGE DISTRICT**

BY: 

THOMAS J. CAPELLA  
Chairman, Jefferson Parish Council

Date: April 23, 2007

## 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.

  
\_\_\_\_\_  
President, Board of Commissioners  
Southeast Louisiana Flood Protection Authority-East

DATE: April 19, 2007

## CERTIFICATE OF AUTHORITY

I, Denise Fitzgerald, do hereby certify that I am an attorney for the Southeast Louisiana Flood Protection Authority - East and that it is a legally constituted public body with full authority and legal capability to perform the terms of the Cooperation Agreement in connection with the Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project Rehabilitation Effort, and to my best information and belief, the authority and legal capability to pay damages in accordance with the terms of this Cooperation Agreement, 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 Agreement on behalf of the Southeast Louisiana Flood Protection Authority - East has acted within his or her authority.

IN WITNESS WHEREOF, I have made and executed this certification this 19<sup>th</sup> day of April 2007.

Denise B. Fitzgerald  
Attorney for the Southeast Louisiana  
Flood Protection Authority - East

## CERTIFICATION REGARDING LOBBYING

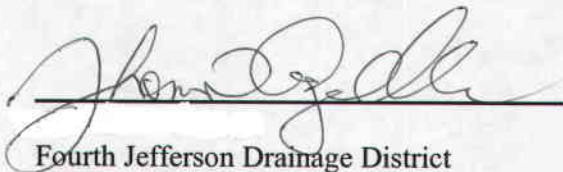
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Fourth Jefferson Drainage District

**THOMAS J. CAPELLA**  
Chairman, Jefferson Parish Council

DATE: April 23, 2007

**CERTIFICATE OF AUTHORITY**

Thomas G. Wilkinson  
I, \_\_\_\_\_, do hereby certify that I am an attorney for the Fourth Jefferson Drainage District, that the Fourth Jefferson Drainage District is a legally constituted public body with full authority and legal capability to perform the terms of the Cooperation Agreement, in connection with the Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project Rehabilitation Effort, and to my best information and belief able to pay damages in accordance with the terms of this Agreement, 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 Agreement, on behalf of Fourth Jefferson Drainage District has acted within his or her authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
23rd day of April, 2007.



\_\_\_\_\_  
Attorney for the Fourth Jefferson Drainage District