

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
ORLEANS LEVEE DISTRICT
FOR
POST FLOOD RESPONSE ASSISTANCE (FLOOD or COASTAL STORM)**

THIS COOPERATION AGREEMENT, 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, and the ORLEANS LEVEE DISTRICT (hereinafter collectively referred to as the "Public Sponsor"), represented by the Acting President of the Board of Commissioners of the Orleans Levee District.

WITNESSETH THAT:

WHEREAS, the Governor of the State of Louisiana has declared a state of emergency for the state of Louisiana pursuant to Proclamation No. 48 KBB 2005 issued on August 26, 2005 due to Hurricane Katrina's potential to cause severe storms, high winds, and torrential rain that could cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of Louisiana;

WHEREAS, following Hurricane Katrina's striking Louisiana and resulting in severe flooding and damage to the southeastern part of the State which has threatened the safety, health, and security of the citizens of the State of Louisiana, along with private property and public facilities, the Governor issued Proclamation No. 54 KBB 2005 on September 22, 2005 to renew the previous Proclamation thus extending the state of emergency until October 25, 2005;

WHEREAS, due to the aftermath of Hurricane Katrina and the continuing threat to the safety, health, and security of the citizens of the State of Louisiana, on October 24, 2005, the Governor has issued Proclamation No. 61 KBB 2005 to extend the state of emergency through Thursday, November 24, 2005 unless terminated sooner;

WHEREAS, due to severe storm damage and extreme flooding to private property and public facilities that continues to threaten the safety, health, and security of the citizens of the state of Louisiana, on November 17, 2005, the Governor issued Proclamation No. 68 KBB 2005 in order to renew Proclamation No. 48 KBB 2005, as amended by Proclamation Nos. 54 KBB 2005 and 61 KBB 2005 to extend the state of emergency and disaster through Saturday, December 24, 2005, unless terminated sooner;

WHEREAS, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair and restoration of any flood control work threatened or destroyed by flood;

WHEREAS, the Public Sponsor owns, operates, maintains and controls a certain non-Federal flood control levee situated within the Parish of Orleans, State of Louisiana and extending approximately from the access road to the sewerage treatment plant near the Orleans Parish and St. Bernard parish line westerly the distance of 4066 feet (hereinafter referred to as “non-Federal levee”);

WHEREAS, the Public 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 construction effort in accordance with the terms of this Agreement;

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term “Construction Effort” shall mean the repair of that portion of the non-Federal levee as described herein that is situated within Orleans Parish, Louisiana to provide an interim level of protection to 10 feet. The location of repair work extends from the access road to the sewerage treatment plant near the Orleans Parish and St. Bernard parish line westerly 4066 feet. The repair for this section of levee consists of the realignment of the sheetpile floodwall vertically and the construction of an embankment against it on the flood side. That embankment shall consist of placing a sand base encapsulated with a geotextile fabric along the cantilevered sheet piling. The sand base will be topped with a 2 foot clay cap and stone armor protection on the side slope, all in accordance with the one time exceptions to cost sharing policy, which are described in the CECW-ZB Memorandum For Records SUBJECT: ASA(CW) Verbal Approval of Policy Deviations dated 10 October 2005.

B. The term “Construction Effort costs” shall mean all costs incurred by the Government directly related to construction of the Construction 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 Public Sponsor; 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’s 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 Public Sponsor.

C. The term “betterment” shall mean the design and construction of a Construction Effort 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 Construction Effort.

ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States, shall expeditiously construct the Construction Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. 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. The District Engineer 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 Construction Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the District Engineer.

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, and maintenance of the Construction Effort and the non-Federal levee.

1. As further specified in Article III, after receiving the Public Sponsor's right of entry to the lands, easements, and rights of way, including suitable borrow and dredged or excavated material disposal areas (LERD) that are described in Article III.A.2. and III.A.3. of this Cooperation Agreement, the Government, subject to the availability of appropriations, shall identify and pay just compensation to the owners of a compensable interest in the LERD described in Article III.A.3 of this Cooperation Agreement. Additionally, the Government, subject to the availability of appropriations, shall acquire interests in those LERD described in Article III.A.2 of this Cooperation Agreement to which the Public Sponsor was unable to obtain right of entry despite its best efforts.

2. As further specified in Article III, the Government shall perform such relocations as it determines to be necessary for the Construction Effort.

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

D. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Construction Effort, the non-Federal levee, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

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

F. The Public Sponsor shall prevent future encroachments on lands, easements, and rights-of-way provided by the Public Sponsor for the Construction Effort which might interfere with the proper functioning of the Construction Effort and the non-Federal levee as determined by the Government. Said lands shall be retained in public ownership for uses compatible with the authorized purposes of the Construction Effort and the non-Federal levee.

ARTICLE III – LANDS 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 Construction Effort. 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 non-Federal levee and the Construction Effort, 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 title, or encumbrances, including the release or subordination to the Construction Effort of any third party interests, as determined by the Government to be necessary for the construction, operation and maintenance of the Construction Effort;

2. The Public Sponsor shall use its best efforts to 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 title, or encumbrances, including the release or subordination to the Construction Effort of any third party interests within such LERD, as determined by the Government to be necessary for the construction, operation and maintenance of the Construction Effort; and

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 from the Mayor of the City of New Orleans, Louisiana, 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 determined by the Government to be necessary for the construction, operation and maintenance of the Construction Effort;

b. In the event that the commandeering official is not the presiding official of the Public Sponsor, the Public Sponsor must secure a right of entry from the commandeering official to the Private LERD described in the Commandeering Order or Orders; and

c. The Public Sponsor shall tender a right of entry to the Government for 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 such relocations as it determines to be necessary for the construction, operation, and maintenance of the Construction Effort. In addition, the Government in the name of the Public Sponsor, shall identify and provide just compensation to the owners of a compensable interest in the Private LERD and shall acquire the requisite interests in the non-Federal Governmental LERD to which the Public Sponsor, despite its best efforts, was unable to obtain a free and unencumbered right of entry, 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 by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), 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 non-Federal levee and the Construction Effort, 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 or Orders referenced in Paragraph A.3.a. of this Article. In like manner, the Government shall obtain a deed or servitude agreement, as appropriate, in the name of the Public Sponsor, for those interests in the non-Federal Governmental LERD to which the Public Sponsor, despite its best efforts, was unable to obtain a free and unencumbered right of entry.

2. Where the Government is unable to obtain free and unencumbered title on the behalf of the Public Sponsor or to reach an agreement with the interest owners in the Private and Other Non-Federal Governmental LERD, the

Government shall obtain such interests, in the name of the United States of America, through the exercise of its eminent domain authority.

3. After the Construction Effort is complete and the acquisition and eminent domain proceedings finalized, the Government shall transfer and assign all of the Private and Other Non-Federal Governmental LERD acquired in the name of the United States of America pursuant to paragraph B.2. of this Article to the Public Sponsor through quitclaim deed, which said transfer, quitclaim, and assignment the Public Sponsor hereby agrees to accept.

ARTICLE IV – METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments required to meet the Public Sponsor's obligations under Article II.E. of the Cooperation Agreement. Construction Effort costs are currently estimated to be \$2,350,000. In order to meet the Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be \$0.0. 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 estimated cash contribution required to meet the Public Sponsor's obligations under Article II.E. of the Cooperation Agreement. 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 Engineer 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 Public Sponsor' obligations under Article II.E. of the Cooperation Agreement, as they are incurred by the Government. In the event that total costs of the Public Sponsor' obligations under Article II.E. of the Cooperation Agreement, 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 Public Sponsor' share of the revised estimate. 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 contributions made by the Public Sponsor. Upon completion of the Construction Effort and resolution of all relevant contract claims and

appeals, the Government shall compute costs and tender a final accounting of the Public Sponsor' obligations under Article II.E. of this Cooperation Agreement.

1. In the event the total contribution by the Public Sponsor is less than the cost of the Public Sponsor' obligations under Article II.E. of this Cooperation Agreement, 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' required share of the cost of the obligations under Article II.E. of this Cooperation Agreement.

2. In the event the total contribution by the Public Sponsor is more than the Public Sponsor's required obligation under Article II.E. of this Cooperation Agreement, 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 OF IN-KIND SERVICES

The Public Sponsor shall not be entitled to receive a credit or reimbursement for any costs incurred by the Public Sponsor hereunder.

ARTICLE VI – OPERATION AND MAINTENANCE

A. The Public Sponsor maintains responsibility for operating and maintaining the non-Federal levee at all times. After the District Engineer has determined that construction of the Construction Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the non-Federal levee, to include those areas restored by the Construction Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

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, claims, or controls for access to the non-Federal levee for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the non-Federal levee. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Cooperation Agreement 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, claims or controls for access to the Project for the purposes of completing, operating, and maintaining the project, or to deny further assistance under Public Law 84-99. 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 Cooperation Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Cooperation Agreement.

ARTICLE VII – FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations 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 the Cooperation Agreement, 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 Cooperation Agreement, 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 Cooperation 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 Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Cooperation Agreement without liability, or, in the Government's discretion, to add to the Cooperation 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 Public Sponsor fails to carry out its obligations under this Cooperation Agreement, the District Engineer shall terminate or suspend work on the Construction Effort, unless the District Engineer determines that continuation of work on the Construction 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 Construction Effort and the non-Federal levee. However, deferral of future performance under this Cooperation 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 Cooperation Agreement pursuant to this Article, both parties shall conclude their activities relating to the Construction Effort and proceed to a final accounting in accordance with Article IV of this Cooperation Agreement. In the event that either party elects to defer future performance under this Cooperation Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or the Public Sponsor elects to proceed with further construction or terminate this Cooperation Agreement.

ARTICLE XII – HAZARDOUS SUBSTANCES

A. After execution of this Cooperation 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 hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601-9675, on lands necessary to Construction Effort construction, operation, and maintenance. All actual costs incurred by the Government in the performance of any such investigations for hazardous substances shall be included in total Construction Effort costs.

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 non-Federal levee or the Construction Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Government shall not proceed with the 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 Construction Effort, or, if already in construction, to continue with construction of the Construction Effort, or to terminate construction of the Construction 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 Construction Effort. 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. Such costs shall not be considered a part of the total Construction Effort costs as defined in this Cooperation Agreement. 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 Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Construction Effort or proceed with further work as provided in Article X of this Cooperation Agreement.

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 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 non-Federal levee (which the Construction Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the non-Federal levee 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 Cooperation 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 Public Sponsor:

President
Orleans Levee District
6001 Stars and Stripes Boulevard
New Orleans, Louisiana 70126

If to the Government:

District Engineer
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.


IN WITNESS WHEREOF, the parties hereto have executed this Cooperation Agreement, which shall become effective upon the date it is signed by the District Engineer.


FEDERAL SPONSOR:

PUBLIC SPONSOR:

THE DEPARTMENT OF THE ARMY

ORLEANS LEVEE DISTRICT

BY: 
Richard P. Wagenaar
Colonel, Corps of Engineers
District Engineer

BY: 
Michael McCrossen
Acting President,
Board of Commissioners

Date: 19 Dec 05

Date: 12-6-05

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.



Michael McCrossen
Acting President, Board of Commissioners
Orleans Levee District

DATE: 12-6-05

CERTIFICATE OF AUTHORITY

I, Gary G. Benoit, do hereby certify that I am an attorney for the Orleans Levee District, that the Orleans Levee District is a legally constituted public body with full authority and legal capability to perform the terms of the Cooperation Agreement between the Department of the Army and the Orleans Levee District and 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 persons who have executed this Agreement on behalf of the Orleans Levee District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 6th day of December 2005.


Typed Name: Gary G. Benoit
Title in Full: Senior Counsel