



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

To R/M
05-19-08

REPLY TO
ATTENTION OF:

CECW-AR (1110-2-1150a)

29 April 1999

(227)

MEMORANDUM THRU COMMANDER, MISSISSIPPI VALLEY DIVISION

FOR COMMANDER, NEW ORLEANS DISTRICT, ATTN: CEMVN-PM-M

SUBJECT: West Bank Hurricane Protection, Vicinity of New Orleans, Louisiana, - Project Cooperation Agreement Amendment 1

The subject project cooperation agreement (PCA) amendment was signed by the Assistant Secretary of the Army (Civil Works) on 26 April 1999. A copy of the executed PCA amendment is returned. The four original signed PCA amendments were forwarded by Federal Express directly to the New Orleans District for filing by the district and the sponsor.

FOR THE COMMANDER:

DAVID B. SANFORD, JR.
Chief, Policy Division
Directorate of Civil Works

Encl
as

AMENDMENT NUMBER 1
OF THE
LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE WEST JEFFERSON LEVEE DISTRICT
FOR CONSTRUCTION OF THE
WEST BANK HURRICANE PROTECTION LEVEE
(Westwego to Harvey Canal)
JEFFERSON PARISH, LOUISIANA

TO MAKE IT A PART AND TO ENABLE THE CONSTRUCTION OF THE
WEST BANK - VICINITY OF NEW ORLEANS, LOUISIANA
HURRICANE PROTECTION PROJECT
JEFFERSON, ORLEANS AND PLAQUEMINES PARISHES, LOUISIANA

THIS AMENDMENT is entered into this 26th day of APRIL, 1999, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works), the West Jefferson Levee District (hereinafter WJLD), represented by the President of the WJLD, appearing herein as the existing Non-Federal Sponsor for the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, Jefferson Parish, Louisiana and as the Non-Federal Sponsor for the operation, maintenance, repair, replacement, and rehabilitation of the West Bank - Vicinity of New Orleans, Louisiana Hurricane Protection Project and the Louisiana Department of Transportation and Development, represented by the Secretary of the Louisiana Department of Transportation and Development, herein replacing and succeeding the WJLD as Non-Federal Sponsor for the construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, Jefferson Parish, Louisiana and assuming the obligations and responsibilities of the Non-Federal Sponsor for the construction of the West Bank - Vicinity of New Orleans, Hurricane Protection Project, Jefferson, Orleans and Plaquemines Parishes, Louisiana.

WITNESSETH, THAT:

WHEREAS, construction of the West Bank Hurricane Protection Levee at Westwego to Harvey Canal, Jefferson Parish, Louisiana was authorized by Section 401(b) of the Water Resources Development Act of 1986, Public Law 99-662;

WHEREAS, on December 28, 1990, the Government and the WJLD entered into a Local Cooperation Agreement (hereinafter the "1990 Agreement") for construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project;

WHEREAS, construction of the West Bank - Vicinity of New Orleans, Louisiana, Hurricane Protection Project at Jefferson, Orleans and Plaquemines Parishes, Louisiana was authorized by Section 401(b) of the Water Resources Development Act of 1986, Public Law 99-662, and Sections 101(a)(17) and 101(b)(11) of the Water Resources Development Act of 1996, Public Law 104 - 303;

WHEREAS, Act 1012 of the 1993 Session of the State of Louisiana Legislature, codified in LSA-R.S. 38:100-104, authorizes the Louisiana Department of Transportation and Development to assume the role of Non-Federal Sponsor from the WJLD for the construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, and to serve as Non-Federal Sponsor for construction of the West Bank, Vicinity of New Orleans, Louisiana Hurricane Protection Project, as modified by Sections 101(a)(17) and 101(b)(11) of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, the Louisiana Department of Transportation and Development and the Government entered into a Memorandum of Agreement (hereinafter "MOA") on May 16, 1995 wherein the Government, subject to certain terms and conditions, agreed to grant to the Louisiana Department of Transportation and Development a right of use, without warranty, of the interests the Government held in the perpetual servitudes in the vicinity of the Algiers Canal, which servitudes the Government had acquired for the Algiers Lock and Canal (Alternate Connection with the Mississippi River in the Vicinity of Algiers at New Orleans), a part of the Intracoastal Waterway, Gulf Section;

WHEREAS, the Government, WJLD, and the Louisiana Department of Transportation and Development desire to enter into an amendment of the 1990 Agreement for the construction, operation, maintenance, repair, replacement, and rehabilitation of the West Bank - Vicinity of New Orleans, Louisiana, Hurricane Protection Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, Section 104 of the Water Resources Development Act of 1986, Public Law 99-662, and Sections 101(a)(17) and 101(b)(11) of the Water Resources Development Act of 1996, Public Law 104 - 303 authorizes the Assistant Secretary of the Army (Civil Works) to afford a credit for work accomplished by the Non-Federal Sponsor;

WHEREAS, the Non-Federal Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the West Bank - Vicinity of New Orleans, Louisiana, Hurricane Protection Project and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government, WJLD and the Louisiana Department of Transportation and Development have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Amendment.

NOW, THEREFORE, the Government, WJLD and the Louisiana Department of Transportation and Development agree to amend the 1990 Agreement as follows:

PARAGRAPH 1.

Effective November 22, 1995, in accordance with Act 1012 of the 1993 of the Louisiana Legislature, codified in LSA-R.S. 38:100-104, the Louisiana Department of Transportation and Development hereby assumes all of the rights, obligations, and liabilities of and all claims against the WJLD, in WJLD's prior capacity as the Non-Federal Sponsor for the construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, pursuant to the terms and provisions of the Local Cooperation Agreement dated December 28, 1990, by and between the Department of the Army and the WJLD for construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, as hereinafter modified and amended, in the same manner and to the same extent as if the Louisiana Department of Transportation and Development were the original Non-Federal Sponsor for construction under the aforesaid Local Cooperation Agreement. The Louisiana Department of Transportation and Development, as Non-Federal Sponsor, ratifies all previous actions of the WJLD with respect to the aforesaid Local Cooperation Agreement with the same force and effect as if the action had been taken by the Louisiana Department of Transportation and Development.

PARAGRAPH 2.

WJLD, the Non-Federal Sponsor originally named in the aforesaid Local Cooperation Agreement, hereby agrees to and confirms the assumption by the Louisiana Department of Transportation and Development of all of the rights, obligations, and liabilities of and all claims against the WJLD, as Non-Federal Sponsor for the construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, pursuant to the terms and provisions of the Local Cooperation Agreement dated December 28, 1990, by and between the Government and the WJLD for construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, as hereinafter modified and amended.

PARAGRAPH 3.

The Government agrees to and recognizes the Louisiana Department of Transportation and Development as the successor Non-Federal Sponsor for the construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, pursuant to the terms and provisions of the Local Cooperation Agreement dated December 28, 1990, by and between the Government and the WJLD for construction of the West Bank Hurricane Protection Levee (Westwego to Harvey Canal) Project, as hereinafter modified and amended. Following the effective date of this Amendment Number 1, the term Non-Federal Sponsor shall refer to the Louisiana Department of Transportation and Development. Provided however, that notwithstanding anything to the contrary herein, all credits given previously by the Government to the WJLD, as Non-Federal Sponsor for the said Project, pursuant to the terms and provisions of the Local Cooperation Agreement, and all other previous actions taken by the Government under the Local Cooperation Agreement shall be considered to have discharged those parts of the Government's obligations under the said Agreement.

PARAGRAPH 4.

The Government, the Louisiana Department of Transportation and Development, and WJLD understand and agree that, notwithstanding the terms and provisions of this Amendment Number 1, the above referenced MOA shall remain in full force and effect and shall be binding upon the parties hereto.

PARAGRAPH 5.

The aforesaid Local Cooperation Agreement shall remain in full force and effect, except as modified by this Amendment No. 1. The Government, WJLD, and the Louisiana Department of Transportation and Development (hereinafter "Non-Federal Sponsor") hereby amend the hereinabove described Local Cooperation Agreement dated December 28, 1990 by amending and restating Articles I through XX thereof, in their totality, to read and agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Amendment:

A. The term "Project" shall mean the provision of standard project hurricane protection to areas on the west bank of the Mississippi River in the vicinity of New Orleans from the Lake Cataouatche area near the St. Charles Parish line through the Westwego to Harvey Canal area and including the area east of the Harvey Canal. The Westwego to Harvey Canal feature of the Project includes 22 miles of earthen levee and 2 miles of floodwalls; the Lake Cataouatche feature eliminates a west side closure of the Westwego to Harvey Canal feature and adds about 10 miles of levee and 2 miles of floodwall; the East of Harvey Canal feature consists of a navigable floodgate in the Harvey Canal below Lapalco Boulevard, construction of a discharge

channel for Cousins Pumping Station, increasing the capacity of Cousins Pumping Station by 1,000 cfs, construction of levees and floodwalls along the east and west banks of Harvey Canal south of Lapalco Boulevard, and south of Hero Canal in the vicinity of Highway 23, and construction of levees and floodwalls along the Federal levees of the east and west banks of Algiers Canal; and the Project also includes necessary measures to mitigate for the project induced loss of significant fish and wildlife resources as generally described in the Westwego to Harvey Canal, Louisiana, General Design Memorandum No. 1 (Reduced Scope), dated 28 July 1989, approved by the Division Commander, Lower Mississippi Valley Division, on 6 October 1989; the Westwego to Harvey Canal, Louisiana, Hurricane Protection Project, Lake Cataouatche Area Post Authorization Change Report and Environmental Impact Statement dated December 1996 and approved by the Assistant Secretary of the Army (Civil Works) on 15 January 1997; and the West Bank of the Mississippi River, in the Vicinity of New Orleans, Louisiana (East of the Harvey Canal), Feasibility Report and Environmental Impact Statement dated August 1994 and approved by the Assistant Secretary of the Army (Civil Works) on 25 February 1997. The Project includes the creditable work described in Article I.K of this Amendment.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Amendment directly related to construction of the Project. Subject to the provisions of this Amendment, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Amendment; costs of historic preservation activities in accordance with Article XVIII.A. of this Amendment; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the credit amount for the creditable work performed by the Non-Federal Sponsor afforded in accordance with Article II.E.4. of this Amendment; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Amendment; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Amendment; and costs of audit in accordance with Article X of this Amendment. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Amendment.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government or a financial obligation of the Non-Federal Sponsor for creditable work, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.D.2. of this Amendment to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Amendment, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U. S. Army Engineer for the New Orleans District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor and WJLD in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to WJLD to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor and WJLD in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "creditable work" shall mean any work on the Project accomplished by the Non-Federal Sponsor, as described in Westwego to Harvey Canal, Louisiana, General Design Memorandum No. 1 (Reduced Scope), dated 28 July 1989, approved by the Division Commander, Lower Mississippi Valley Division, on 6 October 1989; the Westwego to Harvey Canal, Louisiana, Hurricane Protection Project, Lake Cataouatche Area Post Authorization Change Report and Environmental Impact Statement dated December 1996 and approved by the Assistant Secretary of the Army (Civil Works) on 15 January 1997; and the West Bank of the

Mississippi River, in the Vicinity of New Orleans, Louisiana (East of the Harvey Canal), Feasibility Report and Environmental Impact Statement dated August, 1994 and approved by the Assistant Secretary of the Army (Civil Works) on 25 February 1997. The creditable work includes construction of the authorized improvements as well as planning, engineering, design, supervision and administration, and other activities associated with construction, but does not include the construction of betterments or the provision of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the creditable work.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, 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 Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

B. The Congress authorized the Lake Cataouatche feature of the Project, but construction of the feature shall not commence until approval of a construction new start is granted and Federal funds are made available. Currently, the Government's participation in this feature is

limited to preconstruction engineering and design efforts. The Government makes no commitment to budget for funds needed to complete or continue the Lake Cataouatche feature of the Project. In the event the Congress provides additional appropriations for construction of this feature, the Government will undertake construction with Government participation limited to the total amount appropriated, using subsequently appropriated funds and funds provided by the Non-Federal Sponsor in accordance with Article II.E. of this Amendment.

C. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Amendment. In the event of conflict between such a writing and this Amendment, this Amendment shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Amendment.

D. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor and WJLD in writing and furnish WJLD with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, WJLD shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Amendment.

E. The Non-Federal Sponsor shall contribute a minimum of 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features, of total project costs in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Amendment, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph E.1. of this Article and Articles V, X, and XV.A. of this Amendment will be less than 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features of total project costs, the Non-Federal Sponsor shall provide a cash contribution, in accordance with Article VI.B. of this Amendment, in the amount necessary to make the Non-Federal Sponsor's total contribution equal

to 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features of total project costs.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs E.1. and E.2. of this Article and Articles V, X, and XV.A. of this Amendment has exceeded 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features of total project costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

4. The Assistant Secretary of the Army (Civil Works) has determined that the creditable work, as defined in Article I.K of this Amendment, is compatible with the Project and has approved a credit in the estimated amount of \$47,493,000 for construction of such work by the Non-Federal Sponsor. The Congress, in authorizing the Project, included authority for the Assistant Secretary of the Army (Civil Works) to afford credit toward the Non-Federal share of the Project for specific work performed by the Non-Federal Sponsor subsequent to and as described in detail in the Westwego to Harvey Canal, Louisiana, General Design Memorandum No. 1 (Reduced Scope), dated 28 July 1989; the Westwego to Harvey Canal, Louisiana, Hurricane Protection Project, Lake Cataouatche Area Post Authorization Change Report and Environmental Impact Statement dated December 1996; and the West Bank of the Mississippi River, in the Vicinity of New Orleans, Louisiana (East of the Harvey Canal), Feasibility Report and Environmental Impact Statement dated August, 1994, as determined by the Assistant Secretary of the Army (Civil Works) to be a compatible and integral part of the Project. The affording of such credit shall be subject to an on-site inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Project. The actual amount of credit shall be subject to an audit in accordance with Article X.C. of this Amendment to determine reasonableness, allocability, and allowability of costs. To afford such credit, the Government shall apply the credit amount toward any cash contribution required under paragraph E.2. of this Article. If the credit amount exceeds the amount of such cash contribution, the Government, subject to the availability of funds, shall, on behalf of the Non-Federal Sponsor, provide Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas, or perform Project relocations, equal in value to such excess credit amount. As an alternative, and in its sole discretion, the Government may make a payment to the Non-Federal Sponsor in an amount equal to such excess credit amount, up to the value of contributions under paragraph E.1. of this Article and Articles V, X, and XV.A. of this Amendment. In no event shall the credit amount afforded exceed 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features of total project costs including the value of the Non-Federal Sponsor's contributions

required under paragraphs E.1. and E.2. of this Article and Articles V, X, and XV.A. of this Amendment.

F. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Amendment. In the event of conflict between such a writing and this Amendment, this Amendment shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Amendment. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Amendment.

G. The Government shall perform a final accounting in accordance with Article VI.D. of this Amendment to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs C., E., and F. of this Article and Articles V, X, and XV.A. of this Amendment and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs C., E., and F. of this Article.

H. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total project costs under this Amendment unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

I. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

J. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

K. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

L. For as long as the Project remains authorized the WJLD shall operate, maintain, repair, replace, and rehabilitate the existing levees of the Algiers Lock and Canal Project adjacent to the Algiers Canal (hereinafter the "Algiers Lock and Canal Project Levees") as authorized by the River and Harbors Act of 2 March 1945, Public Law No. 14, 79th Congress, 1st Session.

M. The Non-Federal Sponsor shall provide for adjudication of all water rights claims resulting from construction and shall hold and save the United States free from damages due to such claims; and WJLD shall provide for adjudication of all water rights claims resulting from operation, maintenance, repair, replacement, and rehabilitation of the project and shall hold and save the United States free from damages due to such claims.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, waste weirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Amendment and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies 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 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the 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.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Amendment, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Amendment. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are

provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Amendment, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Amendment shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Amendment that are required for the construction of the creditable work, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the creditable work, or, if the Non-Federal Sponsor performs the construction with its own labor, the date that the Non-Federal Sponsor begins construction of the creditable work. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Amendment shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Amendment, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Amendment, or at any time after the effective date of this Amendment the value of the interest shall include the

documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Amendment to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Amendment. These incidental costs may also include payments made for personal property, loss of business or good will, or other payments, that are generally recognized as compensable, and required to be paid, by applicable State law due to the acquisition of a real property interest required for the Project as determined by the Government. Credit requests for payments made for personal property, loss of business or good will, or other payments, must be submitted with sufficient documentation, as determined by the Government, to show that the Non-Federal Sponsor was required to make payment therefor under State law.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Louisiana would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Amendment to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Amendment to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor, WJLD and the Government, not later than 30 days after the effective date of this Amendment, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. 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 period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight 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 that it deems warranted to the District Engineer on matters 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 Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Amendment.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By 01 April of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XIX of this Amendment, Federal Sponsor's total cash contributions required in accordance with Articles II.C., II.E., and II.F. of this Amendment, of the non-Federal proportionate share, and of the funds the Government projects to be required

from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Amendment, total project costs are projected to be \$282,400,000, and the Non-Federal Sponsor's contribution required under Article II.E. of this Amendment is projected to be \$98,400,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Articles II.E.2. of this Amendment in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government, after consideration of any credit afforded pursuant to Article II.E.4. of this Amendment, determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor.

2. For the second and subsequent fiscal years of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government, after consideration of any credit afforded pursuant to Article II.E.4. of this Amendment, determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article VI.B.1. of this Amendment.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government, after consideration of any credit afforded pursuant to Article II.E.4. of this Amendment, deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall

make the additional required funds available through the payment mechanism specified in Article VI.B.1. of this Amendment.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.C. or II.F. of this Amendment, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

D. Upon completion of the Project or termination of this Amendment, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.C. of this Amendment.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.C. of this Amendment, 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 required share of total project costs plus costs due to any betterments provided in accordance with Article II.C. of this Amendment.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.C. of this Amendment, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - 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. The Government shall pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The remaining 50 percent of any such costs for the services provided by the third party shall be paid by the Non-Federal Sponsor and/or by WJLD, whose respective responsibilities for the payment of such third party costs shall be determined based upon the obligation(s) from which the litigation or dispute arises. The existence of a dispute shall not excuse the parties from performance pursuant to this Amendment.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.D. of this Amendment and for so long as the Project remains authorized, the WJLD shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Amendment and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor and WJLD hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor and/or WJLD own or control for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor or WJLD for any reason is failing to perform its respective obligations under this Amendment, the Government shall send a written notice describing the non-performance to the defaulting party. If, after 30 calendar days from receipt of notice, the defaulting party continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the defaulting party owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor or WJLD of responsibility to meet its respective obligations as set forth in this Amendment, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Amendment.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction of the Project and any Project-related betterments, and WJLD shall hold and save the Government free from all damages arising from the operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Amendment, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Amendment. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Amendment. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Amendment.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Amendment.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Amendment, the Non-Federal Sponsor, WJLD and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army", and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of flood plain management plans.

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Amendment, the Government, WJLD and the Non-Federal Sponsor each act in an independent capacity, and none is to be considered the officer, agent, or employee of the other. Provided however, that pursuant to the provisions of the Cooperative Endeavor Agreement between the Louisiana Department of Transportation and Development and WJLD, dated November 22, 1995, WJLD serves as the agent of the Non-Federal Sponsor for purposes of construction of the Project.

B. In the exercise of its rights and obligations under this Amendment, none of the parties shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.C., II.E., II.F., VI, or XVIII.C. of 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 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 Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter the Government or Non-

Federal Sponsor may elect without penalty to terminate this Amendment or to suspend future performance under this Amendment. In the event that the Government or Non-Federal Sponsor elects to suspend future performance under this Amendment pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Amendment.

C. In the event that the Government or Non-Federal Sponsor elects to terminate this Amendment pursuant to this Article or Article XV of this Amendment, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Amendment.

D. Any termination of this Amendment or suspension of future performance under this Amendment in accordance with this Article or Article XV of this Amendment shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment 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 XV - HAZARDOUS SUBSTANCES

A. After execution of this Amendment and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Amendment, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Amendment, subject to an audit in accordance with Article X.C. of this Amendment to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Amendment, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and

the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Amendment, or terminate this Amendment for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Amendment, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with 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 the costs of clean-up and response, 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 total project costs. 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, in its sole discretion, either terminate this Amendment for the convenience of the Government, suspend future performance under this Amendment, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Amendment in an effort to ensure 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 third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor and WJLD shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, WJLD shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Amendment shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Secretary
Louisiana Department of Transportation and Development
P.O. Box 94245
Baton Rouge, Louisiana 70804 - 9245

If to the Government:

Department of the Army, U.S. Army Engineer District
New Orleans Corps of Engineers
Attn: CEMVN-DD-P
P.O. Box 60267
New Orleans, Louisiana 70160 - 0267

If to WJLD:

President
West Jefferson Levee District
P.O. Box 608
Marrero, Louisiana 70072

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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - 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 XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Amendment.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 34.75 percent for the East of Harvey Canal feature and 35 percent for the Westwego to Harvey Canal and Lake Cataouatche features borne by the Non-Federal Sponsor, and 65.25 percent for the East of Harvey Canal feature and 65 percent for the Westwego to Harvey Canal and Lake Cataouatche features borne by the Government.

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the West Bank - Vicinity of New Orleans, Louisiana, Hurricane Protection Project. Notwithstanding any other provision of this Amendment, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Amendment, this maximum amount is estimated to be \$303,278,000, as calculated in accordance with ER 1105-2-100 using October 1, 1997 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

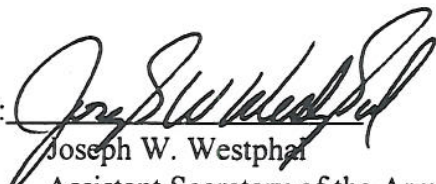
Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall become effective upon the last day of the calendar month in which it is signed by the Assistant Secretary of the Army (Civil Works).


THE DEPARTMENT OF THE ARMY

THE LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

BY:


Joseph W. Westphal
Assistant Secretary of the Army
(Civil Works)

BY:

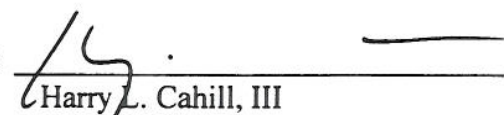

Kam K. Movassaghi
Secretary
Louisiana Department of
Transportation and Development

DATE: 26 APR 1999

DATE: 4-15-99

WEST JEFFERSON LEVEE DISTRICT

BY:


Harry L. Cahill, III
President
Board of Commissioners
West Jefferson Levee District

DATE: 4-15-99

CERTIFICATE OF AUTHORITY

I, Sharon F. Lyles, do hereby certify that I am the principal legal officer of the Louisiana Department of Transportation and Development, that the Louisiana Department of Transportation and Development is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Louisiana Department of Transportation and Development in connection with the West Bank - Vicinity of New Orleans, Louisiana, Hurricane Protection, 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 Louisiana Department of Transportation and Development have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
14th day of April 1999.

Sharon F. Lyles
Sharon F. Lyles
Deputy General Counsel

Louisiana Department of Transportation and Development

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.



Kam K. Movassaghi
Secretary

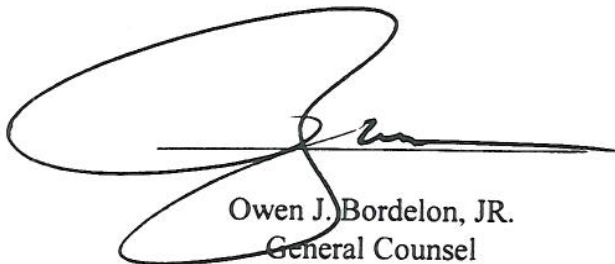
Louisiana Department of Transportation and Development

DATE: 4-15-99

CERTIFICATE OF AUTHORITY

I, Owen Bordelon do hereby certify that I am the principal legal officer of the West Jefferson Levee District, that the West Jefferson Levee District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the West Jefferson Levee District in connection with the West Bank - Vicinity of New Orleans, Louisiana, Hurricane Protection, 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 West Jefferson Levee District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
15th day of April 1999.



Owen J. Bordelon, JR.
General Counsel
West Jefferson Levee District

CERTIFICATION REGARDING LOBBYING

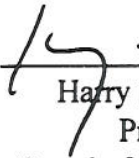
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Harry L. Cahill, III
President
Board of Commissioners
West Jefferson Levee District

DATE: 4-15-99