

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE COASTAL PROTECTION AND RESTORATION AUTHORITY OF
LOUISIANA
FOR
DESIGN AND CONSTRUCTION
OF THE
INNER HARBOR NAVIGATION CANAL HURRICANE PROTECTION WORK,
LOUISIANA

THIS AGREEMENT is entered into this first day of April, 2008, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Non-Federal Sponsor"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, construction of the Lake Pontchartrain and Vicinity, Louisiana Project for hurricane storm damage reduction at Southeast Louisiana (hereinafter the "Authorized Project") was authorized by Section 204 of the Flood Control Act of 1965, Public Law 89-298, as amended;

WHEREAS, under the Flood Control and Coastal Emergencies (FC&CE) heading, Chapter 3, Title II of Public Law 109-234 (hereinafter the "4th Supplemental") (120 Stat. 454-455), the Authorized Project was modified to provide \$350,000,000 for the Secretary of the Army to improve protection at the Inner Harbor Navigation Canal (hereinafter the "*IHNC Hurricane Protection Work*"), at full Federal expense;

WHEREAS, section 4302 of Public Law 110-28 (121 Stat. 154) further authorizes the Secretary of the Army to reallocate unobligated funds that were provided under the FC&CE heading in the 4th Supplemental for projects in the greater New Orleans area to prosecute those projects in a manner which promotes the goal of continuing work at an optimal pace, while maximizing, to the greatest extent practicable, levels of protection to reduce the risk of storm damage to people and property, subject to approval of such reallocation by the House and Senate Committees of Appropriation;

WHEREAS, pursuant to section 4302 of Public Law 110-28 (121 Stat. 154) (hereinafter the "5th Supplemental"), the reallocation of an additional \$800,000,000 toward the *IHNC Hurricane Protection Work* was approved on February 24, 2008, thus increasing the statutory limitation on the Government's financial participation for the *IHNC Hurricane Protection Work* to \$1,150,000,000 as of the effective date of this Agreement;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for design and construction of the *IHNC Hurricane Protection Work*, as defined in Article I.A. of this Agreement);

WHEREAS the Non-Federal Sponsor was established, authorized, and empowered by the State of Louisiana on May 25, 2006 to carry out all functions necessary to serve as the single state entity responsible to act as the non-Federal sponsor for construction, operation, and maintenance of all hurricane, storm damage reduction, and flood damage reduction projects in the greater New Orleans and southeast Louisiana area;

WHEREAS the Non-Federal Sponsor plans to fulfill its obligations under this Agreement by entering into sub-agreements with other non-Federal governmental entities;

WHEREAS the Government and the Non-Federal Sponsor agree that implementation of the *IHNC Hurricane Protection Work* using one or more design-build construction contracts is an appropriate method for accomplishing some or all of such work;

WHEREAS, the 4th Supplemental provides that any project using funds appropriated to improve protection at the Inner Harbor Navigation Canal shall be initiated only after non-Federal interests have entered into binding agreements with the Secretary requiring the non-Federal interests to pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation costs of the project and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors;

WHEREAS, in the event the requirement for the Non-Federal Sponsor to operate, maintain, repair, rehabilitate, and replace any portion of the *IHNC Hurricane Protection Work* is modified by law after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall amend this Agreement as necessary to reflect such modification;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement; and

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

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

ARTICLE I - DEFINITIONS

A. The term “*IHNC Hurricane Protection Work*” shall mean design and construction of such measures as determined by the Government to be appropriate to improve protection at the Inner Harbor Navigation Canal from storm surges with a one percent annual exceedance probability (100-year event) as generally described in the Project Description Document for the Inner Harbor Navigation Canal Hurricane Protection Work, dated March 2008 and approved by the Commander, Mississippi Valley Division on April 1, 2008.

B. The term “*total costs of the IHNC Hurricane Protection Work*” shall mean the sum of all costs incurred by the Government in accordance with the terms of this Agreement directly related to design and construction of the *IHNC Hurricane Protection Work* and the *pre-Agreement planning and design costs* incurred by the Government. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *IHNC Hurricane Protection Work*; any costs to correct deferred or deficient maintenance; or any costs incurred by the Non-Federal Sponsor.

C. The term “*period of design and construction*” shall mean the time from the date the Government issued the Request for Qualifications for the initial design-build construction contract for the *IHNC Hurricane Protection Work* to the date that construction of the *IHNC Hurricane Protection Work* is complete, as determined by the U.S. Army Engineer, New Orleans District (hereinafter the “District Engineer”) after consultation with the Non-Federal Sponsor, or the date that construction under this Agreement is terminated in accordance with Article XI or Article XII.C. of this Agreement, whichever is earlier.

D. The term “*functional portion of the IHNC Hurricane Protection Work*” shall mean a portion of the *IHNC Hurricane Protection Work* for which construction has been completed, can function independently and meets the 100-year event design criteria for such portion, as determined in writing by the District Engineer after consultation with the Non-Federal Sponsor, although the remainder of the *IHNC Hurricane Protection Work* is not complete.

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

F. The term “*Authorized Federal Participation Limit*” shall mean the statutory limitation on the Government’s financial participation in the design and construction of the *IHNC Hurricane Protection Work*, as specified in the 4th Supplemental and modified in accordance with the 5th Supplemental. As of the effective date of this Agreement, such limitation is \$1,150,000,000.

G. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term “*pre-Agreement planning and design costs*” shall mean all costs that were incurred by the Government prior to the effective date of this Agreement for planning and design of the *IHNC Hurricane Protection Work*.

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

A. The Government, using the funds appropriated by the Congress of the United States (hereinafter the “Congress”), shall design and construct the *IHNC Hurricane Protection Work* (including the performance of necessary *relocations*) at 100 percent Federal expense, applying those procedures usually applied to Federal projects, in accordance with this Agreement and applicable Federal laws, regulations, and policies.

1. The Government shall develop and coordinate as required, Individual Environmental Reports (IERs) and Comprehensive Environmental Document (CED), as necessary, to inform the public regarding the environmental impacts of the *IHNC Hurricane Protection Work* in accordance with the alternative arrangements approved by the Council on Environmental Quality on February 23, 2007 pursuant to 40 C.F.R. § 1506.1 for implementing the procedural provisions of the National Environmental Policy Act of 1969 (hereinafter “NEPA”) (42 U.S.C. 4321–4370e). The Government shall not issue a notice to proceed with construction for a construction item under a design-build contract, or initiate construction using the Government’s own forces, until environmental compliance has been achieved under such approved alternative arrangements.

2. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment fully on all design products, including relevant plans and specifications, as provided by the Government’s design-build contractor or the Government’s own forces, prior to the Government’s issuance of a notice to proceed to the design-build contractor for construction of any portion of the *IHNC Hurricane Protection Work* or the Government proceeding with construction on any portion of the *IHNC Hurricane Protection Work*. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment fully on all proposed modifications to the design-build contract, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment fully on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor and provide timely responses thereto using the Government’s existing or comparable record keeping system for comment documentation and management but the execution of contract modifications, resolution of contract claims, and performance of all work on the *IHNC Hurricane Protection Work* shall be exclusively within the control of the Government. If the Government disagrees with a comment and the parties are unable to arrive at comment resolution, at the request of the Non-Federal

Sponsor, the Government shall submit the matter to a mutually-acceptable, qualified, independent third party for non-binding review and written comment. Each party shall pay an equal share of any costs for the services provided by such a third party. In the event of a disagreement and third party non-binding review, such review shall not delay the implementation of the Government's decisions and shall not excuse the parties from performance pursuant to this Agreement.

3. At least 60 calendar days prior to the scheduled date for issuance of a notice to proceed on construction of any portion of the *IHNC Hurricane Protection Work* under any design-build contract or initiation of construction of the *IHNC Hurricane Protection Work* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date.

4. The Government shall require in any design-build contract concerning the *IHNC Hurricane Protection Work* that the design-build contractor shall comply fully with all Government approved Design Criteria for the *IHNC Hurricane Protection Work* in designing any element thereof and comply with all approved designs in constructing any element thereof. The Government shall not release any design-build contractor for the *IHNC Hurricane Protection Work* or issue any notification in accordance with Paragraph D of this Article, until the construction complies fully with all Government approved designs, as determined by the Government. For any component of the *IHNC Hurricane Protection Work* covered by a warranty, in the event of failure or deficiency of such component, the Non-Federal Sponsor may request the Government to demand the design-build contractor to correct the failure or deficiency. Upon receiving such a request and if the Government agrees that there is a failure or deficiency under the warranty clause, the Government shall make such demand and exercise all authority possessed by the Government to ensure that the design-build contractor corrects any such failure or deficiency. The Government shall consider in good faith the comments and requests of the Non-Federal Sponsor regarding any failure or deficiency under the warranty clause, but the determination of whether a failure or deficiency exists shall be exclusively the Government's. If the Government and Non-Federal Sponsor disagree that a failure or deficiency exists under the warranty clause and the parties are unable to arrive at resolution, at the request of the Non-Federal Sponsor, the Government shall submit the matter to a mutually-acceptable, qualified, independent third party for non-binding review and written comment within 14 days. Each party shall pay an equal share of any costs for the services provided by such a third party. Such review shall not excuse the parties from performance pursuant to this Agreement. In the event of such non-binding review and written comment, if making a final determination that there is no failure or deficiency under the warranty clause, the Government shall provide the Non-Federal Sponsor a detailed, comprehensive written explanation indicating precisely the reasons, nature and extent of the Government's disagreement with the third-party recommendations.

5. Prior to the determination by the District Engineer that the *IHNC Hurricane Protection Work* or functional portion thereof is complete, the Government

and Non-Federal Sponsor shall conduct a joint walk-through inspection and each may note any additional work items as a punch-list; and in the event the parties do not agree on resolution of the punch-list items, a mutually acceptable qualified third party shall be used in resolving the dispute within 14 days. Each party shall pay an equal share of any costs for the services provided by such a third party.

6. At the time the District Engineer furnishes the design-build contractor with the Government's Written Notice of Acceptance of Completed Work for each *functional portion of the IHNC Hurricane Protection Work* that is completed, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. In accordance with the provisions of Article III of this Agreement, the Non-Federal Sponsor shall provide the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work* that are owned, claimed, or controlled by the Non-Federal Sponsor and such lands, easements, and rights-of-way that are owned by any other non-Federal governmental entity. All other lands, easements, and rights-of-way required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work* shall be provided by the Government or the Non-Federal Sponsor in accordance with the provisions of Article III of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *IHNC Hurricane Protection Work* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$1,150,000,000 in Federal funds are available for the *IHNC Hurricane Protection Work*.

2. If the Government projects that the amount of Federal funds available for the *IHNC Hurricane Protection Work* within the *Authorized Federal Participation Limit* will not be sufficient to meet the *total costs of the IHNC Hurricane Protection Work*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the amount of Federal funds available for the *IHNC Hurricane Protection Work* will be exhausted. Upon the exhaustion of Federal funds for the *IHNC Hurricane Protection Work*, the parties shall conclude their activities related to construction of the *IHNC Hurricane Protection Work*.

D. When the District Engineer determines that the entire *IHNC Hurricane Protection Work*, or a *functional portion of the IHNC Hurricane Protection Work*, is complete, after following the procedures of Article II.A.5. of this Agreement, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *IHNC Hurricane Protection Work* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *IHNC Hurricane Protection Work* or such completed portion if such drawings are available.

Not later than 6 months after such notification by the Government that the entire *IHNC Hurricane Protection Work* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *IHNC Hurricane Protection Work*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *IHNC Hurricane Protection Work* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of construction for the *IHNC Hurricane Protection Work*, copies of all of the Government's Written Notices of Acceptance of Completed Work for construction items that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, after following the procedures of Article II.A.5. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *IHNC Hurricane Protection Work*, or the *functional portion of the IHNC Hurricane Protection Work* as the case may be, in accordance with Article VII of this Agreement. Nothing in this Agreement is intended to require the Non-Federal Sponsor to perform future measures to restore the *IHNC Hurricane Protection Work* to the authorized level of protection to account for subsidence or sea level rise as a part of its OMRR&R responsibilities.

F. The Government shall maintain current records until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings and provide to the Non-Federal Sponsor on May 1, 2008 and by each quarterly anniversary thereof, a report setting forth the current projections of the following: *total costs of the IHNC Hurricane Protection Work*; the Government's total financial obligations incurred to date for the *IHNC Hurricane Protection Work*; and the *Authorized Federal Participation Limit*.

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

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

I. The Non-Federal Sponsor shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the Authorized Project. The plan shall be designed to reduce the impacts of future flood and coastal events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood and coastal storm damage protection provided by the Authorized Project. The Non-Federal Sponsor shall provide an information copy of the plan to the Government upon its preparation.

J. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the Authorized Project.

K. The Non-Federal Sponsor, by prescribing and enforcing regulations or other means, shall prevent obstructions, encroachments, new developments, or the addition of facilities on the completed *IHNC Hurricane Protection Work*, or on the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation and maintenance of such work, that could reduce the level of protection for the completed *IHNC Hurricane Protection Work* or hinder operation and maintenance of the *IHNC Hurricane Protection Work*, or interfere with the *IHNC Hurricane Protection Work's* proper function.

L. The Non-Federal Sponsor shall not be entitled to reimbursement for any costs that it incurs in performing its responsibilities under this Agreement.

M. The Government shall perform independent peer review of the *IHNC Hurricane Protection Work* in accordance with existing Federal law, regulations and policies.

N. Upon request, each party shall provide the other with any information or documents concerning the *IHNC Hurricane Protection Work* as soon as possible, consistent with applicable state or federal law, regulations, and guidance.

ARTICLE III - LANDS, EASEMENTS, AND RIGHTS-OF-WAY

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government as soon as practicable shall provide the Non-Federal Sponsor with written descriptions, including appropriate maps, whenever possible, of the boundaries of such required lands, easements, and rights-of-way.

B. If at all possible, not later than 30 days prior to the Government's scheduled date for the issuance of each notice to proceed with construction under a design-build contract for the *IHNC Hurricane Protection Work*, or not later than 30 days prior to the Government's scheduled date for initiation of construction using the Government's own forces, the Non-Federal Sponsor shall provide the Government an authorization for entry on all lands, easements, and rights-of-way owned, claimed, or controlled by the Non-Federal Sponsor that the Government reasonably determines to be required for construction of that construction item. However, regardless of the foregoing, the Non-Federal Sponsor shall have 30 days to provide such authorization to the Government,

after the Government provides the written description pursuant to Article III.A. of this Agreement of the lands, easements, and rights-of-way for which such authorization is required.

C. Upon written request by the Government for authorization for entry on lands, easements, and rights-of-way owned by any other non-Federal governmental entity that the Government determines to be required for construction, operation, and maintenance of that construction item the Non-Federal Sponsor shall immediately request right of entry for construction of such item from the non-Federal governmental entity owning the lands, easements, or rights-of-way. The Non-Federal Sponsor shall timely advise the Government if such request is unsuccessful, and then the Government, applying Federal laws, policies, and procedures, shall obtain right of entry to all lands, easements, and rights-of-way under this paragraph that have not been provided by the Non-Federal Sponsor.

D. For all lands, easements, and rights-of way determined by the Government, after consultation with the Non-Federal Sponsor, to be required for the construction, operation, and maintenance of the *IHNC Hurricane Protection Work* that are not owned, claimed, or controlled by the Non-Federal Sponsor or other non-Federal governmental entities, such lands, easements and rights-of-way shall be acquired and provided in accordance with the following provisions.

1. Except as provided below in paragraph D.2. of this Article, for so long as commandeering is legally available under state law in the good faith determination of the Non-Federal Sponsor, the Non-Federal Sponsor is expected to obtain and provide a right of entry to the Government to private lands by securing executive commandeering order(s) in accordance with La. R.S. 29:721, *et seq.* to accommodate the Government's construction schedules for the *IHNC Hurricane Protection Work*. In instances where commandeering is available, not later than 60 days prior to the Government's scheduled date for the issuance of each notice to proceed with construction under a design-build contract for the *IHNC Hurricane Protection Work*, or not later than 30 days prior to the Government's scheduled date for initiation of construction using the Government's own forces, the Non-Federal Sponsor shall provide the Government with rights of entry on private lands obtained by securing executive commandeering order(s).

2. The Non-Federal Sponsor may elect not to secure executive commandeering orders, even if commandeering is legally available, if the Non-Federal Sponsor can acquire the required real estate interests consistent with the Government's construction schedules. Upon making such election, the Non-Federal Sponsor shall provide written notice thereof to the Government together with a written description of the required real estate interests that the Non-Federal Sponsor shall acquire under this paragraph.

a. Not later than 60 days prior to the Government's scheduled date for the issuance of each notice to proceed with construction under a design-build contract for the *IHNC Hurricane Protection Work*, or not later than 30 days prior to the

Government's scheduled date for initiation of construction using the Government's own forces, the Non-Federal Sponsor shall acquire such required real estate interests that the Government determines to be required for construction, operation, and maintenance of that construction item and the Non-Federal Sponsor shall provide to the Government an authorization for entry for construction of such item.

b. If the Non-Federal Sponsor cannot acquire such required real estate interests consistent with the Government's current schedules, the Non-Federal Sponsor shall notify the Government expeditiously in writing.

3. As soon as practicable after the Non-Federal Sponsor obtains and provides a right of entry to the Government to private lands by securing an executive commandeering order pursuant to paragraph D.1. of this Article, the Government applying Federal laws, policies, and procedures, shall acquire the temporary or permanent real property interests required for the construction, operation, and maintenance of the *IHNC Hurricane Protection Work* that includes the temporary use of the property commandeered. However, with the prior written agreement of the Government, the Non-Federal Sponsor may acquire such real property interests, or a portion thereof, in accordance with the following provisions of this paragraph.

a. Not later than 30 days after providing a right of entry to the Government by securing an executive commandeering order, the Non-Federal Sponsor shall provide a written notice to the Government that the Non-Federal Sponsor proposes to acquire such real property interests that are identified in such written notice.

b. Upon written agreement of the Government to such proposal, or a portion thereof, the Non-Federal Sponsor shall acquire such real property interests as soon as practicable.

4. When commandeering is no longer legally available under state law, the Government, applying Federal laws, policies, and procedures, shall acquire all lands, easements, and rights-of-way under paragraph D. of this Article that have not been acquired by the Non-Federal Sponsor except that, with the prior written agreement of the Government, the Non-Federal Sponsor may acquire such lands, easements, and rights-of-way, or a portion thereof, in accordance with the following provisions of this paragraph.

a. Not later than 15 days after commandeering is no longer legally available or not later than 30 days after the Government provides to the Non-Federal Sponsor the written descriptions of the required lands, easements, and rights-of-way in accordance with paragraph A. of this Article, whichever is later, the Non-Federal Sponsor shall provide a written notice to the Government that the Non-Federal Sponsor proposes to acquire the lands, easements, and rights-of-way identified in such written notice. Upon written agreement of the Government to such proposal, or a portion thereof, the Non-Federal Sponsor shall acquire such lands, easements, and rights-of-way as described in paragraph D.4.b. of this Article.

b. Not later than 60 days prior to the Government's scheduled date for the issuance of each notice to proceed with construction under a design-build contract for the *IHNC Hurricane Protection Work*, or not later than 30 days prior to the Government's scheduled date for initiation of construction using the Government's own forces, the Non-Federal Sponsor shall acquire such lands, easements, and rights-of-way that the Government determines to be required for construction, operation, and maintenance of that construction item and the Non-Federal Sponsor shall provide an authorization for entry for construction of such item.

c. If the Non-Federal Sponsor cannot acquire such lands, easements, and rights-of-way consistent with the Government's current schedules, the Non-Federal Sponsor shall notify the Government expeditiously in writing.

E. For all lands, easements and rights-of-way required for the construction, operation, and maintenance of the *IHNC Hurricane Protection Work* that are acquired by the Government, the Government, after consultation with the Non-Federal Sponsor, shall acquire such lands, easements, and rights-of-way in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds.

F. Acquisition of lands, easements, and rights-of-way required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, shall be in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, and the party acquiring the real estate interest, shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

G. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way acquired by the Government for the *IHNC Hurricane Protection Work* as well as those lands, easements and rights-of-way that the Non-Federal Sponsor provided through an authorization for entry or right of entry, are retained in public ownership for uses compatible with the authorized purposes of the *IHNC Hurricane Protection Work*.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, AND RIGHTS-OF-WAY

A. The Government shall afford credit for the value of lands, easements, and rights-of-way that the Non-Federal Sponsor provides for the *IHNC Hurricane Protection Work* pursuant to Article III.B., Article III.C., Article III.D.2., Article III.D.3., and Article III.D.4. of this Agreement toward the non-Federal share of costs for the cost-shared 4th Supplemental work for the Authorized Project. The amount of credit to be afforded shall be determined in accordance with the provisions of the agreement for such 4th Supplemental

cost-shared work. However, no credit shall be afforded for the value of any lands, easements, or rights-of-way that have been provided prior to the effective date of this Agreement as an item of cooperation for another Federal project including the Authorized Project.

B. The Government also shall afford credit in the manner described in paragraph A. of this Article for the following costs incurred by the Non-Federal Sponsor pursuant to Article III of this Agreement subject to a determination by the Government that such costs are reasonable, allocable, and allowable:

1. the documented incidental costs of acquiring lands, easements, or rights-of-way pursuant to Article III.C., Article III.D.2., Article III.D.3., and Article III.D.4. of this Agreement;
2. the administrative costs of securing executive commandeering orders pursuant to Article III.D. of this Agreement; and
3. to the extent paid by the Non-Federal Sponsor, the amount of any state court award entered against the commandeering authority, or the amount of any stipulated settlement, or portion thereof, that the Government approves in writing, for provision of just compensation to landowners resulting from securing an executive commandeering order pursuant to Article III.D.1. of this Agreement.

C. The Government shall not afford any credit nor provide any reimbursement for any costs incurred by the Non-Federal Sponsor to defend against claims or litigation relating to commandeering of private property for the *IHNC Hurricane Protection Work*.

ARTICLE V - COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall each appoint three senior representatives to a Coordination Team. Thereafter, the Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Coordination Team.

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

C. Until the end of the *period of design and construction*, the Coordination Team shall generally oversee the *IHNC Hurricane Protection Work*, including matters related to: completion of all necessary environmental coordination and documentation; all design and construction activities related to each design-build contract; scheduling; real property and relocation requirements; real property acquisition; costs of design-build contracts; the

investigations to identify the existence and extent of hazardous substances in accordance with Article XII.A. of this Agreement; the Government's cost projections; final inspection of the entire *IHNC Hurricane Protection Work* or *functional portions of the IHNC Hurricane Protection Work*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *IHNC Hurricane Protection Work* including issuance of permits; and other matters related to the *IHNC Hurricane Protection Work*. This oversight of the *IHNC Hurricane Protection Work* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

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

E. All comments submitted to the Coordination Team by the Non-Federal Sponsor's representatives, the resolution of such comments by the Coordination Team, or when applicable, the Coordination Team's recommendation on such comments and the District Engineer's decision related thereto shall be entered into the Government's existing or comparable record keeping system for comment documentation and management. For any comment submitted by the Non-Federal Sponsor that was not resolved by the Coordination Team, the Government shall consult with the Non-Federal Sponsor prior to the District Engineer's decision regarding the Coordination Team's recommendation.

F. The Government's costs of participation in the Coordination Team shall be included in *total costs of the IHNC Hurricane Protection Work* and the Non-Federal Sponsor shall pay for its own costs of Coordination Team participation.

ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement, after following the procedures of Article II.A.5. of this Agreement, and for so long as the *IHNC Hurricane Protection Work* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *IHNC Hurricane Protection Work* or *functional portion of the IHNC Hurricane Protection Work*, at no cost to the Government. Nothing in this Article is intended to affect the eligibility of Public Law 84-99 (33 U.S.C. 701n). The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *IHNC Hurricane Protection Work's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article IX of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

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

C. In the event the requirement for the Non-Federal Sponsor to operate, maintain, repair, rehabilitate, and replace any portion of the *IHNC Hurricane Protection Work* is modified by law after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall amend this Agreement as necessary to reflect such modification.

ARTICLE VIII – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *IHNC Hurricane Protection Work*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, which may include, but are 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; Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”; all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) and, as it relates to the Non-Federal Sponsor, the Louisiana Public Bid Law (La. R.S. 38:2211 *et seq.*).

ARTICLE X - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate construction under this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *IHNC Hurricane Protection Work* 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 *IHNC Hurricane Protection Work*.

B. In the event the Government projects that the amount of Federal funds available for the *IHNC Hurricane Protection Work* through the then-current *fiscal year*, or the upcoming *fiscal year*, is not sufficient, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds available for the *IHNC Hurricane Protection Work* will be exhausted. Upon the exhaustion of the amount of Federal funds available for the *IHNC*

Hurricane Protection Work, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to continue construction of the *IHNC Hurricane Protection Work*, or the Government elects to terminate further construction under this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XII.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate construction under this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XII.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate construction under this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge responsibilities under Article XII.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate construction under this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharge its responsibilities under Article XII.C. of this Agreement; 3) the Government continues work on the *IHNC Hurricane Protection Work*; or 4) the Government terminates construction under this Agreement in accordance with the provisions of Article XII.C. of this Agreement.

D. In the event that construction under this Agreement is terminated pursuant to this Article, Article II.C., or Article XII.C. of this Agreement, the parties shall conclude their activities relating to further construction of the *IHNC Hurricane Protection Work*. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *IHNC Hurricane Protection Work* as a contingency to pay costs of termination, including any costs of resolution of real estate acquisition, resolution of contract claims and resolution of contract modifications.

E. Any termination of construction under this Agreement or suspension of future performance under this Agreement in accordance with this Article, Article II.C., or Article XII.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. The Government shall be responsible for all investigations and costs 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. 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 Agreement, to be required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work* and such costs shall be included in *total costs of the IHNC Hurricane Protection Work*.

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 Agreement, to be required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and shall not proceed with the acquisition of the real property interests until the parties agree that acquisition should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *IHNC Hurricane Protection Work*, or, if already in construction, whether to continue with construction of the *IHNC Hurricane Protection Work*, suspend future performance under this Agreement, or terminate construction under this Agreement 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 Agreement, to be required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *IHNC Hurricane Protection Work* 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 cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *IHNC Hurricane Protection Work*. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the IHNC Hurricane Protection Work*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate construction under this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate construction under this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *IHNC Hurricane Protection Work*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup 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 shall be considered the operator of the *IHNC Hurricane Protection Work* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *IHNC Hurricane Protection Work* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIII - NOTICES

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

If to the Non-Federal Sponsor:

Chairman
Coastal Restoration and Protection Authority of Louisiana
1051 North 3rd Street
Capitol Annex Building
Baton Rouge, Louisiana 70802

If to the Government:

District Engineer
U.S. Army Corps of Engineers
New Orleans District
P.O. Box 60267
New Orleans, LA 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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

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

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

ARTICLE XVI - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS

The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana, where creating such an obligation would be inconsistent with Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the last date indicated below.

DEPARTMENT OF THE ARMY

COASTAL PROTECTION AND
RESTORATION AUTHORITY OF
LOUISIANA

BY: John Paul Woodley, Jr.
JOHN P. WOODLEY, JR.
Assistant Secretary of the Army
(Civil Works)

BY: [Signature]
GARRET GRAVES
Chairman


DATE: 1 April 2008

DATE: 04/01/08

CERTIFICATE OF AUTHORITY

I, James D. Caldwell, do hereby certify that I am the principal legal officer of the Coastal Protection and Restoration Authority of Louisiana, that the Coastal Protection and Restoration Authority of Louisiana 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 Coastal Protection and Restoration Authority of Louisiana in connection with the Inner Harbor Navigation Canal Hurricane Protection Work, Louisiana, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, and that the persons who have executed this Agreement on behalf of the Coastal Protection and Restoration Authority of Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
1st day of April 2008.



RICK MCGIMSEY
Director of Civil Division

FOR

JAMES D. CALDWELL
Attorney General
State of Louisiana

CERTIFICATION REGARDING LOBBYING

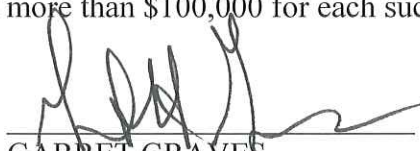
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



GARRET GRAVES

Chairman

Coastal Protection and Restoration Authority of Louisiana

DATE: 04/01/08

**COASTAL PROTECTION AND RESTORATION AUTHORITY
NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, GARRET GRAVES, do hereby certify that I am the CHAIRMAN of the COASTAL PROTECTION AND RESTORATION AUTHORITY of Louisiana, (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the *Inner Harbor Navigation Canal Hurricane Protection Work*, Louisiana; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the *Inner Harbor Navigation Canal Hurricane Protection Work*, Louisiana.

IN WITNESS WHEREOF, I have made and executed this certification this 01st day of April, 2008.

SIGNATURE: _____



BY: GARRET GRAVES, CHAIRMAN
COASTAL PROTECTION AND RESTORATION AUTHORITY

DATE: 04/01/08