

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE COASTAL PROTECTION AND RESTORATION AUTHORITY OF
LOUISIANA
FOR THE
STORM-PROOFING WORK FOR INTERIOR DRAINAGE PUMP STATIONS IN
JEFFERSON AND ORLEANS PARISHES, LOUISIANA

THIS AGREEMENT is entered into this 31ST day of August, 2009, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, New Orleans District and the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Non-Federal Sponsor"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, under the Flood Control and Coastal Emergencies (FC&CE) heading, Chapter 3 of Title II of Public Law 109-234 (120 Stat. 454 – 455) and under the FC&CE heading, Chapter 3, Title III of Public Law 110-252 (122 Stat. 2349-2350) (hereinafter collectively referred to as the "FC&CE Supplementals") provides to the Secretary of the Army \$340,000,000 for storm-proofing interior pump stations to ensure the operability of the stations during hurricanes, storms and high water events (hereinafter the "*Storm-Proofing Features*", as defined in Article I.A. of this Agreement) at full Federal expense;

WHEREAS, on December 14, 2007, the Government, the Louisiana Department of Transportation and Development (hereinafter the "DOTD"), and Jefferson Parish, Louisiana (hereinafter "JP") and the Consolidated Drainage District No. 2 of Jefferson Parish, Louisiana entered into an agreement for construction of an element of the *Storm-Proofing Features* in the Jefferson Parish (hereinafter the "JP Alternative 1 Work"), with DOTD, JP, and the Consolidated Drainage District No. 2 being the non-Federal Sponsors;

WHEREAS, the *Storm-Proofing Features* will be constructed within the territorial jurisdiction of JP and within the boundaries of Jefferson Parish and within the territorial jurisdiction of Sewerage and Water Board of New Orleans (hereinafter the "SWBNO") and within the boundaries of the City of New Orleans and Orleans Parish;

WHEREAS, the Non-Federal Sponsor plans to enter into a Cooperative Endeavor Agreement or other sub-agreements, in accordance with the Constitution and laws of the State of Louisiana, with JP and SWBNO for the performance of the Non-Federal Sponsor's obligations under this Agreement, and JP and SWBNO shall have representation in the Non-Federal Sponsor's portion of the Coordination Team;

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, Chapter 3 of Title II of Public Law 109-234 (120 Stat. 454 – 455) 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, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) for construction of the *Storm-Proofing Work*, as defined in Article I.B. of this Agreement;

WHEREAS, the purposes of this Agreement are to set forth the obligations of the Government and the Non-Federal Sponsor regarding the construction and the operation, maintenance, repair, rehabilitation, and replacement of the *Storm-Proofing Work*; to establish a cooperative relationship that promotes full and timely communication and sharing of information; to foster a harmonious relationship that promotes reaching mutually agreeable sound decisions expeditiously; to create and maintain a working environment where trust and teamwork facilitates the resolution of issues and minimizes disputes; and to achieve the shared goals of the parties to complete expeditiously the work necessary to ensure the operability of the interior pump stations during hurricanes, storms and high water events;

WHEREAS, pursuant to La. R.S. 49:214.1 and in accordance with the requirements of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, the Non-Federal Sponsor was established, authorized, and empowered by the State of Louisiana on May 25, 2006 to carry out any and all functions necessary to serve as the single state entity responsible to act as the local sponsor for construction, operation, and maintenance of all of the hurricane, storm damage reduction, and flood control projects in areas under its jurisdiction, including the greater New Orleans and southeast Louisiana area, and pursuant to La. R.S. 49:214.5.2(A)(1), represents the State of Louisiana’s position in policy relative to the protection, conservation, enhancement, and restoration of the coastal area of the state through oversight of integrated coastal protection projects and programs;

WHEREAS, the FC&CE Supplementals provide that any project using funds appropriated for storm-proofing interior pump stations 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, the Non-Federal Sponsor has determined that the Government’s established peer review process has met the requirements of La. R.S. 38:214.6.3(B)(4) and La. R.S. 49:214.5.2(D) enacted by the Legislature of Louisiana;

WHEREAS, CPRA desires to reserve its rights to seek the enactment of Federal law or to seek a change of the Government's interpretation of law regarding which entity or entities shall be the Non-Federal Sponsor(s), cost sharing requirements, and other obligations or responsibilities related to this work, and the Government and CPRA acknowledge that the Government and CPRA shall amend this Agreement as necessary in the event Federal law is modified or the Government changes its interpretation of law after the effective date of this Agreement to reflect such modification; and the execution of this Agreement will not be construed as a precedent precluding an amendment to this Agreement or any corresponding clarification, amendment or change, or interpretation of any other present or future agreement by the parties concerning these same issues; and

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

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

ARTICLE I - DEFINITIONS

A. The term "*Storm-Proofing Features*" shall mean all work authorized to be implemented under the FC&CE Supplementals for storm-proofing interior pump stations to ensure the operability of the stations during hurricanes, storms and high water events.

B. The term "*Storm-Proofing Work*" shall mean all *Storm-Proofing Features* except for the JP Alternative 1 Work covered under the December 14, 2007 agreement. The *Storm-Proofing Work* will be further described in subsequent Project Description Documents (hereinafter "PDDs") prepared by the U.S. Army Engineer, New Orleans District (hereinafter the "District Engineer") in consultation with the Non-Federal Sponsor and approved by the U.S. Army Engineer, Mississippi Valley Division (hereinafter the "Division Engineer") prior to implementation of the work described in such PDDs. In the event of a conflict between an approved PDD and this Agreement, this Agreement shall control.

C. The term "*total costs of the Storm-Proofing 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 *Storm-Proofing 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 *Storm-Proofing Work*; any costs to correct deferred or deficient maintenance; or any costs incurred by the Non-Federal Sponsor.

D. The term "*period of construction*" shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Storm-*

Proofing Work or the effective date of this Agreement, whichever is earlier, to the date that construction of the *Storm-Proofing Work* is complete, as determined by 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 of this Agreement, whichever is earlier.

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

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

G. The term “*Authorized Federal Participation Limit*” shall mean the statutory limitation on the Government’s financial participation in the design and construction of the *Storm-Proofing Features*, as specified in the FC&CE Supplementals unless modified in accordance with section 4302 of Public Law 110-28 (121 Stat. 154). As of the effective date of this Agreement, such limitation is \$340,000,000.

H. 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.

I. 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 *Storm-Proofing 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 *Storm-Proofing Work* (including the performance of necessary *relocations*) at 100 percent Federal expense.

1. The Government shall afford the Non-Federal Sponsor reasonable 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. To the extent possible, the Government shall afford the Non-Federal Sponsor reasonable opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the

Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor reasonable 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 and provide timely responses thereto using the Government's existing or comparable record keeping system for comment documentation and management but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Storm-Proofing Work* shall be exclusively within the control of the Government.

2. The Government shall require in any contract concerning the *Storm-Proofing Work* that the contractor shall comply with all approved designs in constructing any element thereof. The Government shall not release any contractor for the *Storm-Proofing Work* or issue any notification in accordance with paragraph E. of this Article, until the construction complies fully with all Government approved designs, as determined by the Government. For any component of the *Storm-Proofing 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 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 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.

3. Prior to the determination by the District Engineer that the *Storm-Proofing 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 items as a punch-list.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Storm-Proofing Work*, 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, at no cost to the Government, the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Storm-Proofing Work*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, 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 *Storm-Proofing Work* shall be provided by the Government in accordance with the provisions of Article III of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Storm-Proofing Work* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$340,000,000 of Federal funds are available for the *Storm-Proofing Features* of which \$289,838,200 is currently projected to be available for the *Storm-Proofing Work*.

2. If the Government projects that the Federal funds available for the *Storm-Proofing Work* within the *Authorized Federal Participation Limit* will not be sufficient to meet the *total costs of the Storm-Proofing 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 Federal funds available for the *Storm-Proofing Work* will be exhausted. Upon the exhaustion of Federal funds for the *Storm-Proofing Work*, the parties shall conclude their activities related to design and construction of the *Storm-Proofing Work*. The Non-Federal Sponsor shall not be obligated under this Agreement to construct any unconstructed portions of the *Storm-Proofing Work* for which funding is not available.

D. After following the procedures of Article II.A.3. of this Agreement, the District Engineer shall determine when the entire *Storm-Proofing Work*, or a *functional portion of the Storm-Proofing Work*, is complete and meets the design criteria, and 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 *Storm-Proofing Work* or such functional 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 *Storm-Proofing Work* or such functional portion if such drawings are available. Not later than 60 calendar days after such notification by the Government that the entire *Storm-Proofing 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 *Storm-Proofing Work*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Storm-Proofing Work* cannot be completed within the 60 calendar days, 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 *Storm-Proofing 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.3. of this Agreement, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire

Storm-Proofing Work, or the *functional portion of the Storm-Proofing Work* as the case may be, in accordance with Article VII of this Agreement.

F. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of *total costs of the Storm-Proofing Work*, the Government's total financial obligations for the *Storm-Proofing Work*, the Government's total financial obligations for design and construction of all *Storm-Proofing Features*, and the *Authorized Federal Participation Limit*.

1. As of the effective date of this Agreement, *total costs of the Storm-Proofing Work* are currently estimated to be \$289,838,200.

2. On October 15, 2009 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth the current projections of the following: *total costs of the Storm-Proofing Work*; the Government's total financial obligations incurred to date for the *Storm-Proofing Work*; the Government's total financial obligations incurred to date for design and construction of all *Storm-Proofing Features*, and the *Authorized Federal Participation Limit*.

G. The Non-Federal Sponsor shall not be entitled to credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

H. Upon request, each party shall provide the other with any information or documents concerning the *Storm-Proofing Work* as soon as possible, consistent with applicable State or Federal laws, regulations, and guidance.

I. The Non-Federal Sponsor shall not use *Federal Program funds* to meet any of its obligations under this Agreement unless the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the *Storm-Proofing Work*.

J. The Government shall conduct the independent peer review of the *Storm-Proofing Work*, as appropriate, in accordance with existing Federal laws, regulations and policies.

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 *Storm-Proofing Work*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, and shall determine the schedule for acquisition and provision thereof. As soon as practicable, the Government shall provide the Non-Federal Sponsor with written descriptions, including appropriate maps, of such required lands, easements, and rights-of-way, in detail sufficient

to enable the Non-Federal Sponsor to fulfill its obligations under this Article. The maps provided by the Government shall depict the boundaries of such required lands, easements, and rights-of-way if boundary information is reasonably available to the Government. After the Government provides the Non-Federal Sponsor such written descriptions and maps, such lands, easements, and rights-of-way shall be obtained, acquired, and provided in accordance with the provisions of this Article.

1. The Non-Federal Sponsor shall provide, at no cost to the Government, the lands, easements, and rights-of-way determined by the Government to be required for the construction, operation, and maintenance of the *Storm-Proofing 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. Prior to the issuance of the solicitation for any Government contract for construction of a portion of the *Storm-Proofing Work*, or prior to the Government initiating construction of a portion of the *Storm-Proofing Work* using the Government's own forces, the Non-Federal Sponsor shall acquire all such lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsor shall acquire all such lands, easements, and rights-of-way that are required for construction, operation, and maintenance of the *Storm-Proofing Work*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto.

2. Except as described in paragraph A.1. of this Article, and applying Federal laws, policies and procedures, the Government shall acquire all lands, easements and rights-of-way required for the construction, operation, and maintenance of the *Storm-Proofing Work*. The Government shall acquire such lands, easements, and rights-of-way in the name of the Non-Federal Sponsor, or its public entity assignee, except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor, or its public entity assignee, by quitclaim deed or deeds. The Non-Federal Sponsor, or its public entity assignee, shall accept delivery of such deed or deeds.

3. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way acquired by the Non-Federal Sponsor or the Government for the *Storm-Proofing Work* as well as those lands, easements and rights-of-way that the Non-Federal Sponsor provided through an authorization for entry are retained in public ownership for uses compatible with the authorized purposes of the *Storm-Proofing Work* for the duration of the required interest as determined by the Government in accordance with Article III of this Agreement.

B. Acquisition of lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Storm-Proofing 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.

ARTICLE IV - COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Coordination Team. Thereafter, the 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 Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterparts 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 construction*, the Coordination Team shall generally oversee the *Storm-Proofing Work*, including matters related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; 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 *Storm-Proofing Work* or *functional portions of the Storm-Proofing Work*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Storm-Proofing Work* including issuance of permits; and other matters related to the *Storm-Proofing Work*. This oversight of the *Storm-Proofing 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 *Storm-Proofing 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 *Storm-Proofing 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 Storm-Proofing Work* and the Non-Federal Sponsor shall pay for its own costs of Coordination Team participation.

G. The Government and the Non-Federal Sponsor acknowledge that in certain instances it may be beneficial to designate certain Non-Federal Sponsor personnel to the Project Delivery Team, previously established by the Government, in order to obtain Non-Federal Sponsor input on select issues. To the extent that both parties agree that certain Non-Federal Sponsor personnel should participate on the Project Delivery Team, the Non-Federal Sponsor shall pay for its own costs of Project Delivery Team participation.

ARTICLE V – ISSUE RESOLUTION AND DISPUTE AVOIDANCE

A. The parties recognize that full communication and sharing of information to the extent practicable, consistent with applicable Federal or State law, regulations, and guidance, together with ongoing coordination and consultation, are key to expeditious and sound decision-making. The parties further recognize that decisions are made on a daily basis and issues should be resolved at the lowest organizational level to the extent possible. Similarly, the parties recognize that issue resolution under this Article may be a costly and time consuming process and should be utilized only for resolving significant issues.

B. In the event that the parties are unable to resolve an issue at a lower organizational level, at the request of the Chairman of the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "Chairman"), the Division Engineer shall submit the matter to a mutually acceptable, qualified, independent third party for non-binding review and written comment within 14 calendar days. Each party shall pay an equal share of the costs for the services provided by the independent third party. Upon receipt of comments from the independent third party, the Division Engineer and Chairman shall carefully consider those comments with a view to resolving the issue.

C. In the event that the Division Engineer and the Chairman are unable to resolve the issue within 7 calendar days following receipt of written comments from the independent third party, either the Division Engineer or the Chairman may elect to submit the issue for resolution to the Director of Civil Works of the U.S. Army Corps of Engineers (hereinafter the "Director"). The submission of an issue for resolution to the Director shall include a joint memorandum from the Division Engineer and Chairman explaining the issue and why the parties were unable to reach resolution. The Director shall carefully consider all information provided by the Division Engineer and Chairman as well as the comments from the independent third party. Within 14 calendar days of the receipt of the joint memorandum from the Division Engineer and Chairman, the Director shall render a written decision with a full explanation of the reasons for the decision.

D. Nothing in this Article alters or amends any applicable Federal or State law, regulation, or guidance, nor shall it negate the responsibility of each party to comply with any applicable Federal or State law, regulation, or guidance. Nothing in this Article excuses either party from performance pursuant to this Agreement.

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 parties 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 the 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, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Storm-Proofing Work* or *functional portion of the Storm-Proofing Work*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities 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. Nothing in this paragraph is intended to affect eligibility under Public Law 84-99 (33 U.S.C. 701n).

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 *Storm-Proofing Work* for the purpose of inspection, if the Government determines an inspection to be necessary. 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.

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 *Storm-Proofing 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 *Storm-Proofing 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 *Storm-Proofing Work*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Storm-Proofing Work* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Storm-Proofing Work* through 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 that will have been made available to the *Storm-Proofing Work* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Storm-Proofing 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 *Storm-Proofing 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 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 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 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 provide funds necessary to pay for cleanup and response costs and otherwise discharge its responsibilities under Article XII of this Agreement; 3) the Government continues work on the *Storm-Proofing Work*; or 4) the Government terminates construction under this Agreement in accordance with the provisions of Article XII of this Agreement.

D. In the event that construction under this Agreement is terminated pursuant to this Article, Article II.C., or Article XII of this Agreement, the parties shall conclude their activities relating to further construction of the *Storm-Proofing Work*. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Storm-Proofing 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 of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. Investigations. The Government shall be responsible for all general 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 *Storm-Proofing Work* and such costs shall be included in *total costs of the Storm-Proofing Work*.

B. Discovery of Hazardous Substances Prior to Land Acquisition. 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 *Storm-Proofing 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.

1. If, pursuant to agreement by the Non-Federal Sponsor and the Government under this paragraph, the Non-Federal Sponsor acquires lands, easements, or rights-of-way that are required for the construction, operation, and maintenance of the *Storm-Proofing Work*, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response determined to be necessary by the environmental regulator with jurisdiction, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination, on such lands, easements, or rights-of-way. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the Storm-Proofing Work*.

2. If the Government and the Non-Federal Sponsor do not agree that acquisition should proceed, the Government, in its sole discretion, may proceed with acquisition of such lands, easements, or rights-of-way that the Government must provide pursuant to Article III.A.2. of this Agreement, or may either terminate construction of the *Storm-Proofing Work* under this Agreement for the convenience of the Government, or suspend future performance under this Agreement.

C. Discovery of Hazardous Materials After Land Acquisition. In the event it is discovered after acquisition of lands, easements, or rights-of-way required for the construction, operation, and maintenance of the *Storm-Proofing Work* that hazardous substances regulated under CERCLA exist therein, thereon, or thereunder, 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 initiate construction of the *Storm-Proofing Work*, or, if already in construction, shall not continue with construction of the *Storm-Proofing Work*, until the parties agree that construction should be initiated or continued.

1. Lands Acquired or Provided by the Non-Federal Sponsor. If hazardous substances regulated under CERCLA are discovered to exist in, on, or under lands, easements, or rights-of-way required for the *Storm-Proofing Work* after they have been acquired by the Non-Federal Sponsor, the Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Storm-Proofing Work*, or, if already in construction, whether to continue with construction of the *Storm-Proofing Work*, suspend future performance under this Agreement, or terminate construction under this Agreement for the convenience of the Government. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Storm-Proofing 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 determined to be necessary by the environmental regulator with jurisdiction, 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 *Storm-Proofing Work* that were acquired or provided by the Non-Federal Sponsor. Such costs incurred by the Non-Federal Sponsor shall not be considered a part of *total costs of the Storm-Proofing 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 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 with construction of the *Storm-Proofing Work*.

2. Lands Provided by 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 are required for construction, operation, and maintenance of the *Storm-Proofing Work* and that were acquired by the Government in accordance with Article III.A.2. of this Agreement, the Government, in its sole discretion, may either terminate construction of the *Storm-Proofing Work* under this Agreement for the convenience of the Government, suspend future performance on the *Storm-Proofing Work* under this Agreement, or continue with construction of the *Storm-Proofing Work*.

D. Consultation Regarding Responsible Parties. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article IV 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 D. of this Article shall not relieve any third party from any liability that may arise under CERCLA. Except as between the Government and the Non-Federal Sponsor, nothing herein shall constitute, nor be deemed to constitute, a waiver by either party of any defense, immunity, entitlement to contribution, or exception to any environmental law, regulation, or liability.

E. Operator Status. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Storm-Proofing Work* for

purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the *Storm-Proofing Work* in a manner that will not cause liability to arise under CERCLA. Upon the District Engineer's notification in accordance with Article II.D. of this Agreement that the *Storm-Proofing Work*, or a *functional portion of the Storm-Proofing Work*, is complete and meets the design criteria, if hazardous substances regulated under CERCLA thereafter are found to exist in, on, or under any lands, easements, or rights of way required for OMRR&R of the *Storm-Proofing Work*, or such functional portion, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response determined to be necessary by the environmental regulator with jurisdiction, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination.

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

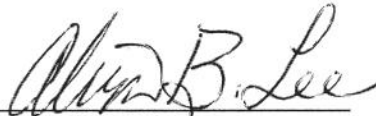
No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except 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 date of the last signature to this Agreement.

DEPARTMENT OF THE ARMY

BY: 
ALVIN B. LEE
Colonel, Corps of Engineers
District Engineer

COASTAL PROTECTION AND
RESTORATION AUTHORITY OF
LOUISIANA

BY: 
GARRET GRAVES
Chairman

DATE: 31 AUG 09

DATE: 28 August 2009

CERTIFICATE OF AUTHORITY

I, James D. "Buddy" Caldwell, do hereby certify that I am the principal legal officer of the Coastal Protection and Restoration Authority of Louisiana and that the Coastal Protection and Restoration Authority of Louisiana is a legally constituted public body with full authority under La. R.S. 49:214.5.2 to enter into the Agreement between the Department of the Army and the Coastal Protection and Restoration Authority of Louisiana in connection with the Storm-Proofing Work for Interior Drainage Pump Stations in Jefferson and Orleans Parishes. I hereby further certify that the Executive Assistant for Coastal Activities, who is statutorily designated as the Chairman of the Coastal Protection and Restoration Authority, has the authority under La. R.S. 49:214.3.1 to coordinate the powers, duties, and functions of state agencies relative to integrated coastal protection, and that the person who has executed this Agreement on behalf of the Coastal Protection and Restoration Authority of Louisiana has acted within their statutory and delegated authority.

IN WITNESS WHEREOF, I have made and executed this certification this 31st day of August 2009.

Richard McGimsey
RICHARD McGIMSEY
Director of Civil Division

FOR

JAMES D. "BUDDY" 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: 28 August 2009

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY**

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 Storm-Proofing Work for Interior Drainage Pump Stations in Jefferson and Orleans Parishes, Louisiana; and that the Non-Federal Sponsor will have the financial capability to satisfy the Non-Federal Sponsor's obligations under the Agreement for the Storm-Proofing Work for Interior Drainage Pump Stations in Jefferson and Orleans Parishes, Louisiana.

IN WITNESS WHEREOF, I have made and executed this certification this 28th
day of August, 2009.

SIGNATURE: _____

BY:


GARRET GRAVES, CHAIRMAN

COASTAL PROTECTION AND RESTORATION AUTHORITY

DATE: _____