

AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY,
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,
JEFFERSON PARISH, LOUISIANA,
AND
CONSOLIDATED DRAINAGE DISTRICT NO. 2 OF JEFFERSON PARISH,
LOUISIANA
FOR
CONSTRUCTION
OF THE
STORM-PROOFING WORK FOR INTERIOR DRAINAGE PUMP STATIONS IN
JEFFERSON PARISH, LOUISIANA

THIS AGREEMENT is entered into this 14th day of December, 2007, by and among the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Mississippi Valley Division (hereinafter the "Division Engineer"); the Louisiana Department of Transportation and Development (hereinafter the "DOTD"), represented by its Secretary; and Jefferson Parish, Louisiana and the Consolidated Drainage District No. 2 of Jefferson Parish, Louisiana (hereinafter the "Consolidated Drainage District No. 2") represented by the Chairman, Jefferson Parish Council (hereinafter collectively referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, under the Flood Control and Coastal Emergencies (FC&CE) heading, Chapter 3 of Title II of Public Law 109-234 (hereinafter the "4th Supplemental") (120 Stat. 454 - 455) provides to the Secretary of the Army \$250,000,000 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") 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, the Government and the Non-Federal Sponsors desire to enter into an agreement (hereinafter the "Agreement") for construction of an element of the Storm-Proofing Features (hereinafter the "*Storm-Proofing Work*", as defined in Article I.A. of this Agreement);

WHEREAS the Coastal Protection and Restoration Authority of Louisiana (hereinafter the "CPRA") 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 CPRA has delegated its authority to the DOTD to serve as the single state entity responsible to act as the non-Federal sponsor and system integrator 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, under the oversight and direction and on behalf of DOTD, Jefferson Parish, Louisiana, and the Consolidated Drainage District No. 2 shall carry out the operation, maintenance, repair, replacement, and rehabilitation required for the *Storm-Proofing Work* in accordance with the provisions of this Agreement;

WHEREAS, the 4th Supplemental provides 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 Government and Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a cooperative strategy and a working relationship between the Government and the Non-Federal Sponsors 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 Sponsors, and facilitate the successful implementation of the *Storm-Proofing Work*.

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

ARTICLE I - DEFINITIONS

A. The term "*Storm-Proofing Work*" shall mean the construction of the following items in Jefferson Parish, Louisiana to increase pump station operability, and to provide associated operator safe haven measures for maintaining pump station operations during and after hurricane and flood events, as generally described as Alternative 1 in the Project Description Document No. 1 Storm Proofing Interior Drainage Pump Stations in Orleans

and Jefferson Parish, Louisiana, dated September 2007 and approved by the Commander, Mississippi Valley Division on September 28, 2007:

1. five new safe rooms with pump automation for remote operation at Westwego #2, Estelle #2, Hero, Cataouatche and Planters pump stations;
2. pump automation for remote operation at Parish Line and Westminster Lincolnshire pump stations using Supervisory Control and Data Acquisition communication system;
3. pump automation through existing Programmable Logic Controllers (PLC) at Ames, Duncan, Elmwood, Suburban and Bonnabel pump stations; and
4. climber screens at Parish Line and Westminster Lincolnshire pump stations.

B. 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; and any costs incurred by the Non-Federal Sponsors.

C. 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 U.S. Army Engineer, New Orleans District (hereinafter the “District Engineer”) after consultation with the Non-Federal Sponsors, or the date that construction under this Agreement is terminated in accordance with Article X or Article XI.C. of this Agreement, whichever is earlier.

D. The term “*functional portion of the Storm-Proofing Work*” shall mean a portion of the *Storm-Proofing Work* for which construction has been completed and that can function independently, as determined in writing by the District Engineer after consultation with the Non-Federal Sponsors, although the remainder of the *Storm-Proofing 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 Storm-Proofing Features, as specified in the 4th Supplemental 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 \$250,000,000.

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 *Storm-Proofing Work*.

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

A. The Government using the funds appropriated by the Congress of the United States (hereinafter the “Congress”), shall construct the *Storm-Proofing Work* (including the performance of necessary *relocations*) at 100 percent Federal expense, utilizing the portion of the design provided by the Non-Federal Sponsors that the Government determines to be acceptable in accordance with paragraph A.1. of this Article, and applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Non-Federal Sponsors expeditiously shall prepare and provide to the Government a design, or the portion thereof, that the Non-Federal Sponsors have specified in writing that it intends to provide, for use in constructing the *Storm-Proofing Work*. The Government shall review such design, or portion thereof, to ensure compliance with applicable Federal laws, regulations, and policies including those related to bidability, constructability, operability and environmental acceptability. The Government, in its sole discretion, may accept, modify, or reject such design, or any portion thereof, for use in constructing the *Storm-Proofing Work*. Prior to commencement of review by the Government of such design, the Non-Federal Sponsors shall provide a written certification and warranty to the Government that the design provided by the Non-Federal Sponsors is free from any legal encumbrances and use restrictions, including but not limited to, any intellectual property rights and outstanding licensing requirements. Furthermore, the Non-Federal Sponsors shall not receive credit or reimbursement for preparing or providing a design, or any portion thereof, to the Government.

2. If the Non-Federal Sponsors fail to provide the specified design or portion thereof for the *Storm-Proofing Work*, or the Government determines that the design, or any portion thereof, provided by the Non-Federal Sponsors is inadequate for any reason, the Government, subject to the availability of funds and the *Authorized Federal Participation Limit*, may design the *Storm-Proofing Work* or complete the design of the *Storm-Proofing Work*.

3. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including

change orders. In any instance where providing the Non-Federal Sponsors 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 Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, 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.

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 Sponsors.

B. In accordance with the provisions of Article III of this Agreement, the Non-Federal Sponsors 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 Sponsors 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 or the Non-Federal Sponsors 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, \$250,000,000 of Federal funds are available for the Storm-Proofing Features of which \$41,404,600 is currently projected to be available for the *Storm-Proofing Work*. The Government makes no commitment to provide additional Federal funds for the Storm-Proofing Features or the *Storm-Proofing Work*. Further, the Government's financial participation in the *Storm-Proofing Work* is limited to the Federal funds that the Government makes available to the *Storm-Proofing Work*.

2. If the Government projects that the Federal funds the Government will make available to 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 Sponsors 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* within the

Authorized Federal Participation Limit, the parties shall conclude their activities related to design and construction of the *Storm-Proofing Work*.

D. When the District Engineer determines that the entire *Storm-Proofing Work*, or a *functional portion of the Storm-Proofing Work*, is complete, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors 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 completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsors a copy of all final as-built drawings for the entire *Storm-Proofing Work* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Storm-Proofing Work* is complete, the Government shall furnish the Non-Federal Sponsors 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 6 month period, the Government shall provide written notice to the Non-Federal Sponsors, and the Government and the Non-Federal Sponsors shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Storm-Proofing Work*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Storm-Proofing Work* that have not been provided previously shall be provided to the Non-Federal Sponsors.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsors 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 VI of this Agreement.

F. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsors 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 projected to be \$41,404,600.

2. On April 1, 2008 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 Sponsors 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 Sponsors shall not be entitled to credit or reimbursement for costs it incurs in performing their responsibilities under this Agreement.

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

A. The Government, after consultation with the Non-Federal Sponsors, 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. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such required lands, easements, and rights-of-way.

B. Not later than 60 days prior to the Government's scheduled date for the award of each Government contract for construction of the *Storm-Proofing 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 Sponsors shall provide the Government an authorization for entry on all lands, easements, and rights-of-way owned, claimed, or controlled by the Non-Federal Sponsors that the Government determines to be required for construction of that item.

C. Not later than 60 days prior to the Government's scheduled date for the award of each Government contract for construction of the *Storm-Proofing 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 Sponsors shall obtain the lands, easements, and rights-of-way owned by any other non-Federal governmental entity that the Government determines to be required for the construction, operation, and maintenance of that work and the Non-Federal Sponsors shall provide to the Government an authorization for entry for construction of such item.

D. For all lands, easements, and rights-of way determined by the Government, after consultation with the Non-Federal Sponsors, to be required for the construction, operation, and maintenance of the *Storm-Proofing Work* that are not owned, claimed, or controlled by the Non-Federal Sponsors 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, the Non-Federal Sponsors are 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 *Storm-Proofing Work*.

Not later than 60 days prior to the Government's scheduled date for the award of each Government contract for construction for the *Storm-Proofing 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 Sponsors shall provide the Government with rights of entry on private lands obtained by securing executive commandeering order(s).

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

a. Not later than 60 days prior to the Government's scheduled date for award of each Government contract for construction for the *Storm-Proofing 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 Sponsors shall acquire, at no cost to the Government, 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 Sponsors shall provide to the Government an authorization for entry for construction of such item.

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

3. As soon as practicable after the Non-Federal Sponsors obtain and provide 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 *Storm-Proofing Work* that is in addition to the temporary use of the property commandeered.

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 Sponsors.

E. For all lands, easements and rights-of-way required for the construction, operation, and maintenance of the *Storm-Proofing Work* that are acquired by the Government, the Government, after consultation with the Non-Federal Sponsors, shall acquire such lands, easements, and rights-of-way in the name of the Consolidated Drainage District No. 2 except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Consolidated Drainage District No. 2 by

quitclaim deed or deeds. The Consolidated Drainage District No. 2 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 *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.

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

ARTICLE IV - COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsors 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 Sponsors shall co-chair the Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsors' 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 XI.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 Sponsors.

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. 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 Sponsors shall pay for their own costs of Coordination Team participation.

ARTICLE V - 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 VI - 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 Sponsors, 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 Sponsors shall conduct their operation, maintenance, repair, rehabilitation, and replacement responsibilities in accordance with applicable Federal and State laws as provided in Article VIII of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. Each of the Non-Federal Sponsors hereby gives to the other Non-Federal Sponsors a right to enter, at reasonable times and in a reasonable manner, upon property that each Non-Federal Sponsor now or hereafter owns or controls for access to the *Storm-Proofing Work* for the purposes of inspection, operation, maintenance, repair, rehabilitation, and replacement of the *Storm-Proofing Work*.

C. The Non-Federal Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors now or hereafter own or control 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 Sponsors for any reason are failing to perform their obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsors.

ARTICLE VII – HOLD AND SAVE

The Non-Federal Sponsors 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 VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors 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 Sponsors, the Louisiana Public Bid Law (La. R.S. 38:2211 *et seq.*).

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors 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 X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their 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 Sponsors 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 Sponsors 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 Sponsors determine to suspend future performance under this Agreement in accordance with Article XI.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsors 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 XI.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsors on whether to proceed or to terminate construction under this Agreement, or the failure of the Non-Federal Sponsors to provide funds to pay for cleanup and response costs or to otherwise discharge responsibilities under Article XI.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsors reach agreement on how to proceed or to terminate construction under this Agreement; 2) the Non-Federal Sponsors provide funds necessary to pay for cleanup and response costs and otherwise discharge their responsibilities under Article XI.C. 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 XI.C. of this Agreement.

D. In the event that construction under this Agreement is terminated pursuant to this Article, Article II.C., or Article XI.C. 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 real estate acquisition, resolution of contract claims, and 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 XI.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

ARTICLE XI - 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 *Storm-Proofing Work* and such costs shall be included in *total costs of the Storm-Proofing 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 *Storm-Proofing Work*, the Non-Federal Sponsors 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 Sponsors 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, 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 *Storm-Proofing Work*. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction of the *Storm-Proofing Work* after considering any liability that may arise under CERCLA, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, 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 *Storm-Proofing Work*. Such costs incurred by the Non-Federal Sponsors shall not be considered a part of *total costs of the Storm-Proofing Work*. In the event the Non-Federal Sponsors do 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 Sponsors' 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 *Storm-Proofing Work*.

D. The Non-Federal Sponsors 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 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 Sponsors, the Non-Federal Sponsors shall be considered the operator of the *Storm-Proofing Work* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, rehabilitate, and replace the *Storm-Proofing Work* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XII - 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 DOTD:

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

If to Jefferson Parish and the Consolidated Drainage District No. 2:

Council Chairman
Jefferson Parish Council
10th Floor
Joseph S. Yenni Building
P.O. Box 10242
Jefferson, LA 70181-0242

And

Consolidated Drainage District No. 2
Suite 907
1221 Elmwood Park Blvd.
Jefferson, LA 70123

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 XIII - 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 XIV - 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 XV - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsors, 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 XVI - OBLIGATIONS OF FUTURE APPROPRIATIONS


The Non-Federal Sponsors intend to fulfill fully their 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.

ARTICLE XVII – JOINT AND SEVERAL RESPONSIBILITY OF THE
NON-FEDERAL SPONSORS

The obligations and responsibilities of the DOTD, Jefferson Parish, Louisiana, and the Consolidated Drainage District No. 2 shall be joint and several, such that each of the aforesaid entities shall be liable for the whole performance of the obligations and responsibilities of the Non-Federal Sponsors under the terms and provisions of this Agreement. The Government may demand the whole performance of said obligations and responsibilities from any of the entities designated herein as one of the Non-Federal Sponsors.

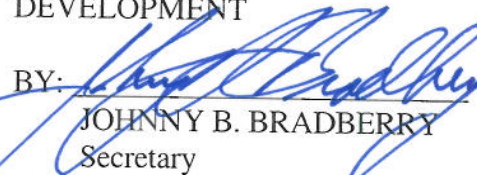
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Division Engineer.

DEPARTMENT OF THE ARMY

BY: 
ROBERT CREAR,
Brigadier General, U.S. Army
Division Engineer

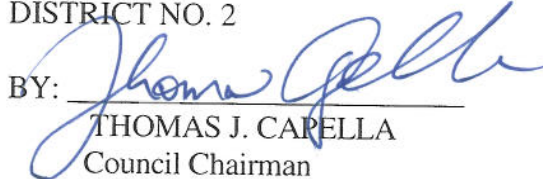
DATE: 14 Dec 07

LOUISIANA DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT

BY: 
JOHNNY B. BRADBERRY
Secretary

DATE: 12-12-07

JEFFERSON PARISH, LOUISIANA
AND THE CONSOLIDATED DRAINAGE
DISTRICT NO. 2

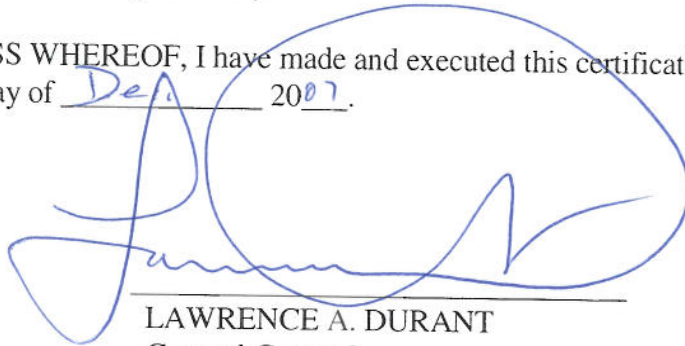
BY: 
THOMAS J. CAPELLA
Council Chairman

DATE: 12/13/2007

CERTIFICATE OF AUTHORITY

I, Lawrence A. Durant, do hereby certify that I am the principal legal officer of the Louisiana Department of Transportation and Development, that the Louisiana Department of Transportation and Development is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Louisiana Department of Transportation and Development in connection with the Storm Proofing Work For Interior Drainage Pump Stations In Jefferson Parish, 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 Louisiana Department of Transportation and Development have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
11th day of Dec 2007.



LAWRENCE A. DURANT
General Counsel

CERTIFICATE OF AUTHORITY

I, Thomas G. Wilkinson, do hereby certify that I am the principal legal officer of the Jefferson Parish, Louisiana and the Consolidated Drainage District No. 2 of Jefferson Parish, Louisiana and, that the Jefferson Parish, Louisiana and the Consolidated Drainage District No. 2 of Jefferson Parish, Louisiana are each legally constituted public bodies with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Jefferson Parish, Louisiana and the Consolidated Drainage District No. 2 of Jefferson Parish, Louisiana in connection with the Storm Proofing Work For Interior Drainage Pump Stations In Jefferson Parish, 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 Jefferson Parish, Louisiana and the Consolidated Drainage District No. 2 of Jefferson Parish, Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
13th day of June 2007.

THOMAS G. WILKINSON
Parish Attorney

CERTIFICATION REGARDING LOBBYING

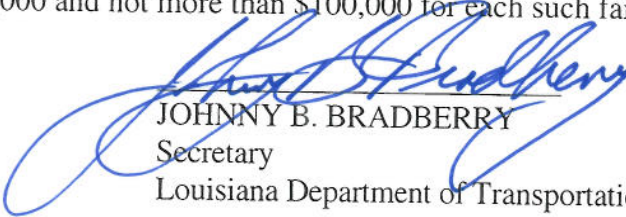
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.


JOHNNY B. BRADBERRY
Secretary
Louisiana Department of Transportation and Development

DATE: 12-12-07

CERTIFICATION REGARDING LOBBYING

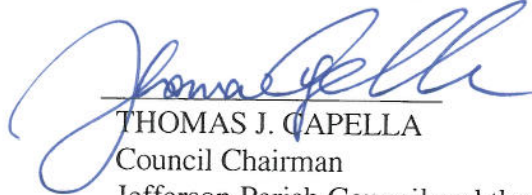
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

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THOMAS J. CAPELLA
Council Chairman
Jefferson Parish Council and the
Consolidated Drainage District No. 2
Jefferson Parish, Louisiana

DATE: 12-13-2007