

**SUPPLEMENTAL AGREEMENT NO. 1
COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND THE BOARD OF COMMISSIONERS OF THE
ORLEANS LEVEE DISTRICT,
THE SEWERAGE AND WATER BOARD OF NEW ORLEANS,
AND THE CITY OF NEW ORLEANS
FOR REHABILITATION OF A FEDERAL HURRICANE/SHORE
PROTECTION PROJECT**

THIS SUPPLEMENTAL AGREEMENT NO. 1, (hereinafter referred to as the “Supplemental No. 1”) is entered into by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the “Government”) represented by the District Engineer, New Orleans District, U. S. Army Corps of Engineers (or his designee), and the BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT (hereinafter referred to in the singular person as “OLD”), represented by the Acting-President of the Board of Commissioners of the Orleans Levee District and THE SEWERAGE AND WATER BOARD OF NEW ORLEANS (hereinafter referred to in the singular person as “S&WB”), represented by the President of the Sewerage and Water Board of New Orleans, the latter two public bodies hereinafter collectively referred to as the “Public Sponsors”, together with THE CITY OF NEW ORLEANS, (hereinafter sometimes referred to as the “Commandeering Authority”) represented by the Mayor of the City of New Orleans.

WITNESSETH THAT:

WHEREAS, the Government constructed a Hurricane/Shore Protection Project for the Lake Pontchartrain, Louisiana and Vicinity, Louisiana, Project, (hereinafter referred to as “HSPP”), including features along New Orleans East and Orleans East Bank, authorized by the Flood Control Act of 1965, Public Law 298 of the 89th Congress, approved October 27, 1965, as amended, and governed by the following Agreements of Local Assurance, all of which remain in full effect: “Act of Assurance” for the Lake Pontchartrain and Vicinity, Louisiana, Project, Barrier Plan, signed by the President of the Board of Commissioners of the Orleans Levee District on July 28, 1966 and approved on September 30, 1966; “Act of Assurance” wherein the Local Sponsor agreed to pay its pro rata portion of the cost of construction of the Lake Pontchartrain and Vicinity, Louisiana, Project, Barrier Plan within Orleans Parish, signed by the President of the Board of Commissioners of the Orleans Levee District on September 16, 1971 and approved on March 29, 1974; “Supplemental Assurance” wherein the Local Sponsor agreed to comply with Public Law 91-646 in fulfilling its obligations for the Lake Pontchartrain and Vicinity, Louisiana project, signed by the President of the Board of Commissioners of the Orleans Levee District on September 21, 1973 and approved on

April 2, 1974; "Agreement between the United States and the Board of Commissioners of the Orleans Levee District" in which the parties acknowledge that the Public Sponsor could make deferred payments pursuant to the Water Resources Development Act of 1974 (WRDA 74), signed by the President of the Board of Commissioners of the Orleans Levee District on March 30, 1976, signed by the Corps of Engineers on February 15, 1977 and approved on December 7, 1977; "Interim Agreement" wherein the Public Sponsor agreed to comply with all the required conditions and provisions of local cooperation in the previous Assurances for the High Level Plan, rather than the Barrier Plan, signed by the President of the Board of Commissioners of the Orleans Levee District on February 21, 1985 and approved on March 7, 1985; "Supplemental Agreement" wherein the Public Sponsor agreed to comply with all the required conditions and provisions of local cooperation in the previous Assurances for the High Level Plan, rather than the Barrier Plan, signed by the President of the Board of Commissioners of the Orleans Levee District on May 29, 1985 and approved on June 21, 1985; "Supplemental Agreement between the United States of America, the Orleans Levee District, and the Sewerage and Water Board of New Orleans," signed by all three parties on February 18, 1997, in which the Sewerage and Water Board of New Orleans agreed to provide all lands, easements, and rights-of-way and to operate and maintain "fronting protection" to pumping stations located in the Orleans Avenue Canal, the London Avenue Canal, and the New Basin Canal and Orleans Levee District agreed to continue all of obligations for the project; and "Supplemental Agreement between the United States of America, the Orleans Levee District, the East Jefferson Levee District and the Sewerage and Water Board of New Orleans," signed by all four parties on February 18, 1997, in which the Sewerage and Water Board of New Orleans agreed to provide all lands, easements, and rights-of-way and to operate and maintain "fronting protection" to Pumping Station No. 6 located in the 17th Street Canal, and Orleans Levee District and East Jefferson Levee District agreed to continue their respective obligations for the project;

WHEREAS, pursuant to 33 U. S. C. 701n, the Government is authorized to assist in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature;

WHEREAS, on October 21, 2005 the Government and the Orleans Levee District entered into a Cooperation Agreement (hereinafter the "Original Cooperation Agreement") for the rehabilitation of a portion of the HSPP; which Original Cooperation Agreement shall remain in full effect and as supplemented and amended herein;

WHEREAS, part of the Rehabilitation Efforts require that interim gated closure structures and integrated pumping capacity be constructed to allow for permanent repairs to the HSPP, and includes effecting certain bank stabilization measures of the outfall canals to allow for safe operating stages, and repairs to the floodwalls and levees of the Inner Harbor Navigational Canal all as generally described in the Project Information Report Revision No.1 for Orleans East Bank prepared by the District Engineer, U. S.

Army Engineer District, New Orleans, dated January 20, 2006 and approved by the Deputy Division Engineer on January 22, 2006;

WHEREAS, as between the Government and the Public Sponsors, the above referenced project assurances and agreements set forth the respective obligations of the parties therein named, including, but not limited to, the obligation of OLD, without costs to the Government, to provide all interior drainage and pumping plants required for reclamation and development of the protected areas, to maintain and operate levees, floodgates and approach channels, drainage structures, drainage ditches or canals, floodwalls, and stoplog structures in relation to this HSPP and to the Rehabilitation Efforts herein described, except as expressly provided within this Supplemental No. 1;

WHEREAS, the Sewerage and Water Board of New Orleans is the entity that has the exclusive non-Federal jurisdictional mission of interior water drainage for the City of New Orleans, including the operation and maintenance of canal bottoms and interior pumping stations on property under the control of the S&WB;

WHEREAS, the City of New Orleans appears herein for the limited purpose of agreeing to provide the following obligations: to exercise the authority of the Mayor of the City of New Orleans pursuant to La. R.S. 29:721, et seq, to commandeer all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, (hereinafter "LERD") that is privately-owned (hereinafter "Private LERD"), as may be determined by the Government to be necessary for the construction, operation, and maintenance of the HSPP and the Rehabilitation Effort, in accordance with the terms of Article III of this Supplemental No. 1; to secure or cause to be secured an executive order from the Governor of the State of Louisiana commanding the above referenced Private LERD in accordance with the authority set forth in La. R.S. 29: 721, et seq.; to tender right of entry to the Public Sponsors to the Private LERD described in the Commandeering Order or Orders; and to provide right of entry to all LERD owned, claimed or controlled by the City of New Orleans in accordance with Article III of this Supplemental No. 1;

WHEREAS, the Public Sponsors and the City of New Orleans hereby represent that they have the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and are willing to participate in the HSPP Rehabilitation Effort in accordance with the terms of this Supplemental No. 1.

NOW THEREFORE, the Government, the City of New Orleans, and the Public Sponsors agree as follows:

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Supplemental No. 1

A. The term "Rehabilitation Effort", as described in the Original Cooperation Agreement, is amended to include additional items of work, including, but not limited to,

the construction of interim gated closure structures and integrated pumping capacity near the confluence of Lake Pontchartrain with the London Outfall Canal and the Orleans Avenue Outfall Canal and includes effecting certain bank stabilization measures (including, but not limited to the possible placement of stability berms, relief wells, slurry trench, and/or sheet pile cutoffs) along portions of the outfall canals to allow for safe operating stages of drainage waters through the outfall canals, the repair and rehabilitation of damaged areas, the replacement of particular features of the Inner Harbor Navigational Canal floodwalls, all in accordance with project authority therefor, as generally described in the following two reports: "Project Information Report (PIR), PL 84-99, Rehabilitation of Damaged Hurricane/Shore Protection Project, Lake Pontchartrain, La And Vicinity Hurricane Protection Project, Orleans Parish, La, Orleans East Bank," prepared by the District Engineer, U. S. Army Engineer District, New Orleans, dated October 18, 2005 and approved by the Deputy Division Engineer on October 19, 2005 and Revision No. 1 to that PIR prepared by the District Engineer, U. S. Army Engineer District, New Orleans, dated January 20, 2006 and approved by the Deputy Division Engineer on January 22, 2006. The Government will operate, maintain and repair the interim canal closure and associated pumping capacity and remove these features after the completion of permanent repair and rehabilitation of the hurricane protection system. It is understood and agreed that these PIRs are subject to change by the Government in consultation with the Public Sponsors and the City of New Orleans.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Government directly related to construction of the Rehabilitation Effort. Such term shall include, but is not necessarily limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; the costs of lands, easements, rights of way, borrow, and relocations that are not owned, claimed or controlled by the Public Sponsors and/or by the City of New Orleans; and the cost of investigations to identify the existence of the hazardous substances as identified in Article XII.A. The term shall not include any costs for operation and maintenance except that of the interim gated closure structures and integrated pumping capacity for the London Avenue and Orleans Avenue Outfall Canals and their removal by the Government upon completion of the project since these are construction features of this project; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations that are owned, claimed, or controlled by the Public Sponsors and/or by the City of New Orleans.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsors, whether singly or collectively, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II – OBLIGATIONS OF THE GOVERNMENT, THE CITY OF NEW ORLEANS AND PUBLIC SPONSORS

A. The Government, subject to receiving funds appropriated by the Congress of the United States, shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Public Sponsors and the City of New Orleans shall be afforded the opportunity to review and comment on all such solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The District Engineer will, in good faith, consider the comments of the Public Sponsors and the City of New Orleans, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the District Engineer.

B. As further specified in Article III, the Public Sponsors and the City of New Orleans shall provide right of entry to all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the HSPP.

1. As further specified in Article III, after receiving the rights of entry to the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas (hereinafter “LERD”) from the Public Sponsors and the City of New Orleans, the Government, subject to the availability of appropriations, shall identify and pay just compensation to the owners of compensable interests in the LERD described in Article III.A.3. of this Supplement No. 1. Additionally, the Government, subject to the availability of appropriations, shall acquire interests in those LERD described in Article III.A.2. of this Supplemental No. 1 to which the Public Sponsors were unable to obtain right of entry despite their best efforts.

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

C. The Public Sponsors and the City of New Orleans shall not use Federal funds to meet their share of Rehabilitation Effort costs under this Supplemental No. 1 unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

D. The Public Sponsors shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, the HSPP, and any related betterments, except for damages due to the fault or negligence of the Government or the Government’s contractors.

E. One or both of the Public Sponsors may request the Government to accomplish betterments. The Public Sponsor requesting said betterment shall be solely responsible

for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the requesting Public Sponsor(s) in accordance with Article IV.

F. The Public Sponsors shall prevent future encroachments on lands, easements, and rights-of-way provided by the respective Public Sponsor for the Rehabilitation Effort which may interfere with the proper functioning of the Rehabilitation Effort and the HSPP, as determined by the Government. The City of New Orleans shall prevent future encroachments on lands, easements, and rights-of-way owned, claimed or controlled by the City of New Orleans that are provided by the City of New Orleans for the Rehabilitation Effort which may interfere with the proper functioning of the Rehabilitation Effort and the HSPP, as determined by the Government. Said real estate interests shall be retained in public ownership for uses compatible with the authorized purposes of the Rehabilitation Effort and the HSPP.

G. Notwithstanding the provisions of this Supplemental No. 1, the OLD shall provide, without costs to the Government, all interior drainage and pumping plants required for reclamation and development of the protected areas, and shall maintain and operate levees, floodgates and approach channels, drainage structures, drainage ditches or canals, floodwalls, and stoplog structures in relation to the HSPP and to the Rehabilitation Efforts described herein; provided however, that the Government, subject to the availability of appropriations, shall utilize the interim canal closures, together with the integrated temporary pumps, that are located near the confluence of Lake Pontchartrain with the London Avenue and Orleans Avenue Canals, respectively, as necessary complementary features for the construction of the permanent repair and rehabilitation of the HSPP, until such time as the Government determines, in its sole discretion, that the permanent repair and rehabilitation of the HSPP is complete. When the Government determines, in its sole discretion, that the permanent Rehabilitation Effort is completed, the Government will remove the interim canal closures and the integrated temporary pumps.

ARTICLE III – LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Public Sponsors and the City of New Orleans with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsors and the City of New Orleans shall, at no cost to the Government, provide right of entry to all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, (hereinafter “LERD”) as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the HSPP and the Rehabilitation Effort, in the manner hereinafter discussed.

1. Each Public Sponsor and the City of New Orleans shall provide right of entry to all LERD that each owns, claims, or controls (hereinafter “Public Sponsor LERD” or “City of New Orleans LERD”, respectively) in a manner that is free and clear of any liens, defects of titles, or encumbrances, including the release or subordination to the

Rehabilitation Effort of any third party interests, as determined by the Government to be necessary for the construction, operation and maintenance of the Rehabilitation Effort;

2. The Public Sponsors shall use their best efforts to provide right of entry to LERD that any other non-Federal governmental entity owns, claims, or controls (hereinafter "Other Non-Federal Governmental LERD") in a manner that is free and clear of any liens, defects of titles, or encumbrances, including the release or subordination to the Rehabilitation Effort of any third party interests within such Other Non-Federal Governmental LERD, as determined by the Government to be necessary for the construction, operation and maintenance of the Rehabilitation Effort; and

3. OLD shall provide right of entry to all other LERD not owned, claimed, or controlled by the Public Sponsors, the City of New Orleans or Other Non-Federal Governmental Entities (hereinafter "Private LERD") as follows:

a. The City of New Orleans shall exercise the authority of the Mayor of the City of New Orleans pursuant to La. R.S. 29:721, et seq, to commandeer all Private LERD, including all privately owned third party interests, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the HSPP and the Rehabilitation Effort, or shall secure or cause to be secured an executive order from the Governor of the State of Louisiana commandeering the above referenced Private LERD, including all privately owned third party interests, in accordance with the authority set forth in La. R.S. 29:721, et seq..

b. The City of New Orleans shall tender right of entry to the OLD to the Private LERD described in the Commandeering Order or Orders, whether the Commandeering Official for said Commandeering Order or Orders was the Mayor of the City of New Orleans or the Governor of the State of Louisiana.

c. The OLD shall tender to the Government a right of entry to the Private LERD.

4. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Government shall perform such relocations as it determines to be necessary for the construction, operation and maintenance of the Rehabilitation Effort. In addition, the Government shall identify and provide just compensation to the owners of compensable interests in the Private LERD and shall acquire the requisite interests in the Other Non-Federal Governmental LERD to which the Public Sponsors, despite their best efforts, were unable to obtain free and unencumbered right of entry, all in accordance with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the

Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Project and the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

1. The Government shall obtain a deed or servitude agreement, as appropriate, in the name of the OLD for those interests described in the Commandeering Order or Orders referenced in Paragraph A.3.a. of this Article. In like manner, the Government shall obtain a deed or servitude agreement, as appropriate, in the name of the OLD, for those interests in the Other Non-Federal Governmental LERD to which the Public Sponsors, despite their best efforts, were unable to obtain a free and unencumbered right of entry.

2. Where the Government is unable to obtain free and unencumbered title on behalf of the OLD or to reach an agreement with the interest owners in the Private and Other Non-Federal Governmental LERD, the Government shall obtain such interests, in the name of the United States of America, through the exercise of eminent domain authority.

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

ARTICLE IV – METHOD OF PAYMENT

A. The Public Sponsors shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsors' obligations under Article II of this Supplemental No. 1. Rehabilitation Effort costs are currently estimated to be \$298,354,366.00. In order to meet the Public Sponsors' cash payment requirements, the Public Sponsors must provide a cash contribution estimated to be \$0.0 (zero dollars). The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not construed as the total financial responsibilities of the Government and the Public Sponsors.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsors of the Public Sponsors' estimated cash contribution required to meet the Public Sponsors' obligation under Article II.E. of this Supplemental No. 1. Within five calendar days thereafter, the Public Sponsors shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO,

USAED, B2, New Orleans” to the District Engineer of the U. S. Army Engineer District, New Orleans. The Government shall draw on the funds provided by the Public Sponsors such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Public Sponsors’ obligations under Article II.E. of this Supplemental No. 1, as they are incurred by the Government. In the event that total costs of the Public Sponsors’ obligations under Article II.E. of this Supplemental No. 1 are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsors of the additional contribution the Public Sponsors will be required to make to meet the additional required contribution. Within ten calendar days thereafter, the Public Sponsors shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsors. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsors a final accounting of the Public Sponsors’ obligations under Article II.E. of this Supplemental No. 1.

1. In the event the total contribution by the Public Sponsors is less than the Public Sponsors’ obligations under Article II.E. of this Supplemental No. 1, the Public Sponsors shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsors’ obligations under Article II.E. of the Supplemental No.

2. In the event total contribution by the Public Sponsors is more than the Public Sponsors’ required obligation under Article II.E., the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsors. In the event the existing funds are not available to repay the Public Sponsors for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsors for excess contributions provided.

ARTICLE V – CREDITING OF IN-KIND SERVICES

The Public Sponsors and the City of New Orleans shall not be entitled to receive a credit or reimbursement for any costs incurred by the Public Sponsors or the City of New Orleans hereunder.

ARTICLE VI – OPERATION AND MAINTENANCE

A. The OLD maintains responsibility for operating and maintaining the HSPP at all times. After the District Engineer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsors with written notice of such determination, the OLD shall operate and maintain the HSPP, to include those areas

restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

B. The Public Sponsors and the Government shall coordinate efforts such that the maximum safe water levels maintained in or operating through the outfall canals do not interfere with the integrity of the weakened outfall canals and HSPP and do not interfere with the expedient construction of the Rehabilitation Effort. When the Government utilizes the interim gated closure structures and integrated pumps or otherwise informs the S&WB of the maximum safe water levels of the outfall canals, the S&WB shall operate its drainage system in a manner that conforms to the maximum safe water levels identified by the Government and in a manner that does not interfere with the integrity of the outfall canals and the HSPP features in the vicinity of the outfall canals.

C. The Public Sponsors and the City of New Orleans hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsors or the City of New Orleans own or control for access to the HSPP for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the HSPP. If an inspection shows the Public Sponsors for any reason are failing to fulfill the Public Sponsors' obligations under this Supplemental No. 1 without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsors. If, after 30 calendar days from receipt of such notice, the Public Sponsors continue to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsors or the City of New Orleans own or control for access to the Project for the purposes of completing, operating, and maintaining the project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsors of responsibility to meet the Public Sponsors' obligations as set forth in this Supplemental No. 1, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Supplemental No. 1.

ARTICLE VII – FEDERAL AND STATE LAWS

In the exercise of the rights and obligations of the Public Sponsors and the City of New Orleans hereunder, the Public Sponsors and the City of New Orleans agree to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII – RELATIONSHIP OF PARTIES

The Government, the City of New Orleans, and the Public Sponsors act in an independent capacity in the performance of their respective functions under the Supplemental No. 1, and none of the parties are to be considered the officer, agent, nor employee of the other parties.

ARTICLE IX – OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Supplemental No. 1, or to any benefit that may arise therefrom.

ARTICLE X – COVENANT AGAINST CONTINGENT FEES

The Public Sponsors and the City of New Orleans warrant that no person or selling agency has been employed or retained to solicit or secure this Supplemental No. 1 upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsors and the City of New Orleans for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Supplemental No.1 without liability, or, in the Government's discretion, to add to the Supplemental No. 1 or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI – TERMINATION OR SUSPENSION

If at any time the Public Sponsors or the City of New Orleans fail to carry out their respective obligations under this Supplemental No. 1, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and the HSPP. However, deferral of future performance under this Supplemental No. 1 shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that any party elects to terminate this Supplemental No. 1 pursuant to this Article, the parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Supplemental No. 1. In the event that any party elects to defer future performance under this Supplemental No. 1 pursuant to this Article, such deferral shall remain in effect until such time as either the Government or the Public Sponsors elect to proceed with further construction or terminate this Supplemental No. 1.

ARTICLE XII – HAZARDOUS SUBSTANCES

A. After execution of this Supplemental No. 1, the Government shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government to identify the existence and extent of hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the HSPP or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsors, the City of New Orleans, and the Government shall provide prompt notice to each other and shall not proceed with the commandeering and/or acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government, the City of New Orleans, and the Public Sponsors shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government, the City of New Orleans, and the Public Sponsors determine to proceed or continue with the construction after considering liability that may arise under CERCLA, the Public Sponsors shall be responsible, as between the Government and the Public Sponsors, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination located in, on, or under, Public Sponsors' LERD. Other Non-Federal Governmental LERD and Private LERD. The City of New Orleans shall be responsible, as between the Government and the City of New Orleans, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination located in, on or under the City of New Orleans LERD. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Supplemental No. 1. In the event the Public Sponsors or the City of New Orleans fail to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the respective responsibilities of the Public Sponsors or the City of New Orleans under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Supplemental No. 1.

D. The Public Sponsors, the City of New Orleans, and the Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsors, the OLD shall be considered the operator of the HSPP (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability except as otherwise set forth in this subparagraph of Article XII. As between the Government and the Public Sponsors, the S&WB shall be considered the operator for the interim gated closure structures and integrated pumping capacity for purposes of CERCLA liability. To the maximum extent practicable, the OLD shall operate and maintain the HSPP, and S&WB shall operate and maintain the interior drainage system serving the City in a manner that will not cause liability under CERCLA.

ARTICLE XIII – NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Supplemental No. 1 shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Orleans Levee District:

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

If to the Government:

District Engineer
U. S. Army Corps of Engineers
P. O. Box 60267
New Orleans, Louisiana 70160-0267

If to the Sewerage and Water Board of New Orleans:

Executive Director
Sewerage and Water Board of New Orleans
625 St. Joseph Street
New Orleans, LA 70165-6501

If to the City of New Orleans:

Mayor
City of New Orleans
1300 Perdido Street
New Orleans, Louisiana 70112

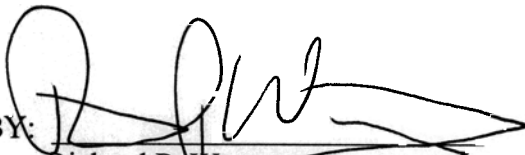
B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.


C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental No. 1 which may be executed in counterparts and having full force and effect as a whole, and which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT

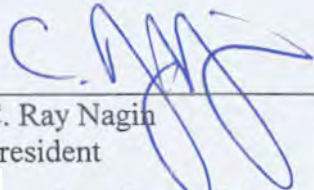
BY: 
Richard P. Wagenaar
Colonel, Corps of Engineers
District Engineer

BY: 
Michael P. McCrossen
Acting-President, Board of Commissioners of the Orleans Levee District

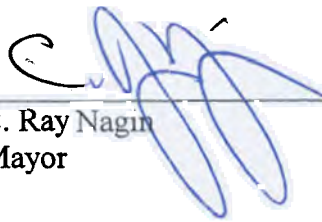
Date: 1/27/06

Date: Jan 27, 06

**SEWERAGE AND WATER BOARD
OF NEW ORLEANS**

BY: 
C. Ray Nagin
President
1-27-06

CITY OF NEW ORLEANS

BY: 
C. Ray Nagin
Mayor
1-27-06

CERTIFICATION REGARDING LOBBYING

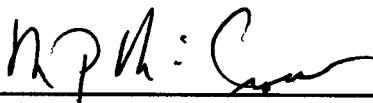
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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



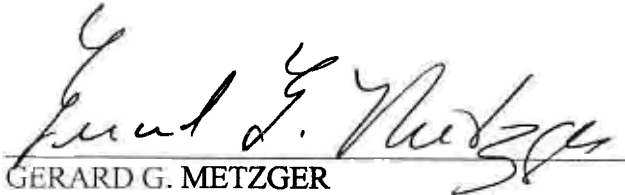
Michael P. McCrossen
Acting-President, Board of Commissioners
of the Orleans Levee District

DATE: Jan 27, 06

CERTIFICATE OF AUTHORITY

I, GERARD G. METZGER, do hereby certify that I am an attorney for the Orleans Levee Board, that the Board of Commissioners of the Orleans Levee District is a legally constituted public body with full authority and legal capability to perform the terms of the Supplemental No. 1 Cooperation Agreement between the United States of America and the Board of Commissioners of the Orleans Levee District, the City of New Orleans, and the Sewerage and Water Board of New Orleans in connection with the Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project Rehabilitation Effort, and to my best information and belief able to pay damages in accordance with the terms of this Supplemental No. 1, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who has executed this Supplemental No. 1 on behalf of the Orleans Levee District has acted within his or her authority.

IN WITNESS WHEREOF, I have made and executed this certification this 27th day of January 2006.

A handwritten signature in cursive script, appearing to read "Gerard G. Metzger", written over a horizontal line.

GERARD G. METZGER

Attorney for the Board of Commissioners
of the Orleans Levee District

CERTIFICATION REGARDING LOBBYING

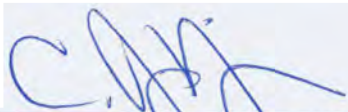
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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



C. Ray Nagin
President
Sewerage and Water Board of New Orleans

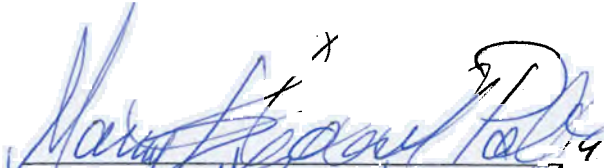
DATE:

1-27-06

CERTIFICATE OF AUTHORITY

I, Mary-Elizabeth PALTRON, do hereby certify that I am an attorney for the Sewerage and Water Board of New Orleans, that the Sewerage and Water Board of New Orleans is a legally constituted public body with full authority and legal capability to perform the terms of the Supplemental No. 1 Cooperation Agreement between the United States of America and the Orleans Levee District, the City of New Orleans, and the Sewerage and Water Board of New Orleans in connection with the Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project Rehabilitation Effort, and to my best information and belief able to pay damages in accordance with the terms of this Supplemental No. 1, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who has executed this Supplemental No. 1 on behalf of the Sewerage and Water Board of New Orleans has acted within his or her authority.

IN WITNESS WHEREOF, I have made and executed this certification this 2nd day of January 2006.


Printed Name: Mary-Elizabeth
Attorney for the Sewerage and Water Board of New Orleans

CERTIFICATION REGARDING LOBBYING

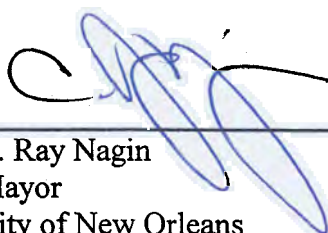
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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




C. Ray Nagin
Mayor
City of New Orleans

DATE: 1-27-04

CERTIFICATE OF AUTHORITY

I, Penny M. Moses-Fields, do hereby certify that I am an attorney for the City of New Orleans, that the City of New Orleans is a legally constituted public body with full authority and legal capability to perform its obligations under the terms of the Supplemental No. 1 Cooperation Agreement between the United States of America and the Orleans Levee District, the City of New Orleans, and the Sewerage and Water Board of New Orleans in connection with the Lake Pontchartrain, Louisiana and Vicinity, Hurricane Protection Project Rehabilitation Effort, and to my best information and belief able to pay damages in accordance with the terms of this Supplemental No. 1, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who has executed this Supplemental No. 1 on behalf of the City of New Orleans has acted within his or her authority.

IN WITNESS WHEREOF, I have made and executed this certification this 21 day of January 2006.


Printed Name: Penny M. Moses-Fields
Attorney for the City of New Orleans