

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

AGREEMENT
STATE PROJECT NO. 744-45-0010
FEDERAL AID PROJECT NO. ENH-4510(500)
ST. CHARLES WESTBANK MISSISSIPPI LEVEE
MULTI-USE PATH, PHASE III
ST. CHARLES PARISH

THIS AGREEMENT, made and executed in three (3) original copies on this 21st day of April, 2010, by and between the **Department of Transportation and Development**, hereinafter referred to as "DOTD", and **Parish of St. Charles**, a political subdivision of the State of Louisiana, hereinafter referred to as "Sponsor";

WITNESSETH: That;

WHEREAS, under the provisions of Title 23, United States Code, "Highways", as amended, funds have been appropriated out of the Highway Trust Fund to finance enhancement projects under the direct administration of the DOTD; and

WHEREAS, the Sponsor has requested an appropriation of funds to finance a portion of the project as described herein; and

WHEREAS, the Sponsor insures the project is part of the Transportation Improvement Program (TIP), if applicable, which serves to implement the area wide plan held currently valid by the appropriate local officials; and

WHEREAS, the Sponsor agrees to abide by the policies and procedures set forth in the current edition of both the "**Transportation Enhancement Information Guide**", latest edition and the "**I've Got a Project, Now What Do I Do?**" manual, latest edition; and

WHEREAS, the DOTD is agreeable to the implementation of this Project and desires to cooperate with the Sponsor as hereinafter provided:

NOW, THEREFORE, in consideration of the premises and mutual dependent covenants herein contained, **the bid documents for the construction project will be in the name of SPONSOR**, the parties hereto agree as follows:

ARTICLE I - PROJECT DESCRIPTION

The improvement that is to be undertaken under this project will consist generally of constructing a multi-use path on the westbank Mississippi River levee between Davis Drive in Luling and the St. Charles/Jefferson Parish line and related work.

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For construction costs, State Project No. **744-45-0010** and Federal Project No. **ENH-4510(500)** have been assigned.

All progress reports, invoices, etc. incurred in the performance of these services shall be identified with these project numbers.

ARTICLE II - FUNDING

Except for services hereinafter specifically listed to be furnished at the DOTD's expense or at the Sponsor's expense, as the case may be, the cost of this project will be a joint participation between the Sponsor and the Federal Highway Administration, hereinafter "FHWA", with the Sponsor contributing the 5% match of the participating construction cost and the FHWA contributing, through the DOTD, the remaining 95%. The maximum federal funds available for this project are **\$ 881,700**. With this funding option, the Sponsor agrees to provide all design and construction inspection at its own expense. The Sponsor may incorporate items of work into the construction contract not eligible for Federal-Aid participation at its own costs. Funds will be disbursed as provided in **Article XII {Cost Reimbursements}**.

No Notice to Proceed shall be issued and no compensable costs for construction may be incurred prior to a formal notification from DOTD that FHWA authorization has been received. Any costs for which the Sponsor expects to be reimbursed for incurred prior to such authorization will not be compensable.

ARTICLE III - CONCEPTUAL PLANS AND ENVIRONMENTAL DECISION

This project has been reviewed and the finding is that this project meets the requirements for actions classified as "Categorical Exclusions."

ARTICLE IV - PRE-CONSTRUCTION SERVICES

The Sponsor shall select and enter into a contract with a consulting engineering firm for all engineering services necessary for the preparation of complete plans, specifications and estimates for the proposed improvements as covered herein. The Sponsor shall be responsible for the costs of these services. The Sponsor is prohibited from selecting or approving any Consultant or Sub-Consultant who is on DOTD's disqualification list or who has been debarred pursuant to LSA-R.S. 48:295.1, *et seq.* The Sponsor shall be responsible for any contract costs attributable to the errors or omissions of its Consultants or Sub-Consultants.

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The Sponsor or consulting engineers employed by it shall make all necessary surveys, prepare plans and special specifications for the project in accordance with the applicable requirements of the latest edition of the Louisiana Standard Specifications for Roads and Bridges, 23 CFR Part 630 ("Preconstruction Procedures"), Federal Aid Policy Guide Part 630, and the following specific requirements.

1. The design standards shall comply with the criteria prescribed in 23 CFR Part 625 ("Design Standards for Highways") and Federal Aid Policy Guide Part 625. The format of the plans shall conform to the standards used by the DOTD in the preparation of its contract plans for items of work of similar character, including plans for all drainage and utilities affected, as contained in the current edition of its "Roadway Plan Preparation Manual", and the "Hydraulics Manual" which is made a part hereof by reference. Design of bicycle and pedestrian facilities shall follow AASHTO and ADA guidelines and/or requirements.

2. Design surveys, right-of-way surveys and the preparation of right-of-way maps shall be performed in accordance with the requirements specified in the current edition of the DOTD's "Location & Survey Manual."

3. The Sponsor will be required to develop this project in accordance with DOTD's "Environmental Impact Procedures Manual," latest edition. Requirements for Environmental documents are prescribed in the FHWA's "Federal-Aid Policy Guide". All environmental documents and public involvement proposals are required to be developed under these requirements and shall be submitted to the DOTD for review and comments.

4. The Sponsor shall, at its expense, be responsible for relocation of any utilities which conflict with construction. These costs are not considered eligible for federal or state reimbursement. Adjustments to utilities, however, may be included in the plans. Adjustments are dealing with vertical positioning alone (up or down). Relocation is dealing with the horizontal positioning of a utility. Any questions concerning whether work is an adjustment and eligible to be included on the plans should be submitted in writing to the Enhancement Coordinator.

The Sponsor will submit copies of letters from each utility company stating that arrangements have been made for all required relocations and/or adjustments to the District Utilities Representative and the Enhancement Coordinator prior to federal authorization for construction letting. Federal authorization is requested 6 weeks prior to letting.

5. The Sponsor shall, at its expense, acquire all right-of-way and servitudes required for the project in accordance with **Article V**.

6. The Sponsor does hereby agree to produce electronic deliverables in conformance with "DOTD Software and Deliverable Standards for Electronic Plans" as outlined at http://www.dotd.louisiana.gov/highways/project_devel/design/electronic_standards_disclaimer.asp. The Sponsor shall download and apply the latest CAD standards. The Sponsor hereby agrees to install incremental updates to software and CAD standards as instructed by the Enhancement Coordinator. Such updates shall not have a significant impact on the development time or delivery date for project plans, or require the Sponsor to purchase additional software. Prior to proceeding with plan development, the Sponsor shall contact the Enhancement Coordinator for any special instructions regarding updates to standards or project-specific requirements, if this information has not already been provided.

In the event that any electronic standard conflicts with written documentation, including DOTD plan-development manuals, the electronic standard typically governs. The Sponsor is responsible for contacting the Enhancement Coordinator should questions arise.

Plan deliveries shall be made on CD or DVD media and labeled with media-compatible indelible ink on separate lines as follows:

State Project Number
"Final Plans Submittal", "60% ACP Submittal" (or other milestone)
"Electronic Deliverables"
Sponsor Name

The CD/DVD shall be delivered with a signed cover letter that includes, among the formalities, a deliverable "hash" code that is documented in a report generated by the ControlCAD Indexer Submittal tool. The hash code is used to verify that the CD is authentic. At any stage of the plan development process, the Enhancement Coordinator may require plan delivery by other methods including, but not limited to, upload to the DOTD ProjectWise repository.

The Sponsor is responsible for ensuring that all sub-consultants are prepared to produce electronic deliverables in conformance with DOTD electronic standards for plans.

7. After completion of preliminary plans, two (2) complete sets of prints of the basic plans, dated and stamped "Preliminary", shall be submitted to the DOTD for review and comment.

8. Upon completion of its review of the preliminary plans, the DOTD will return one (1) set to the Sponsor with comments, if any, marked thereon and the plans shall be corrected accordingly.

9. After plans have been developed to show all information required for a plan-in-hand inspection, the Sponsor shall provide a minimum of eight (8) sets of plans for a complete plan-in-hand field inspection with members of the DOTD and the FHWA at a time and date mutually agreed to in advance by all parties. DOTD will make arrangements for the plan-in-hand inspection.

Subsequent to the plan-in-hand inspection, the Sponsor shall make such changes in the plans as necessary to reflect agreements reached at this stage and shall show existing or taking lines required for right-of-way, referenced to the centerline of the adjacent roadway, if applicable.

10. After plans have been developed to show all final design information and quantities, the Sponsor shall provide one (1) signed and stamped set of vellum reproducible and/or prints of the final plans, with the Title Sheet matte filmed, and one (1) reproducible copy of the final technical specifications, special provisions and cost estimate along with one (1) electronic copy of the documents in Microsoft Office format. These documents shall be subject to a complete review by members of DOTD and FHWA.

Subsequent to final plan submission, Sponsor shall address all applicable comments.

11. Subsequent to approval of final plans, acquisition of all required right-of-way and the relocation and/or adjustment of all utility conflicts, the DOTD shall prepare the construction proposals and prepare a Plan, Specification and Estimate (P S & E) submittal to FHWA as specified in 23 CFR Part 630 Subpart B ("Plans, Specifications and Estimates") and Federal Volume 6, Chapter -Aid Policy Guide Part 630. This submission shall contain all certifications and data necessary to conform to the Federal-Aid Policy Guide. Upon receipt of formal approval of the P S & E submission from the FHWA, the DOTD will advise the Sponsor in writing of such approval and will advertise the project for the receipt of bids.

12. After the Project has been constructed and accepted by DOTD, the plans remain the property of and in the possession of DOTD.

ARTICLE V - RIGHT-OF-WAY ACQUISITION AND RELOCATION

The Sponsor agrees to provide for the acquisition of rights of way and related services for the project in accordance with State and Federal Laws, the Uniform Relocation Assistance and Real Property Act of 1970, as amended, DOTD's Real Estate Procedure Manual, Federal Regulations and particularly Title 23 Part 710 and 49 Part 24 of the Code of Federal Regulations ("CFR"), as amended, the Work Plan "A" attached hereto, and any additional written instructions given by

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the DOTD.

Acquisitions and relocations must be reviewed and certified by the DOTD Real Estate Section and must be completed prior to federal authorization for construction letting. Federal authorization is requested 6 weeks prior to letting. If the Sponsor requested use of the right-of-way expenditures as match in their Enhancement Application, then the value of the ROW acquisition must be provided to the DOTD Real Estate Section with a copy to the DOTD Enhancement Coordinator.

ARTICLE VI - CONSTRUCTION PLANS

The Sponsor or Consulting Engineers employed by the Sponsor shall prepare the plans and any environmental documents for the improvement at no expense to the DOTD and FHWA and shall conform to DOTD standards. The plans and any environmental documents shall be approved by the DOTD and FHWA.

ARTICLE VII - RECEIPT OF BIDS

The DOTD will, at its expense and at the proper time, prepare construction proposals based on the latest edition of the "Louisiana Standard Specifications for Roads and Bridges", as amended to comply with the DOTD's current practices, advertise for and receive bids for the work in accordance with the DOTD's normal requirements. All such bids will be properly tabulated, extended and summarized to determine the official low bidder. The DOTD will then submit to the Sponsor copies of the official bid tabulations for their information and comments or approval while the Review Committee concurrently analyzes the bids for the DOTD. The award of contract, shall comply with LSA-R.S. 48:255, will be made by the DOTD on behalf of the Sponsor following the favorable recommendation of award by the Review Committee and concurrence by the Federal Highway Administration (FHWA) and the Sponsor.

Construction contracts will be prepared by the DOTD after the award of contract and will be transmitted to the Sponsor for its further handling toward execution. The Sponsor will be responsible for construction contract recordation. The DOTD will, at the proper time, inform the Sponsor in writing to issue to the Contractor an official "Notice to Proceed" with construction.

ARTICLE VIII - CONSTRUCTION

The Sponsor or its Consultant will provide technical administration and inspection during the project construction; however, in the event a Consultant provides this service for the Sponsor it will be performed under the direct supervision of a full time employee of the Sponsor who will

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have charge and control of the project at all times. The Sponsor is responsible for the costs of these services.

The DOTD will assign a project engineer from its District Office at **Bridge City (02)** to serve as a construction coordinator for the DOTD during project construction. The construction coordinator will make intermittent trips to the construction site to insure that the construction contractor is following established construction procedures and that applicable Federal and State requirements are being enforced. The construction coordinator will advise the Sponsor of any discrepancies noted and, if necessary, will direct that appropriate remedial action be taken. Failure to comply with such directives will result in the withholding of funds by DOTD until the Sponsor takes corrective measures.

Except where a deviation has been mutually agreed to in writing by both the DOTD and the Sponsor, the following specific requirements shall apply.

1. When it is stipulated in Louisiana Standard Specifications for Roads and Bridges that approval by the engineer or the DOTD is required for equipment and/or construction procedures, such approval must be obtained through the DOTD Construction Section. All DOTD policies and procedures for obtaining such approval shall be followed.
2. All construction inspections personnel utilized by the Sponsor and/or the Sponsor's Consultant must meet the same qualifications required of DOTD construction personnel. When certification in a specific area is required, these personnel must meet the certification requirements of DOTD.
3. All construction procedures must be in accordance with DOTD guidelines and policies established by the Construction Contract Administration Manual, latest edition, the Engineering Directives and Standard Manual, and any applicable memoranda. These documents will be made available to the Consultant through the Sponsor from DOTD.
4. All documentation of pay quantities must conform to the requirements of DOTD as outlined in the Construction Contract Administration Manual, latest edition. This manual will be made available to the Consultant through the Sponsor from DOTD.
5. All materials to be tested shall be sampled in accordance with the DOTD's Sampling Manual. All material testing other than those tests normally run by project personnel on the job site shall be tested by the DOTD's District or Central Laboratory.
6. In the event that a private laboratory is used for material testing, the Sponsor will be responsible for all cost associated with the material testing. All private laboratory

personnel utilized by the Sponsor and/or the Sponsor's Consultant must meet the same qualifications required of DOTD laboratory personnel. When certification in a specific area is required, these personnel must meet the certification requirements of DOTD.

The Consultant and/or the Sponsor shall be required to comply with all parts of this section while performing duties as project engineer.

ARTICLE IX - SUBCONTRACTING

Any subcontracting performed under this project either by consulting engineers engaged by the Sponsor or the construction contractor must have the prior written consent of the Sponsor and the DOTD. In the event that the Consultant or the contractor elects to sublet any of the services required under this contract, it must take affirmative steps to utilize Disadvantaged Business Enterprises (DBE) as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:

- (a) Including qualified DBE on solicitation lists.
- (b) Assuring that DBE are solicited whenever they are potential sources.
- (c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum DBE participation.
- (d) Where the requirement permits, establishing delivery schedules which will encourage participation by DBE.
- (e) Using the services and assistance of the Small Business Administration, the Office of Disadvantaged Business Enterprise of the Department of Commerce and the Community Services Administration as required.

Also, the Contractor is encouraged to procure goods and services from labor surplus areas.

ARTICLE X - DBE REQUIREMENTS

It is the policy of the Federal Highway Administration that small business firms owned and controlled by socially and economically disadvantaged persons and other persons defined as eligible in Title 49 Code of Federal Regulations, Part 26 (49 CFR 26) shall have reasonable opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the requirements of 49 CFR 26 apply to this project.

The Sponsor or its contractor agrees to ensure that Disadvantaged Businesses (DBE) as defined in 49 CFR 26 have reasonable opportunity to participate in performance of contracts and

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subcontracts financed in whole or in part with Federal funds. The Sponsor or its contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that such firms have reasonable opportunity to compete for and perform contracts. The Sponsor or its contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract.

The preceding Policy and DBE Obligation shall apply to this project and shall be included in the requirements on any contract or subcontract. Failure to carry out the requirements set forth therein shall constitute a breach of this agreement and, after notification by DOTD, may result in termination of this agreement by DOTD or other such remedy, as DOTD deems appropriate.

The Sponsor or its contractor shall utilize the services of banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

The above requirements shall be physically included in all subcontracts entered into by the Sponsor or its Contractor.

ARTICLE XI - INCIDENTAL COSTS

Incidental project costs incurred by the Sponsor in negotiating pre-construction engineering contracts, right-of-way appraisals and settlements, railroad and utility adjustments, contract recordation, and such other costs not provided in **Article XII {Cost Reimbursements}** shall be the responsibility of the Sponsor.

Incidental project costs incurred by the DOTD for services relating to pre-construction engineering, right-of-way acquisitions, utility relocations, bid advertisements, construction and construction engineering will be absorbed by DOTD.

ARTICLE XII - COST REIMBURSEMENTS

The DOTD will reimburse the Sponsor monthly the correct FHWA ratio of the costs of construction in effect at the time of authorization. The Sponsor shall render invoices monthly for reimbursement, which invoices shall be certified as correct by the proper designated official of the Sponsor. All invoices shall have the official name of project and project numbers affixed to each sheet. All such charges shall be subject to verification, adjustment and/or settlement by the DOTD's Audit Officer.

When the final costs of construction have been determined; adjustments will be made so that the amount of participation in these items will not exceed the percentages outlined in Article II.

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Before final payment is recommended by DOTD, all documentation of pay quantities shall conform to DOTD policies and procedures. The Sponsor acknowledges, however, that the FHWA will not participate in the cost of those items not constructed in accordance with the approved plans and specifications and in this event the Sponsor will be obligated to assume full financial responsibility. The Sponsor shall also submit all final billings for all phases of work within one year after the completion of final acceptance of the project. Failure to submit these billings within the specified one-year period shall result in the project being closed on previously billed amounts and any unbilled cost shall be the responsibility of the Sponsor.

The Sponsor shall reimburse the DOTD any and all amounts which may be cited by the FHWA or DOTD due to the Sponsor's noncompliance with Federal/State laws and/or regulations. The cited amounts reimbursed by the Sponsor will be returned to the Sponsor upon clearance of the citation(s).

Should the Sponsor fail to reimburse the DOTD any and all cited amounts within a thirty (30) day period after notification, all future payment request from the Sponsor will be held until the cited amount is exceeded at which time only the amount over and above the cited amount(s) will be released for payment. Additionally, no new Sponsor projects will be approved until such time as the cited amount is reimbursed to the DOTD.

The participation by the DOTD and the FHWA in the project shall in no way be construed to make the DOTD or the FHWA a party to the contract between the Sponsor and its contractor.

ARTICLE XIII - COST RECORDS

The Sponsor and all others employed by it in connection with this project shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred relative to this project and shall keep such material available at their respective offices at all reasonable times during the contract period and for five years from the date of final payment under the project, for inspection by the DOTD and/or Legislative Auditor, the FHWA or any authorized representative of the Federal Government under State and Federal Regulations effective as of the date of this contract and copies thereof shall be furnished if requested.

ARTICLE XIV - CANCELLATION

The terms of this agreement shall be binding upon the parties hereto until the work has been completed and accepted and all payments required to be made to the Sponsor have been made; but this agreement may be terminated under any or all of the following conditions:

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1. By mutual agreement and consent of the parties hereto.
2. By the Sponsor should it desire to cancel the project prior the award of contract, provided any cost that has been incurred for the preparation of plans is not eligible for reimbursement by the DOTD or the FHWA.
3. By the DOTD due to the withdrawal of State or Federal funding for the project.
4. By the DOTD for just cause, including but not limited to, violation of any provision of this Agreement.

ARTICLE XV - PROJECT RESPONSIBILITY

The DOTD, its officers, engineers and employees will not be required to supervise or perform such other services in connection with the development of this project as specifically set forth herein; however, the Sponsor will assume full responsibility for the project development and will save harmless the DOTD against any loss or damage of any kind, incident to or occasioned by deeds undertaken in pursuance of this agreement.

ARTICLE XVI - CIVIL RIGHTS

The Sponsor agrees that the project will be developed in full, in accordance with the principles and intents contained in the DOTD's latest Title VI Plan (Phase I) and that the same or closely related procedures providing for involvement of the Sponsor designated civil rights specialist in appropriate key stages of project development as identified in the aforementioned Title VI Plan, will be followed.

Further, the Sponsor agrees that its own employment policies and practices will afford fair and nondiscriminatory employment opportunities to all employees and applicants for employment and that a viable affirmative action program is maintained in the interest of increasing employment opportunities for minorities, women and other disadvantaged persons. It is understood that the Sponsor as a recipient of federal financial assistance under this agreement, is subject to monitoring and review of its civil rights activities by the DOTD and agrees to cooperate with DOTD officials in the achievement of civil rights objectives prescribed in the agreement and in any contracts resulting herefrom.

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ARTICLE XVII - PUBLIC LIABILITY

The Sponsor shall indemnify and save harmless the DOTD against any and all claims, demands, suits and judgments for sums of money allegedly due to any party for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of, any negligent act or omission, operation or work of the Sponsor, its agents, servants or employees while engaged upon or in connection with the services required or performed by the Sponsor or resulting from the ownership, possession or control of the improvement during its life.

ARTICLE XVIII - FINAL INSPECTION AND MAINTENANCE

Upon completion and final acceptance of the project, copy of which acceptance shall be furnished to the DOTD by the Sponsor; the Sponsor shall assume the maintenance of the improvement at its expense and in a manner satisfactory to the DOTD and/or the FHWA. The final acceptance will be recorded at the Parish Clerk of Courts Records Office by the Sponsor. Before making the final inspection, the DOTD's District Administrator shall be notified so that he may have a representative present for such inspection.

For projects on non-state controlled routes, title to the project right-of-way shall be vested in the Sponsor but shall be subject to DOTD and FHWA requirements and regulations concerning abandonment, disposal, encroachments and/or uses for non-highway purposes.

Upon completion and final acceptance of the project, the Sponsor shall assume the maintenance thereof.

For projects which contain landscaping, in order to ensure that the plantings continue to contribute to the beautification of Louisiana, the Sponsor shall be required to maintain the landscaping for the life of the plantings. Maintenance shall include but not be limited to annual mulching and fertilization, replacement plantings and weeding, pruning and watering as needed. Failure to maintain the landscaping shall result in the Sponsor being prohibited from being awarded any future Enhancement projects for a period of five years.

ARTICLE XIX - FEDERAL PROVISIONS

The Sponsor agrees that as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions set forth in 23 CFR, Part 633, Subpart C and Appendix A, which is incorporated herein by reference.

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ARTICLE XX - STATE HORTICULTURE PROVISIONS

The Sponsor agrees that as a condition to payment of the Federal funds obligated, it accepts and will comply with all LA Horticulture Laws, Rules, and Regulations which are incorporated herein by reference.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

Barbara Jane Tucker
Witness for First Party

Valerie Barthelot
Witness for First Party

Yvonne LeBlanc
Witness for Second Party

Cassandra Gray
Witness for Second Party

**STATE OF LOUISIANA
PARISH OF ST. CHARLES**

BY: V.J. St. Pierre, Jr.

V.J. St. Pierre, Jr.
Typed or Printed Name

TITLE: Parish President

72-6001208
Federal Identification Number

**STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT**

BY: Eric K. ...
for Secretary Sherril H. LaBas

RECOMMENDED FOR APPROVAL

BY: Rueck ...
Division Head