

2007-0385

INTRODUCED BY: ALBERT D. LAQUE, PARISH PRESIDENT

ORDINANCE NO. 07-12-24

An ordinance to approve and authorize the execution of a Cooperative Endeavor Agreement between the State of Louisiana, Department of Transportation & Development, and St. Charles Parish for State Project No. 579-45-0001, St. Charles West Bank Hurricane Protection Levee - Phase 1, Magnolia Ridge.

WHEREAS, Act 203 of the 2007 Session of the Louisiana State Legislature allocated funding for the Hurricane Flood Protection, Construction and Development Program of which a maximum of \$4,500,000.00 is designated for the St. Charles Parish West Bank Hurricane Protection Levee - Phase 1, Magnolia Ridge; and,

WHEREAS, the Louisiana Department of Transportation & Development has prepared the attached Cooperative Endeavor Agreement to provide for the use of said funds; and,

WHEREAS, it is the desire of the Parish Council to approve said Agreement.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the Cooperative Endeavor Agreement between the State of Louisiana, Department of Transportation & Development, and St. Charles Parish for State Project No. 579-45-0001, St. Charles West Bank Hurricane Protection Levee - Phase 1, Magnolia Ridge is hereby approved.

SECTION II. That the Parish President is hereby authorized to execute said Agreement on behalf of St. Charles Parish.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: MARINO, HILAIRE, RAMCHANDRAN, BLACK, DUHE, MINNICH

NAYS: NONE

ABSENT: FAUCHEUX, FABRE, WALLS

And the ordinance was declared adopted this 17th day of December, 2007, to become effective five (5) days after publication in the Official Journal.

Agreement-WB Hurricane Phase I Magnolia Ridge

CHAIRMAN:

[Signature]

SECRETARY:

[Signature]

DLVD/PARISH PRESIDENT:

December 18, 2007

APPROVED:

DISAPPROVED:

PARISH PRESIDENT:

[Signature]

RETD/SECRETARY:

12-18-07

AT:

3:45 pm

RECD BY:

BGT

AMENDED By:

by: ord. No. 10-12-9; ord. No. 13-10-6; ord. 14-11-1

COOPERATIVE ENDEAVOR AGREEMENT

**BETWEEN THE
STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
AND
ST. CHARLES PARISH**

**STATE PROJECT NO. 579-45-0001
St. Charles West Bank Hurricane Prot. Levee- PHASE 1 Magnolia Ridge**

In accordance with Article VII, Section 14 of the Louisiana Constitution, the Louisiana Department of Transportation and Development, herein represented by its duly authorized Secretary, hereinafter referred to as LADOTD and St. Charles Parish, represented by its duly authorized President, hereinafter referred to as Sponsor do hereby enter into a Cooperative Endeavor Agreement (the Agreement) to serve the public for the purposes hereinafter declared on this 9th day of January, 2008 in multiple original copies.

WHEREAS, Act 203 of the Legislature of the State of Louisiana, Regular Session of 2007 adopted in accordance with Section VII, Section 11 appropriated funds to be allocated to designated agencies; and

WHEREAS, the said Act 203 designated LADOTD as the recipient of \$52,700,000 for Hurricane Flood Protection, Construction and Development Program of which a maximum of \$4,500,000 is designated for the St. Charles Parish West Bank Hurricane Prot. Levee- Phase 1 Magnolia Ridge.

NOW, THEREFORE, the LADOTD and the Sponsor do hereby agree that;

**ARTICLE I
PURPOSE**

The Purpose of this Cooperative Endeavor Agreement is to set forth the terms of administering the project.

For the purpose of administering of funds, identification and record keeping, State Project No. 579-45-0001 is assigned to this project. This number will be used to identify all project costs.

**ARTICLE II
PROJECT DESCRIPTION**

The improvement that is to be undertaken with this project shall be interim flood protection improvements consisting of two gated structures: 1) The south gated structure is the western terminus of the project, situated across the Paradis Canal connecting the Sunset Drainage District levee to the Magnolia Ridge Levee System. Gates in the south structure provide for passage of small boats from the public boat launch on U.S. Highway 90. The gates are to be operated in accordance with the Interior Water Level Management Plan to insure that wetland

habitat values within the western basin of the ringed Magnolia Ridge Levee System will not be compromised. 2) The north gated structure is a part of the ring-type levee system that connects existing barriers by spanning the Paradis Canal north of the Burlington Railroad. Gated openings in the north structure allow normal drainage patterns in the Paradis Canal and under storm conditions when closed provide flood protection. The gates are to be operated in accordance with the Interior Water Level Management Plan.

This improvement shall hereinafter be referred to as the "Project".

ARTICLE III **SCOPE AND PROJECT RESPONSIBILITY**

As provided in Act 203 and as stated above, the State funds for this project are limited to \$4,500,000 payable out of the State General Fund by Statutory Dedication out of the Coastal Protection and Restoration Fund to the LADOTD.

The Sponsor shall make all necessary surveys and prepare plans, specifications and estimates for the project in accordance with LADOTD requirements.

The Sponsor shall advertise and receive bids in accordance with the Public Bid Laws of the State of Louisiana, and Generally as follows:

Written authorization must be obtained from the LADOTD prior to advertising the project or any phase thereof for bids.

The Sponsor will solicit bids for the services, labor and materials needed to construct the project in accordance with the Public Bid Laws of the State, including, but not limited to R.S.38:2212, et. seq., applicable to political subdivisions of the State. The Sponsor will also keep a procurement file relative to the necessary acquisition of services, labor and materials needed to complete the project that will be subject to review by the LADOTD at any time.

After receipt of bids and before award of the contract, the Sponsor shall submit to the LADOTD copies of three (3) lowest bidder's proposals and proof of advertising. The Sponsor's submittal shall include: proof of publication of advertisement for bids; bid tabulation form certified by the engineer and the contracting agency; bid proposals and bid bonds of the three (3) lowest bidders and proposed notice of Award of Contract (AOC). After receiving comments from the LADOTD, the Sponsor may then award and execute the construction contract and will submit to the LADOTD the AOC, executed construction contract and performance/payment bond(s). The contract and bonds shall be recorded in the Clerk of Court's office for the parish or parishes where the project is to be constructed. Proof of recordation shall be submitted to the LADOTD along with the Notice To Proceed. Once the above item has been submitted to the LADOTD, the Sponsor shall adopt a Resolution Certifying Compliance with the Public Bid Law as conforming to the requirements of R.S. 38:2211, et. seq. The format of this resolution shall be provided by the LADOTD.

The DOTD's review does not relieve the Sponsor of its responsibility to comply with public bid and contracting laws.

ARTICLE IV
CONSTRUCTION

The LADOTD will provide technical administration and inspection during the project construction.

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

1. When it is stipulated in "Louisiana Standard Specifications" that approval by the Engineer or the LADOTD is required for equipment and/or construction procedures, such approval must be obtained from the Project Engineer.
2. All Construction procedures must be in accordance with LADOTD guidelines and policies established by the "Engineering Directives and Standard Manual", and any applicable memoranda. These documents will be made available to the consultant through the Sponsor.
3. All documentation of pay quantities must conform to the requirements of LADOTD as outlined in the "Construction Contract Administration" Manual. This manual will be made available to the consultant through the Sponsor.

ARTICLE V
PAYMENT

The LADOTD shall pay the Sponsor, monthly, one-hundred (100%) percent of the eligible project costs. Costs in excess of this amount shall be borne 100% by the Sponsor. The Sponsor shall render invoices monthly for payment, which invoices shall be certified as correct by the Sponsor's Engineer and by the proper designated official of the Sponsor. All such charges shall be subject to verification, adjustment and/or settlement by the LADOTD's Audit Officer.

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

ARTICLE VI
RECORD KEEPING, REPORTING AND AUDITS

The Contract Monitor for this contract is Pamela Burleigh, Public Works, LADOTD.

The Sponsor shall maintain all documents, papers, field books, accounting records, appropriate financial records and other evidence pertaining to costs incurred for the project and shall make such materials available for inspection at all reasonable times during the contract period and for a three year period from the date of reimbursement under the project for inspection by the LADOTD and/or the Legislative Auditor; however, prior to disposal of any project data, the Sponsor shall obtain prior written approval of the LADOTD. The Sponsor shall

furnish copies of project records to the LADOTD and/or the Legislative Auditor within thirty (30) days of a written request.

The submission of documentation to the LADOTD as required by this Agreement and its Supplements is to verify that such documentation is being produced, to provide evidence of the progress of the project, and to verify that the expenditure of funds, eligible for state reimbursement, occurs in accordance with this Agreement and all applicable state laws. Unless a written request is received from the Sponsor, the LADOTD will not provide extensive document review for the project or take responsibility of determining whether or not this documentation is complete and accurate.

The Sponsor shall provide to the LADOTD any requested reports on the status of the project. The Sponsor shall, during the term of the Agreement, cause to be conducted annually, by a duly qualified certified public accountant, an audit and examination of its books and accounts pertaining to the project. The Sponsor shall provide the Legislative Auditor and the LADOTD with copies of the annual audit report, and any other financial reports which relate to the project, no later than thirty (30) days after receipt and acceptance by the Sponsor. The Sponsor shall provide to the LADOTD a complete audit of the project upon its completion, no later than ninety (90) days after completion of the project. The LADOTD reserves the right to audit the project records at any time.

The Sponsor must have a fully executed and approved Agreement before entering into any contracts which obligate state funding and must follow all laws pertaining to public bidding. Further, written authorization must be obtained from the LADOTD prior to advertising the project or any phase thereof for bids.

ARTICLE VII **FINAL ACCEPTANCE**

In addition to any other condition for reimbursement, either contained herein or pursuant to law, or the LADOTD or Federal rules and regulations, no reimbursement shall be made by the LADOTD until such time as the Sponsor provides the LADOTD with the following items:

1. Certification by the Sponsor's Engineer that the work is complete and that all work has been performed in accordance with the plans and specifications
2. Recommendation of acceptance by the Sponsor's Engineer (Substantial Completion)
3. A Resolution by the Sponsor accepting the work
4. A certified copy of the Recordation of Acceptance
5. A certified copy of the Clear Lien Certificate or as accepted

6. In the event of unresolved liens, notification of the Sponsor's intent to deposit retainage in a court of competent jurisdiction
7. Two copies of Operation and Maintenance Manual, Final Cost Estimate, and As-Built Drawings or Plans of Record
8. A certified payment request from the Sponsor

If the Sponsor intends to phase the project under separate construction contracts, the Sponsor shall request approval from the LADOTD. Also, the sponsor shall advise the LADOTD of the scope of each phase and provide a marked up copy of the cost estimate in the approved application for funding showing each phase so that appropriate state project numbers may be assigned for each part of the work.

ARTICLE VIII **TERMINATION FOR CAUSE**

LADOTD may terminate this agreement for cause based upon the failure of the Sponsor to comply with the terms and/or conditions of the agreement; provided that LADOTD shall give Sponsor written notice specifying Sponsor's failure. If within thirty (30) days after receipt of such notice, Sponsor shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then LADOTD may, at its option, place Sponsor in default and the agreement shall terminate on the date specified in such notice. The Sponsor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the LADOTD to comply with the terms and conditions of this agreement; provided that the Sponsor shall give the LADOTD written notice specifying the LADOTD's failure and a reasonable opportunity for the LADOTD to cure the defect.

ARTICLE IX **TERMINATION FOR CONVENIENCE**

The LADOTD may terminate the agreement at any time by giving thirty (30) days written notice to Sponsor. Upon receipt of notice, Sponsor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders, for materials, facilities, services and supplies in connection with the performance of this Agreement. Sponsor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

ARTICLE X **OPERATION & MAINTENANCE RESPONSIBILITY**

The Sponsor shall develop an Operation and Maintenance Manual and shall provide the LADOTD with two (2) copies of the Operation and Maintenance Manual and as-built plans or plans of record. The Sponsor shall maintain the project, as completed, at its expense and in accordance with the Sponsor's maintenance policies and the Operation and Maintenance Manual.

The Sponsor agrees to assume all maintenance and operation costs for the project and all future alterations as may be required without cost to the State.

The Title to the project rights-of-way shall be vested in the Sponsor but shall be subject to the LADOTD requirements and regulations concerning abandonment, disposal, encroachments and/or uses for non-flood control purposes.

ARTICLE XI
PROGRESS SCHEDULE

Within thirty (30) days after this agreement is executed, the Sponsor shall submit to the LADOTD a progress schedule that indicates, using a bar graph, the various activities that must be accomplished to develop construction plans and specifications and let a construction contract within the time allotted. The schedule shall be submitted to the LADOTD, Public Works, Director, State Programs.

ARTICLE XII
DISCRIMINATION CLAUSE

The Sponsor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and the Sponsor agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Sponsor agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Sponsor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this agreement.

ARTICLE XIII
HOLD HARMLESS AND INDEMNITY

The Sponsor agrees and obligates itself, its successors and assigns, to defend, indemnify, save, protect and hold forever harmless and provide a defense for the LADOTD, its officials, officers and employees against any and all claims that may be asserted by any persons or parties resulting from violation by the Sponsor, its employees, agents and/or representatives of the requirements of all State laws applicable to the project. Further, the Sponsor agrees that it shall indemnify and save harmless and provide a defense for the LADOTD, its officials, officers and employees, against any and all claims, demands, suits, actions (ex contractu, et delictu, quasi-contractual, statutory or otherwise), judgments of sums of money, attorney's fees and court costs, to any party of third person including, but not limited to, amounts for loss of life or injury or damage to persons, property or damages to contractors, subcontractors, suppliers, laborers or other agents or contractors of the Sponsor or any of the above, growing out of, resulting from, or by reason of, any negligent act or omission, operation or work of the Sponsor, its employees, servants, contractors, or any person engaged upon or in connection with the engineering services, construction and construction engineering required or performed by the Sponsor hereunder

including, but not limited to, any omissions, defects or deficiencies in the plans, specifications or estimates or by virtue of any extra work, delays, disruptions, inefficiencies or nonpayment of any engineering, construction, or construction engineering cost incurred or any other claim of whatever kind or nature arising from, out of, or in anyway connected with the project, to the extent permitted by law.

Nothing herein is intended, nor shall be deemed, to create a third party beneficiary to any obligation by the LADOTD herein or to authorize any third person to have any action against the LADOTD arising out of this Agreement.

ARTICLE XIV
TAXES

The Sponsor agrees that the responsibility for payment of taxes, if any, from the funds received under this Agreement, its Supplements and/or legislative appropriation shall be the Sponsor's obligation and identified under Federal Tax Identification Number shown on the signature sheet.

ARTICLE XV
AMENDMENTS

The parties hereto agree than any change in the scope of the project shall require a written amendment, agreed to and signed by both parties.

ARTICLE XVI
OWNERSHIP

All records, reports, documents and other material delivered or transmitted to Sponsoring party by the State shall remain the property of the State, and shall be returned by Sponsoring Party to the State, at Sponsoring Party's expense, at termination or expiration of this agreement. All records, reports, documents, or other material related to this agreement and/or obtained or prepared by Sponsor in connection with performance of the services contracted for herein shall become the property of the State, and shall, upon request, be returned by Sponsoring Party to the State at Sponsor's expense at termination or expiration of this agreement.

ARTICLE XVII
ASSIGNMENT

The Sponsor shall not assign any interest in this agreement and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the State, provided however, that claims for money due or to become due to Sponsor from the State may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

ARTICLE XVIII
FINANCIAL DISCLOSURE

Each recipient shall be audited in accordance with R.S. 24:513. If the amount of public funds received by the provider is below the amount for which an audit is required under R.S. 24:513, the transferring agency shall monitor and evaluate the use of the funds to ensure effective achievement of the goals and objectives.

ARTICLE XIX
AUDITOR'S CLAUSE

It is hereby agreed that the Legislative Auditor of the State of Louisiana, and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all records and accounts of Contracting Party which relate to this agreement.

The Sponsor and any subcontractors paid under this agreement shall maintain all books and records pertaining to this agreement for a period of three years after the date of final payment under the prime contract and any subcontract entered into under this agreement.

ARTICLE XX
FISCAL FUNDING CLAUSE

The continuation of this agreement is contingent upon the appropriation of funds to fulfill the requirements of the agreement by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the agreement, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the agreement, the agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

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:

Valarie Berthelet
(Witness for First Party)

Sandra S. Miguez
(Witness for First Party)

**STATE OF LOUISIANA
St. Charles Parish**

BY: Albert D. Lague
(Signature)

Albert D. Lague
(Typed or Printed Name)

Parish President

(Title)
72-6001208
(Sponsor's Federal Identification Number)

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

A. Thomas
(Witness for First Party)

BY: C. J. Prueff
Assistant Secretary

Office of Public Works, Hurricane Flood
Protection & Intermodal Transportation

Gladys P. Fleming
(Witness for Second Party)

RECOMMENDED FOR APPROVAL

BY: William P. Kelly
Deputy Assistant Secretary

Public Works and Water Resources Division