

Ord.

2010-0248

INTRODUCED BY: V.J. ST. PIERRE, JR., PARISH PRESIDENT  
(DEPARTMENT OF WATERWORKS)

ORDINANCE NO. 10-7-11

An ordinance to approve and authorize the execution of a Memorandum of Agreement between the Department of the Army and the Parish of St. Charles for the West Bank and Vicinity Louisiana Project in Luling.

**WHEREAS**, the Department of the Army proposes to construct the West Bank and Vicinity, Louisiana Project for hurricane storm damage reduction in Southeast Louisiana, which includes protection for US Highway 90 East of the Davis Diversion Facility and for the residents of Ama; and,

**WHEREAS**, it will be necessary to relocate a section of the St. Charles Parish Waterworks' 12" water main located along the North side of said section of US Highway 90 in Luling to perform this project; and,

**WHEREAS**, it is in the best interest of both parties that the Department of the Army perform the relocations of the Parish's Facilities necessary for the WBV-73 reach of the Project on behalf of St. Charles Parish.

**THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:**

**SECTION I.** That the Memorandum of Agreement between the Department of the Army and the Parish of St. Charles for the West Bank and Vicinity Louisiana Project be hereby approved.

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

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

- YEAS: SCHEXNAYDRE, AUTHEMENT, RAYMOND, TASTET, BENEDETTO, HOGAN, COCHRAN, LAMBERT, NUSS
- NAYS: NONE
- ABSENT: NONE

And the ordinance was declared adopted this 26th day of July, 2010, to become effective five (5) days after publication in the Official Journal.

CHAIRMAN: Billy Raymond, Sr.  
 SECRETARY: Barbara Jacob Jucker  
 DLVD/PARISH PRESIDENT: July 27, 2010  
 APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_  
 PARISH PRESIDENT: [Signature]  
 RETD/SECRETARY: July 27, 2010  
 AT: 11:20 AM RECD BY: [Signature]

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE PARISH OF ST. CHARLES  
FOR  
THE WEST BANK AND VICINITY  
LOUISIANA PROJECT**

THIS AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between THE DEPARTMENT OF THE ARMY acting by and through the U.S Army Engineer for the New Orleans District (“Government”) and the Parish of St. Charles (“Parish”), as authorized by the Parish Council, acting by and through its President.

WITNESSETH THAT:

WHEREAS, Section 401(b) of the Water Resource Development Act of 1986, Public Law 99-662, as amended by Sections 101(a)(17) and 101(b)(11) of the Water Resource Development Act of 1996, Public Law 104-303, Section 328 of the Water Resource Development Act of 1999, Public Law 106-53, an Section 3084 of the Water Resource Development Act of 2007, Public Law 110-114, authorized the Secretary of the Army to construct the West Bank and Vicinity, Louisiana Project for hurricane storm damage reduction in Southeast Louisiana (hereinafter referred to as the “Project”); and

WHEREAS, the Flood Control and Coastal Emergencies (FC&CE) heading, Chapter 3, Title I of Public Law 109-148, and the Flood Control and Coastal Emergencies heading, Chapter 3, Title III of Public Law 110-252 authorized the Secretary of the Army, at Full Federal Expense, to accelerate completion of unconstructed portions of the Project; and

WHEREAS, PL 109-234, Title II, Chapter 3, Construction, and Flood Control and Coastal Emergencies; PL 110-28, Title IV, Chapter 3, Flood Control and Coastal Emergencies and Sec. 4302; the Water Resources Development Act (WRDA) of 2007 (Public Law 110-114) Section 3084 and Section 7012); and P.L. 110-252, Title III, Chapter. 3, Construction, authorized incremental improvement necessary to achieve to 100-year level of risk reduction; and

WHEREAS the Government is undertaking the construction of WBV- 73 reach of the Project, the construction of which will impact facilities owned by the Parish, namely those facilities listed in Exhibit A (hereinafter referred to as “Facilities”).

WHEREAS the current time constraints on the Project require an expedited delivery schedule, including the performance of all relocations the Government has determined to be necessary for the Project, and considering that the Government has already significantly developed the plans and specifications for the project, including the locating and identifying of interfering facilities, the parties agree that in order to maintain efficiency and expediency, it is in the best interest of the Project that the Government perform the relocations of the Parish’s Facilities necessary for the WBV-73 reach of the Project on behalf of the Parish; and

WHEREAS, the Parish, with the approval of the Parish Council, herein authorizes the Government to perform the relocation on behalf of the Parish, a detailed description of the work to be performed is attached hereto as Exhibit B; and

WHEREAS, in furtherance thereof, the Government and the Parish desire to enter into this agreement providing for the Government to incorporate the Parish's relocation plan into the plans and specifications and ensure the performance of the relocations of the Parish's Facilities that the Government determines to be necessary for the construction of the WBV-73 reach of the Project and for the Parish to pay the Government for performing these services on its behalf.

NOW, THEREFORE, the Government and the Parish, agree as follows:

### **I. Obligations of the Parish**

The Parish, with the approval of the Parish Council, hereby authorizes the Government to perform the relocation of the Facilities on behalf of the Parish. A detailed description of the facility relocation work is shown on Exhibit A attached hereto. A detailed estimate of all of the relocation cost is shown on the attached Exhibit B. Before the Government will begin the work, the Office of Coastal Protection and Restoration, on behalf of the Parish, will advance to the Government the funds necessary to perform the relocation work, including all engineering design cost, all geophysical investigations costs required in order to perform the work, all administrative cost directly attributable to any of the relocation works, any cost necessary to acquire any permits needed to perform the work, any other incidental cost directly attributable to the relocation work,. The Parish will insure that these funds are advanced to the Government and any additional funds should the actual cost exceed the attached estimate. Once all cost and expenses have been paid, if the actual cost to perform the relocation work is less than amount advanced, the difference will be promptly remitted.

### **II. Obligations of the Government**

The Government agrees to perform the work described in Exhibit B as a part of the construction of the WBV-73 Project. Construction will be performed by the Corps' contractor as part of the construction of the subject project, but all cost associated with the relocation of the facilities will be kept as a separate account.

### **III. Liability**

As a requirement of the Government undertaking the described work, that as long as the Government and its contractor perform the plans in a workmanlike manner, the Parish hereby agrees to hold the United States of America, its employees, officers, and assigns, harmless for any damage that may occur as a result of the relocation of the above facilities except as indicated in this paragraph below. The Government agrees to act in a reasonable manner in conducting their activities on the property covered by this Agreement. The United States has waived sovereign immunity for negligence in the Federal Tort Claims Act, 28 U.S.C. 1346, 2671-2680, and the Department of the Army acknowledges that in the event its employees are negligent, liability may attach for such negligence under the Federal Tort Claims Act. Under the Permits and Responsibilities clause of the Federal Acquisition Regulations (FAR 52.236-7), the contract between the United States and its contractor under which the subject work will be performed, will require the contractor to be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Parish has no responsibility to hold and save the Government or its contractors harmless for such negligence.

#### IV. Acceptance and Release

Once the subject work is complete the Government will tender the work to the Parish. At that time the Parish will perform its final inspect of the subject work for compliance and completeness and, after appropriate testing of the work, sign a Final Acceptance and Release. This Final Acceptance and Release will certify that the work performed by the Government and its contractors has been reviewed and found to be complete and in compliance with all project plans, specifications, agreements, and all local, state and federal laws governing the work; that the Government and its contractors have fulfilled all contractual obligations in performance of the relocation of the Parish's Facility; and the Parish understands that by signing this Final Acceptance and Release it will release and relieve, subject to the one-year warranty of CFR 52.246-21, the Government, its contractors, assigns and their employees from any and all liability due to the performance and fitness of any and all work carried out in the relocation of Parish's Facilities.

#### V. Effective Date and Duration

a. This Agreement shall become effective upon execution by the District Engineer. If terminated prior to the signing of the Final Acceptance and Release, it shall remain effective until terminated by any party upon 60 days written notice. In the event of termination, the parties shall consult with each other concerning all claims for termination cost.

b. The Parish shall continue to be obligated for payment of costs incurred by the Government under this Agreement, and for costs of closing out or transferring any ongoing relocation work until the time of signing of the Final Acceptance and Release.

c. This Agreement may be modified, supplemented or amended only by written agreement of the parties.


d. All notices under this Agreement shall be provided as follows:

ST. CHARLES PARISH  
Department of Waterworks  
P.O. Box 108  
Luling, LA 70070

DISTRICT ENGINEER  
U.S. Army Corps of Engineers  
New Orleans District  
P.O. Box 60267  
New Orleans, LA 70160-0267

**PARISH OF ST. CHARLES**

**THE UNITED STATES OF AMERICA**


BY:   
\_\_\_\_\_  
V.J. ST. PIERRE  
Parish President  
Department of Waterworks  
Parish of St. Charles, as authorized by  
the St. Charles Parish Council

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

**ATTORNEY'S CERTIFICATE OF AUTHORITY**

I, Leon C. Vial, III, Attorney for the St. Charles Parish, certify that V.J. St. Pierre, President of St. Charles Parish, as authorized by the St. Charles Parish Council, has authority to grant the above Authorization for and Right of Entry for pipeline relocation, West Bank and Vicinity, Louisiana Hurricane and Storm Damage Risk Reduction Project, WPV-73, St. Charles Parish, LA.; that said irrevocable authorization for and right of entry is executed by the proper duly-authorized officer; and that the irrevocable authorization for and right of entry is in sufficient form to grant the authorization for and right of entry therein stated.

Witness my signature as Attorney for the Parish of St. Charles this 27<sup>th</sup> day of July 2010.

BY:   
(sign) #58825  
LEON C. VIAL, III  
Attorney for St. Charles Parish