



DEPARTMENT OF THE ARMY
MISSISSIPPI VALLEY DIVISION, CORPS OF ENGINEERS
P.O. BOX 80
VICKSBURG, MISSISSIPPI 39181-0080

24 Aug 2015

REPLY TO
ATTENTION OF:

CEMVD-PD-L

MEMORANDUM FOR Commander, New Orleans District

SUBJECT: Planning Assistance to States (PAS), Agreement Approval,
Lower 9th Ward, LA Master Plan Study

1. Reference memorandum CEMVN-PM-B, 19 June 2015, subject: Planning Assistance to States (PAS), Cost Sharing Agreement Approval Memorandum, Lower 9th Ward Master Plan (encl).
2. I hereby approve the PAS Agreement for the Lower 9th Ward, section 22 Environmental Master Plan Study. MVN provided satisfactory responses to MVD comments on 24 July 2015. The agreement follows the model with no deviations.
3. A copy of the executed agreement should be provided to MVD.
4. The MVD point of contact is Mr. Mincer Minor, CEMVD-PD-L, at (601) 634-5841.

Encl

RAYFORD E. WILBANKS
Chief, Lower District Support Team
MVM, MVK and MVN

PLANNING ASSISTANCE TO STATES AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY
AND

LOWER NINTH WARD CENTER FOR SUSTAINABLE ENGAGEMENT AND
DEVELOPMENT

FOR A SECTION 22 ENVIRONMENTAL MASTER PLAN STUDY

THIS AGREEMENT is entered into this 14th day, of September, 2015, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Lower Ninth Ward Center for Sustainable Engagement and Development (hereinafter the "Sponsor"), represented by its Chief Executive Officer executing this Agreement.

WITNESSETH, that

WHEREAS, Section 22 of the Water Resources Development Act (WRDA) of 1974 (Public Law 93-251), as amended, authorizes the Secretary of the Army, acting through the Chief of Engineers, to assist the States, as therein defined, in the preparation of comprehensive plans for the development, utilization and conservation of water and related resources of drainage basins, watersheds or ecosystems located within the boundaries of such State;

WHEREAS, Section 319 of the WRDA of 1990 (Public Law 101-640) authorizes the Secretary of the Army to collect fees from States and other non-Federal governmental entities for the purpose of recovering 50 percent of the cost of the Program established by WRDA of 1974, Section 22;

WHEREAS, the Sponsor has reviewed the State's comprehensive water plans and identified the need for planning assistance as described in the Scope of Work incorporated into this Agreement;

WHEREAS, the Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in the study cost-sharing and financing in accordance with the terms of this Agreement;

WHEREAS, the Sponsor may provide up to 100 percent of its required contribution of Study Costs by the provision of services, materials, supplies or other in-kind services.

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsor and all negotiated costs of work performed by the Sponsor pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.

B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.

C. The term "Study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers New Orleans District of initial Federal funds following the execution of this Agreement and ending when the New Orleans District provides the planning report to the Sponsor.

D. The term "Scope of Work" ("SOW") means the description of the work to be performed as set forth in **Attachment "A"** and which is incorporated by reference. The SOW is not considered binding on either party and is subject to change by the Government in consultation with the Sponsor.

E. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsor in accordance with the SOW.

ARTICLE II - OBLIGATIONS OF PARTIES

A. The Government, subject to receiving funds appropriated by the Congress of the United States (Congress), using funds and in-kind services provided by the Sponsor and funds appropriated by the Congress, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Articles III.A., III.B., and III.C. of this Agreement, the Sponsor shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs. If agreeable to all parties, in-kind services may comprise up to

100 percent of the Sponsor's contributions. The in-kind services to be provided by the Sponsor, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the Scope of Work. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsor understands that the schedule of work may require the Sponsor to provide cash or in-kind services at a rate that may result in the Sponsor temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of the Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of the Article or the obligations concerning payment specified in Article III of this Agreement.

D. No Federal funds may be used to meet the Sponsor's share of Study Costs under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used to carry out the Study.

E. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsor with a third party in furtherance of the Agreement which obligates funds of the Sponsor and does not obligate Federal appropriations shall be exclusively within the control of the Sponsor, but shall be subject to applicable Federal laws and regulations.

F. Notwithstanding any provision of this Agreement, this Agreement and the Government's obligations hereunder shall not be effective and will not commence until Federal funds have been appropriated and allocated to the District Engineer, U.S. Army Corps of Engineers New Orleans District for the implementation of this Study. In the event that Federal funds are allocated to the District Engineer for this Study after the date that the parties hereto execute this Agreement, the effective date of this Agreement shall be the date that funding approval is provided to the District Engineer.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs. At least quarterly, the Government shall provide the Sponsor a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$40,000.00, and the Sponsor's share of estimated Study Costs is \$20,000.00. In order to meet the Sponsor's cash payment requirements for its share of estimated Study Costs, the Sponsor must provide a cash contribution currently estimated to be \$0.00. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the Study described in the SOW, projected costs, price-level changes, and anticipated inflation. Such cost

estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The Sponsor shall provide its cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. No later than 30 days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsor in writing of the funds the Government determines to be required from the Sponsor to meet its share of Study Costs. No later than 15 days thereafter, the Sponsor shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, New Orleans District" to the District Engineer or an Electronic Funds Transfer in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Sponsor such sums as the Government deems necessary to cover the Sponsor's share of contractual and in-house financial obligations attributable to the Study as they are incurred.

3. In the event the Government determines that the Sponsor must provide additional funds to meet its share of Study Costs, the Government shall so notify the Sponsor in writing. No later than 60 days after receipt of such notice, the Sponsor shall provide the Government with a check or an Electronic Funds Transfer for the full amount of the additional required funds.

C. Within 90 days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsor, and credits for the negotiated costs of the Sponsor, and shall furnish the Sponsor with the results of this accounting. Within 30 days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsor for the excess, if any, of cash contributions and credits given over its required share of Study Costs, or the Sponsor shall provide the Government any cash contributions required for the Sponsor to meet its required share of Study Costs.

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

To provide for consistent and effective communication, the Government's Project Manager for the Study and the Sponsor's designated representative shall communicate regularly until the end of the Study Period.

ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of 3 years after the period of design and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsor act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsor's rights and obligations under this Agreement, the Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsor shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon 30 days written notice, either party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon the failure of the parties to extend the study under Article II.D. of the Agreement, or upon failure of the Sponsor to fulfill its obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

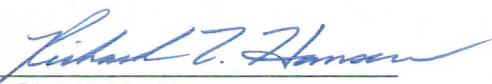
ARTICLE XI – LIMITATION ON GOVERNMENT EXPENDITURE

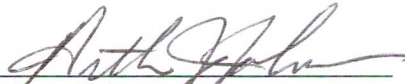
In accordance with Section 22 of WRDA of 1974, as amended, Government financial participation in the cooperative preparation of comprehensive plans for development, utilization, and conservation of water and related resources pursuant to said authority shall be limited to the expenditure of not more than \$2,000,000 in any one year in any one State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which, subject to the provisions of Article II.G. of this Agreement, shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, New Orleans District.

DEPARTMENT OF THE ARMY

Lower Ninth Ward Center for
Sustainable Engagement and
Development

BY: 
Richard L. Hansen,
Colonel, US Army
District Engineer

BY: 
Arthur Johnson,
Chief Executive Officer
Lower Ninth Ward Center for
Sustainable Engagement and
Development

Attachment A: "Scope of Work: Environmental Resource Planning Study for the Development of an Environmental Master Plan"

CERTIFICATE OF AUTHORITY

I, Rachel Pickens, do hereby certify that I am the principal legal officer of the Lower Ninth Ward Center for Sustainable Engagement and Development and that the Lower Ninth Ward Center for Sustainable Engagement and Development is a legally constituted non-profit corporation organized and existing under the laws of the State of Louisiana that is exempt from paying taxes under Section 504 of the Internal Revenue Code (26 U.S.C 501), with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Lower Ninth Ward Center for Sustainable Engagement and Development in connection with the Section 22 Environmental Master Plan Study, and that the person who has executed this Agreement on behalf of the Lower Ninth Ward Center for Sustainable Engagement and Development has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certification this 7 day of September, 2015.

By: _____



Rachel Pickens
Principal Legal Officer,
Lower Ninth Ward Center for Sustainable Engagement and Development

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**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I Arthur Johnson do hereby certify that I am the Chief Executive Officer of Lower Ninth Ward Center for Sustainable Engagement and Development ("Non-Federal Sponsor"), that I am aware of the financial obligations of the Non-Federal Sponsor for the Environmental Master Plan Study and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Planning Assistance to States Agreement between the Department of the Army and the Lower Ninth Ward Center for Sustainable Engagement and Development for the Section 22 Environmental Master Plan Study


IN WITNESS WHEREOF, I have made and executed this Certification on this 24 day of July, 2015

BY: 
TYPED NAME: Arthur Johnson
TITLE: Chief Executive Officer
DATE: July 24, 2015

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CERTIFICATION OF LEGAL REVIEW

The Cost Sharing Agreement for the Lower Ninth Ward Environmental Master Plan Study has been fully reviewed by the Office of Counsel, New Orleans District and the Agreement is legally sufficient.

By: 
Stephan C. Roth
New Orleans District Counsel

Date: 6/16/15

CERTIFICATION REGARDING LOBBYING

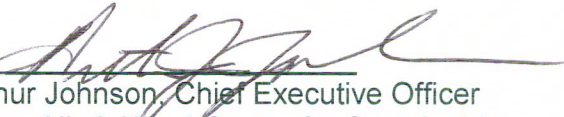
The undersigned certifies, to the best of his or her knowledge and belief, that:

(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.

By: 
Arthur Johnson, Chief Executive Officer
Lower Ninth Ward Center for Sustainable
Engagement and Development

DATE: Sept. 7, 2015

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Attachment “A” SCOPE OF WORK

ENVIRONMENTAL RESOURCE PLANNING STUDY FOR THE DEVELOPMENT OF AN ENVIRONMENTAL MASTER PLAN

The Lower Ninth Ward community in the City of New Orleans is home to a 400 acre cypress Tupelo swamp known as the “Bayou Bienvenue Wetland Triangle”. This historically significant wetland habitat is bordered to the south by Florida Avenue and to the north, east, and west by the Industrial Canal (Lake Borgne main outfall canal), and provides unprecedented environmental and recreational diversity to the area. Fifty years ago, Bayou Bienvenue was a freshwater cypress swamp and part of the complex network of wetlands that stretched 30 miles from New Orleans to Lake Borgne. In the past, this wetland was a valuable asset to the Lower Ninth community, offering storm protection, recreation, and natural beauty; however a century of development and canal-building has converted the swamp into an open-water brackish marsh. A healthy cypress swamp in the Bayou Bienvenue Wetland Triangle is essential to the long-term sustainability of the Lower Ninth Ward. Wetlands, especially cypress forests, act as “horizontal levees, “reducing the height and velocity of storm surges, and sheltering man-made levees from waves. A restored Bayou Bienvenue Wetland Triangle would be the closest cypress swamp to downtown New Orleans and could serve an invaluable role in educating the public about Louisiana’s natural history and the value of wetlands.

The Lower Ninth Ward Center for Sustainable Engagement and Development (CSED) has requested the United States Army Corps of Engineers (USACE) to provide CSED with environmental planning assistance relative to the restoration and recreational use of the Bayou Bienvenue Wetland Triangle. The CSED is a non-profit organization that is incorporated, organized, and existing under the laws of the State of Louisiana and which is exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501). The CSED will serve as the Non-Federal Sponsor under a Planning Assistance to States Agreement with the Department of the Army, in accordance with the Planning Assistance to States (PAS) Program, as authorized by Section 22 of the Water Resources and Development Act of 1974. A primary focus of the CSED is coastal rehabilitation with the goal of rebuilding an equitable, culturally, and environmentally sustainable community. One of the strategic initiatives of the CSED is to protect and restore the natural environment that is integral to a healthy ecosystem, green space, and recreation, including the Bayou Bienvenue environmental regeneration effort, which is a mission that is directly related to the proposed PAS Study.

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The purpose of the PAS Study is to assist the CSED in the preparation of environmental planning documents (including conceptual drawings) that can be used in the comprehensive planning, development, and design of a (non-vehicular) transportation route/corridor which would provide a recreation and ecosystem resource within the Bayou Bienvenue Wetland Triangle for the Lower Ninth Ward community and visitors. The PAS Study will consist of a planning level assessment that will include ecosystem-friendly recreation features in the Bayou Bienvenue Wetland Triangle, including a pedestrian corridor and bike path, together with related features and improvements such as educational signage, viewing platforms, connections, crossings, lighting, bike racks, benches, tiled walk-ways, and parking areas. The PAS Study will include rough order of magnitude design and construction costs. At the conclusion of the Study, USACE will provide the CSED with a Planning Report that will include technical data, analyses, assessments, conceptual drawings, cost information, and related planning level of detail information, that the CSED can utilize in the preparation of an environmental master plan for wetland restoration and the development of limited impact recreation facilities in the Bayou Bienvenue Wetland Triangle.

USACE and the CSED will coordinate the Study efforts with local stakeholders (such as the Sewage and Water Board of New Orleans, the Orleans Levee District, the New Orleans Public Belt Rail Road, etc.) so that any environmental master plan that may be ultimately adopted will have the greatest chance for future implementation.

The PAS Program provides funding and authority to USACE to provide the planning and technical assistance necessary to prepare comprehensive plans for the development, utilization, and conservation of water and related land resources of drainage basins, watersheds or ecosystems. PAS studies are cost-shared on a 50% Federal and 50% non-Federal basis. The Non-Federal Sponsor can provide 100% of its share as work-in-kind. It is estimated that Study Period will be 6 months commencing upon release of the initial Federal funds to USACE, (New Orleans District) and the execution of the PAS Agreement, and ending upon delivery of the Planning Report to the CSED by the New Orleans District. At this time, the estimated Study Costs are \$40,000, and the CSED's share of the Estimated Study Costs is \$20,000 in work-in-kind.

Cost Estimate

Task	USACE Cost	CSED WIK	Total Cost
Bayou Bienvenue Wetland Triangle Data Collection	\$0	\$5,000	\$5,000
Bayou Bienvenue Wetland Triangle Existing Conditions	\$0,000	\$3,000	\$3,000

Documentation			
Alternative Development	\$3,000	\$3,000	\$6,000
Alternative Evaluation	\$3,000	\$3,000	\$6,000
ROM Cost Estimates	\$3,000	\$0	\$3,000
Conceptual Drawings	\$5,000	\$0	\$5,000
Stakeholder Coordination	\$1,000	\$5,000	\$6,000
Report Documentation	\$5,000	\$1,000	\$6,000
TOTALS	\$20,000	\$20,000	\$40,000

Deliverables

The final deliverable will be a completed Environmental Master Planning Report outlining all environmental resource planning aspects of the proposed project. The Planning Report will include the following:

- Analysis of existing conditions in the Bayou Bienvenue Wetland Triangle;
- Identification of environmental resource planning alternatives (pedestrian corridor, educational signage, viewing platforms, connections and crossings, etc);
- Planning level assessment of environmental resource alternatives;
- Rough- Order- Magnitude cost of alternatives;
- Conceptual Drawings;
- Path forward for future implementation.

The timeframe to complete the above work is estimated at 4-months. This includes a total period of four-weeks for the Sponsor and USACE to review the 50% and 95% draft Study Planning Report submittals.

Federal/Non-Federal funds allocation Table by Fiscal Year

Fiscal Year	USACE Contribution	Local Sponsor Contribution
4th Qtr FY15	\$20,000	\$20,000