

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE PLAQUEMINES PARISH GOVERNMENT OF LOUISIANA
FOR
DESIGN
FOR THE
LOUISIANA COASTAL AREA WEST BAY BENEFICIAL USE PROJECT

THIS AGREEMENT is entered into this 6th day of August, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, New Orleans District and the Plaquemines Parish Government of Louisiana (hereinafter the "Non-Federal Sponsor"), represented by the Plaquemines Parish President.

WITNESSETH, THAT:

WHEREAS, Section 7006(d) of the Water Resources Development Act of 2007, Public Law 110-114, authorized the Secretary, substantially in accordance with the January 31, 2005 Report of the Chief of Engineers, to implement in the coastal Louisiana ecosystem a program for the beneficial use of material dredged from federally maintained waterways (hereinafter the Louisiana Coastal Area Beneficial Use of Dredged Material Program or "LCA BUDMAT Program") at a total cost of \$100,000,000;

WHEREAS, Federal General Investigations funds for Fiscal Year 2013 included funds for the Government to initiate design of the LCA BUDMAT Program which may include individual projects which are elements of the LCA BUDMAT Program located in Plaquemines Parish, Louisiana;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the "Agreement") for the provision of design for the Louisiana Coastal Area West Bay Beneficial Use Project (an element of the LCA BUDMAT Program and hereinafter the "*Project*", as defined in Article I.A. of this Agreement);

WHEREAS, Section 105(c) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215), provides that the costs of design of a water resources project shall be shared in the same percentage as the purposes of such project;

WHEREAS, the Government and the Non-Federal Sponsor agree that, during the *period of design*, the Non-Federal Sponsor shall contribute 35 percent of *total design costs* for the *Project*;

WHEREAS, Section 7007 of the Water Resources Development Act of 2007, Public Law 110-114, provides authority to afford credit for *in-kind contributions* provided by the Non-Federal Sponsor for design of the *Project*;

WHEREAS, the Non-Federal Sponsor desires to receive credit toward its required contribution of funds for design of the *Project* in accordance with the provisions of this Agreement for work (hereinafter the “*in-kind contributions*” as defined in Article I.I. of this Agreement) that on August 26, 2013 was determined to be integral to the *Project*;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful design and implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean the of multiple marsh sites and one ridge alternative in the West Bay area utilizing sediments dredged in Southwest Pass from approximately River Mile (RM) 11 Below Head of Passes to RM 6 above Head of Passes for the beneficial use of materials in Plaquemines Parish, Louisiana, in the vicinity of West Bay, Louisiana, as generally described in the LCA West Bay Beneficial Use Project Management Plan, dated November 4, 2013, and substantially in accordance with the January 31, 2005 Report of the Chief of Engineers and the Louisiana Coastal Area (LCA), Louisiana, Beneficial Use of Dredged Material Program, Final Programmatic Study Report and Environmental Impact Statement, dated January 2010.

B. The term “*total design costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of engineering and design, economic and environmental analyses, and evaluation performed after a feasibility report whether performed prior to or after the effective date of this Agreement that were not previously shared with a non-Federal interest pursuant to any other agreement; the Government’s costs of review processes required by the Government; the Government’s costs of Independent External Peer Review, if required, except for the

costs of any contract for an Independent External Peer Review panel; the costs of *in-kind contributions* for which credit will be afforded in accordance with Article II.B.3. of this Agreement; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; the Government's costs of contract dispute settlements or awards; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article VII.B. and Article VII.C. of this Agreement. The term does not include any costs of *betterments* under Article II.E. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies for the *Project*; any costs incurred as part of feasibility studies under any other agreement for the *Project*; any costs of *in-kind contributions* determined by the Government to not be eligible for credit; the Non-Federal Sponsor's costs of negotiating this Agreement; any costs of a contract for an Independent External Peer Review panel; or any costs of negotiating a project partnership agreement for the *Project*.

C. The term "*period of design*" shall mean the time from the effective date of this Agreement to the date that a Project Partnership Agreement for construction of the *Project* is executed between the Government and a non-Federal interest or the date that this Agreement is terminated in accordance with Article X of this Agreement, whichever is earlier.

D. The term "*financial obligations for design*" shall mean the financial obligations for design that have or will be incurred by the Government, using funds appropriated by the Congress of the United States and funds provided by the Non-Federal Sponsor in accordance with the provisions of this Agreement, that result or would result in costs that are or would be included in *total design costs*. The term does not include the costs of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement or any costs of *in-kind contributions*.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.1.b. of this Agreement, as determined by the Government, to the *financial obligations for design*, as projected by the Government.

F. The term "*betterment*" shall mean a difference in the design of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

G. The term "*Federal program funds*" shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

H. The term "*fiscal year*" shall mean one year beginning on October 1 and ending on September 30.

I. The term “*in-kind contributions*” shall mean cultural resource analysis coordination, project management, design documentation report support, plans and specifications, field investigations, and adaptive management and monitoring for the *Project* as generally described in the Integral Determination Report for the *Project* that will be performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and that were determined to be integral to the *Project* on August 26, 2013.

J. The term “*Non-Federal Sponsor’s credit request*” shall mean documentation provided by the Non-Federal Sponsor containing the following: (1) a written certification by the Non-Federal Sponsor to the Government that it has made specified payments to contractors, suppliers, or employees for *in-kind contributions* and its contributions under Article III and Article VII of this Agreement in accordance with the provisions of this Agreement; (2) copies of all relevant invoices and evidence of such payments; (3) written identification of such costs that have been paid with *Federal program funds* and a copy of the written verification from the Federal agency that provided the funds; (4) the products produced as a result of the *in-kind contributions* for which credit is requested; and (5) a written request for credit of a specific amount not in excess of such specified payments.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design the *Project*, except for the *in-kind contributions*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall provide or perform the *in-kind contributions* that will be provided or performed after the effective date of this Agreement in accordance with applicable Federal and State laws and regulations.

1. To the extent possible, the Government shall design the *Project* in accordance with the Project Management Plan for the *Project* developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts and the relevant scopes of work prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the

Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. In the event the Government performs all or some of the design for the *Project* using its own forces, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on relevant scopes of work prior to the commencement of such work using the Government's own forces. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project*, except for the *in-kind contributions*, shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer, New Orleans District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations and relevant scopes of work for all contracts for the *in-kind contributions* that will be provided or performed after the effective date of this Agreement, including those the Non-Federal Sponsor intends to perform with its own forces, prior to the Non-Federal Sponsor's issuance of such solicitations or commencement of work on the *in-kind contributions* using the Non-Federal Sponsor's own forces. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Government with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government, but the contents of solicitations, award of contracts or commencement of design using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor, except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal and State laws and regulations. The Non-Federal Sponsor shall include appropriate provisions in its contracts for the design of the *in-kind contributions*, as necessary, to ensure compliance with such laws and regulations.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the *in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

6. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all design products that are developed by contract or by Government personnel during the *period of design*, and the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all design products that are developed by contract or by Non-Federal Sponsor personnel during the *period of design*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all design products, including those developed as *in-kind contributions*, shall be exclusively within the control of the Government.

B. The Non-Federal Sponsor shall contribute 35 percent of *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than 35 percent of *total design costs*, the Government shall determine the amount of funds that would be necessary to meet 35 percent of *total design costs* without considering the credit the Government projects will be afforded for the *in-kind contributions* pursuant to paragraph B.3. of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from 35 percent of *total design costs* the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph B.1.a. of this Article by the amount of credit the Government projects will be afforded for the *in-kind contributions* pursuant to paragraph B.3. of this Article.

2. The Government, in accordance with the conditions and limitations of this paragraph, shall determine the amount of the costs for *in-kind contributions* that may be eligible for credit.

a. The Non-Federal Sponsor in a timely manner shall provide the Government with the *Non-Federal Sponsor's credit request(s)* and any other documents required by the Government to enable the Government to determine the costs of *in-kind contributions* that may be eligible for credit. Failure to provide the required documents in a timely manner may result in denial of credit.

b. Costs for *in-kind contributions* are not eligible for credit pursuant to this Agreement unless the Government determines through a review performed by the Government that the work was accomplished in a satisfactory manner and in accordance with the provisions of this Agreement.

c. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement shall be subject to an audit in accordance with Article VII.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

d. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for credit pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* are completed and the time the credit is afforded.

e. None of the costs for *in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* are eligible for credit pursuant to this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

f. Costs for *in-kind contributions* that are in excess of the Government's estimate of the costs for the Government to have performed or provided such work or materials are not eligible for credit pursuant to this Agreement. In addition, *in-kind contributions* obtained at no cost to the Non-Federal Sponsor are not eligible for credit as *in-kind contributions* under this Agreement.

g. Costs for *betterments*, construction of the *Project*, the provision of lands, easements, rights-of-way, *relocations*, or the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material are not eligible for credit as *in-kind contributions* under this Agreement.

h. Costs for work determined by the Government to not be integral to the *Project* are not eligible for credit.

3. The Government, in accordance with this paragraph, shall afford credit toward the Non-Federal Sponsor's 35 percent share of *total design costs* for the costs of the *in-kind contributions* determined to be eligible in accordance with paragraph B.2. of this Article. However, the maximum amount of credit afforded under this Agreement shall not exceed the lesser of the following amounts as determined by the Government: (a) an amount equal to 35 percent of *total design costs* minus the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement; or (b) the costs of the *in-kind contributions* determined to be eligible for credit in accordance with paragraph B.2. of this Article.

4. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs for *in-kind contributions* that exceed the amount of credit afforded pursuant to paragraph B.3. of this Article.

C. Upon conclusion of the *period of design*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

D. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

E. The Non-Federal Sponsor may request the Government to include *betterments* in the design of the *Project*. Such requests shall be in writing and shall describe the *betterments* requested to be included in the design of the *Project*. If in its sole discretion the Government elects to include such *betterments* or any portion thereof in the design of the *Project*, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Government shall allocate the costs of the *Project* features that include *betterments* between *total design costs* and the costs of the *betterments*. The Non-Federal Sponsor shall be solely responsible for all costs of design of the *betterments* by the Government under this paragraph and shall pay all such costs in accordance with Article IV.D. of this Agreement.

F. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the *Project* or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Partnership Agreement.

G. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. As of the effective date of this Agreement, \$2,350,000 of Federal funds have been provided by Congress for the LCA BUDMAT Program of which \$1,073,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the LCA BUDMAT Program or the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

2. Section 7006(d)(1) of the Water Resources Development Act of 2007, Public Law 110-114, established the total cost of the LCA BUDMAT Program at \$100,000,000. If the Government determines that the total amount of Federal funds provided by Congress for all projects implemented pursuant to the LCA BUDMAT Program has reached the maximum effective Federal funding amount authorized for the LCA BUDMAT Program (currently \$65,000,000 or 65 percent of \$100,000,000), and the Government projects that the Federal funds the Government will make available to the *Project* from such maximum effective Federal funding amount authorized for the LCA BUDMAT Program will not be sufficient to meet the Federal share of *total design costs*,

the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, the parties shall terminate this Agreement and proceed in accordance with Article X.C. of this Agreement.

ARTICLE III - DESIGN COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the *period of design*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Design Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Design Coordination Team informed of the progress of design and of significant pending issues and actions, and shall seek the views of the Design Coordination Team on matters that the Design Coordination Team generally oversees.

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; scheduling of reports and work products; plans and specifications; real property and relocation requirements for construction of the *Project*; design contract awards and modifications; design contract costs; the performance of, scheduling for, and determining eligibility of costs of *in-kind contributions*; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Design Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Design Coordination Team. The Government, having the legal authority and responsibility for design of the *Project*, has the discretion to accept or reject, in whole or in part, the Design Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VII.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The

Government's costs of participation in the Design Coordination Team shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, and the costs included in *total design costs* for the *in-kind contributions* for which credit will be afforded in accordance with Article II.B.3. of this Agreement.

1. As of the effective date of this Agreement, *total design costs* are projected to be \$1,650,758; the Non-Federal Sponsor's share of *total design costs* is projected to be \$577,765; the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement is projected to be \$49,522; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement is projected to be \$528,243; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.3. of this Agreement is projected to be \$528,243; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b. of this Agreement is projected to be \$0; the *non-Federal proportionate share* is projected to be 33 percent; and the Government's total financial obligations to be incurred to include *betterments* in the design of the *Project* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By June 6, 2014, and by each quarterly anniversary thereof until the conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total design costs*; the Non-Federal Sponsor's share of *total design costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement; the amount of funds determined in accordance with Article II.B.1.a of this Agreement; the amount of credit to be afforded for *in-kind contributions* pursuant to Article II.B.3 of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b. of this Agreement; the *non-Federal proportionate share*; the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year* and the Government's total financial obligations to be incurred to include *betterments* in the design of the *Project* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; (b) the projected *non-Federal proportionate share of financial obligations for design* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations for design* using the Government's own forces through the first *fiscal year*. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the design of the *Project* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for design of the *Project*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for design* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make *financial obligations for design* of the *Project* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for design* using the Government's own forces for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; and (b) the *non-Federal proportionate share of financial obligations for design* as *financial obligations for design* are incurred. If at any

time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own forces in the current *fiscal year*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total design costs*. In addition, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *total design costs* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the final accounting show that the total contribution of funds provided by the Non-Federal Sponsor for design of the *Project* exceeds the Non-Federal Sponsor's total contribution of funds required by Article II.B.1.b. of this Agreement, the Government, subject to the availability of funds and as limited by Article II.B.4. of this Agreement, shall refund the excess contribution of funds to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to make the refund, the Government shall seek such appropriations as are necessary to make the refund.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.E. of this Agreement to include *betterments* in the design of the *Project* in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation to include *betterments* in the design of the *Project*, the Government

shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of design of such *betterments*. No later than 30 calendar days prior to the Government incurring any financial obligation for design of such *betterments*, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of design of such *betterments* through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for design of such *betterments* as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for design of such *betterments*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations to include *betterments* in the design of the *Project* and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting of design of such *betterments* from being conducted in a timely manner, the Government shall conduct an interim accounting of design of such *betterments* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting of design of such *betterments* to complete the final accounting of design of such *betterments* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for design of such *betterments* and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for including *betterments* in the design of the *Project* exceed the total contribution of funds provided by the Non-Federal Sponsor for design of such *betterments*, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, New Orleans (B2)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the final accounting show that the total contribution of funds provided by the Non-Federal Sponsor for including *betterments* in the design of the *Project* exceeds the total obligations for design of such *betterments*, the Government,

subject to the availability of funds, shall refund the excess contribution of funds to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to make the refund, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE V - DISPUTE RESOLUTION

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. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or 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 Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government

shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE IX - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of design of the *Project* is

in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total design costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total design costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that this Agreement is terminated pursuant to this Article or Article II.G.2. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.G.2. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Plaquemines Parish President
8056 Highway 23
Suite 200
Belle Chasse, LA 70037

If to the Government:

District Engineer
U. S. Army Corps of Engineers
ATTN: CEMVN-PM-BC
7400 Leake Avenue
New Orleans, LA 70118

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

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

ARTICLE XII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.


ARTICLE XIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

PLAQUEMINES PARISH GOVERNMENT
OF LOUISIANA

BY: 
RICHARD L. HANSEN
Colonel, U.S. Army
District Engineer

BY: 
BILLY NUNGESSER
President

DATE: 6 August 2014

DATE: 7/30/14



CERTIFICATE OF AUTHORITY

I, Leo Palazzo, do hereby certify that I am the principal legal officer of the Plaquemines Parish Government of Louisiana, that the Plaquemines Parish Government of Louisiana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Plaquemines Parish Government of Louisiana in connection with design of the Louisiana Coastal Area West Bay Beneficial Use Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Plaquemines Parish Government of Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

30th day of July, 2014.

LEO PALAZZO

Plaquemines Parish Government Attorney

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 31 U.S.C. 1352. 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.


BILLY NUNGESSER
President
Plaquemines Parish Government of Louisiana

DATE: 7/30/14

