



St. Bernard Parish Council

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www.sbpj.net

Kerri Callais
*Councilmember
at Large*

Richard "Richie" Lewis
*Councilmember
at Large*

Gillis McCloskey
*Councilmember
District A*

Joshua "Josh" Moran
*Councilmember
District B*

Howard Luna
*Councilmember
District C*

Wanda Alcon
*Councilmember
District D*

Fred Everhardt, Jr.
*Councilmember
District E*

Roxanne Adams
Clerk of Council

#12

EXTRACT OF THE OFFICIAL PROCEEDINGS OF THE COUNCIL OF THE PARISH OF ST. BERNARD, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING HELD IN THE COUNCIL CHAMBERS OF THE ST. BERNARD PARISH GOVERNMENT COMPLEX, 8201 WEST JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA ON TUESDAY, SEPTEMBER 21, 2021 AT THREE O'CLOCK P.M.

On motion of Ms. Callais, seconded by Mr. McCloskey, it was moved to **adopt** the following resolution:

RESOLUTION SBPC #2171-09-21

A RESOLUTION TO AUTHORIZE THE PARISH PRESIDENT TO SIGN AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF LOUISIANA THROUGH THE COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD AND ST. BERNARD PARISH REGARDING ENGINEERING AND DESIGN OF THE EAST BANK SEDIMENT TRANSPORT CORRIDOR BS-0033.

WHEREAS, Coastal Restoration and Preservation is of vital importance to the citizens of St. Bernard Parish; and,

WHEREAS, engineering and design of the east Bank Sediment Transport Corridor BS-0033 allow both Parties desire to enter into this Agreement for the purpose of engineering and designing a project capable transporting sediment to other project locations in St. Bernard and Plaquemines Parishes which will benefit various marsh creation projects in St. Bernard and Plaquemines Parish and the surrounding area East Bank Sediment Transport Corridor ("Project" or "East Bank Sediment Transport Corridor"); and

WHEREAS, a Council Resolution authorizing the Parish President to sign the Intergovernmental Agreement between the State of Louisiana through the Coastal Protection and Restoration Authority Board and St. Bernard Parish regarding Engineering and Design of the East Bank Sediment Transport Corridor BS-0033 is needed to obtain up to a maximum of One Million- Dollars (\$1,000,000.00) in funding for the project.

NOW THEREFORE, BE IT RESOLVED, that the Parish Council hereby authorizes the Parish President to sign the Intergovernmental Agreement between the State of Louisiana Through the Coastal Protection and Restoration Authority Board and St. Bernard Parish regarding attached as Engineering and Design of the East Bank Sediment Corridor (BS-0033) Exhibit A.



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Page -2-

Extract #12, continued

September 21, 2021

The above and foregoing having been submitted to a vote, the vote thereupon resulted as follows:

YEAS: McCloskey, Moran, Alcon, Everhardt, Callais

NAYS: None

ABSENT: Luna

The Council Chair, Mr. Lewis, cast his vote as **YEA**.

And the motion was declared **adopted** on the 21st day of September, 2021.

CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of a motion adopted at a Regular Meeting of the Council of the Parish of St. Bernard, held at Chalmette, Louisiana, on Tuesday, September 21, 2021.

Witness my hand and the seal
of the Parish of St. Bernard on
this 21st day of September, 2021.

ROXANNE ADAMS
CLERK OF COUNCIL

INTERGOVERNMENTAL AGREEMENT
BETWEEN
STATE OF LOUISIANA,
THROUGH THE COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD
AND
SAINT BERNARD PARISH GOVERNMENT
REGARDING
ENGINEERING AND DESIGN OF THE EAST BANK SEDIMENT TRANSPORT
CORRIDOR BS-0033

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”), is entered into and effective on _____, by and between the State of Louisiana through the Coastal Protection and Restoration Authority Board, (hereinafter referred to as the “STATE”) acting by and through the Chairman of the Board, Kyle R. “Chip” Kline, Jr., and the Saint Bernard Parish Government (hereinafter referred to as the “SBPG”) represented by its duly authorized Parish President Parish President, Guy McInnis (the STATE and SBPG also at times referred to as PARISH are collectively referred to herein as the “Parties”).

WHEREAS, Article VII, Section 14 of the Louisiana Constitution provides, in part, that “(f)or a public purpose, the state and its political subdivisions . . . may engage in cooperative endeavors with each other . . .”; and

WHEREAS, pursuant to La. R.S. 49:214.5.2(A)(1), the Coastal Protection and Restoration Authority Board (the “BOARD”) represents the State of Louisiana’s position relative to the protection, conservation, enhancement, and restoration of the coastal area of the state through oversight of integrated coastal protection projects and programs and at La. R.S. 49:214.5.2(A)(7), the BOARD has the power and authority to enter into any contract with any political subdivision of the state for the study, planning, engineering, design, construction, operation, maintenance, repair, rehabilitation, or replacement of any integrated coastal protection project and to this end, may contract for the acceptance of any grant of money upon the terms and conditions, including any requirement of matching the grants in whole or part, which may be necessary; and

WHEREAS, pursuant to La. R.S. 49:214.6.1, the Coastal Protection and Restoration Authority (“CPRA”) is the implementation and enforcement arm of the BOARD and is directed by the policy set by the BOARD, and pursuant to La. R.S. 49:214.6.2 and La. R.S. 49:214.6.3, CPRA

shall administer the programs of the BOARD and shall implement projects relative to the protection, conservation, enhancement, and restoration of the coastal area of the State of Louisiana through oversight of integrated coastal projects and programs consistent with the legislative intent as expressed in La. R.S. 49:214.1, and, therefore, the BOARD directs CPRA to administer and implement the obligations undertaken by the BOARD pursuant to this Agreement; and

WHEREAS, the PARISH is the governing authority in the Parish of Saint Bernard and has jurisdiction over all levees, hurricane protection, flood control structures and integrated coastal protection projects, with the authority of a local political subdivision to enter into agreements with governmental bodies such as the BOARD for the public welfare, health, safety and good order of the Parish of Saint Bernard by virtue of the specific authority granted under La. Const. Art. 6 Section 5, La. R.S. 33:1395 et seq., and the Saint Bernard Parish Government Home Rule Charter; and

WHEREAS, under La. R.S. 38:281 et seq., R.S. 38:301, and La. Const. Article VI, Part III, the construction, maintenance, and care and inspection of levees, and all other things incidental thereto, within the jurisdiction of the numerous levee districts and levee authorities established by Louisiana law shall devolve on the levee districts and levee authorities and the boards of commissioners of the respective levee districts and levee authorities; and

WHEREAS, the SBPG is authorized under La. Const. Article VI, Part III of the Louisiana Constitution to provide for the construction and maintenance of levees, levee drainage, flood protection, and hurricane flood protection within the territorial jurisdiction of the SBPG, and all purposes incidental thereto, including on its own behalf or for the areas or the levee districts under its authority; and

WHEREAS, under La. Const. Article VI, Part III, the construction, maintenance, and care and inspection of levees, and all other things incidental thereto, within the jurisdiction of the numerous levee districts and levee authorities established by Louisiana law shall devolve on the levee districts and levee authorities and the boards of commissioners of the respective levee districts and levee authorities; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of engineering and designing a project capable transporting sediment to other project locations in St. Bernard and Plaquemines Parishes which will benefit various marsh creation projects in St. Bernard and Plaquemines Parish and the surrounding area East Bank Sediment Transport Corridor (“Project” or “East Bank Sediment Transport Corridor”); and

WHEREAS, the Project is an integrated coastal protection project eligible for funding under Section 105 the Gulf of Mexico Energy Security Act (GOMESA) Act of 2006 (Title I of Division C of Public Law 109-432; 43 U.S.C. 1331 *et seq.*; 120 Stat. 3000), 30 C.F.R. Parts 219 and 1219, Louisiana Constitution Article VII, Sections 9(B), 10.1 and 10.2, and La. R.S. 49:214.5.4(E); and

WHEREAS, the Project is consistent with the STATE’S 2017 Coastal Master Plan and Fiscal Year 2021 Annual Plan, and is identified as eligible for allocation of proposed GOMESA funding, contingent upon funding being made available to the STATE for the Project; and

WHEREAS, this Agreement will be mutually beneficial to the Parties in the furtherance of their respective statutory purposes, duties, and authorities, and each Party expects to receive a public benefit at least equal to the costs of the responsibilities undertaken pursuant hereto; and

WHEREAS, the STATE and SBPG, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Parties 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 Parties, and to facilitate the successful implementation of the Project as described herein; and

NOW, THEREFORE, in consideration of the Parties’ mutual undertakings herein and the purposes, duties, and authorities granted under La. R.S. 49:214.1 *et seq.*, the constitution and general laws of the State of Louisiana, the Parties hereto do hereby agree as follows:

ARTICLE I

PURPOSE AND IDENTIFICATION

A. Purpose.

The Purpose of this Agreement is to set forth the terms, conditions, and responsibilities to be performed by the SBPG and the STATE in the engineering and design of the East Bank Sediment Transport Corridor Project which will benefit St. Bernard Parish in providing sediment material for future projects in the area.

B. Identification.

For the purpose of administration, identification and record keeping, State Project Number BS-0033 is assigned to this Project. This number will be used to identify all Project costs.

ARTICLE II

PROJECT DESCRIPTION

The objectives of the current phase for the East Bank Sediment Transport Corridor BS-0033 project are to engineer and design the final plans and prepare the final bid documents prior to construction.

The SBPG will perform the following scope of work for the East Bank Sediment Transport Corridor East Bank Sediment Transport Corridor Project:

1. Engineering and Design of Final Plans
2. Preparation of Construction Bid Package

The SBPG's engineering and design of the East Bank Sediment Transport Corridor will consist of the following:

1. The full scope and Project responsibilities of the work described in this Agreement are provided in Article IV and Attachment A.

ARTICLE III

PROJECT FUNDING

This Agreement shall be administered as follows:

- A. The STATE, through CPRA, shall provide to the SBPG, a maximum of **\$1,000,000.00** for the Engineering and Design of the Project from qualified revenues generated from Outer Continental Shelf oil and gas activity provided to the STATE under GOMESA (the "GOMESA Funds"). CPRA shall withhold a maximum of \$200,000.00 from the total amount of \$1,000,000.00 for land rights purposes including but not limited to tax assessment and survey pursuant to LA RS 49:214.6.9 and any title work that may be required. No funds at issue in this agreement may be used for land acquisition purposes. Any funds that may be remaining at the conclusion of this agreement may be used for the engineering and design of the project or may be repurposed for the later construction of this project. Any additional funds required for completion of the project, including but not limited to, design, construction administration, safety and inspection, shall be the sole responsibility of the SBPG. The GOMESA Funds available to SBPG for the Engineering and Design of the Project are as follows: **\$1,000,000.00** from Fiscal Year 2021-22 GOMESA fund allocations, contingent upon receipt of funding from GOMESA and the funding being included in the STATE'S Fiscal Year 2022 Annual Plan approved by the Louisiana Legislature. The funding will be provided on a reimbursement basis to the SBPG based upon submittal and approval of invoices and deliverables as set forth more fully in Articles III, IV, and V herein, and in accordance with all other terms and conditions of this Agreement. The Project Budget Estimate is provided in **Attachment B**, which is attached hereto and incorporated herein. This is intended to be a reasonable cost estimate; actual quantities, hours, and hourly rates shall be billed as incurred not to exceed the maximum Project cost as specified herein.

- B. All funding expended for this Project shall be used for the purposes stated herein, in accordance with constitutional and statutory restrictions on the use of the GOMESA Funds for public purposes and federal funds, and in accordance with all applicable state and federal statutes, laws, rules and regulations. The use of Project funding shall at all times be consistent with sound engineering principles and practices as may be directed and defined by the CPRA Engineering Division. All funding shall be subject to Article XIX entitled, "Fiscal Funding Clause".

ARTICLE IV

SCOPE AND PROJECT RESPONSIBILITY

A. Project Tasks

1. The STATE, through CPRA, or its agent will perform the following:
 - a) Develop the Intergovernmental Agreement with associated terms and conditions including the reimbursement to the SBPG of **\$1,000,000.00** total maximum amount for the Engineering and Design Phase of the Project cost.
 - b) Provide funding on a reimbursable basis to SBPG in accordance with the terms and conditions of the Intergovernmental Agreement for the Engineering and Design Phase of the Project.
 - c) Provide appropriate personnel for consultation as required.
 - d) Provide access to relevant engineering and design resources as may be required in the performance of the work.
 - e) At its discretion, perform secondary review of Final (95%) Plans and Specifications. The SBPG has primary responsibility to review and provide comments on the Final (95%) Plans and Specifications. SBPG also has responsibility to provide Ready For Bid Contract Documents incorporating all comments.

2. The SBPG, or its agent, will perform the following:

The SBPG, or its agent, shall perform the following during the engineering and design of the project, as may be applicable:

- a. Engineering and design of the Project in accordance with the CPRA minimum design standards and accepted engineering principles and practices as delineated in the Design Criteria to be developed by SBPG within 30 days of execution of the agreement between SBPG and the engineering consulting firm engaged by SBPG for this Project, which shall be updated throughout the term of this Agreement.
- b. Develop and submit all necessary permits as may be required.

B. Design Standards

The work for this Project shall be performed in accordance with **Attachment A** and all Engineering Design Documents, Plans, and Specifications shall be prepared according to sound engineering principles and practices as directed and defined by the STATE, through the CPRA Engineering Division. These documents shall be prepared by or under the direct supervision of a professional engineer licensed in the discipline of civil engineering and registered in the State of Louisiana in accordance with Louisiana Revised Statutes Titles 37 and 46, regarding Professional and Occupational Standards, as governed by the Louisiana Professional Engineering and Land Surveying Board.

**ARTICLE V
DELIVERABLES**

1. The SBPG shall provide to the STATE, in accordance with the process referenced in Article VI and through CPRA's Project Manager identified in Article VII, the following:
 - a. Prior to reimbursement, the SBPG shall render detailed monthly invoices for payment of work performed and all documentation necessary to support the invoice, including a summary of the type of work, total value of the work performed, and the costs incurred, as provided in **Attachment C** (Monthly Monitoring Reports), along with the following:
 - i. Monthly contracted services summary;
 - b. Copies of all recorded time sheets/records for contractors/subcontractors/vendors shall be included in the detailed monthly invoices;
 - c. Invoices shall be certified by the SBPG's consultant/contractor/ subcontractor/vendor and another properly designated official representing the SBPG as being correct and completed in accordance with the Contract Documents; and
 - d. All invoices shall be subject to verification, adjustment and/or settlement as a result of any audit referenced in Article VII of this Agreement. Project costs in excess of those described in Article III shall be borne 100% by the SBPG; and
 - e. Written certification required in Article IV.A.2(a); and,
 - f. Written certification that all Federal statutes, laws, rules, and regulations, that apply to GOMESA have been met; and,
 - g. Any other Project-related documents requested by CPRA

2. The SBPG shall provide to the STATE, a copy of a Resolution passed by its Board of Commissioners authorizing its execution of this Agreement.

3. The SBPG shall submit to the STATE a copy of any final documents produced in connection with the performance of the work outlined herein, including but not limited to, surveys, test results, land rights documents, design documents, plans, and specifications, generated for the Project in accordance with this Agreement. However, in the event that the SBPG needs to publicly bid any portion of the work for this Project, the SBPG shall keep confidential and shall not disclose, subject to the requirements of the Louisiana Public Records law and Louisiana Public Bid Law, any Project documents to any other entity, except its consultants, agents, or representatives for the Project, prior to advertising such work for public bid.

ARTICLE VI

PAYMENT

All costs incurred by the SBPG, which are directly related to the work described herein, will be eligible for reimbursement in accordance with established guidelines and in accordance with Articles III, IV and V herein.

The SBPG will be reimbursed 100% up to an amount not to exceed a maximum of **\$1,000,000.00**, subject to the terms and conditions set forth herein, for all costs needed to fully construct the Project as described in Article IV. However, it is the intent of this Agreement that reimbursement shall not exceed the original awarded contract value for the contract between the SBPG and their contractor.

The SBPG shall pay all contractor/subcontractor/vendor invoices, and the STATE through CPRA, shall reimburse the SBPG for its payments to the contractor/subcontractor/vendor, provided that SBPG shall provide the deliverables referenced in Article V to the State, through CPRA's Project Manager identified in Article VII. Subject to any other terms of this Agreement, in no case shall the sum total of payments made by the STATE, through CPRA, to the SBPG exceed **\$1,000,000.00** for the initial term of this Agreement.

The SBPG shall implement and adhere to accounting procedures to assure that reimbursable costs are allowable, reasonable, and allocable. Reimbursement will be limited to allowable, reasonable, and allocable costs.

All payments shall be subject to verification, adjustment, and/or settlement as a result of any audit referenced herein.

The participation by the STATE in the Project shall in no way be construed to make the STATE a party to any contract between the SBPG and its consultant(s)/contractor(s)/subcontractor(s).

ARTICLE VII

RECORD KEEPING, REPORTING, AUDITS AND MONITORING

The contract monitor and project manager for this Agreement is Jessica Diez, or her designee. The STATE shall provide the SBPG notice of any changes to the designated Project Manager within seven (7) days of any such change.

The Project Manager shall maintain a file relative to the necessary acquisition of services, labor and materials needed to complete the Project. Likewise, the SBPG shall maintain a procurement file relative to the necessary acquisition of services, labor, and materials needed to complete the Project that will be subject to review by the STATE at any time and upon request.

SBPG agrees to abide by the requirements of all applicable state and federal statutes, laws, rules, and regulations, including but not limited to assurance that all documentation shall be sufficient to meet any requirements set by the Federal Government relative to GOMESA, including without limitation, 2 C.F.R. part 200, including but not limited to 2 C.F.R. part 200, Subpart F “Audit Requirements”, and the Department of Interior’s Bureau of Ocean Energy Management Office of Natural Resources, Revenue’s regulations relative to the GOMESA Funds at 30 C.F.R. Parts 219 and 1219. SBPG and its consultants/contractors/subcontractors shall act in good faith to supply the STATE and/or the United States Department of Interior with any supporting material or documentation needed for release of the GOMESA Funds or for legal compliance.

The SBPG and its consultants/contractors/subcontractors shall maintain all documents, papers, books, field books, accounting records, appropriate financial records and other evidence, including electronic records that are pertinent to the GOMESA Funds, pertaining to costs incurred for the Project and shall make such materials available for inspection at all reasonable times during the contract period and for a five (5) year period from the date of reimbursement under the Project for inspection by the STATE, the Inspector General and/or the Legislative Auditor, the United States Department of the Interior’s Office of Inspector General (DOI OIG), and the Government Accountability Office (GAO); however, prior to disposal of any Project data for the Project, the SBPG shall obtain prior written approval from the STATE, through CPRA.

Each Party acknowledges and agrees that the Legislative Auditor of the State of Louisiana, the auditors of the Office of the Governor, Division of Administration, DOI OIG, and the GAO

shall have the authority to audit all records and accounts of the STATE and the SBPG which relate to this Agreement, and those of any subcontractors which relate to this Agreement. Any audit shall be performed in accordance with R.S. 24:513 *et seq.* and/or 2 C.F.R. part 200, Subpart F “Audit Requirements”, Appendix II provided herein as Attachment F, as applicable. SBPG further agrees to make available to the Office of the Governor, Division of Administration, the Office of the Inspector General the DOI OIG, and the GAO any documents, papers or other records, including electronic records of SBPG that are pertinent to the GOMESA Funds, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to SBPG’s personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

The STATE and the SBPG, and any consultants/contractors/subcontractors paid under this Agreement shall maintain all books and records pertaining to this Agreement for a period of five (5) years after the date of final payment under the prime contract and any subaward/contract/subcontract entered into under this Agreement.

The purpose of submission of documentation by STATE to the SBPG, or by the SBPG to the STATE as required by this Agreement is to verify that such documentation is being produced, to provide evidence of the progress of the Project, and to verify that the expenditure of Project funds occurs in accordance with the terms of this Agreement. As between the STATE and SBPG, the STATE assumes no responsibility to provide extensive document review for any documents received from SBPG or its consultants/contractors/subcontractors or to determine the completeness or accuracy of any such documentation. The SBPG and its consultants/ contractors/subcontractors shall also be responsible for, and assure, compliance with all applicable state and federal statutes, laws, rules, and regulations in carrying out any of its obligations under this Agreement.

SBPG shall assist CPRA with any audit reporting required by 2 C.F.R. 200. The Parties further agree that they will comply with 2 C.F.R. part 200, Subpart F “Audit Requirements”.

SBPG shall be responsible for monitoring any consultants, contractors and subcontractors to ensure that work performed in connection with this Agreement comports with the Agreement’s terms and all applicable federal and state laws, rules, regulations, and guidelines.

ARTICLE VIII

TERMINATION FOR CAUSE

The STATE may terminate this Agreement for cause based upon the failure of SBPG to comply with the terms and/or conditions of the Agreement; provided that the STATE shall give the SBPG written notice specifying the SBPG’s failure. If within thirty (30) days after receipt of such

notice, the SBPG shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the STATE may, at its option, place the SBPG in default and the Agreement may terminate on the date specified in such notice.

The SBPG may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the STATE to comply with the terms and conditions of this Agreement; provided that the SBPG shall give the STATE written notice specifying the STATE's failure and providing a reasonable opportunity for the STATE to cure the defect.

In the event that either Party elects to terminate this Agreement pursuant to this Article, the Parties agree to participate in a final cost accounting as of the date of termination and in accordance with the terms and conditions herein. The obligations under this Article shall survive termination or expiration of this Agreement for any reason.

ARTICLE IX

TERMINATION FOR CONVENIENCE

The STATE may terminate this Agreement at any time by giving thirty (30) days written notice to the SBPG. The SBPG may likewise terminate this Agreement at any time by giving thirty (30) days written notice to the STATE. The SBPG shall be entitled to reimbursement for the costs of deliverables in progress, to the extent work has been performed satisfactorily as of the date of termination and any costs or expenses the SBPG incurs which are directly associated with the termination, modification, or change of any underlying engineering, design and/or consultant contracts for the Project.

In the event that either Party elects to terminate this Agreement pursuant to this Article, the Parties agree to participate in a final cost accounting as of the date of termination and in accordance with the terms and conditions herein. The obligations under this Article shall survive termination or expiration of this Agreement for any reason.

ARTICLE X

ALLOWABLE COSTS

Costs that result from obligations incurred by SBPG during a suspension or after termination are not allowable unless the STATE expressly authorizes them in writing in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if: (1) the costs result from obligations which were properly incurred by SBPG before the effective date of suspension or termination, and are not in anticipation of it; and

(2) the costs would be allowable if the grant award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

ARTICLE XI

NON-DISCRIMINATION CLAUSE

The Parties agrees to abide by the requirements of the following provisions as applicable: Titles VI and VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Section 504 of the Federal Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974 (VEVRAA); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975 (ADEA), as amended, and the requirements of the Americans with Disabilities Act of 1990 (ADA), including the revised ADA Standards for Accessible Design for Construction Awards revised regulations implementing Title II of the ADA and Title III of the ADA, as amended; Federal Executive Order (EO) 11246 "Equal Employment Opportunity", as amended by EO 11375 "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and implementing regulations at 41 C.F.R. part 60 "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" and EO 12086 "Equal Employment Opportunity Functions"); and EO 13166 "Improving Access to Services for Persons With Limited English Proficiency."

The Parties agree not discriminate in employment practices, and will render services under this contract in accordance with 41 C.F.R. 60-1.4 and without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by either Party, or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this Agreement.

ARTICLE XII

COMPLIANCE WITH FEDERAL LAW

The Parties and any of their consultants, contractors and subcontractors employed in the completion of any construction-related activity, project or program conducted with the GOMESA Funds agree to comply with any applicable Federal labor laws covering non-Federal construction, which may include but are not limited to, the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), as supplemented by Department of Labor Regulations (29 C.F.R. part 5) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c), as supplemented by Department of Labor Regulations (29 C.F.R. part 3) and to the extent applicable 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act) (formerly 40 U.S.C. 276a *et seq.*), the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), and the Federal Funding Accountability and Transparency Act

(FFATA) (<https://www.fsrs.gov>). The Parties further agree, in the case of any equipment and/or product authorized to be purchased under this Agreement, to comply with the Buy American Act 41 U.S.C. 8301-8305 (formerly 41 U.S.C. 10a-10c), if and as applicable. The Parties further agree to comply with any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201), as applicable. The Parties will also comply with all applicable provisions of 2 C.F.R. Part 200, as amended, including without limitation 2 C.F.R. §§ 200.216, 200.322 and 200.323, as applicable.

The Parties also agree to comply with any applicable Federal environmental laws and executive orders, which may include but are not limited to, The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*), The Endangered Species Act (16 U.S.C. § 1531 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*), Clean Water Act Section 404 (33 U.S.C. § 1344 *et seq.*), The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order No. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, National Historic Preservation Act (16 U.S.C. § 470 *et seq.*), Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”), the Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*), Executive Order 11988 (“Floodplain Management”), Executive Order 11990 (“Protection of Wetlands”), Executive Order 13112 (“Invasive Species”), The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*), The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*), The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*), The Safe Drinking Water Act (42 U.S.C. § 300 *et seq.*), The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq.*), Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”), Rivers and Harbors Act (33 U.S.C. 407), Marine Protection, Research and Sanctuaries Act (Pub. L. 92-532, as amended), National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), Executive Order 13089 (“Coral Reef Protection”), Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*). SBPG must immediately notify CPRA in writing, pursuant to Article XXXVII, if SBPG becomes aware of any impact on the environment that may impact the use of GOMESA Funds for the Project.

ARTICLE XIII

GENERAL ADMINISTRATIVE AND FINANCIAL REQUIREMENTS

SBPG shall comply with, and require any consultants, contractors and subcontractors employed in the completion of any activity, project or program conducted with the GOMESA

Funds to comply with, all conditions of the GOMESA Funds as applicable, including but not limited to: (i) GOMESA, (ii) all applicable provisions of 2 C.F.R. 200, (iii) 30 C.F.R. Parts 219 and 1219, (iv) La. R.S. 49:214.5.4(E), and (v) any CPRA Internal Agency Policies applicable to SBPG and/or to consultants, contractors and subcontractors, and the provisions provided therein. All provisions contained in any of the above-cited laws, rules, regulations, guidelines, policies, or other documents, will be deemed incorporated by reference, as applicable, to this Agreement.

SBPG shall also be responsible for payment of all applicable taxes related to the GOMESA Funds.

ARTICLE XIV **HOLD HARMLESS AND INDEMNITY**

The SBPG shall be fully liable for the actions of its successors, officers, directors, assigns, agents, representatives, employees, partners, consultants, contractors, subcontractors, vendors, and other persons under its control, and shall fully indemnify and hold the STATE and its successors, officers, directors, assigns, agents, representatives, employees, partners, consultants, contractors, subcontractors, vendors, and other persons under its control, harmless from suits, actions, damages, and costs of every name and description relating to personal injury and/or damage to real or personal tangible property, caused by the negligence, failure to act or legal fault of the SBPG, its successors, officers, directors, assigns, agents, representatives, employees, partners, consultants, contractors, subcontractors, vendors, and other persons under its control, without limitation, except that the SBPG shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act or legal fault of the STATE, and its successors, officers, directors, assigns, agents, representatives, employees, partners, consultants, contractors, subcontractors, vendors, and other persons under its control.

No Party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties herein.

The obligations under this Section shall survive termination or expiration of this Agreement for any reason.

ARTICLE XV **AMENDMENTS**

Notwithstanding any other provision herein, the Parties agree that any change to this Agreement shall require a written amendment, mutually agreed upon and signed by both Parties. The terms and conditions contained in this Agreement may not be amended, modified, superseded, subsumed, terminated, or otherwise altered except by mutual written consent of all Parties hereto.

ARTICLE XVI
OWNERSHIP

All records, reports, documents and other material delivered or transmitted to the SBPG by the STATE shall remain the property of the STATE and shall be returned by the SBPG to the STATE upon request at termination or expiration of this Agreement. All records, reports, documents, or other material related to this Agreement and/or obtained or prepared by the SBPG in connection with performance of the services contracted for herein shall be the property of the SBPG, and shall be retained in accordance with the terms of this Agreement.

ARTICLE XVII
NO ASSIGNMENT

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

ARTICLE XVIII
FINANCIAL CAPABILITY

SBPG hereby acknowledges and certifies that it is aware of the financial obligations of the SBPG under this Agreement and that SBPG will have the financial capability to satisfy the obligations of the SBPG under this Agreement, including but not limited to all obligations for OMRR&R of the Project.

SBPG agrees to take any and all appropriate steps to obtain funding for the responsibilities undertaken by SBPG pursuant to this Agreement and/or any future agreements(s) and for which STATE has not agreed to provide funding therefore. Should current or future revenues dedicated to the Project be insufficient to fulfill the obligations of the SBPG for the Project, SBPG is obligated to make reasonable good faith efforts to obtain or seek funding from other sources, including, but not limited to additional taxes, fees, tolls, grants, donations, legislative appropriations, reallocation of funds, or decreasing the cost or extent of other operations. Nothing herein shall prevent STATE from seeking additional funding to assist the BOARD, CPRA or SBPG with the responsibilities undertaken by any Party pursuant to this Agreement.

ARTICLE XIX
FISCAL FUNDING CLAUSE

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

ARTICLE XX
CERTIFICATION OF DEBARMENT / SUSPENSION STATUS

All Parties certify with their execution of this Agreement that it is not suspended, debarred or ineligible from entering into contracts or agreements with any department or agency of the Federal Government, or in receipt of notice of proposed debarment or suspension. The SBPG further certifies with its execution of this Agreement that it is not suspended, debarred or ineligible from entering into contracts or agreements with any department or agency of the State of Louisiana, or in receipt of notice of proposed debarment or suspension.

All Parties agree to secure from any consultant(s), contractor(s) and/or subcontractor(s) for the Project certification that such consultant(s), contractor(s) and/or subcontractor(s) are not suspended, debarred or declared ineligible from entering into contracts with any department or agency of the Federal Government, or in receipt of a notice of proposed debarment or suspension. The Parties further agree to secure from any consultant(s), contractor(s) and/or subcontractor(s) for the Project certification that such consultant(s), contractor(s) and/or subcontractor(s) are not suspended, debarred or declared ineligible from entering into contracts with any department or agency of the State of Louisiana, or in receipt of a notice of proposed debarment or suspension.

All Parties agree to provide immediate notice to the other Party in the event of it or its consultant(s), contractor(s) and/or any subcontractor(s) associated with the Project being suspended, debarred or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this Agreement. The SBPG further agrees to provide immediate notice to the

STATE in the event of it or its consultant(s), contractor(s) and/or any subcontractor(s) being suspended, debarred or declared ineligible by any department or agency of the State of Louisiana, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this Agreement.

Upon notice of suspension, debarment, or declaration that either Party and/or its consultant(s), contractor(s) and/or any subcontractor(s) is/are ineligible to enter into contracts with any department or agency of the Federal Government, either prior to or after execution of this Agreement, each Party reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this Agreement pursuant to the terms of Article VIII in this Agreement, or take such other action it deems appropriate under this Agreement. Upon notice of suspension, debarment, or declaration that the SBPG and/or its consultant(s), contractor(s), and/or any subcontractor(s) is/are ineligible to enter into contracts with any department or agency of the State of Louisiana, either prior to or after execution of this Agreement, the STATE further reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this Agreement pursuant to the terms of Article VIII in this Agreement, or to take such other action it deems appropriate under this Agreement.

ARTICLE XXI

NO THIRD PARTY BENEFICIARY

Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement as indicated herein or by operation of law.

ARTICLE XXII

RELATIONSHIP OF PARTIES

- A. In the exercise of their respective rights and obligations under this Agreement, the SBPG and the STATE each act in an independent capacity and no Party is to be considered the officer, agent, or employee of the other, unless otherwise provided by law.
- B. In the exercise of its rights and obligations under this Agreement, no Party shall provide, without the consent of the other Party, any consultant/contractor/ subcontractor with a release that waives or purports to waive any rights the other Party may have to seek relief or redress against that consultant/contractor/subcontractor either pursuant to any cause of action that the other Party may have or for violation of any law.

- C. The participation by STATE in the Project shall in no way be construed to make the STATE a party to any contract between the SBPG, consultant(s), contractor(s) and/or subcontractor(s) or between the STATE and any third party. The participation by the SBPG in the Project shall in no way be construed to make SBPG a party to any contract between the STATE and/or either's consultant(s), contractor(s) and/or subcontractor(s), or any third party.

ARTICLE XXIII
APPLICABLE LAW, VENUE AND DISPUTES

This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana. Before any Party to this Agreement may bring suit in any court concerning any issue relating to this Agreement, such Party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The exclusive venue for any suit arising out of this Agreement shall be in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana.

ARTICLE XXIV
DELAY OR OMISSION

No delay or omission in the exercise or enforcement of any right or remedy accruing to a Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

ARTICLE XXV
REPORTING OF FRAUD, WASTE, ABUSE OR CRIMINAL ACTIVITY

In accordance with 2 C.F.R. §200.113, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the GOMESA Funds shall be reported in writing to the U.S. Department of Interior and U.S. Department of Interior Office of Inspector General.

Online: Hotline Complaint Form (https://forms.doioig.gov/hotlinecomplaint_form.aspx)

Toll-Free Phone: 1-800-424-5081

Fax to: 703-487-5402 (ATTN: HOTLINE OPERATIONS)

Or report via U.S. Mail: Office of Inspector General, U.S. Department of the Interior, 381 Elden Street, Suite 3000, Herndon, VA 20170, ATTN: Intake Management Unit

Additionally, in accordance with La. R.S. 24:523.1, any actual or suspected misappropriation, fraud, waste or abuse of public funds shall be reported to the Louisiana Legislative Auditor Hotline via one of the following:

Toll-Free Phone: 1-844-50-FRAUD (1-844-503-7283); or

Fax to: 1-844-40-FRAUD (1-844-403-7283)

Or report via U.S. Mail: LLA Hotline P. O. Box 94397 Baton Rouge, LA 70804

ARTICLE XXVI **SEVERABILITY**

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

ARTICLE XXVII **ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

ARTICLE XXVIII

PROVISION REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Agreement shall forthwith be amended to make such insertion or correction.

ARTICLE XXIX **ANTI-LOBBYING**

SBPG and its consultant(s), contractor(s), or subcontractor(s) agree not to use proceeds from this Agreement to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

SBPG and all of its consultant(s), contractor(s) and subcontractor(s) shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. SBPG and each of its and all of its consultant(s), contractor(s) and subcontractor(s) shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. SBPG shall also complete a Certification Regarding Lobbying as provided in **Attachment D**.

ARTICLE XXX **PROHIBITED ACTIVITY, CONFLICTS OF INTEREST AND CODE OF ETHICS**

SBPG and its consultant(s), contractor(s), and subcontractor(s) are prohibited from using, and shall be responsible for its consultant(s), contractor(s), and subcontractor(s) being prohibited from using, the GOMESA Funds provided herein for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. SBPG and its consultant(s), contractor(s), and subcontractor(s) will comply with the provision of the Hatch Act (5 U.S.C. 1501 *et seq.*), which limits the political activity of employees.

SBPG and any entity or individual performing work under this Agreement subject to any form of legal agreement with SBPG, including without limitation, consultants, contractors and subcontractors, must comply with the conflicts of interest provisions referenced in CPRA's Conflicts of Interest Policy as contained in CPRA's Policy No. 4, entitled "Governmental Ethics Compliance and Dual Employment", effective April 1, 2009, as well as any additional agency conflicts of interest policies or procedures that CPRA may implement in the future.

SBPG and any entity or individual performing work under this Agreement subject to any form of legal agreement with SBPG, including without limitation, consultants, contractors and subcontractors, must also comply with Chapter 15 of Title 42 of the Louisiana Revised Statutes (La. R.S. 42:1101 *et seq.*, Code of Governmental Ethics) in the performance of services called for in this Agreement. SBPG agrees to immediately notify the CPRA if potential violations of the Code of Governmental Ethics arise at any time during the term of this Agreement.

ARTICLE XXXI

COVENANT AGAINST CONTINGENT FEES

SBPG shall warrant that no person or other organization has been employed or retained to solicit or secure this Agreement upon contract or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the STATE shall have the right to annul this Agreement without liability in accordance with Article VIII ("Termination for Cause") of this Agreement or, in its discretion, to deduct from this Agreement or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee, or to seek such other remedies as legally may be available.

ARTICLE XXXII

CONSULTANTS, CONTRACTORS AND SUBCONTRACTORS

SBPG may, with prior written permission from the STATE, enter into subcontracts with third parties for the performance of any part of SBPG's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of SBPG to the STATE for any breach in the performance of SBPG's or any subcontractor's duties.

ARTICLE XXXIII

COPYRIGHT

The STATE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, and to authorize others to do so. The

SBPG also reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, and to authorize others to do so. The Parties also understand and agree that they will not interfere with any rights the Federal Government may have with respect to the right to reproduce, publish, distribute, exhibit and/or otherwise use and exploit the work throughout the world in all media now known or hereafter devised, and to authorize others to do so for Federal purposes.

ARTICLE XXXIV

DRUG FREE WORKPLACE COMPLIANCE

SBPG hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended and with 24 C.F.R. Part 21. Further, in any contracts executed by and between SBPG and any third parties funded using the GOMESA Funds under this Agreement, there shall be a provision mandating compliance with the Drug-Free Workplace Act of 1988, as amended, in accordance with 48 FAR 23.500, *et seq.*, and 48 C.F.R. 52.223-6.

ARTICLE XXXV

REMEDIES FOR NONCOMPLIANCE

The SBPG acknowledges that any of the GOMESA Funds not used in accordance with the terms and conditions of this Agreement, state and federal law or conditions of the GOMESA Funds, shall be reimbursed to the STATE, and that any cost and expense in excess of the total maximum Project cost, as agreed to by the STATE and set forth herein, shall be the sole responsibility of the SBPG. STATE shall also be entitled to any other remedies for noncompliance as provided herein.

If SBPG or its consultant(s), contractor(s), and/or subcontractor(s) fail to comply with Federal statutes, regulations or the terms and conditions of a Federal award for the GOMESA Funds, in addition to Termination for Cause or Termination for Convenience, the STATE may take one or more of the following actions, as appropriate in the circumstances: (a) temporarily withhold cash payments pending correction of the deficiency by SBPG or its consultant(s), contractor(s), and/or subcontractor(s) or more severe enforcement action as necessary; (b) disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance; (c) wholly or partly suspend or terminate payment of the GOMESA Funds; (d) recommend that suspension or debarment proceedings be initiated under 2 C.F.R. part 180 and Federal awarding agency regulations; (e) withhold further Federal awards for the project or program; or (f) Take other remedies that may be legally available. The SBPG shall be given a reasonable time in which to cure noncompliance. Any dispute may be resolved in accordance with

the procedure set forth in Article XXIII (“Applicable Law, Venue and Disputes”) of this Agreement.

ARTICLE XXXVI
NO AUTHORSHIP PRESUMPTIONS

Each of the Parties has had an opportunity to negotiate the language of this Agreement in consultation with legal counsel prior to its execution. No presumption shall arise or adverse inference be drawn by virtue of authorship. Each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party who (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any person that becomes a Party by reason of assignment and/or assumption of this Agreement and any successor to a signatory Party.

ARTICLE XXXVII
DESIGNATION OF POINTS OF CONTACT

The Parties designate the following persons to be their official contacts in relation to this Agreement. Any Party may change its contact person upon written notice to the other Party. 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 registered or certified mail as follows:

If to SBPG:

John Lane
Executive Director of Coastal Operations
Saint Bernard Parish Government
8201 W Judge Perez Drive
Chalmette, LA 70043
(504)278-4280

If to the CPRA BOARD:

Kyle R. “Chip” Kline, Jr.

Chairman
Capitol Annex - State of Louisiana
P.O. Box 44027
Baton Rouge, LA 70804-4027
225-342-7669

If to CPRA:

Lawrence B. Haase
Executive Director
Coastal Protection and Restoration Authority
Post Office Box 44027
Baton Rouge, LA 70804-4027
225-342-4683

ARTICLE XXXVIII
EFFECTIVE DATE / DURATION / MODIFICATION / TERMINATION

This Agreement shall be effective for a period of eighteen months, commencing on, 2021 and terminating on, 2023, unless otherwise terminated or amended by written mutual agreement of all parties or in accordance with the terms herein.

Except as otherwise provided herein, the provisions, terms and conditions contained in this Agreement may not be amended, modified, superseded, terminated, or otherwise altered except by mutual written consent of all Parties hereto.

This Agreement may be executed in multiple originals.

THUS DONE, PASSED, AND SIGNED on the dates indicated below before the below-named notary and competent witnesses.

SAINT BERNARD PARISH GOVERNMENT

**COASTAL PROTECTION AND
RESTORATION AUTHORITY BOARD**

BY: _____

Guy McInnis, Parish President

BY: _____

Kyle R. "Chip" Kline, Jr., Chairman

DATE: _____

DATE: _____

(SBPG's Federal Identification Number)

WITNESSES:

WITNESSES:

Signature

Signature

Print Name

Print Name

Signature

Signature

Print Name

Print Name

STATE OF LOUISIANA

PARISH OF _____

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for said Parish and State aforesaid, on this _____ day of _____ 2021 personally came and appeared Guy McInnis to me known, who declared that he is the Parish President of the Saint Bernard Parish Government that he executed the foregoing instrument on behalf of said entity and that the instrument was signed pursuant to the authority granted to him by said entity and that he acknowledged the instrument to be the free act and deed of said entity.

Signature

Print Name

Louisiana Notary Public / Bar Number

My commission expires: _____

(SEAL)

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for said Parish and State aforesaid, on this _____ day of _____, 2021 personally came and appeared Kyle R. “Chip” Kline, Jr., to me known, who declared that he is the Chairman of the Coastal Protection and Restoration Authority Board, that he executed the foregoing instrument on behalf of said State Agency and that the instrument was signed pursuant to the authority granted to him by said State Agency and that he acknowledged the instrument to be the free act and deed of said State Agency.

Signature

Print Name

Louisiana Notary Public / Bar Number

My commission expires: _____

(SEAL)

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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 an 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.

DATE: _____

Kyle R. "Chip" Kline, Jr., Chairman
Coastal Protection and Restoration Authority Board

ATTACHMENT A
SCOPE OF
SERVICES
EAST BANK SEDIMENT TRANSPORT CORRIDOR
(BS-0033) FINAL ENGINEERING AND DESIGN
ST. BERNARD PARISH,
LOUISIANA JUNE 04, 2021

PROJECT BACKGROUND

Much of St. Bernard Parish is composed of emergent wetlands that are deteriorating due to factors such as subsidence, sea-level rise, historical damage from the Mississippi River Gulf Outlet (MRGO), canal dredging, leveeing of the Mississippi River, and erosional forces from seasonal storms. Furthermore, these marshes are sediment starved so there is very little chance for them to recover without intervention. It is also important to note that these wetlands, or what remains of them, represent the first line of defense for the \$17B GNO Hurricane Storm Damage Risk Reduction System (HSDRRS) which they border. While sediment diversions are planned for the region, they are years away from implementation, and given that they work on geologic timescales, are not solely able to address the immediate need to rebuild the region's wetlands.

Currently, the St. Bernard Parish Government (SBPG) is engaged in a wide range of coastal restoration activities aimed at protecting and sustaining their coastal communities, ecosystems, and fisheries. Additionally, Louisiana's Coastal Protection and Restoration Authority (CPRA) 2017 Coastal Master Plan (Master Plan) identified a tremendous need (over 50,000 acres of marsh creation valued at over \$2 billion) for marsh creation on the east side of the Mississippi River in St. Bernard and Plaquemines parishes (Figure 1). SBPG, and other stakeholders, strongly support the rapid implementation of these projects. Key to this accelerated implementation is the identification of an out-of-system, renewable, sediment borrow source, and a cost-effective means of transporting that sediment to the various project locations. Because the limited sediment resources of Lake Lery have been utilized for other restoration projects and are no longer available, identification of an out-of-system borrow source became a critical component of near-term implementation of marsh creation projects identified as priorities by SBPG, the 2017 Coastal Master Plan, and CPRA.

Through development of the East Bank Sediment Transport Corridor (EBSTC) BS-0033 Preliminary Engineering and Implementation Plan, a dredge pipeline corridor was identified that could provide an economical and reusable accessway to renewable sediment sources from the Mississippi River to many of the marsh creation areas identified in the 2017 Coastal Master Plan (Figure 1). Based on an evaluation of multiple sediment delivery methods, it was determined that the most feasible and cost-effective sediment delivery method for transporting sediment dredged from the Mississippi River to multiple marsh creation areas was a permanent dredge

pipeline corridor (PDPC) created from sand hydraulically pumped from the Mississippi River (Figure 2).

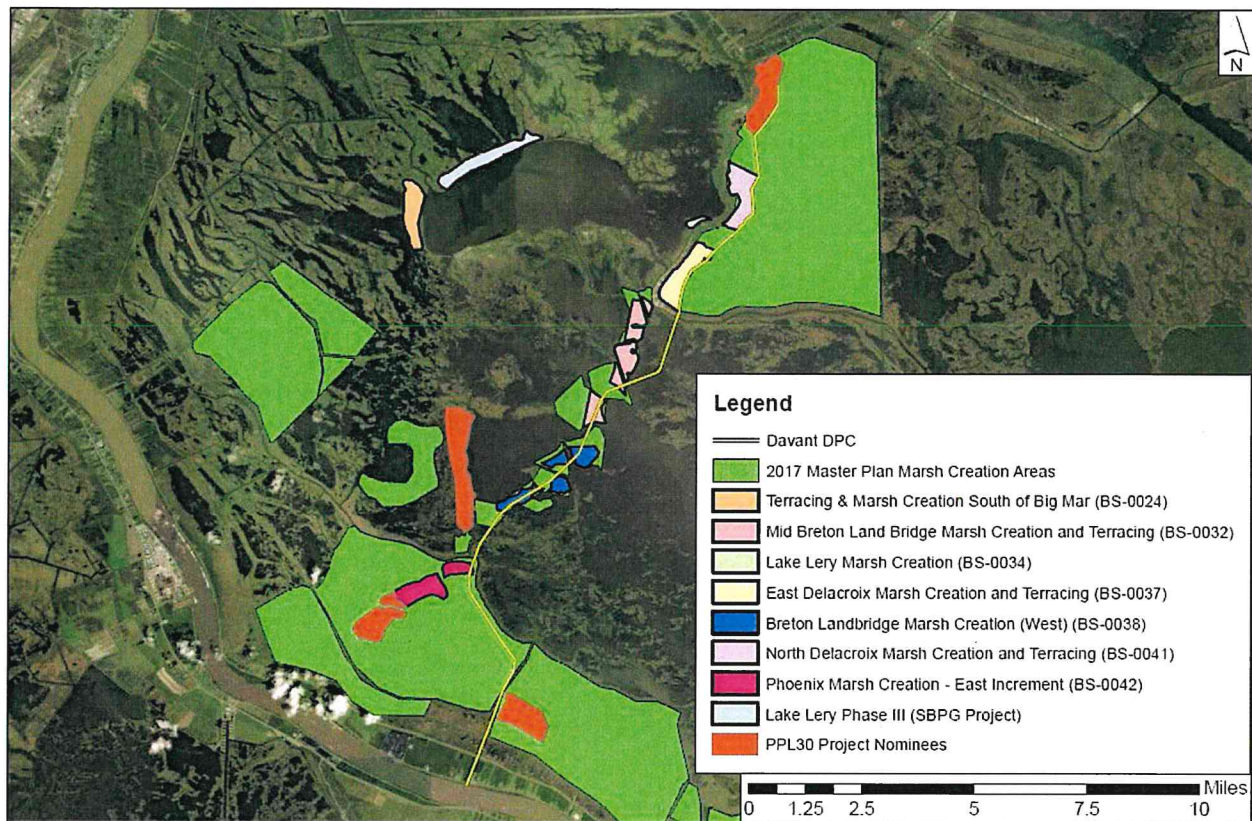


Figure 1: BS-0033 Corridor and Nearby Potential Marsh Creation Areas

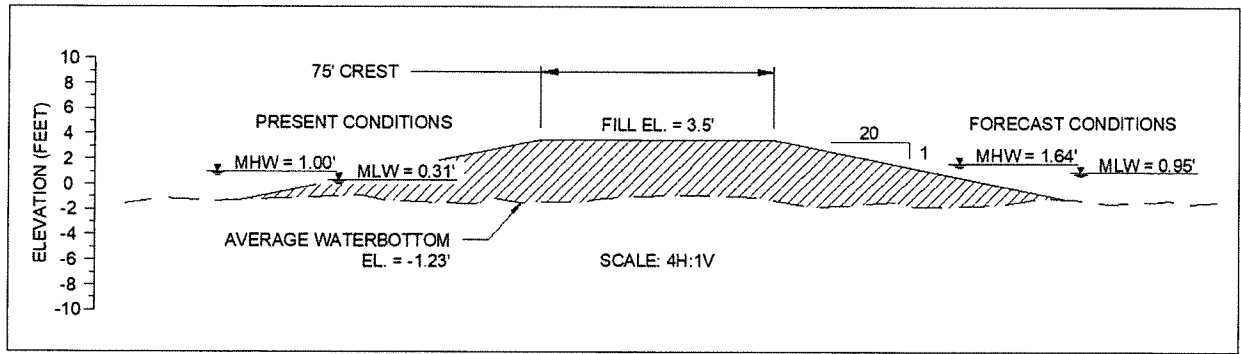


Figure 2: PDPC Typical Cross Section

The preliminary design package for EBSTC was completed in September 2020, and Royal Engineers and Consultants, LLC (Royal) is prepared to move into final design and permitting of the dredge pipeline corridor to ensure continued progress on this crucial effort.

This Scope of Services details the necessary data collection, permitting, land rights, final design, schedule, budget, and deliverables necessary for the development of the EBSTC Project Final Engineering and Implementation Plan.

SCOPE OF SERVICES: TASKS, TIMELINES, AND DELIVERABLES

TASK 1: PROJECT MANAGEMENT

This task includes the associated labor expended for the successful management of the project, including project schedule, budget, internal and external communications, etc. Mitch Andrus, P.E., Ph.D. will serve as the principal coastal engineer and technical lead for the project. Mandy Green, Ph.D., will be overseeing project management activities between the Contracting Party, SBPG, and coordination with CPRA for all services required under this contract.

Task 1 Deliverables: Project Management Plan summarizing the communication plan, project schedule, subcontractor roles, known stakeholders, contact list, meeting schedule, monthly progress reports, and all other pertinent information needed to manage the project.

TASK 2: DATA COLLECTION

Based on the Alternatives Evaluation and the Preliminary Design Package, the Contracting Party has determined what additional topographic and bathymetric surveys are necessary to complete design efforts. The Contracting Party will develop a topographic and bathymetric survey plan to

obtain sufficient data for complete design of the dredge pipeline corridor, borrow in the Mississippi River, and levee/road crossings, which will be of a sufficient level to complete final design, estimate quantities, and for bidding purposes.

A geotechnical investigation will be performed across the dredge pipeline corridor (incorporating geotechnical data already collected for nearby projects such as Phoenix Marsh Creation - East Increment (BS-0042), Breton Landbridge Marsh Creation (West) (BS-0038), and Mid Breton Land Bridge Marsh Creation and Terracing (BS-0032) as appropriate) and in the Davant Anchorage borrow area. The Contracting Party will develop a geotechnical investigation plan to obtain this required data. Once the plan is developed and boring/CPT locations have been finalized, the Contracting Party will develop drawings and file for a geotechnical investigation permit. Once the permit is received, field work will commence. The geotechnical analysis will be of a sufficient level for final design of project features.

Using the results of the preliminary design study and previous geophysical and geotechnical work performed by others, the Contracting Party will prepare and submit a Mississippi River Borrow Area Technical Memorandum to define the geophysical survey, cultural resources survey, and geotechnical data collection program for the selected borrow area(s). This document shall define the horizontal and vertical control to be utilized in the surveys along with the required pieces of equipment to be utilized, including but not limited to magnetometer, bathymetric, side-scan sonar, and CHIRP sub-bottom. The memo will present the survey plans showing the location of the baselines, survey transects, vibracore locations, and survey procedures along with recommendations for sediment testing. It shall include a list of available reports and data reviewed. No field work shall commence until SBPG/CPRA has provided written approval of the recommendations contained in the Mississippi River Borrow Area Technical Memorandum. All surveys shall be conducted in accordance with the USACE Standards for Subsurface Investigations, the CPRA General Guidelines: Exploration for Sediment Resources for Coastal Restoration, the CPRA Marsh Creation Design Guidelines, and the Louisiana Division of Archaeology's Section 106 Investigation and Report Standards.

Task 2 Deliverables: Survey, Geotechnical, and Remote Sensing Plans, Joint Coastal Use Permit application for Geotechnical Investigation, and Draft and Final Mississippi River Borrow Area Technical Memorandums.

TASK 3: MODELING

Task 3.1 Modeling

Existing models will be refined to investigate the impact of project implementation on surrounding hydrology and landscape to support the Hydrologic Modification Impact Analysis required by the Louisiana Department of Natural Resources for the permitting process. Modeling will use readily available data as well as data collected through data collection tasks (e.g., topographic and bathymetric surveys). Modeling tasks may include but are not limited to: review of existing data and development of boundary conditions; refinements to existing model mesh; model refinements; calibration, sensitivity analysis, and validation (if necessary); model production runs; post-processing of production runs; and reporting.

Task 3 Deliverables: Presentation of model results to SBPG and CPRA, draft and final model reports

TASK 4: PERMITTING

4.1 Permit Drawings

Based upon the accepted Preliminary Design and the Task 2 data collection efforts, the Contracting Party shall prepare and submit to SBPG/CPRA a draft of the required Joint Permit Application for the scope and character of the project, computed project quantities, and areas of impacts. Following review and comment by SBPG/CPRA, the Contracting Party shall finalize the permit application, computed project quantities, and areas of impacts for submittal.

It is understood that the Joint Application for work within the Louisiana Coastal Zone, including the Department of Environmental Quality (DEQ) Water Quality Certification, Coastal Use Permit, United States Army Corps of Engineers (USACE) permits, and section 404/10 required for construction of the project is the responsibility of the design team. Responding to requests for additional information, from the DEQ, State of Louisiana Coastal Management Division, State Historic Preservation Office, and USACE for specifics to their respective sections of the Joint

Application for work within the Louisiana Coastal Zone is also the responsibility of the design team.

4.2 Pre-Application Meeting

Within the previous phase of work, the Contracting Party contacted and discussed this project with permitting agencies. The Contracting Party shall prepare and present design information at the permit pre-application meeting. The Contracting Party shall compile the Pre-application Meeting Agendas, Presentations, and Meeting Minutes.

4.3 Permitting Time and Coordination

The Contracting Party will coordinate reviews and responses to comments from relevant regulatory agencies and respond to requests for additional information.

Task 4 Deliverables: Permit Drawings, Quantities, and complete Permit Application. Attend Pre-Application Meeting, and prepare meeting agendas, presentations, and meeting minutes.

TASK 5: FINAL DESIGN PACKAGE

The primary goal of the final design of the recommended project features is the development of a construction bid package for the proposed project, including the Engineer's Estimate of Probable Construction Cost and finalization of all remaining permitting questions and rationale for compliance. A Final Design Report shall also be included in the final submittal.

5.1 Final Plans

The Contracting Party shall prepare detailed plans of the final design including project location maps; survey data and baselines; geotechnical data including Mississippi River borrow area locations, limits, geotechnical cross sections specifying cut elevations and horizontal limits, and locations of geotechnical cores and their zone of influence; dredge pipeline corridors designs; existing pipeline and other below and above ground infrastructure; levee, roadway, and pipeline crossings; fill plans and design templates for the dredge pipeline corridor, including design slopes and crown dimensions; typical cross sections; volume requirements; and additional details.

5.2 Final Specifications

The Contracting Party shall prepare a complete set of specifications that shall include a description and order of work; front end contract documents, special terms and conditions; quantity estimates; bid schedules; and construction standards for dredging, excavation, fill transport, fill placement, and environmental protection. The Contracting Party shall ensure consistency with SBPG and CPRA's standard bid documents including general terms and conditions. Based on the review, the Contracting Party shall prepare the specifications in a format acceptable to SBPG and CPRA.

5.3 Final Design Report

The Contracting Party shall prepare and submit the Final Design Report. When completed, the report shall include sections describing:

- Changes from Preliminary Design to Final Design
- Site layout and vicinity maps;
- Environmental and cultural resource restrictions (inclusive of all permit requirements);
- Estimates of sediment composition, budgets, and availability;
- Information regarding land rights and oyster lease assessments (to be performed via CPRA)
- Construction Plans;
- Construction Specifications;
- Final Engineer's Estimate of Probable Construction Cost; and
- Project Construction Schedule

5.4 Final Engineer's Estimate of Probable Construction Cost

The Contracting Party shall develop an Engineer's Estimate of Probable Construction Cost for the project, including the pertinent aspects of the construction effort. Construction costs shall be broken down by project feature and include an appropriate cost contingency based on final design. Tables summarizing these cost breakdowns shall be prepared.

5.5 Final Design Meeting

The Contracting Party shall prepare and submit a draft Final Design Presentation to SBPG/CPRA for review and comment. The presentation shall depict a summary of the draft Final Design Report elements. Upon receipt of written comments, the Contracting Party shall evaluate and address the comments and shall prepare and submit a revised presentation.

The Contracting Party shall arrange, prepare for, attend, and present the Final Design to CPRA and stakeholders as directed by SBPG/CPRA. The Contracting Party shall compile and distribute the Meeting Agenda and Meeting Minutes.

Task 5 Deliverables: Design Report (Draft and Final), Final Plans, Engineer's Estimate of Probable Construction Cost, Final Design Review Meeting.

TASK 6: CONSTRUCTION BID PACKAGE

The Contracting Party shall prepare the Construction Bid Package, which shall include the schedule of items to be bid upon by proposing contractors. Documents shall be provided as a Signed and Sealed Bid Package.

Task 6 Deliverables: Construction Bid Package certified by a professional engineer registered in the State of Louisiana.

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ATTACHMENT B

PROJECT BUDGET ESTIMATE

BUDGET

The total cost for the tasks outlined in this Scope of Services is \$1,500,000, billed on a % complete basis, based on the following estimated budget breakdown by task.

Tasks	Budget
Task 1: Project Management	\$200,000
Task 2: Data Collection	\$678,000
Task 3: Modeling	\$60,000
Task 4: Permitting	\$125,000
Task 5: Final Design Package	\$398,000
Task 6: Construction Bid Package	\$39,000
Total Project Budget	\$1,500,000

ASSUMPTIONS

Costs are estimated based on previous projects. These costs are subject to change based on proposals from qualified subconsultants which will be solicited immediately upon NTP. While cost estimates are provided for each task, flexibility to move funds between tasks will be necessary based on feedback during permitting or as a result of data collection activities.

SCHEDULE

The initial project schedule for the tasks as scoped is targeted for completion within 18 months of NTP. The expected schedule for project milestones is provided below, and a detailed delivery schedule will be developed as part of the Project Management Plan in Task 1. To the extent practicable, tasks will be conducted concurrently. This schedule could be extended due to circumstances outside of the design team's control, including but not limited to permitting agency processing, weather delays during data collection, Mississippi River stage, landowner coordination during data collection, and land rights agreements.

Tasks	Duration (Months)
Task 1: Project Management	18
Task 2: Data Collection	7.5
Task 3: Modeling	4

Task 4: Permitting	10
Task 5: Final Design Package	8
Task 6: Construction Bid Package	1

PROJECT TEAM

Royal will serve as the prime contractor for this project and be responsible for the final design, cost estimating, levee crossing, infrastructure analyses, and technical reporting. Additional subcontractors will be brought on as needed for services such as permitting, geotechnical/geophysical data collection and engineering, surveying, land rights, environmental compliance, and modeling. The Contracting Party is committed to using local subcontractors who have the capability and capacity to perform the necessary additional services; all of which will be vetted with SBPG prior to engaging.

ADDITIONAL SERVICES

Services beyond this scope can be provided as Additional Services, but only when authorized in advance, in writing, by you. Additional Services can be provided on either a % complete or negotiated lump sum basis according to the attached standard personnel rates.

ATTACHMENT C
MONTHLY MONITORING REPORT

CONTRACT NO. _____

Date: _____

Contracting Party: _____ CPRA Contract No. _____

Project Title: “ _____ ”

Invoice No. _____ Invoice Amount: _____

Total Contract Amount: \$ _____ Contract Balance: \$ _____

Total Task Amount: \$ _____ Task Balance: \$ _____

Total invoiced to date: \$ _____

I. WORK COMPLETED TO DATE (ACCORDING TO TYPE CONTRACT):

- A. Percentage of work completed [include percentage completed and/or milestones accomplished (give dates)].
- B. Hourly (include services performed and number of hours worked).
- C. Scope of Services Outlined by Tasks (include tasks completed or portion of task completed to date).
- D. Actual Costs Incurred
- E. Fee Schedule

II FOR EACH PROJECT A NARRATIVE OF IMPLEMENTATION PROGRESS INCLUDING:

- A. Tasks and/or milestones accomplished (give dates)

B. Tasks and/or milestones not accomplished with explanation or assessment of:

1. Nature of problems encountered:

(Form DNR-PR)

2. Remedial action taken or planned:

3. Whether minimum criteria for measure can still be met:

4. Likely impact upon achievement:

III DELIVERABLES

IV OTHER DISCUSSIONS OF SPECIAL NOTE

Contracting Party _____ Date _____
(Printed Name)

Approval _____ Date _____
CPRA Project Manager (Printed Name)

Approval _____ Date _____
CPRA Contract Monitor or Designee (Printed Name)

ATTACHMENT D

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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 an 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.

DATE: _____

Guy McInnis, Parish President
Saint Bernard Parish Government

ATTACHMENT F

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person

employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or

organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]