



# *St. Bernard Parish Council*

8201 West Judge Perez Drive    Chalmette, Louisiana, 70043  
(504) 278-4228    Fax (504) 278-4209  
[www.sbpj.net](http://www.sbpj.net)

**#49**

**Kerri Callais**  
*Councilmember  
at Large*

**Richard "Richie" Lewis**  
*Councilmember  
at Large*

**Gillis McCloskey**  
*Councilmember  
District A*

**Nathan Gorbaty**  
*Councilmember  
District B*

**Howard Luna**  
*Councilmember  
District C*

**Wanda Alcon**  
*Councilmember  
District D*

**Manuel "Monty"  
Montelongo III**  
*Councilmember  
District E*

**Roxanne Adams**  
*Clerk of Council*

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, OCTOBER 2, 2018 AT SEVEN O'CLOCK P.M.

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

## **RESOLUTION SBPC #1883-10-18**

A RESOLUTION AUTHORIZING THE PARISH PRESIDENT TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY DEPARTMENT FOR VIOLET CANAL DREDGING IN THE AMOUNT OF \$280,095.00 (STATE PROJECT NUMBER PO-0001)

**WHEREAS**, St. Bernard Parish and the Louisiana Coastal Protection and Restoration Authority (CPRA) is charged with planning, designing and engineering projects to improve the coastal areas of the State of Louisiana; and

**WHEREAS**, St. Bernard Parish has the responsibility to dredge and maintain the Violet Canal; and

**WHEREAS**, CPRA is willing to fund maintenance dredging of the Violet Canal as reflected in the attached intergovernmental agreement in the amount of \$280,095.00; and

**WHEREAS**, St. Bernard Parish is interested in working with Louisiana CPRA to fund and perform this maintenance work for the Violet Canal.

**NOW THEREFORE BE IT RESOLVED**, the St. Bernard Parish Council, does hereby authorize the President of St. Bernard Parish Government to enter into the attached intergovernmental agreement with the Louisiana Coastal Protection and Restoration Authority to perform maintenance work and activities for the Violet Canal as described in the attached agreement in the amount of \$280,095.00.

**BE IT FURTHER RESOLVED**, the Parish agrees to perform the tasks as identified and provide all necessary reports, assurances, and any other related documents required in connection with this funding program.



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Extract #49 continued

October 2, 2018

**Kerri Callais**  
*Councilmember  
at Large*

**Richard "Richie" Lewis**  
*Councilmember  
at Large*

**Gillis McCloskey**  
*Councilmember  
District A*

**Nathan Gorbaty**  
*Councilmember  
District B*

**Howard Luna**  
*Councilmember  
District C*

**Wanda Alcon**  
*Councilmember  
District D*

**Manuel "Monty"  
Montelongo III**  
*Councilmember  
District E*

**Roxanne Adams**  
*Clerk of Council*

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

**YEAS:**            McCloskey, Gorbaty, Luna, Alcon, Montelongo

**NAYS:**            None

**ABSENT:**        Lewis

The Council Chair, Ms. Callais, cast her vote as **YEA**.

And the motion was declared **adopted** on the 2<sup>nd</sup> day of October, 2018.

## 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, October 2, 2018.

Witness my hand and the seal  
of the Parish of St. Bernard on  
this 2<sup>nd</sup> day of October, 2018.

ROXANNE ADAMS  
CLERK OF COUNCIL



**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**STATE OF LOUISIANA,**  
**THROUGH THE COASTAL PROTECTION AND RESTORATION AUTHORITY**  
**BOARD**  
**AND**  
**ST. BERNARD PARISH GOVERNMENT**  
**REGARDING**  
**VIOLET CANAL FRESHWATER DIVERSION**  
**(PROJECT NUMBER PO-0001)**

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement"), is entered into and effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 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, Johnny B. Bradberry, and the St. Bernard Parish Government (hereinafter referred to as the "PARISH") represented by its duly authorized President, Guy S. McInnis.

**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, where appropriate, CPRA shall administer and implement the obligations undertaken by the Board pursuant to this Agreement; and

**WHEREAS**, the PARISH has the authority of a local political subdivision to enter into agreements with governmental bodies, such as the State, for the public welfare, health, safety and good order of its jurisdiction by virtue of the specific authority granted in its resolution annexed hereto and Article VII, Section 14 of the Louisiana Constitution; and

**WHEREAS**, the PARISH is obligated to and desires to perform maintenance and improvements associated with the dredging of the Violet Canal for the Violet Canal Freshwater Diversion Project; and

**WHEREAS**, in furtherance of this maintenance and specified improvements, the STATE agrees to provide funds to the PARISH, and this Agreement is intended to outline the terms and conditions thereof; and

**WHEREAS**, the PARISH understands and agrees that once the State's obligations under this Agreement are complete, the PARISH will be 100% responsible for the funding and performance of all future maintenance and improvements associated with the dredging of the Violet Canal and the associated costs thereto and the State will have no additional responsibilities for any maintenance and improvements associated with the dredging of the Violet Canal; 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 PARISH, 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 maintenance and improvements associated with the dredging of the Violet Canal for the Violet Canal Freshwater Diversion 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 PARISH for certain maintenance and improvements associated with the dredging of the Violet Canal. Improvements will benefit future operations of the Violet Freshwater Diversion project.

#### **B. Identification.**

For the purpose of administration, identification and record keeping, State Project Number PO-0001 is assigned to this Project. This number will be used to identify all project costs.

## **ARTICLE II**

### **PROJECT DESCRIPTION**

The PARISH will perform maintenance dredging in the Violet Canal for up to 2,000 linear feet between LA 46 to LA 39 in Violet, Louisiana. The work to be performed is intended to restore the canal cross section to increase the hydrologic efficiency of the canal for the siphon project and improve access for navigation for the canal, as well as to restore the functionality of the weir box at the immediate discharge of the Violet Canal Freshwater Diversion Siphon. Dredged materials will be disposed of in a manner mutually agreed upon by CPRA and

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*State Project No. PO-0001*

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the PARISH. An engineering and design (E&D) Scope of Work, appended as **Attachment A**, further describe the work to be performed.

### **ARTICLE III** **PROJECT FUNDING**

This Project includes a total maximum project cost of **Two Hundred and Eighty Thousand, Ninety Five Dollars (\$280,095.00)** and shall be administered as follows:

- A. The STATE, through CPRA, shall provide to the PARISH, an amount consisting of \$64,860.00 for Engineering and Design and Data Collection; \$15,235.00 for Construction Observation and Administration; \$150,000.00 for Construction of Primary Maintenance Dredging; and \$50,000.00 for Construction of Advance Maintenance Dredging. The funding will be provided to the PARISH on a reimbursement basis upon submittal and approval of invoices and deliverables as set forth more fully in Articles III, IV, V, and VI herein, and in accordance with all other terms and conditions of this Agreement. This is intended to be an estimate; actual quantities 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 State funds for public purposes, and shall be used in strict accord with all applicable state, local, and federal statutes, laws, rules and regulations. The use of Project funding shall at all times be consistent with sound engineering principles and practices and in accordance with all applicable State and Federal Guidelines. All funding shall be subject to Article XV, entitled, "Fiscal Funding Clause."
- C. The PARISH acknowledges that any State funds not used in accordance with the terms and conditions of this Agreement and state and federal law shall be reimbursed to the STATE, and that any cost and expense in excess of the STATE'S share of the total maximum Project cost, as agreed to by the STATE and set forth herein, shall be the sole responsibility of the PARISH.

### **ARTICLE IV** **SCOPE AND PROJECT RESPONSIBILITY**

- A. The STATE, through CPRA, or its agent will perform the following:
  - 1. Develop the Intergovernmental Agreement for reimbursement to the PARISH
  - 2. Provide funding on a reimbursable basis for the Project.
  - 3. Provide appropriate personnel for consultation as required.
  - 4. Provide access to relevant materials required in the performance of the work.
  - 5. Provide any progress schedules/work directives as may be necessary to facilitate the Project.
- B. The PARISH, or its agent, will perform the following:
  - 1. Perform the maintenance dredging and related work, including but not limited to the engineering, design, permitting and construction.
  - 2. Perform the Engineering and Design in accordance with **Attachment A**, and in accordance with the sound engineering principles and practices.
  - 3. Provide all necessary supplies, personnel and equipment to ensure that the maintenance dredging is completed to as-built specifications and in accordance with sound engineering principles and practices.
  - 4. Oversight of contracted work to perform the tasks listed above.

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5. Receive, approve, and pay invoices from consultants/contractors/vendors on a timely basis and in accordance with all applicable state, federal, and local laws.
6. Submit invoices, certified in accord with Article VI, to CPRA for reimbursement.
7. **Deliverables** - The PARISH shall provide to the STATE, through CPRA, the following:
  - a. Copies of all detailed monthly invoices;
  - b. Monthly Monitoring reports (attached hereto and incorporated herein as **Attachment B**) which documents monthly and total costs for the Project, along with the following:
    - i. Project Work Summary Report (the format of this report shall be mutually agreed upon by the STATE and the PARISH), and any other documents, photographs, plans, drawings, maps, schematics, reports or any other materials relating to the Project;
    - ii. Monthly On-site Project equipment inventory, usage, and maintenance report (the format of this report shall be mutually agreed upon by the STATE and the PARISH);
    - iii. Monthly contracted services summary;
8. The PARISH shall adhere to all applicable State funding guidelines, as well as to all terms and conditions of this Agreement.
9. The PARISH understands and agrees that once the State's obligations under this Agreement are complete, the PARISH will be 100% responsible for the funding and performance of all future maintenance and improvements associated with the dredging of the Violet Canal and the associated costs thereto and the State will have no additional responsibilities for any maintenance and improvements associated with the dredging of the Violet Canal.

C. Public Bid

All work shall be procured in accordance with applicable Louisiana Public Bid Law. The PARISH shall advertise and receive bids for such work in accordance with the Public Bid Laws of the State of Louisiana, and generally as follows:

1. The PARISH will solicit bids for the services, labor and materials needed to construct the Project in accordance with the Public Bid Laws of the State, including, but not limited to La. R.S.38:2211, *et seq.*, and as applicable to political subdivisions of the State.
  2. The PARISH shall submit to the STATE, through CPRA, copies of the three (3) lowest bidders' proposals and proof of advertising. The PARISH'S submittal shall include: proof of publication of advertisement for bids; bid tabulation form certified by the engineer and the contracting agency; bid proposals and bid bonds of the three (3) lowest bidders and the notice of Award of Contract.
  3. The PARISH shall submit to the CPRA copies of the notice of Award of Contract, executed Contract and Performance/Payment bond(s) for the Project.
  4. The PARISH shall ensure that the Contract and bonds shall be recorded in Clerk of Court office(s) for the parish or parishes where the work is to be performed. Proof of recordation of the Contract and bonds shall be submitted to the STATE, though CPRA, along with a copy of the Notice to Proceed. Once those items have been submitted to the CPRA, the PARISH shall adopt a Resolution Certifying Compliance with the Public Bid Law and send a certified copy of the resolution to the CPRA.
- D. During the construction period, the PARISH or its agent will document Project construction with monthly status reports that summarize the progress of construction,

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identify any potential or actual problems associated with compliance with the construction contract, and describe any field changes or change orders. The STATE, through CPRA shall receive copies of these reports by the 10<sup>th</sup> calendar day of each month and be invited to all construction meetings. The PARISH will immediately notify CPRA of any construction delays or specific environmental concerns.

- E. The PARISH or its agent will arrange for and conduct final inspection of the completed works or improvement. Such inspection shall be made in conjunction with CPRA. The PARISH will provide to the STATE, through CPRA, a certified engineer's approval of the final project inspection upon project completion, as well as a Construction Completion Report, including as-built drawings, within two months of final inspection, if requested.
- F. The work for this Project shall be performed in accordance with the terms and conditions of this Agreement and all Engineering Design Documents, Plans, and Specifications shall be prepared according to sound engineering principles and practices. 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**

The PARISH shall provide to the STATE, a copy of the Resolution and/or Ordinance adopted by its Board authorizing its execution of this Agreement.

The PARISH 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. In the event that the PARISH needs to publicly bid any portion of the work for this Project, the PARISH shall keep confidential and shall not disclose any Project documents to any other entity prior to advertising such work for public bid.

The PARISH shall also submit to the STATE all other deliverables specified herein, including those specified in Article IV, Section B.

#### **ARTICLE VI** **PAYMENT**

The STATE shall pay the PARISH, monthly, one-hundred (100%) percent of the eligible project costs as determined by the consultant/contractor/vendor invoices submitted by the PARISH to the STATE as follows:

- A. Prior to payment, the PARISH shall render detailed monthly invoices for payment of work performed, including a summary of the type of work, total value of the work performed, and the costs incurred.
- B. Invoices shall be certified by the PARISH's consultant/contractor and another properly designated official representing the PARISH as being correct and in compliance with the plans and specifications.

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- C. All payments shall be subject to verification, adjustment and/or settlement as a result of any audit referenced in this Agreement. Project costs in excess of those described in Article III shall be borne 100% by the PARISH.
- D. Subject to any other terms of this Agreement, in no case shall the sum total of payments made by the STATE to the PARISH exceed \$280,095.00 for the term of this Agreement.

**ARTICLE VII**  
**RECORD KEEPING, REPORTING AND AUDITS**

The contract monitor for this Agreement is the Project Manager designated for the Project by the STATE. The Project Manager for this Project shall be Mr. Barry Richard or his designee. The STATE shall provide the PARISH 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 PARISH 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.

The PARISH shall maintain all documents, papers, field books, accounting records, appropriate financial records and other evidence pertaining to costs incurred for the Project and shall make such materials available for inspection at all reasonable times during the contract period and for a 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; however, prior to disposal of any project data for the Project, the PARISH 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, and the Office of the Inspector General shall have the authority to audit all records and accounts of the STATE and the PARISH 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.*

The STATE and the PARISH, and any 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 subcontract entered into under this Agreement.

The purpose of submission of documentation by STATE to the PARISH, or by the PARISH 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. The STATE assumes no responsibility to provide extensive document review for any documents received by PARISH or to determine the completeness or accuracy of any such documentation. The PARISH 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.



**ARTICLE VIII**  
**TERMINATION FOR CAUSE**

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

The PARISH 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 PARISH 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 PARISH. The PARISH may likewise terminate this Agreement at any time by giving thirty (30) days written notice to the STATE. The PARISH 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 PARISH incurs which are directly associated with the termination, modification, or change of any underlying engineering 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**  
**NON-DISCRIMINATION CLAUSE**

The Parties agree to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the requirements of the Americans with Disabilities Act of 1990.

The Parties agree not discriminate in employment practices, and will render services under this Agreement without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment.

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 XI HOLD HARMLESS AND INDEMNITY

The PARISH shall be fully liable for the actions of its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control, and shall fully indemnify and hold the STATE and its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, 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 PARISH, its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control, without limitation, except that the PARISH 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, subcontractors, and other persons under its control. However, PARISH shall fully indemnify and hold the STATE and its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control, harmless from suits, actions, damages, and costs of every name and description relating to any technical comments or suggestions offered by STATE's employees to the PARISH pertaining to the Project design.

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. Nothing in this Agreement shall be construed as a waiver of any defenses or immunities provided to any party hereto by any Federal or Louisiana law or statute. It is clearly the intent of all parties that all parties shall be allowed to assert any and all defenses and immunities provided by Federal or Louisiana law.

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

#### ARTICLE XII ENTIRE AGREEMENT AND AMENDMENTS

This Agreement constitutes the entire understanding and reflects the entirety of the undertakings among 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.

The Parties agree that any change to this Agreement shall require a written amendment, mutually agreed upon and signed by both Parties. No change to this Agreement shall be valid or enforceable unless reduced to writing and signed by both parties.

#### ARTICLE XIII OWNERSHIP

All records, reports, documents and other material delivered or transmitted to the PARISH by the STATE shall remain the property of the STATE and shall be returned by the



PARISH to the STATE at the PARISH's expense at termination or expiration of this Agreement. All records, reports, documents, or other material related to this Agreement and/or obtained or prepared by the PARISH in connection with performance of the services contracted for herein shall be the property of the PARISH, and shall be retained in accordance with the terms of this Agreement.

#### **ARTICLE XIV** **ASSIGNMENT**

The PARISH shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment, transfer, subrogation or novation), without prior written consent of the STATE provided however, that claims for money due or to become due to the PARISH 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 XV** **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. 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 government in case of an emergency, 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 XVI** **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. PARISH 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 PARISH 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 PARISH 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 Articles VIII or IX in this Agreement, or to take such other action it deems appropriate under this Agreement.

#### **ARTICLE XVII** **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 XVIII** **RELATIONSHIP OF PARTIES**

- A. In the exercise of their respective rights and obligations under this Agreement, the PARISH 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 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.
- 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 PARISH, its consultant(s), contractor(s) and/or subcontractor(s) or between the STATE and any third party. The participation by the PARISH in the Project shall in no way be construed to make PARISH 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 XIX**  
**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 vested in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana.

**ARTICLE XX**  
**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 St. Bernard Parish Government:

Guy McInnis  
Parish President  
8201 W Judge Perez Drive  
Chalmette, LA 70043  
504-278-4280

If to the CPRA Board:

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

If to CPRA:

Michael R. Ellis  
Executive Director  
Coastal Protection and Restoration Authority  
Post Office Box 44027  
Baton Rouge, LA 70804-4027  
225-342-4683

**ARTICLE XXI**  
**FINANCIAL CAPABILITY**

PARISH hereby acknowledges and certifies that it is aware of the financial obligations of the PARISH under this Agreement and that PARISH has the financial capability to satisfy the obligations of the PARISH under this Agreement. PARISH agrees to take any and all appropriate

steps to obtain funding for the responsibilities undertaken by PARISH 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 PARISH for the Project, PARISH 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, at its sole discretion, from seeking additional funding to assist PARISH with the responsibilities undertaken by any Party pursuant to this Agreement.

## **ARTICLE XXII 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 XXIII 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 Agreement 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 to the Agreement shall forthwith be amended to make such insertion or correction.

## **ARTICLE XXIV 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 XXV TAXES**

PARISH shall be responsible for payment of all applicable taxes from the funds to be received under this Agreement. PARISH's federal tax identification number, \_\_\_\_\_, DUNS# \_\_\_\_\_.

## **ARTICLE XXVI SUBRECIPIENTS, CONSULTANTS, CONTRACTORS AND SUBCONTRACTORS**

PARISH may, with prior written permission from the STATE, enter into subawards and/or subcontracts with third parties for the performance of any part of PARISH's duties and

*Violet Canal Freshwater Diversion Project, Maintenance and Improvements*

*State Project No. PO-0001*

*Page 12 of 16*



obligations. In no event shall the existence of a subaward or subcontract operate to release or reduce the liability of PARISH to the STATE for any breach in the performance of PARISH's or any subcontractor's duties.

**ARTICLE XXVII**  
**COVENANT AGAINST CONTINGENT FEES**

PARISH 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 XXVIII**  
**EFFECTIVE DATE / DURATION / MODIFICATION / TERMINATION**

This Agreement shall remain in effect until termination by written mutual agreement of all parties, in accordance with the terms hereof, or upon final accepted completion of the work outlined in this Agreement. However, all work shall be completed and Project closed out no later than December 31, 2018.

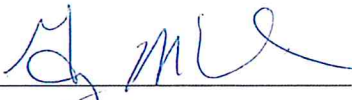
Except as otherwise provided herein, the provisions, terms and conditions contained in this Agreement may not be amended, modified, superseded, terminated, or otherwise altered except by mutual written consent of all parties hereto. This Agreement may be executed in multiple originals.


**THIS SPACE INTENTIONALLY LEFT BLANK**

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

**ST. BERNARD PARISH GOVERNMENT**

**COASTAL PROTECTION AND  
RESTORATION AUTHORITY BOARD**

BY:   
Guy S. McInnis, President

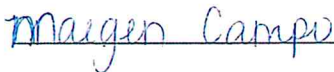
BY:   
Johnny B. Bradberry, Chairman

DATE: 6/20/18

DATE: 6/15/2018

726001193  
(District's Federal Identification Number)

**WITNESSES:**

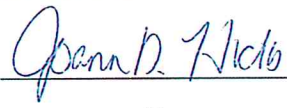
  
Signature


Maegen Campo  
Print Name

  
Signature

John Lane  
Print Name

**WITNESSES:**

  
Signature  
**Joann D. Hicks**

  
Print Name  
Signature  
**Shirley T. Long**

Print Name



STATE OF LOUISIANA  
PARISH OF ST. BERNARD

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for said Parish and State aforesaid, on this 20 day of June 2018, personally came and appeared Guy McInnis, or his assigned acting, \_\_\_\_\_, to me known, who declared that he is the President of St. Bernard Parish, 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

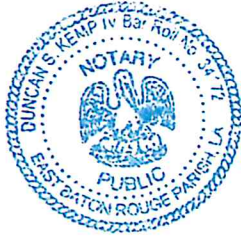
WILLIAM MARTIN MCGOEY  
Louisiana Notary Public ID# 12496  
LSNA# 14205  
Commissioned for life  
Louisiana Notary Public / Bar Number

My commission expires: at del

(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 15<sup>th</sup> day of June, 2018, personally came and appeared Johnny B. Bradberry, 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.



Duncan S. Kemp, IV

Signature

Duncan S. Kemp, IV

Print Name

La. Bar 34172  
Louisiana Notary Public / Bar Number

My commission expires: at death

(SEAL)