



St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4228 Fax (504) 278-4209
www.sbpsg.net

#38

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, APRIL 18, 2017 AT THREE O'CLOCK P.M.

On motion of Mr. Montelongo, seconded by Mrs. Alcon, it was moved to adopt the following resolution:

RESOLUTION SBPC #1713-04-17

A RESOLUTION AUTHORIZING THE PARISH PRESIDENT TO SIGN A COOPERATIVE ENDEAVOR AGREEMENT WITH THE LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES TO RETAIN A PRIME CONTRACTOR TO CREATE A PRODUCTIVE OYSTER REEF ON PUBLIC OYSTER SEED GROUNDS TO OFFSET IMPACTS TO OYSTER AREAS RESULTING FROM ANY EXPOSURE TO DEEPWATER HORIZON OIL, DISPERSANT, AND RESPONSE ACTIVITIES.

WHEREAS, St. Bernard Parish Government has been afforded access to up to three point seven million dollars in state funding for above described project to be completed by a prime contractor, subcontractors and the Parish.

WHEREAS, it is in the best interest of the citizens of St. Bernard and Louisiana to have execute this project to create a productive oyster reef on public oyster seed grounds,

WHEREAS, the St. Bernard Parish Council decrees the attached Exhibit "A" is a proper and fair Cooperative Endeavor Agreement with the Louisiana Department of Wildlife and Fisheries.

NOW THEREFORE, BE IT RESOLVED, that the St. Bernard Parish Council, the governing authority of St. Bernard Parish, does hereby support the efforts of the Parish President in executing the Cooperative Endeavor Agreement with the Louisiana Department of Wildlife and Fisheries and authorizes signature of the Cooperative Endeavor Agreement.



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Extract #38 continued
April 18, 2017

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

YEAS: Luna, Alcon, Montelongo

NAYS: None

ABSENT: Lewis, McCloskey, Gorbaty

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

And the motion was declared **adopted** on the 18th day of April, 2017.

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, April 18, 2017.

Witness my hand and the seal
of the Parish of St. Bernard on
this 18th day of April, 2017.

ROXANNE ADAMS
CLERK OF COUNCIL

STATE OF LOUISIANA

GOVERNMENTAL CONTRACT- ST. Bernard Spat on Shell Deployment

Be it known, that on this _____ day of _____, 2017 by and between the Department of Wildlife and Fisheries of the State of Louisiana, hereinafter referred to as the "State", and the St. Bernard Parish Government officially domiciled at 8201 W. Judge Perez Drive Chalmette, LA 70043; hereinafter referred to as the "Parish" do hereby enter into contract under the following terms and conditions.

Purpose

To create a productive oyster reef on public oyster seed grounds to offset impacts to oyster areas resulting from any exposure to Deepwater Horizon oil, dispersant, and response activities.

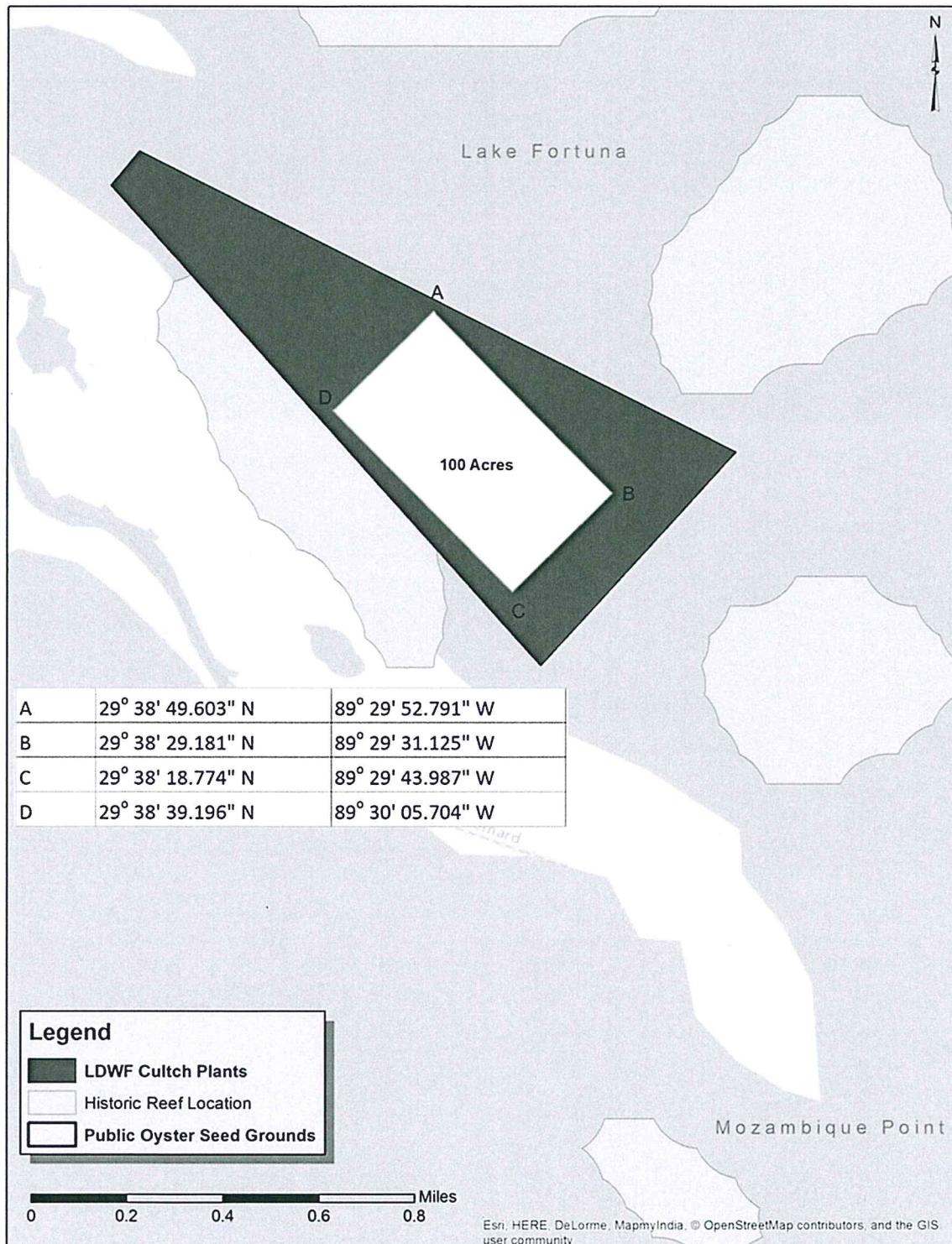
Scope of Services

The Parish hereby agrees to furnish the following services:

- Deploy fossilized shell cultch material onto approximately 100 acres of designated public oyster seed grounds at a density of 226 tons/acre in the Lake Fortuna area.
- Produce 6 acres of high density oyster spat on shell utilizing fossilized oyster and place that spat-on-shell in experimental plots as directed by the State.
- When directed by the State, evenly spread the growing oyster spat over the entire 100-acre plot
- The Parish may utilize any number of subcontractors to complete this work, however, the State requests that local licensed oyster harvesters be used in fulfillment of these services to the maximum extent practical.

Location of Work

The project will be located within the Lake Fortuna Public Oyster Area as detailed in the map below:



Description of Work

The Parish will engage a sub-contractor for the provision of the following proprietary services: (1) the mining and transport of fossilized oyster shells (22,600 tons) to the designated 100-acre site (oyster cultch plant) on the public oyster seed grounds in the Lake Fortuna area; (2) the even placement of said oyster shells on the bed of the entire oyster cultch plant; (3) the transport of fossilized oyster shells (1,356 tons) to a designated oyster hatchery; (4) the setting of spat and transport of said oyster shells from the oyster hatchery to a designated dock in St. Bernard Parish; and (5) the operation and maintenance of the oyster cultch plant until the project is completed. The Parish will separately engage oyster fishermen and other contractors for the provision of the following associated services: (1) the transport of spat-on-shell material (1,356 tons) from the designated dock in St. Bernard Parish to the designated nursery area in the oyster cultch plant; and (2) the transport and even placement of said spat-on-shell material across the entire oyster cultch plant. Spat-on-shell material will be deployed at a density that, after accounting for estimated mortality during deployment and growth, should result in 20 seed oysters per square meter. The Parish will also perform all administrative services associated with the project, including inspections; monitoring; reporting; and invoicing

Payment Terms

In consideration of the services described above, state hereby agrees to pay the Parish a maximum fee of \$3,700,000. The maximum fee is based on:

- \$2,600,000 for the implementation and deployment of the 22,600 ton 100 acre cultch plant.
- \$1,000,000 for the implementation and deployment of the 6 acres of spat-on-shell plots.
- \$100,000 for administrative services performed by the Parish.

Payments to the Parish will be made only on approval of the LDWF Fisheries Management Division Administrator or duly authorized designee. Payments are scheduled as follows:

- Payments up to a maximum of \$2,600,000 will be made to the Parish for the 100 acre cultch plant upon receipt of an invoice(s) from the Parish to the State noting the weight and area of cultch plant deployment.
 - Invoices should be submitted at a rate of \$26,000 per acre or \$115.04 per ton of cultch deployed.
- Payments up to a maximum of \$1,000,000 will be made to the Parish for completion of the 6 acre spat-on-shell portion of this project upon receipt of an invoice and report stating the percentage of work completed at the time of the report. If the State approves the percentage of work completed as stated in the report, a percentage of the payment will be made to the Parish equivalent to the percentage of the work completed.
 - The report should detail the work completed. This should include but not be limited to; any deployment and setup of hatchery equipment needed to conduct spat-on-shell operations; number and participation level of sub-contractors; amount of spat-on-shell produced; amount and location of deployed spat-on-shell; and any monitoring activities associated with this portion of the project.
- A fixed fee of \$100,000 will be paid to the Parish for administrative services.

- The Parish may submit an initial invoice of up to \$50,000 for administrative costs incurred during project development. This invoice should include an implementation plan, detailing how the Parish will execute and administer this project. A final payment for the remaining balance available for administrative services (\$100,000) will be made upon review and approval of the project completion report.

In the event that progress towards the successful completion of this agreement is not undertaken by the Parish (ie. No sacks are transplanted), all funds paid to the Parish, minus documented expenses, shall be returned to the State upon written request.

Performance Measures

Performance will be measured by the amount of cultch material and spat on shell transplanted. In addition to the amount transplanted, performance will also be measured by the density of live seed oysters per square meter on the completed, with a target of 20 seed oysters per square meter. The contract will be considered successfully completed when LDWF estimates that the contracted amount of cultch and spat on shell material has been deployed.

Monitoring Plan

The State will assist in the direction and monitoring of cultch material placement along with spat on shell deployment and maintenance activities at the project site on Lake Fortuna. Weekly contact shall be made between the Parish and the State project manager to inform the State of activities performed in conjunction with this project. In addition, the Parish shall submit a report to accompany each invoice for reimbursement as well as submit a completion report at the termination of this agreement. These reports shall include summary information on project status, individuals/companies assisting with the project and the amount of cultch and spat-on-shell deployed to the project site in Lake Fortuna.

Taxes

Parish hereby agrees that the responsibility for payment of taxes from the funds thus received under this Contract and/or legislative appropriation shall be Parish's obligation and identified under Federal tax identification number (.....)

Termination for Cause

The State may terminate this Contract for cause based upon the failure of the Parish to comply with the terms and/or conditions of the Contract; 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 of failure which cannot be corrected in thirty (30) days, begun in good faith and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Parish in default and the Contract shall 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 contract; provided that the Parish shall give the State written notice specifying the State's failure and a reasonable opportunity for the state to cure the defect.

Termination for Convenience

The State may terminate the Contract at any time by giving thirty (30) days written notice to the Parish. The Parish shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

Remedies for Default

Any claim or controversy arising out of this contract shall be resolved by the provisions of LSA - R.S. 39: 1672.2 – 1672.4.

Ownership

All records, reports, documents and other material delivered or transmitted to Parish by State shall remain the property of State, and shall be returned by Parish to State, at Parish's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by Parish in connection with the performance of the services contracted for herein shall become the property of State, and shall, upon request, be returned by Parish to State, at Parish's expense, at termination or expiration of this contract.

Nonassignability

The Parish shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the Parish from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State and the Office of Contractual Review.

Auditors

It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors and/or other State auditors shall have the option of auditing all accounts of Parish which relate to this contract.

Term of Contract

This contract shall begin on (.....) and shall terminate on (.....).

Fiscal Funding

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any 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 contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

Funds for this project are from (.....) grant number (.....). The Parish is subject to all standard and special terms and conditions specified in the grant document.

Insurance Requirements

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A- VI.

This rating requirement shall be waived for Worker's Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana State agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any sub-contractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) calendar days' notice in advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

Compensation Insurance: Before any work is commenced, the Contractor shall maintain during the life of the contract, Workers' Compensation Insurance for all of the Contractor's employees employed at the site of the project. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance: The Contractor shall maintain during the life of the contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either them, or in such a manner as to impose liability to the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

Insurance Covering Special Hazards: Special hazards as determined by the State shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the Contractor, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

Licensed and Non-Licensed Motor Vehicles: The Contractor shall maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed there under, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance: The Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.

Indemnification and Limitation of Liability

Neither 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 under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State and its Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State. If applicable, Contractor will indemnify, defend and hold the State and its Authorized Users harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or its Authorized Users may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product, Material or Service; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal

quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

Subcontractors

The Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and/or State Agency for any breach in the performance of the Contractor's duties. All requirements in the contract shall also be required for each subcontractor. The Contractor will be the single point of contact for all subcontractor work.

Discrimination Clause

The Parish agrees 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, 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 Act of 1975, and Parish agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Parish agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disabilities.

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

Record Retention

Contracting Party agrees to retain all books, records, and other documents relevant to this agreement and the funds expended hereunder for at least three years after final payment, or as required by applicable Federal law if Federal funds are used to fund this agreement.

Personal Information Breach Notification

The Parish agrees to bear the entire cost of notification in the event a breach of personal information (such information can include first name or first initial and last name in combination with any one or more of the following data elements, when the name or the data element is not encrypted or redacted: social security number, driver's license number, account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account) occurs as a result of, or for reasons relating to this agreement when such breach is attributable, either in whole or part, to the action, negligence or failure to act on the part of the Parish.

Confidentiality Clause

All data and information, of any kind, provided by the State to the Parish for the purposes of carrying out this agreement shall remain the property of the State and is considered confidential. All such data and information shall not be released or disclosed by the Parish to any third parties, except:

- a. To subcontractors approved by the State, or
- b. As expressly authorized, in writing, by the State, or
- c. For data or information required to be released or disclosed pursuant to a valid court order.

Validity Clause

This agreement is not valid (effective), and no legal obligation exists until all required signatures and approvals are obtained. This may include the Louisiana Department of Civil Service, and the Louisiana Division of Administration, Office of State Procurement, Professional Contracts.

It is the responsibility of the Parish to advise the department in advance if agreement funds or agreement terms may be insufficient to complete the agreement objectives.

THUS DONE AND SIGNED AT Baton Rouge, Louisiana on the day, month and year first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this day of (enter date).

PARISH SIGNATURES:

STATE AGENCY SIGNATURE:

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____

By: _____

Title: _____