

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CALCASIEU PARISH POLICE JURY
FOR THE
EXPEDITED PROCESSING OF
SECTION 10/404 PERMIT APPLICATIONS**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered into this 27th day of April, 2018, by and between the Department of the Army (hereinafter referred to as the "Government" and/or "CEMVN"), represented by the U.S. Army Engineer, New Orleans District (the "District Engineer" or "District Commander") and the Calcasieu Parish Police Jury (CPPJ), represented by the Calcasieu Parish Police Jury President.

WITNESSETH, THAT:

WHEREAS, under the authority of Section 214 of the Water Resources Development Act of 2000 ("Section 214"), as amended by Section 1006 of the Water Resources Reform and Development Act of 2014 and codified under 33 U.S.C. 2352, the Secretary of the Army ("Secretary"), after public notice, may accept and expend funds contributed by a non-federal public entity, to expedite the evaluation of permits applications of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army, including Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. 403) (hereinafter "Section 10"); and Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter "Section 404"); and

WHEREAS, in doing so, the Secretary must ensure that the use of such funds will not impact impartial decision making with respect to permits applications, either substantively or procedurally; and

WHEREAS, the Secretary has delegated this responsibility to the Chief of Engineers and his authorized representatives, including District Commanders of the United States Army Corps of Engineers; and

WHEREAS, by letter dated 5 January 2016, CPPJ requested the United States Army Corps of Engineers ("USACE"), New Orleans District ("CEMVN"), to expedite the evaluation of Section 10 and Section 404 ("Section 10/404") permit applications to be submitted by CPPJ to the USACE relative to the construction, replacement, and maintenance of roadways and bridges, drainage improvements, public park enhancements, etc., that are under the jurisdictional authority and responsibility of the CPPJ. CPPJ has indicated its intent to provide the necessary funds to CEMVN to expedite their Section 10/404 permit evaluations; and

WHEREAS, CPPJ is a non-federal public entity that was created by an Act of the State of Louisiana Legislature in 1840, and which operates and administers a Division of Engineering and Public Works whose primary objective is to provide quality roads, bridges, and infrastructure that are safe and economical within applicable design standards.

WHEREAS, CEMVN issued an initial Special Public Notice on March 21, 2016 which was posted and published on the CEMVN webpage and which was also distributed to concerned agencies, organizations, and the interested public, advising the public of CEMVN's proposed intent to accept and expend funds contributed by CPPJ for the expedited review and processing of Section 10/404 permit applications; and

WHEREAS, on April 11, 2016, following the expiration of the public comment period and the consideration and review of the comments received in response to the March 21, 2016 Special Public Notice, the CEMVN District Commander determined that expenditure of funds to be contributed by CPPJ for expedited evaluation and processing of Section 10/404 permit applications is appropriate, will serve public purposes, and complies with the requirements of Section 214 and current applicable USACE guidance; and

WHEREAS, the CEMVN District Commander's decision to enter into this Agreement does not constitute any endorsement or implied consent to the Section 10/404 permit applications to be submitted by CPPJ; rather, it enables CEMVN staff to devote the attention required to the Section 10/404 permit applications in a more timely and more thorough manner than they may otherwise be able to; and

WHEREAS, the CEMVN District Commander has issued a Memorandum for Record dated 9 June 2017, to document his decision that CEMVN accept and expend funds from CPPJ pursuant to Section 214 and this Agreement for the expedited evaluation and processing of Section 10/404 permit applications to be submitted by CPPJ; and

WHEREAS, CEMVN and CPPJ desire to enter into this Agreement for the purposes stated herein; and

WHEREAS, CEMVN and CPPJ have the full authority, capacity, and capability to enter into and to perform the obligations of this Agreement.

ARTICLE I – PURPOSE AND AUTHORITY

The foregoing recitals are incorporated herein by reference as if fully set forth herein and constitute material terms of this Agreement. Pursuant to the requirements of Section 214, and all other applicable guidance and regulations, CEMVN and CPPJ (“collectively the parties”), enter into this Agreement for the purpose of establishing the framework for the acceptance and expenditure of funds to be provided by CPPJ to expedite the CEMVN evaluation and processing of Department of Army, Section 10/404 permit applications to

be submitted by CPPJ. CPPJ represents and agrees that all Section 10/404 permits submitted to CEMVN pursuant to this Agreement will be in the name of CPPJ and that the proponent of all Section 10/404 permit applications made pursuant to this Agreement will be CPPJ.

ARTICLE II – SCOPE OF WORK AND FUNDING

A. As of the effective date of this Agreement, the Estimated Total Costs for CEMVN to expedite the evaluation and processing of Section 10/404 permits for CPPJ over the 36 month term of this Agreement, are estimated to be Two Hundred and Seventy-Five Thousand Dollars (275,000.00). The Estimated Total Costs are the equivalent of an One Hundred Thousand Dollars (\$100,000.00) annually, per federal fiscal year, with fiscal year 2018 pro-rated. **Attachment “A”** of this Agreement contains a USACE budget estimate to support the Estimated Total Costs, which includes the tasks, estimated hourly rates for the personnel hours required, travel and related costs, indirect labor costs, and the total annual cost for each federal fiscal year covered by the term of this Agreement. This budget estimate is subject to adjustment by CEMVN and is not to be construed as the total financial responsibility of CPPJ. No adjustment in excess of the Estimated Total Costs shall be made by CEMVN without the written agreement of CPPJ and thirty (30) calendar days prior notice to CPPJ. The CPPJ certifies that at the time this agreement is executed, that sufficient funds are available and authorized for expenditure to finance the cost of this agreement within CPPJ’s current appropriation or limitation of the current biennial budget.

B. It is understood and agreed by the parties that use of the funds accepted by CEMVN pursuant to this Agreement will not impact impartial Government decision-making with respect to Section 10/404 permit decisions, either substantively or procedurally.

C. Not later than thirty (30) calendar days after receipt of written notification from CEMVN that CEMVN has qualified personnel in place at the New Orleans District that are ready and available to commence the expedited permit processing for CPPJ, and prior to CEMVN incurring any financial obligations or performing any work under this Agreement, CPPJ shall provide Seventy Five Thousand and no cents (\$75,000.00) in initial funds to CEMVN to cover the pro-rated annual costs for the remaining months of federal fiscal year 2018 by delivering a check payable to “FAO, USAED, New Orleans (B2)” to the District Engineer or by electronically transferring such funds in the manner to be prescribed by CEMVN. Not less than sixty (60) calendar days prior to the beginning of each subsequent federal fiscal year period covered by this Agreement, CPPJ shall provide CEMVN with One Hundred Thousand Dollars (\$100,000) for the upcoming annual federal fiscal year period using either of the payment mechanisms described herein above. All fund transfers under this Agreement will be directly between CPPJ and the CEMVN.

D. CEMVN shall draw the sums that CEMVN deems necessary from the funds provided by CPPJ to cover the costs of the expedited Section 10/404 permit processing as such costs are incurred by CEMVN. Excluding federal fiscal year 2018 whenever the balance

of funds provided by CPPJ reaches Ten Thousand Dollars (\$10,000.00) during any federal fiscal year of this Agreement, and if additional funds are required for CEMVN to continue its expedited Section 10/404 permit processing, CEMVN shall notify CPPJ in writing that additional funds are required to be paid by CPPJ to CEMVN within thirty (30) calendar days following the date of the issuance of the written notice to CPPJ by CEMVN. The parties shall agree upon a dollar amount to be remitted by CPPJ to CEMVN to continue the expedited Section 10/404 expedited permit processing based upon the amount of time left in the then-current fiscal year and the estimated amount of expedited permit processing work remaining to be performed by CEMVN in that fiscal year. The parties shall memorialize their agreement on the amount of additional funds to be provided by CPPJ to CEMVN in a letter agreement executed by the District Engineer and the President of the CPPJ. Within thirty (30) calendar days from the issuance of the initial notice by CEMVN to CPPJ that additional funds are required, the additional funds will be remitted by CPPJ to CEMVN to avoid any stoppage in work. Upon receipt of the required funds by CEMVN, a copy of the letter agreement shall be published on the CEMVN web page at page at <http://www.mvn.usace.army.mil/Missions/214Agreements.aspx> and forwarded to the HQUSACE Regulatory Section 214 Manager, and maintained by HQUSACE during the active term of this Agreement on the HQUSACE website.

E. If the funds are not timely provided by CPPJ, all expedited Section 10/404 permit processing by CEMVN under this Agreement shall stop until the required amount of funds are provided by CPPJ. CEMVN's remaining work on CPPJ Section 10/404 permit applications shall progress according to the availability of appropriated funds, subject to other constraints imposed by law, regulation, and/or Government policy. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds three (3) months.

F. Funds provided by CPPJ will be primarily expended on direct labor, salaries, and overhead for CEMVN personnel performing expedited Section 10/404 permit processing activities for CPPJ, and other such permissible and acceptable activities that the funding provided pursuant to this Agreement may be expended upon, in accordance with the provisions of Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended and codified at 33 U.S.C. § 2352; the CECW-CO-R Memorandum for Commanders, Major Subordinate Commands, and District Commands, dated 02 Sept. 2015, SUBJECT: "Updated Implementation Guidance for Section 1006 of the Water Resources Reform and Development Act of 2014, and Guidance on the Use of Funding Agreements Within the Regulatory Program"; and any and all other applicable laws, regulations, policies and procedures.

G. Funds shall not be expended to complete enforcement activities but funds may be used for compliance activities including monitoring of mitigation sites and compliance inspections.

H. Funds may not be used to continue activities for CPPJ should a lapse in appropriations result in a shutdown furlough of the USACE Regulatory Program.

I. CPPJ shall comply with 33 CFR 320-332 in preparing the Section 10/404 permit applications and shall timely submit all engineering, environmental, and other technical documents as required by all applicable laws and regulations for the evaluation and processing of the Section 10/404 permit applications.

J. CPPJ shall not use funds provided by another federal agency (or any non-federal contribution made to match funds provided by another federal agency) to meet any of its obligations under this Agreement, unless CPPJ forwards to CEMVN, a written confirmation from the federal agency that the use of the funds to expedite the Section 10/404 permit review process is acceptable.

K. Within ninety (90) calendar days of the expiration of the term of this Agreement or within ninety (90) calendar days of the date that this Agreement is terminated earlier pursuant to Article IX, the Government shall conduct a final accounting. Should the final accounting determine that additional funds are required from CPPJ, within thirty (30) calendar days of receipt of written notice from CEMVN, CPPJ shall provide CEMVN with the full amount of the additional required funds. Should the final accounting determine that CPPJ has provided funds in excess of the required amount, CEMVN shall refund the excess amount no later than sixty (60) calendar days after CEMVN the date of the final accounting. The final accounting by the Government shall in no way limit CPPJ's obligation to promptly pay for any costs which may become known after the final accounting.

ARTICLE III – IMPARTIAL DECISION-MAKING

A. In order to ensure the funds accepted from CPPJ are expended for the intended purpose, CEMVN shall establish separate accounts in the USACE Financial Management System to track the acceptance and expenditure of funds pursuant to this Agreement in accordance with the USACE current fiscal year budget execution guidance. CEMVN personnel accomplishing the technical and administrative tasks required to expedite the evaluation and processing of the Section 10/404 permit applications covered by this Agreement, shall charge their time against the specific applicable account(s) when working on the applications. CEMVN shall track expenditures pursuant to this Agreement, including funding provided by CPPJ for expediting the processing of Section 10/404 permit applications by federal fiscal year basis by funding source. In instances where CEMVN employees are concurrently working on multiple Section 10/404 permit applications of the CPPJ funded by this Agreement, CEMVN shall ensure that the labor and all other costs are accurately charged to the correct project accounts of CPPJ.

B. The Section 10/404 reviews, processing, and evaluations conducted by CEMVN shall follow the same procedures for decisions that would otherwise be required for the evaluation of Section 10/404 permits for similar projects or activities not carried out using

funds authorized under Section 214. No prescribed procedures, analyses, decisions, or other activities will be eliminated, curtailed, or omitted by CEMVN for purposes of expediency, and all Section 10/404 reviews shall comply with all applicable laws, regulations, policies, and guidance. However, process improvements that are developed by CEMVN can be shared in order for all members of the general public to benefit.

C. All preliminary jurisdictional determinations and any approved jurisdictional determinations where funds are used must have documentation that a non-funded regulator conducted a review of the determination to maintain the impartiality of the decision but the review need not be a field review. For approved jurisdictional determinations that require additional coordination with the Environmental Protection Agency, an additional internal review is not required.

D. A copy of this Executed Agreement shall be published on the CEMVN web page at <http://www.mvn.usace.army.mil/Missions/214Agreements.aspx> and forwarded to HQUSACE Regulatory Section 214 Manager. HQUSACE will maintain a copy of this Agreement during its active term on the HQUSACE website. All final decisions on the Section 10/404 permit applications will be made available, updated monthly, and published on the CEMVN public web page.

E. Activities conducted in accordance with this Agreement must expedite the Section 10/404 permit review process and may include generally shorter review times as compared to typical review times, facilitation of a smoother review process through improved coordination and communication, and/or the development or use of programmatic agreements or standard operating procedures. CEMVN shall ensure that expediting the evaluation of Section 10/404 permit applications pursuant to this Agreement does not adversely affect the timeline for evaluation by CEMVN of permits applications under the jurisdiction of the Department of the Army of other entities that have not contributed funds under Section 214. All final Section 10/404 permit decisions and decision documents, including all reporting and state programmatic permit verifications, shall be reviewed and approved in writing by a responsible official, at least one level above the decision maker. For purposes of this Agreement, the decision maker is the person that has been delegated signature authority. The one-level-above review must be a position that is not partially or fully funded by the same funding entity. For example, if the decision maker is a Regulatory Section Chief, then the one-level-above reviewer may be the Regulatory Chief or Deputy Chief. Team leaders are appropriate one-level-above reviewers provided signature authority has been delegated to the project manager level.

F. Instruments for mitigation banks or in-lieu fee programs developed pursuant to this Agreement, must be signed by a Regulatory Branch/Division Chief, an equivalent, or a higher level position that is not funded by this Agreement.

ARTICLE IV - APPLICABLE LAWS

CEMVN and CPPJ, in carrying out their respective obligations under this Agreement, shall comply with all requirements of applicable federal and state laws, and implementing USACE regulations, policies, and guidance.

ARTICLE V - DISPUTE RESOLUTION

The parties agree that, in the event a dispute arises as to the performance of any function under this Agreement, they will use their best efforts to resolve the dispute by informal means, including without limitation, mutually agreeable, non-binding alternative dispute resolution processes. If the alternative dispute resolution process has been utilized and has been exhausted, the parties may avail themselves of any remedies available at law or equity. The existence of a dispute shall not excuse the parties from performing their obligations under this Agreement.

ARTICLE VI – COMMUNICATIONS

A. To provide for consistent and effective communication, not more than thirty (30) calendar days after the effective date of this Agreement, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement.

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

If to CPPJ: President
 Calcasieu Parish Police Jury
 1015 Pithon Street
 Lake Charles, Louisiana 70602

If to CEMVN: District Engineer
 U.S. Army Corps of Engineers
 New Orleans District
 7400 Leake Avenue
 New Orleans, Louisiana 70118-3651

C. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article. Any request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

ARTICLE VII – MISCELLANEOUS

A. The term of this Agreement shall be for a period of sixty 36 months commencing on the date that the CEMVN District Engineer has executed the Agreement following execution of the Agreement by CPPJ. This Agreement may be executed in any number of counterparts, each of which shall constitute an original document which shall be binding upon any of the Parties executing same.

B. This Agreement shall not affect any pre-existing or independent relationships or obligations between CPPJ and the Government.

C. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and effect, to the fullest extent permitted by law.

D. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind a party unless in writing and signed by each party and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

E. Neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each Party may, at any time at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

ARTICLE VIII – AMENDMENT & MODIFICATION

This Agreement may be amended or modified only by written agreement of the parties, executed by the CEMVN District Engineer and the CPPJ President. This Agreement shall be modified to conform to changes in federal law, and may be amended, by written agreement of the parties, to conform to changes in the guidance applicable to Section 214 or for other reasons.

ARTICLE IX – TERMINATION

A. Either party may terminate this Agreement without cause by providing written notice to the other party. Such termination shall be effective thirty (30) calendar days following receipt of such notice by the other party, unless a later date is stated in the notice of termination.

B. This Agreement may be terminated by any party for cause by providing thirty (30) calendar days written notice to the other party and demonstrating in the notice, that the other party has not fulfilled its responsibilities under this Agreement and/or has not complied with the terms and conditions of the Agreement. The notice shall identify the alleged failures, breaches, and/or non-compliance and give the party in alleged default, thirty (30) calendar days to cure and remedy the failures, breaches, and/or situations of non-compliance which are identified in the notice. If the defaulting party fails to correct the conditions identified in the notice, to the satisfaction of the other party, the Agreement shall automatically terminate at the end of the thirty (30) calendar day cure period.

C. Termination of this Agreement shall not relieve CPPJ of liability for obligations previously incurred by CEMVN in connection with the review of the Section 10 and/or 404 permit applications made by CPPJ pursuant to this Agreement. Upon termination of this Agreement, CPPJ shall remain responsible for all costs properly incurred by CEMVN due at the time of termination and for the costs of closing out or transferring any on-going contracts.

D. This Agreement shall remain in force until the Agreement expires at the end of its natural term without a timely renewal; is terminated at an earlier date pursuant to this Article; the authority provided to USACE to accept funds in accordance with 33 U.S.C. 2352 is terminated; or until the funds contributed by CPPJ have been expended and are not replenished, whichever occurs first.

E. If this Agreement is terminated prior to CEMVN's issuance of any Section 10 and/or 404 permits for the CPPJ projects or activities, CEMVN's remaining work on the CPPJ Section 10/404 permit applications shall progress according to the availability of appropriated funds, subject to other constraints imposed by law, regulation, or Government policy.

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

DEPARTMENT OF THE ARMY

CALCASIEU PARISH POLICE JURY

BY: 
Michael N. Clancy
Colonel, U.S. Army
District Engineer

BY: 
Judd Bares
Police Jury President

DATE: 27 Apr 18

DATE: April 5, 2018

ATTACHMENT A

CEMVN Itemized Budget Estimate for Federal Fiscal Years (FY) 2018-2022:

Estimated Direct Labor Costs Per Federal Fiscal Year:

Project Manager: Salary labor cost for a GS-12 (Step 5) level personnel with locality adjustment, includes and approximate hourly rate of \$39.32 and an approximate \$81,792 per year salary.

Clerical, administrative costs, etc.: Labor costs for these duties associated with other GS-5 or GS-7 Office Administrative Assistant personnel, are not included within this Memorandum of Agreement.

Estimated Indirect Labor Costs Per Federal Fiscal Year:

Overtime ("OT"): OT on an as need basis. OT rates are comparable to hourly rates for GS-12 level personnel.

Travel: Site visits as required, estimated for GS-12 (Step 5) level personnel for an average 12 hour day trip, total approximately \$471.84 (per one day site visit). Multiple day visits as required and/or requested which require overnight stay, may include additional costs for lodging accommodations and applicable Per Diem rates.

Misc. costs, copying, postage, supplies, gas, etc.: To be determined by USACE

TOTAL ESTIMATED ANNUAL (FEDERAL FISCALYEAR) COSTS

FY 2018 Pro-rated Estimated Costs for January – September 2018: \$75,000.00

Fiscal Years covered under the MOA: 2018, 2019, and 2020

Estimated Direct and Indirect Labor, Travel and other Costs: \$100,000 annually

*This budget estimate is subject to adjustment by the CEMVN, is not to be construed as the total financial responsibility of the Applicant. Total labor costs will be adjusted annually to account for cost of living adjustments and performance-based salary increases. Changes to burdened overhead rate can change periodically and will be reflected in timekeeping and billing records.