

AMENDMENT NO. 1  
TO  
DESIGN AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
ALABAMA STATE PORT AUTHORITY  
FOR  
DESIGN  
OF THE  
MOBILE HARBOR CHANNEL WIDENING  
LIMITED REEVALUATION REPORT

THIS AMENDMENT NO. 1 is entered into this 2<sup>ND</sup> day of MAY, 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Mobile District (hereinafter the "District Engineer"), and the Alabama State Port Authority (hereinafter the "Non-Federal Sponsor"), represented by its Acting Director.

WITNESSETH, THAT:

WHEREAS, on August 14, 2012, the Government and the Non-Federal Sponsor entered into an agreement for the preparation of a Limited Reevaluation Report for the Mobile Harbor Channel Widening Project (hereinafter the "Agreement");

WHEREAS, the Government and the Non-Federal Sponsor concluded that the Limited Reevaluation Report should include evaluation of an additional segment of the channel to obtain the most benefit from widening;

WHEREAS, this additional segment of the channel is within the authorization in Section 201 of the Water Resources Development Act of 1986, Public Law 99-662, for the Mobile Harbor Navigation Project at Mobile, Alabama; and

WHEREAS, the Government and Non-Federal Sponsor desire to amend the Agreement to include evaluation of the addition channel segment in the Limited Reevaluation Report and update the costs accordingly.

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

1. The fifth WHEREAS clause is amended by replacing "Project Cooperation Agreement" with "Project Partnership Agreement" in both locations.
2. Article I.A. is amended by striking the current paragraph and replacing it with the following:

“The term “*Project*” shall mean preparation of a Limited Reevaluation Report (LRR) for widening of the Mobile Harbor Navigation Channel up to the authorized widths, as generally described in the Report of the Chief of Engineers, dated November 18, 1981.

3. Article I.B. is amended by striking the current paragraph and replacing it with the following:

“The term “*total design costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of engineering and design, economic and environmental analyses, and evaluation performed after a feasibility report whether performed prior to or after the effective date of this Agreement that were not previously shared with a non-Federal interest pursuant to any other agreement; the Government’s costs of review processes required by the Government; the Government’s costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review Panel; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VII.B. and Article VII.C. of this Agreement. The term does not include any costs of additional work under Article II.E. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies for the *Project*; any costs incurred as part of feasibility studies under any other agreement for the *Project*; the Non-Federal Sponsor’s costs of negotiating this Agreement; or any costs of negotiating a project partnership agreement for the *Project* or separable element thereof.”

4. Article I.C. is amended by replacing “Project Cooperation Agreement” with “Project Partnership Agreement”.

5. Article II.A. is amended by deleting paragraph 7. in its entirety.

6. Article II.F., Article II.F.1., Article II.F.2., Article II.F.3., and Article II.G. are amended by replacing “Project Cooperation Agreement” with “Project Partnership Agreement”.

7. Article IV.A.1. is amended by striking the current paragraph and replacing it with the following:

“As of the effective date of this Agreement, *total design costs* are projected to be \$1,806,667; the Non-Federal Sponsor’s contribution of funds required by Article II.B.1. of this Agreement is projected to be \$451,667; the *non-Federal proportionate share* is projected to be 25 percent; and the Government’s total financial obligations to be incurred for additional work and the Non-Federal Sponsor’s contribution of funds for such costs required by Article II.E. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.”

8. Article IV.C.2. is amended by replacing "Project Cooperation Agreement" with "Project Partnership Agreement".

9. Article IV.D.3.b. is amended by replacing "Project Cooperation Agreement" with "Project Partnership Agreement".

10. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

ALABAMA STATE PORT AUTHORITY

BY: 

Jon J. Chytko  
Colonel, U.S. Army  
District Commander

BY: 

James K. Lyons  
Director

DATE: 5/2/14

DATE: 4/14/14

CERTIFICATE OF AUTHORITY

I, Luther Strange, do hereby certify that I am the principal legal officer of the Alabama State Port Authority, that the Alabama State Port Authority is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, as amended, between the Department of the Army and the Alabama State Port Authority in connection with design of the Mobile Harbor Channel Widening Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the Alabama State Port Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
18<sup>th</sup> day of April 2014.

Luther Strange  
Luther Strange  
Attorney General  
State of Alabama

## CERTIFICATION REGARDING LOBBYING

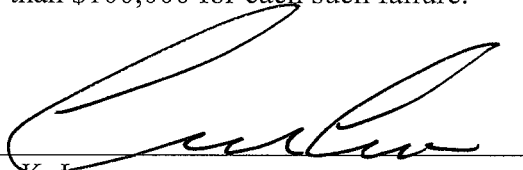
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



James K. Lyons  
Director  
Alabama State Port Authority

DATE: 4/14/14