

GREAT LAKES LEGACY ACT PROJECT AGREEMENT
BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES,
CITY OF MILWAUKEE, MILWAUKEE COUNTY PARKS,
MILWAUKEE METROPOLITAN SEWERAGE DISTRICT AND
WE ENERGIES
FOR
FOCUSED FEASIBILITY STUDY, PRE-DESIGN INVESTIGATION
& REMEDIAL DESIGN
OF REMAINING IMPACTED SEDIMENTS, THE REMEDIAL DESIGN OF THE
PROPOSED DREDGE MATERIAL MANAGEMENT FACILITY AND THE
REMOVAL OF PCB CONTAMINANT SOURCE MATERIAL IN
THE MILWAUKEE ESTUARY AREA OF CONCERN
MILWAUKEE, WISCONSIN

The United States Environmental Protection Agency (U.S. EPA), represented by the Great Lakes National Program Office (GLNPO), and the Wisconsin Department of Natural Resources (WDNR), the City of Milwaukee, Milwaukee County Parks, Milwaukee Metropolitan Sewerage District (MMSD) and WE Energies (the Non-Federal Sponsors), are entering into this Project Agreement (Agreement) to conduct Focused Feasibility Studies, Pre-Design Investigations and Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management facility, the Removal of the PCB Contaminant Source Material, all of which are in the Milwaukee Estuary Area of Concern in Milwaukee, Wisconsin, as more fully described in this Agreement (the Project).

The Project, as defined in Paragraph 1.h of this Agreement, is a qualified project under the Great Lakes Legacy Act (GLLA), codified as amended at 33 U.S.C. § 1268(c)(11). All of the areas that are part of the Project are in in the Milwaukee Estuary Area of Concern, and the Project is to be carried out within the Milwaukee Estuary Area of Concern, which is wholly within the United States. The Project will complete Focused Feasibility Studies, Pre-Design Investigations and Remedial Designs of remaining impacted sediments, the Remedial Design of the proposed dredge material management facility at the Port of Milwaukee, and the removal of the PCB contaminant source material. The Non-Federal Sponsors submitted an application to GLNPO for the Milwaukee Estuary Area of Concern dated June 6, 2019. The Project is described more completely in the attached Scope of Work.

Section 118(c)(11) of the Clean Water Act codifies the Great Lakes Legacy Act (GLLA), 33 U.S.C. § 1268(c)(11), and authorizes GLNPO to monitor and evaluate, remediate, or prevent further or renewed contamination of sediment in Areas of Concern. Under Section

118(c)(11)(D)(iii), 33 U.S.C. § 1268(c)(11)(D)(iii), the Non-Federal Sponsors must enter into a written project agreement under which it agrees to carry out its responsibilities and requirements for the Project. Section 118(c)(11)(E), 33 U.S.C. § 1268(c)(11)(E), specifies the non-Federal share of the cost of a project carried out under the GLLA, including, but not limited to: the value and types of any in-kind contribution of material or services that are integral to the Project and are to be provided by the Non-Federal Sponsors; limitations on the credit for any such in-kind contributions provided by the Non-Federal Sponsors; and the Non-Federal Sponsors' responsibility for 100% of the cost of long-term operation and maintenance of the Project.

This Agreement under the GLLA to evaluate contaminated sediments and to prevent further or renewed contamination of sediments will facilitate removing Beneficial Use Impairments and delisting an Area of Concern. This work supports Objective 1.2 of U.S. EPA's Strategic Plan for 2018-2022 to provide for clean and safe water by sustainably managing the GLLA program to support aquatic ecosystems and recreational, economic, and subsistence activities. In addition, the work under this Agreement supports the following two Measures of Progress from the Great Lakes Restoration Initiative Action Plan II: all necessary management actions in Areas of Concern have been taken; and removal of Beneficial Use Impairments in Areas of Concern.

The Estimated Total Project Costs of the Project is \$29,285,715. The Non-Federal Sponsors' share of the costs of the Project is 35%.

GLNPO and the Non-Federal Sponsors have the authority and capability to perform as set forth in this Agreement and intend to cooperate in cost-sharing and financing of the Project according to the terms of this Agreement.

NOW, THEREFORE, GLNPO and the Non-Federal Sponsors agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

1. For purposes of this Agreement:

a. "Article@ means a portion of this Agreement identified by roman numeral.

b. "Estimated Total Project Costs" means \$29,285,715. The Estimated Total Project Costs for the Focused Feasibility Studies, pre-design investigations and remedial design for [the various areas on as identified in the SOW/Map] is \$13,000,000 to \$16,000,000, and the Estimated Total Project Costs for the source control at Basin H is \$6,200,000. The Estimated Total Project Costs may be increased by 5% as a contingency by the mutual agreement of GLNPO and the Non-Federal Sponsors without having to sign a modification to this Agreement.

c. "Fiscal Year" means one fiscal year of GLNPO. The GLNPO fiscal year

begins on October 1 and ends on September 30.

d. “GLLA” means the Great Lakes Legacy Act, 33 U.S.C. § 1268(c)(11), as amended.

e. “In-Kind Contributions” means the value, as established by GLNPO, of Project related goods and services provided by the Non-Federal Sponsors that GLNPO determines are integral to the Project, including, but not limited to: construction and operation of Project elements, airspace for the disposal of contaminated source material and dredged sediment in an excavated material disposal facility, construction materials, equipment, design or engineering services, laboratory services and staff charges; and specifically includes but is not limited to Basin H source control, as-built evaluation, utility locate, Grand Trunk sewer assessment and clean-out source control, Solvay car ferry design, NAPL remedial design, proposed dredge material management facility design and a potential credit under Section 118(E)(iii) for work done by WE Energies.

f. “Non-federal proportionate share” means the ratio of the Non-Federal Sponsors’ total cash and in-kind contribution required according to this Agreement to the total financial obligations for the Project, as projected by GLNPO.

g. “Paragraph” means a portion of this Agreement identified by Arabic numeral.

h. “Project” means work set forth in the Scope of Work, which is attached hereto and incorporated by reference, including completion of Focused Feasibility Studies, Pre-Design Investigations and Remedial Designs of remaining impacted sediments, the Remedial Design of the Proposed Dredge Material Management Facility at the Port of Milwaukee, and the Removal of the PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern in Milwaukee, Wisconsin.

i. “Project period” means the time from the date the Project Agreement first becomes effective to the date that GLNPO notifies the Non-Federal Sponsors in writing of GLNPO’s determination that the Project is complete and can be closed out or is otherwise terminated.

j. “Scope of Work” means the Scope of Work for Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern in Milwaukee, Wisconsin & attached hereto and incorporated by reference.

k. “Total Project Costs” means all costs incurred by the Non-Federal Sponsors and/or GLNPO according to this Agreement that are directly related to the work on the Project prior to any operation and maintenance costs. Subject to this Agreement, the term includes, but

is not limited to: the value of the Non-Federal Sponsors' in-kind contributions; GLNPO's engineering and design costs during the Project; investigation costs to identify the existence and extent of hazardous substances; actual Project costs; GLNPO's costs of contract dispute settlements or awards; and audit costs pursuant to Article X of this Agreement. The term does not include any financial obligations for the operation and maintenance of the Project; or any costs of dispute resolution under Article VII of this Agreement. This term also does not include GLNPO's direct labor and indirect costs because Congress has directed EPA "to exercise maximum flexibility to minimize non-Federal match requirements." H.R. Rep. No. 112-151 at 65 (2011).

ARTICLE II - OBLIGATIONS OF GLNPO AND THE NON-FEDERAL SPONSORS

2. Subject to receiving funds appropriated by the United States Congress, GLNPO shall conduct its assigned portions of the Project by applying those procedures usually applied to Clean Water Act projects, pursuant to federal laws, regulations, and policies.

3. By signing this Agreement, each Non-Federal Sponsor certifies that its financial management systems meet the following standards:

a. Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities is made according to the financial reporting requirements of this Agreement.

b. Accounting records. The Non-Federal Sponsor maintains records which adequately identify the source and application of funds provided for financially-assisted activities. These records contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

c. Internal control. Effective control and accountability is maintained for all Project Agreement cash, real and personal property, and other assets. The Non-Federal Sponsor adequately safeguards all such property and assures that it is used solely for authorized purposes.

d. Budget control. For each Project Agreement, the Non-Federal Sponsor compares actual expenditures or outlays with budgeted amounts. Financial information is related to performance or productivity data, including developing unit cost information whenever appropriate or specifically required in the Project Agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

e. Allowable cost. The parties agree that the regulations at 2 CFR Part 200 and the terms of this Agreement will govern in determining the reasonableness, allowability, and allocability of costs.

f. Source documentation. The Non-Federal Sponsor's accounting records are supported by such source documentation as paid bills, payrolls, time and attendance records, contract award documents, etc.

4. The Non-Federal Sponsors shall contribute a share of the Total Project Costs as follows:

a. The parties have estimated the amount of the Estimated Total Project Costs to be provided by the Non-Federal Sponsors, which may include In-Kind Contributions that are determined to be integral to the Project. In-Kind Contributions can include, but are not limited to the following:

(1) Lands;

(2) Equipment;

(3) Labor;

(4) Airspace for the disposal of dredged sediment; and

in (5) Work or services performed by the Non-Federal Sponsors as set forth in the Statement of Work for the Project.

b. If the amount of the In-Kind Contributions which the Non-Federal Sponsors provides to the Project is less than 35% of the Total Project Costs, the Non-Federal Sponsors shall provide an additional cash contribution, pursuant to Paragraph 21, in the amount necessary to make its total contribution equal to 35%.

5. GLNPO shall perform a final accounting according to Paragraph 20 after work is completed on the Project to determine the value of the Non-Federal Sponsors' contributions under this Agreement to determine whether the Non-Federal Sponsors have met their financial obligations under this Agreement.

6. The Non-Federal Sponsors shall not use federal program funds to meet any of its obligations for the Project under this Agreement.

7. Each Non-Federal Sponsor certifies that the Non-Federal Sponsor and, to its knowledge, any of its contractors who will execute work under this Agreement:

a. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local transaction;

b. Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Paragraph 7.b; and

d. Have not within the preceding three years had a public transaction terminated for cause or default.

8. The Non-Federal Sponsors will ensure that projects involving collection of environmental data (measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology) meet the American National Standard requirements and guidance for Quality Management Systems for Environmental Information and Technology Programs; ASQ/ANSI E4:2014, or most current version. "Quality System Documentation" includes a Quality Management Plan (QMP), applicable project-level quality assurance documentation Quality Assurance Project Plan (QAPP), or other documentation which demonstrates compliance with ASQ/ANSI E4:2014. The Non-Federal Sponsors will ensure that the project follows requirements of EPA Quality Policy 2105/2106 and applicable guidance. The Non-Federal Sponsors will ensure that any primary or secondary environmental data collection supporting GLLA projects/program meet requirements as outlined in the most current version of the "GLLA QA Considerations," and follow GLLA program-specific requirements outlined in the GLLA QMP and GLLA Data Reporting Standard (DRS).

ARTICLE III – ACCESS, LANDS, EASEMENTS, AND RIGHTS-OF-WAY

9. GLNPO, after consulting with the Non-Federal Sponsors, shall determine the access, lands, easements, or rights-of-way necessary for conducting the Project, including those necessary for completion of the Project. Before construction begins, the Non-Federal Sponsor shall acquire all access agreements, lands, easements, or rights-of-way necessary for the construction, as set forth in the Statement of Work for the Project.

10. Until GLNPO furnishes the Non-Federal Sponsors with the results of the final accounting pursuant to Paragraph 20, the Non-Federal Sponsors in a timely manner shall provide GLNPO the documents that are necessary for it to determine the value of any contribution provided pursuant to Paragraph 9. Upon receiving these documents, GLNPO shall afford credit for the value of the contribution according to Article IV.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS AND RIGHTS-OF-WAY

11. The Non-Federal Sponsors shall receive credit according to this Article for the value of the lands, easements, or rights-of-way that it provides pursuant to Article III. However, the Non-Federal Sponsors shall not receive credit for the value of any lands, easements, or rights-of-way that it provided previously for another federal project. The Non-Federal Sponsors also shall not receive credit for the value of lands, easements, or rights-of-way that were acquired or provided using federal program funds.

12. For the sole purpose of affording credit according to this Agreement, the value of lands, easements, and rights-of-way, including those necessary for the borrowing of material, or the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined according to this Paragraph.

a. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of the real property interests on the date the Non-Federal Sponsors authorize GLNPO to enter the property. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of the real property interests at the time the interests are acquired.

b. General Valuation Procedure. Except as provided in Paragraph 12.c, the fair market value of lands, easements, or rights-of-way shall be determined according to Paragraph 12.b.i, unless a different amount is determined later to represent fair market value according to Paragraph 12.b.ii.

i. The Non-Federal Sponsors shall obtain, for that real property interest, an appraisal prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and GLNPO. The appraisal shall be prepared according to the applicable rules of just compensation, as specified by GLNPO. The fair market value shall be the amount in the Non-Federal Sponsors' appraisal, if GLNPO approves the appraisal. If GLNPO does not approve the Non-Federal Sponsors' appraisal, GLNPO may obtain an appraisal, and the fair market value shall be the amount in GLNPO's appraisal, if the Non-Federal Sponsors approves the appraisal. If the Non-Federal Sponsors do not approve GLNPO's appraisal, GLNPO, after consultation with the Non-Federal Sponsors, shall consider both parties' appraisals and shall determine the fair market value based on both appraisals.

ii. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to Paragraph 12.b.i, GLNPO, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consulting with the Non-Federal

Sponsors, may approve in writing an amount greater than the amount determined pursuant to Paragraph 12.b.i, but not to exceed the amount actually paid or proposed to be paid. If GLNPO approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsors, but no less than the amount determined pursuant to Paragraph 12.b.i.

c. Waiver of Appraisal. GLNPO may waive the requirement for an appraisal to determine the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, GLNPO and the Non-Federal Sponsors must agree in writing to the value of the real property interest in an amount not to exceed \$10,000.

ARTICLE V - PROJECT COORDINATION TEAM

13. To provide for consistent and effective communication, the Non-Federal Sponsors and GLNPO, not later than 30 business days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. The Project Coordination Team shall meet or talk regularly until the end of the Project period. GLNPO's Project Manager and a counterpart named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

14. GLNPO's Project Manager and the Non-Federal Sponsors' counterpart shall keep the Project Coordination Team informed of Project progress and significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

15. Until Project completion, the Project Coordination Team shall generally oversee the Project including, but not necessarily limited to, matters related to: design; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; GLNPO's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the management plan for proposed dredged or excavated material disposal; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of Project schedules.

16. The Project Coordination Team may make recommendations to the Project Managers on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. GLNPO and the Non-Federal Sponsors in good faith shall consider the recommendations of the Project Coordination Team. GLNPO and the Non-Federal Sponsors may accept or reject, in whole or in part, the Project Coordination

Team's recommendations.

ARTICLE VI - METHOD OF PAYMENT

17. As of the effective date of this Agreement, the Estimated Total Project Costs are \$29,000,000, and the Non-Federal Sponsors contribution required under Paragraph 4 is projected at \$10,250,000. An estimate of the projected contributions by each of the Non-Federal Sponsors is included in the attached SOW on page 6. These amounts are subject to adjustment by GLNPO and are not to be construed as the total financial responsibilities of GLNPO and the Non-Federal Sponsors if a modification to this Agreement is signed by GLNPO and the Non-Federal Sponsors that increases the Estimated Total Project Costs.

18. In providing its required share of the Total Project Costs required by Paragraph 4, the Non-Federal Sponsors shall provide In-Kind Contributions and/or cash payment to the Project according to the provisions of this Paragraph.

a. Since the Non-Federal Sponsors are meeting some of their cost share requirements through In-Kind Contributions, the Non-Federal Sponsors shall submit detailed documentation of the work it performs under this Project. The Non-Federal Sponsors shall provide GLNPO with quarterly reports beginning with the first full three-month period after the effective date of this Agreement. The quarterly report shall, at a minimum, include the time period for which costs were incurred, total amount of costs incurred, a summary of work accomplished by the Non-Federal Sponsors in the previous quarter on each element of the Project, and a breakout of costs incurred to date in a tabular format. This report shall also include detailed documentation and certification of the Non-Federal Sponsors' In-Kind Contributions made to meet its cost share requirement. The type of records that the Non-Federal Sponsors must submit include, but are not limited to, payroll records to support staff time, a calculated indirect cost rate to document indirect costs, travel vouchers and receipts, invoices that support contractor costs, and proof of payment documentation (such as SAP screen shots and/or Oracle payment history reports). If an entity other than the Non-Federal Sponsor is submitting documentation of In-Kind Contributions made to satisfy any portion of the Non-Federal Sponsors' cost share requirement, then the certification shall be signed and submitted by the entity that incurred those costs.

The Non-Federal Sponsors or other entity submitting documentation of In-Kind Contributions made to satisfy any portion of the Non-Federal Sponsors' cost share requirement shall sign and submit the following certification with each quarterly report:

I, [insert name of person], [insert name of company/organization] certify that I reviewed all the cost documentation of costs that are being claimed for the in-kind cost share of the [insert name] GLLA project. I verified the work prior to paying these costs. I have also verified that these costs have been paid.

I certify under penalty of law that I have examined and am familiar with the documents and information which support the statements made in this certification. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to 18 U.S.C. §§ 1001 and 1341.

Upon execution of the Project Agreement, the GLNPO Project Manager will provide the Non-Federal Sponsors with guidance concerning documentation of In-Kind Contributions. If the Non-Federal Sponsors fail to submit a quarterly report, GLNPO may send the Non-Federal Sponsors written notice and a request to submit the report. The Non-Federal Sponsors shall submit the quarterly report within 60 days of receiving the written notice from GLNPO. If the Non-Federal Sponsors fail to submit the quarterly report within 60 days following the written notice and request, GLNPO may disallow those In-Kind Contributions claimed by the Non-Federal Sponsors during that three-month period and GLNPO may not count such costs toward the Non-Federal Sponsors cost share requirement.

b. Since the Non-Federal Sponsor WDNR is meeting some of its cost share requirements through cash payments/contributions, the Non-Federal Sponsor WDNR shall pay in the manner outlined in Paragraph 21, below within 30 days of an invoice provided to the Non-Federal Sponsor by the EPA.

19. If at any time GLNPO determines that an increase in the Estimated Total Project Costs is necessary to complete the Project and additional funds or In-Kind Contributions will be needed from the Non-Federal Sponsors to cover the non-federal proportionate share of the increased Estimated Total Project Costs, GLNPO shall notify the Non-Federal Sponsors in writing of the additional funds required and shall explain why they are required. If the parties sign a modification to this Agreement to increase the Estimated Total Project Costs the Non-Federal Sponsors, within 90 calendar days from receipt of the notice shall pay the additional cash contribution, or shall make the additional In-Kind Contributions required to meet the non-federal proportionate share, in the manner described in Paragraph 18. GLNPO may continue project expenditures with or without a modification to this Agreement if the Director of GLNPO determines in writing that project expenditures must proceed to demobilize personnel and equipment for the orderly wind down of the Project to comply with law or to protect human life or property.

20. Upon completion of the Project or termination of this Agreement before Project completion and upon resolution of all relevant proceedings, claims, and appeals, GLNPO shall conduct a final accounting, based primarily on the information provided by the Non-Federal Sponsors under Paragraph 18 or at the request of the GLNPO Program Manager, and give the

Non-Federal Sponsors the final accounting results. GLNPO may perform an interim accounting on its own or if requested by the Non-Federal Sponsors.

a. GLNPO's final accounting shall determine the Total Project Cost, each party's total contribution toward the Project, and measure that contribution against each party's required share for the Project.

b. If the final accounting shows that the Non-Federal Sponsors' total contribution is less than its required share of the Total Project Costs, the Non-Federal Sponsors shall within 90 calendar days after receipt of written notice, pay the amount necessary to meet its required share by delivering a check payable in the manner described in Paragraph 21, below.

c. If the final accounting shows that the Non-Federal Sponsors' total contribution is more than its required share of the Total Project Costs, the Non-Federal Sponsors shall receive a credit for the Non-Federal share of additional work toward the Project including, but not limited to, a remedial design and/or remedial action.

21. In the event that the Non-Federal Sponsors have not provided enough funding to meet its required proportionate share of Total Project Costs, GLNPO will provide the Non-Federal Sponsors with an invoice for the balance required and the Non-Federal Sponsors shall submit a check, made payable to the order of the "Treasurer, United States of America," to the address specified on the invoice. The check shall contain a notation referencing a Budget Organization account number that GLNPO shall provide after this Agreement is executed. In the case of an Electronic Fund Transfer (EFT), the Non-Federal Sponsors shall contact EPA to obtain the appropriate instructions on payment submittal.

ARTICLE VII - DISPUTE RESOLUTION

22. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article are the exclusive mechanism to resolve disputes arising under or with respect to this Agreement.

23. Any dispute which arises under or with respect to this Agreement initially shall be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 business days from the time the dispute arises, unless extended by written agreement of the parties to the dispute. The informal dispute period arises when the party not in dispute receives the other party's written notice of dispute.

24. Statements of Position.

a. If the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, the position advanced by GLNPO shall be binding unless, within 10

business days after the conclusion of the informal negotiations, the Non-Federal Sponsors invoke the formal dispute resolution procedures of this Article by serving on GLNPO a written statement of position on the matter in dispute. The statement of position shall include, but is not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Non-Federal Sponsors.

b. Within 30 business days after receiving the Non-Federal Sponsors' statement of position, GLNPO shall serve on the Non-Federal Sponsors its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by GLNPO. Within 20 business days after receiving GLNPO's statement of position, the Non-Federal Sponsors may submit a reply.

c. GLNPO shall maintain an administrative record of the dispute that contains all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, GLNPO may allow submission of supplemental statements of position by the parties to the dispute.

d. The Director of GLNPO will issue a final administrative decision resolving the dispute based on the administrative record described above. This decision shall bind the Non-Federal Sponsors.

ARTICLE VIII - OPERATION AND MAINTENANCE

25. Subject to applicable federal laws and regulations, the Non-Federal Sponsors, at no cost to GLNPO, shall operate and maintain the elements of the Project constructed pursuant to this Agreement in a manner compatible with the authorized purposes of the Project including the operation and maintenance of the dredged sediment from the Project. The Non-Federal Sponsors shall be responsible for taking all actions necessary to undertake the operation and maintenance for the Project as set forth in the attached SOW.

26. The Non-Federal Sponsors authorize GLNPO to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors own or control for the purpose of monitoring the effectiveness of the operation and maintenance of the Project. However, nothing in this Agreement conveys to GLNPO any interest in real property owned or controlled by a Non-Federal Sponsor.

27. The Non-Federal Sponsors authorize GLNPO or its agent to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsors to enable the disposal of dredged or excavated material that, in GLNPO's sole discretion, are necessary for operating, maintaining, or managing the disposal facilities including, but not necessarily limited to, construction, operation, and maintenance of the dredged or excavated material disposal facilities; and disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project.

ARTICLE IX - SEVERABILITY CLAUSE

28. If a court issues an order that invalidates any provision of this Agreement, the parties shall remain bound to comply with all provisions of this Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

29. GLNPO and the Non-Federal Sponsors shall maintain such books, records, documents, or other evidence related to this Project and the work performed for at least five years after the completion of the Final Accounting discussed in Paragraph 20, above. To the extent permitted under applicable federal laws and regulations, GLNPO and the Non-Federal Sponsors shall each allow the other to inspect the books, records, documents, or other evidence.

30. The parties agree that the Non-Federal Sponsors WDNR, City of Milwaukee, Milwaukee County Parks, and MMSD are responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501-7507, as implemented by Office of Management and Budget (OMB) at 2 CFR Part 200 Subpart F. The Non-Federal Sponsors shall provide to GLNPO Single Audit Act reports for each year during which work was performed under this Project Agreement within 30 days of the availability of that report. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable federal laws and regulations, GLNPO shall give the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any non-federal audits performed pursuant to this Paragraph before GLNPO furnishes the Non-Federal Sponsors with the results of the final accounting shall be allocated according to the provisions of 2 CFR Part 200, and the costs that are allocated to the Project shall be included in Total Project Costs and shared according to the provisions of this Agreement.

31. The parties agree that the Non-Federal Sponsor WE Energies is responsible for complying with any auditing requirements imposed upon its organization. As part of this Project Agreement, WE Energies agrees to provide GLNPO with audited financial statements for each year during which work was performed under this Project Agreement within 30 days of the availability of those statements. Upon request of WE Energies and to the extent permitted under applicable federal laws and regulations, GLNPO shall give WE Energies and independent auditors any information necessary to enable an audit of WE Energies' activities under this Agreement. The costs of any non-federal audits performed pursuant to this Paragraph before GLNPO furnishes WE Energies with the results of the final accounting shall be allocated according to the provisions of 2 CFR Part 200, and the costs that are allocated to the Project shall be included in Total Project Costs and shared according to the provisions of this Agreement.

32. In accordance with 31 U.S.C. § 7503, GLNPO may conduct audits in addition to any audit that the Non-Federal Sponsors already conduct. The costs of GLNPO audits performed

pursuant to this Paragraph before GLNPO furnishes the Non-Federal Sponsors with the results of the final accounting shall be included in the Total Project Costs, and shared according to the provisions of this Agreement.

ARTICLE XI - FEDERAL LAWS AND REGULATIONS

33. In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors and GLNPO agree to comply with all applicable federal laws and regulations, including, but not limited to environmental laws such as the Endangered Species Act, 16 U.S.C §1531 *et seq.*

ARTICLE XII - RELATIONSHIP OF PARTIES

34. In the exercise of their respective rights and obligations under this Agreement, GLNPO and the Non-Federal Sponsors each act in an independent capacity, and neither is considered the officer, agent, representative, or employee of the other.

35. In the exercise of their rights and obligations under this Agreement, neither 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 for violation of the law.

ARTICLE XIV - TERMINATION OR SUSPENSION

36. If the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, or if the Director of GLNPO, in his sole discretion, determines it would be impractical to continue work for any reason, but particularly if continuing the work is not expected to achieve the objectives of the Project, the Director shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States, or is necessary to satisfy agreements with any other non-federal interests in connection with the Project.

37. If GLNPO does not receive annual appropriations sufficient to meet its share of scheduled expenditures for the Project for the then-current or upcoming fiscal year, GLNPO shall notify the Non-Federal Sponsors in writing, and GLNPO may terminate this Agreement or suspend future performance under this Agreement. If GLNPO suspends future performance pursuant to this Paragraph, the suspension shall remain in effect until GLNPO receives sufficient appropriations or until GLNPO terminates this Agreement, whichever occurs first.

38. If GLNPO terminates this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting pursuant to Paragraph 20.

39. Any termination of this Agreement or suspension of future performance under this Agreement shall not relieve the parties of liability for any obligation previously incurred. Interest shall accrue on any delinquent payment owed by the Non-Federal Sponsors 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 before the payment became delinquent, or auctioned immediately before the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HISTORIC PRESERVATION

40. The parties shall evaluate the Project's impact on historic property. The costs of identification, survey and evaluation of historic properties shall be included in Total Project Costs and shared according to this Agreement.

ARTICLE XVI - NOTICES

41. Unless otherwise specified here, any notice, request, demand or other communication required or permitted under this Agreement between the parties shall be in writing and addressed as follows:

to the Non-Federal Sponsor WDNR:

Scott Inman, P.E.
Contaminated Sediments Engineer
Remediation and Redevelopment
Wisconsin Department of Natural Resources
3911 Fish Hatchery Rd
Fitchburg, WI 53711
(608) 273-5613
Scott.Inman@Wisconsin.gov

to the Non-Federal Sponsor City of Milwaukee Redevelopment Authority:

David Misky
Assistant Executive Director
Redevelopment Authority of the City of Milwaukee (RACM)
809 N Broadway #2
Milwaukee, WI 53202
(414) 286-8682
dmisky@milwaukee.gov

to the Non-Federal Sponsor Milwaukee County Parks:

Sarah Toomsen
Manager of Planning and Development
Milwaukee County Parks
9480 Watertown Plank Road
Wauwatosa, WI 53226
(414) 257-7389
Sarah.toomsen@milwaukeecountywi.gov

to the Non-Federal Sponsor MMSD:

Tom Chapman, P.E.
Senior Project Manager
Milwaukee Metropolitan Sewerage District
260 W. Seeboth Street
Milwaukee, WI 53204-1446
(414) 225-2154
tchapman@mmsd.com

to the Non-Federal Sponsor WE Energies:

Robert Paulson
Principal Environmental Consultant
WEC Energy Group – Business Services
333 Everett Street – A231
Milwaukee, WI 53203
(414) 221-3948
robert.paulson@we-energies.com

to GLNPO:

Heather Williams
Project Manager
Great Lakes National Program Office
77 West Jackson Blvd. (G-17J)
Chicago, IL 60604
(312) 886-5993
williams.heather@epa.gov

42. Any party may change its notice address provided in Paragraph 41 by written notice to the other party.

43. The addressee shall be deemed to have received any notice given pursuant to this Agreement at the earlier of the date it is actually received, or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

43. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - RESPONSIBLE PARTIES

44. If it is discovered through any investigation for hazardous substances or other means that CERCLA liability, or liability under any other federal or state authority, for hazardous substances addressed by the Project can be attributed to a potentially responsible party, the Non-Federal Sponsors and GLNPO shall provide prompt written notice to each other. The Non-Federal Sponsors and GLNPO shall consult according to Article V in an effort to ensure that potentially responsible parties bear their fair share of clean up and response costs as defined in CERCLA or other federal or state law. Implementation of the Project shall not relieve any party from any liability that may arise under CERCLA or other federal or state law.

ARTICLE XIX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

45. This Agreement does not create any rights, confer any benefits, or relieve any liability, for any third person not party to this Agreement.

ARTICLE XX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

46. No officer, agent, consultant, or employee of the Non-Federal Sponsors or of GLNPO, may be charged personally, or held liable, under this Agreement because of any breach, attempted breach, or alleged breach of this Agreement.

47. This Agreement will become effective on the date the GLNPO representative signs this Agreement.

ARTICLE XXI - AUTHORITY OF SIGNATORY TO BIND AND AVAILABILITY OF FUNDS

48. Each undersigned representative of a Non-Federal Sponsor and GLNPO certifies that he or she is fully authorized to enter into the terms of this Agreement and to execute and legally bind such party to this Agreement.

49. Each undersigned representative of a Non-Federal Sponsor certifies that the Non-Federal Sponsor has the funds and financial capability to meet its required proportionate share of the Total Project Costs under this Agreement.

50. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Project Agreement for the Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern

By: _____
Cathy Stepp
Great Lakes National Program Manager
U.S. Environmental Protection Agency

Date: _____

Project Agreement for the Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern

By: _____

Preston Cole
DNR Secretary
Wisconsin Department of Natural Resources

Date: _____

Project Agreement for the Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern

By: _____

(Name)

City of Milwaukee

Date: _____

Project Agreement for the Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern

By: _____

Guy Smith
Executive Director
Milwaukee County Parks

Date: _____

Project Agreement for the Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern

By: _____

Kevin L. Shafer, P.E.
Executive Director
Milwaukee Metropolitan Sewerage District

Date: _____

Project Agreement for the Focused Feasibility Study, Pre-Design Investigation & Remedial Design of Remaining Impacted Sediments, the Remedial Design of the Proposed Dredge Material Management Facility, and the Removal of PCB Contaminant Source Material in the Milwaukee Estuary Area of Concern

By: _____

Elizabeth Stueck-Mullane
Vice President Environmental
WEC Energy Group

Date: _____