

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
GULF COAST PROTECTION DISTRICT
FOR
THE ORANGE COUNTY SEPARABLE ELEMENT
OF THE
SABINE PASS TO GALVESTON BAY, TEXAS
COASTAL STORM RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this *29th* day of *April, 2022*, by and between the Department of the Army (hereinafter the “Government”), represented by the **U.S. Army Corps of Engineers, Galveston District** and the **Gulf Coast Protection District** (hereinafter the “Non-Federal Sponsor”), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, construction of the Sabine Pass to Galveston Bay, Texas coastal storm risk management project (hereinafter the “Authorized Project”) was authorized by Section 1401(3)(3) of the Water Resources Development Act of 2018, Public Law 115-270;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement to construct the Orange County separable element of the Authorized Project (hereinafter the “Project”, as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (hereinafter “WRDA 1986”) (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, the Design Agreement, dated September 18, 2020, between the County of Orange, Texas and the Orange County Drainage District (collectively hereinafter “Orange County”) and the Government recognized that if the Non-Federal Sponsor for the Project Partnership Agreement agreed to assume all responsibility and liability for the non-Federal share of total design costs under the Design Agreement, any deferred non-Federal share of total costs would be paid in accordance with the terms of the Project Partnership Agreement;

WHEREAS, as of the effective date of this Agreement, Orange County has contributed \$14,598,700 toward the non-Federal share of total design costs under the Design Agreement;

WHEREAS, the Non-Federal Sponsor intends with this Agreement to assume all responsibility and liability for the remaining non-federal share of the Project’s design costs, including total design costs under the Design Agreement;

WHEREAS, to the extent that appropriations provided under the Construction heading, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”) are available for such purpose, the Non-Federal Sponsor may, but is not required to, finance the non-Federal cash contributions required for construction of the Project, currently estimated at \$712,227,300, pursuant to the provisions of Section 103(k) of the WRDA 1986 (33 U.S.C. 2213(k)), with the interest rate for deferred payments determined in accordance with Section 106 of the WRDA 1986 (33 U.S.C. 2216);

WHEREAS, the provisions of Section 902 of the WRDA 1986 (33 U.S.C. 2280) do not apply to the funds provided in BBA 2018 that will be used for construction of the Project;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor’s full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means the coastal storm risk management project for Orange County, Texas as generally described in the Sabine Pass to Galveston Bay, Texas Coastal Storm Risk Management and Ecosystem Restoration Final Feasibility Study and Environmental Impact Statement, dated May 2017 and approved by the Chief of Engineers on December 7, 2017, consisting of the following authorized components, with modifications as may be appropriate and are within the discretionary authority of the Chief of Engineers: approximately 15.6 miles of new levees ranging from 12.0 to 17.5 feet NAVD88 in elevation; 10.7 miles of new floodwalls and gates ranging from 13.5 to 16 feet NAVD88; appropriate drainage structures, road/railroad closure gates to mitigate interior flooding during surge events; and pump stations, sector gated structures (Cow Bayou and Adams Bayou) with adjacent vertical lift floodgates for normal channel flows, and mitigation features,

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (See 42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily

limited to: the Government's costs and cash contributions provided by Orange County pursuant to the terms of the Design Agreement, executed on September 18, 2020, between the Government and Orange County; engineering, design, and construction costs; the Government's supervision and administration costs; the Non-Federal Sponsor's creditable costs for providing real property interests, placement area improvements, and relocations and for providing in-kind contributions; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement (hereinafter "OMRR&R"); HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; betterments; additional work; or the Non-Federal Sponsor's cost of negotiating this Agreement.

D. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "placement area improvements" means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and dewatering pumps and pipes.

G. The term "functional portion thereof" means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Galveston District (hereinafter the "District Commander"), although the remainder of the Project is not yet complete.

H. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for Southwestern Division (hereinafter the "Division Commander"). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

I. The term "betterment" means a difference in construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to construction of that element.

J. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

K. The term “additional work” means items of work related to, but not cost shared as a part of, the Project that the Government will undertake on the Non-Federal Sponsor’s behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall complete design and undertake construction of the Project using funds provided in BBA 2018 and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations.

B. The Non-Federal Sponsor shall contribute 35 percent of construction costs for the Project, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project. If the Government determines that the Non-Federal Sponsor’s estimated credits for real property interests, placement area improvements, and relocations will exceed 35 percent of construction costs, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations with the cost of such work included as a part of the Government’s cost of construction. Nothing in this provision affects the Non-Federal Sponsor’s responsibility under Article IV for the performance and costs of any cleanup and response related thereto.

2. If providing in-kind contributions as a part of its 35 percent cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. After considering the cash contributions provided by Orange County pursuant to the Design Agreement and the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2. above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor for the then-current fiscal year.

a. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide at a minimum the full amount of such funds for the then-current fiscal year in accordance with Article VI.C.

b. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide at a minimum the full amount of such required funds to the Government in accordance with Article VI.C.

4. In lieu of providing the funds required from the Non-Federal Sponsor as specified in paragraph B.3. of this Article, the Non-Federal Sponsor may finance all or part of its required non-Federal funds in accordance with Article VI.D.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. The Government shall consider and respond to significant comments from the Non-Federal Sponsor, though ultimately the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act of 1966, Public Law 89-665, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of the Project, or a functional portion thereof, is complete, the District Commander shall so notify the Non-Federal Sponsor in writing within 30 calendar days of such determination, and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project,

or such functional portion thereof. Such activities will generally consist of maintenance and inspection of those project features identified in Article I A. above, including related drainage structures, pump stations, gates, as well as monitoring to ensure success of project mitigation features. The Government shall furnish the Non-Federal Sponsor with an OMRR&R Manual and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsor shall conduct its OMRR&R responsibilities in a manner consistent with the authorized purpose of the Project, applicable Federal laws and regulations, and the Government's specific directions prescribed in the OMRR&R Manual. The Government and the Non-Federal Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any OMRR&R of the Project. No OMRR&R by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

G. The Non-Federal Sponsor shall ensure participation in and compliance with applicable Federal floodplain management and flood insurance programs. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such participation and compliance.

H. In accordance with Section 402 of WRDA 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall ensure preparation of a floodplain management plan for the Project within one year after the effective date of this Agreement and implementation of such plan no later than one year after completion of construction of the Project. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such preparation and implementation. The plan shall be designed to reduce the impacts of future coastal storm events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of coastal storm risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

I. The Non-Federal Sponsor shall ensure publication of floodplain information in the area concerned and provision of this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such publication and provision.

J. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of coastal storm risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

K. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

L. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsor's costs for participation on the Project Coordination Team shall be included in construction costs that are cost shared.

M. The Non-Federal Sponsor may request in writing that the Government perform betterments or additional work on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work. In addition, the Non-Federal Sponsor is responsible for providing, at no cost to the Government, any additional real property interests, relocations, and placement area improvements determined by the Government to be required for construction, operation, and maintenance of such work.

N. The Non-Federal Sponsor assumes all responsibility and liability for the remaining non-Federal share of the Project's design costs, including total design costs under the Design Agreement, which are included in construction costs under this Agreement

ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests required for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. Prior to initiating acquisition and in accordance with Article IV.A., the Non-Federal Sponsor shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of the Project. Subject to the requirements in Article IV.B., the Non-Federal Sponsor shall acquire the real property interests and provide the Government with authorization for entry thereto according to the Government's construction

schedule for the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the placement area improvements required for construction, operation, and maintenance of the Project, provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements, and provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations required for construction, operation, and maintenance of the Project, provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations, and provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides the Non-Federal Sponsor with written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.E., must provide funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title, and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's provision of real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the performance and costs of any cleanup and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624; (2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3); (4) in acquiring real property, the Non-Federal

Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C 4651 and the provisions of 42 U.S.C. 4652; and (5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid by the Non-Federal Sponsor without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law.

Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests, placement area improvements, and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project. However, the only costs eligible for credit are those that the Non-Federal Sponsor incurred to acquire real property interests from private owners, construct placement area improvements, perform relocations, and provide in-kind contributions.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interests in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. Only costs associated with real property interests acquired from private owners after the effective date of this Agreement are eligible for credit. For each creditable real property interest, the Non-Federal Sponsor shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the

Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event that the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise

the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$25,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. When the anticipated value of the real property interest exceeds \$10,000, the Non-Federal Sponsor must offer the owner the option of having the Non-Federal Sponsor appraise the real property interest.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project after the effective date of this Agreement. Only incidental costs for acquiring real property interests from private owners are eligible for credit. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of placement area improvements required for the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any placement area improvements required for the Project. Only placement area improvements provided after the effective date of this Agreement are eligible for credit. Such costs shall include, but not necessarily limited to, actual costs of constructing the improvements; planning, engineering, and design costs; and supervision and administration costs, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for credit.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Texas would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions, which may include engineering and design; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for the following: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; any in-kind contributions performed prior to the effective date of this Agreement or costs that exceed the Government's estimate of the cost for such in-kind contributions.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for real property interests that were previously provided as an item of local cooperation for another Federal project or real property interests (other than those acquired through relocations) that are owned or controlled by public entities.

ARTICLE VI - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs are projected to be \$2,390,000,000, with the Government's share of such costs projected to be \$1,553,500,000 and the Non-Federal Sponsor's share of such costs projected to be \$836,500,000, which includes creditable real property interests, relocations, and placement area improvements projected to be \$109,674,000, creditable in-kind contributions projected to be \$0, cash payments from Orange County of \$14,598,700, and the amount of additional funds required to meet the Non-Federal Sponsor's cost share projected to be \$712,227,300. Average annual costs for OMRR&R of the Project are projected to be \$4,663,000. Costs for betterments are projected to be \$0 and the costs for additional work are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated amount of any creditable in-kind contributions; the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year; and, if any required non-Federal funds are financed pursuant to Article II.B.4., the monthly amounts incurred to date and the estimated interest charges applied to each monthly amount.

C. Payment of Funds During Construction. To the extent the Non-Federal Sponsor elects to provide during construction the funds required to meet its 35 percent share of construction costs, or a portion thereof, the following provisions apply:

1. The Non-Federal Sponsor shall provide such funds by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. In addition, to the extent practicable, the Government shall obligate funds provided by the Non-Federal Sponsor in excess of the non-Federal share for specific contracts to enable full obligation of such non-Federal funds within the budget cycle associated with such funds. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal

Sponsor shall provide the Government with the full amount of such additional required funds or elect to defer payment of such funds in accordance with paragraph D. of this Article.

3. Upon completion of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government, or the Non-Federal Sponsor may finance such payment pursuant to paragraph D. of this Article. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund. In the event funds are not available to make such refund, the Government shall seek appropriations as necessary to make the refund. In addition, if the final accounting determines that the Non-Federal Sponsor's credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions, as determined by the Government, exceed its share of construction costs for the Project, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

D. Deferred Payment of Funds During Construction. To the extent the Non-Federal Sponsor elects to finance all or a portion the funds required to meet its 35 percent share of construction costs, the following provisions apply:

1. The Government will maintain records of monthly Federal expenditures and determine the non-Federal share of such expenditures. Beginning with award of the first construction contract, which is initiation of construction, the Government shall start charging interest on the non-Federal share of each monthly amount of Federal expenditures that is financed. The first monthly amount of the non-Federal share of Federal expenditures that is financed shall include the non-Federal share of any design costs incurred by the Government that were not previously cost shared at 35 percent and not recovered pursuant to Article II.B.3. The Government shall determine the interest rate, based on a 30-year maturity period for the fiscal year in which construction is initiated, in accordance with Section 106 of the WRDA 1986. Interest shall be compounded annually on the anniversary of each monthly amount until the date construction is completed or terminated, as applicable. If such anniversary is less than twelve months, the Government shall prorate the interest charges. The Government shall provide the Non-Federal Sponsor with monthly reports of all such monthly amounts expended to date and the estimated interest charges applied to each monthly amount. Following completion of construction, or termination of construction, interest shall be calculated in accordance with paragraphs D.2. and D.4. of this Article.

2. Pursuant to Article II.E. or Article VII, the District Commander shall provide written notification to the Non-Federal Sponsor of the date construction was completed or terminated, as applicable. No later than 30 calendar days after the date of the District Commander's written notice, the Government shall complete a final accounting and notify the Non-Federal Sponsor in writing of the principal amount, which includes the portion of the non-Federal cash contributions that has been financed plus interest that has accrued during construction. Further, the Government shall notify the Non-Federal Sponsor of the annual installment amounts for payment of the principal amount amortized over a 30-year maturity period, using the same interest rate that was used to calculate interest during construction with the addition of a 1/8 percent transaction fee to that interest rate as required by Section 106 of the WRDA 1986. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting.

3. The Non-Federal Sponsor shall pay the first installment no later than 30 calendar days after the date of the Government's notification of the principal amount and annual installment amounts pursuant to paragraph D.2. of this Article, and each annual installment thereafter on the anniversary date of such notification, by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Commander or providing an Electronic Funds Transfer in accordance with procedures established by the Government. The Non-Federal Sponsor, in its sole discretion, may prepay the principal amount, in whole or in part, at any time without penalty.

4. Beginning five years after completion or termination of construction, as applicable, and at five-year intervals thereafter, the Government shall recalculate the annual installment amounts by amortizing the outstanding portion of the principal amount over the remaining portion of the payment period. The interest rate for each recalculation is determined in accordance with Section 106 of the WRDA 1986 based on a 30-year maturity period, plus the 1/8 percent transaction fee, for the fiscal year at the time of such recalculation. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installment amounts within 15 calendar days of such payments being due. The last installment amount shall be adjusted upward or downward to assure payment of all the indebtedness.

E. If the Government agrees to acquire or provide real property interests, placement area improvements, relocations, additional work, or betterments on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days after receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction, until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum 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 3 months.

ARTICLE VIII - HOLD AND SAVE

Subject to the provisions of Article XV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs that are cost shared.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:
Executive Director
Gulf Coast Protection District
3200 Southwestern Freeway #2600
Houston, Texas 77026

If to the Government:
District Commander
U.S. Army Corps of Engineers, Galveston District
2000 Fort Point Road
Galveston, Texas 77550

B. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

ARTICLE XIII - CONFIDENTIALITY

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 XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

ARTICLE XV - OBLIGATIONS OF FUTURE APPROPRIATIONS


The Non-Federal Sponsor intends to fulfill fully its obligations under this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Gulf Coast Protection District or the Legislature of the State of Texas, where creating such an obligation would be inconsistent with: (i) article III, Section 49, article VIII, Sections 6-7, or article XVI, Section 59(c) of the Texas Constitution; (ii) Chapter 49 of the Texas Water Code; or (iii) Sections 9502.0302 & 9502.0303(3) of the Texas Special District

Local Laws Code. If the Non-Federal Sponsor is unable to, or does not, fulfill its obligations under this Agreement, the Government may exercise any legal rights it has to protect the Government's interests.

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

DEPARTMENT OF THE ARMY

GULF COAST PROTECTION DISTRICT

BY: 
TIMOTHY R. VAIL
Colonel, U.S. Army
District Engineer

BY: 
RACHAEL N. SUNSTRUM
Executive Director

DATE: 04/29/2022

DATE: 4-29-22