

IN-KIND MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
GULF COAST PROTECTION DISTRICT

FOR DESIGN WORK
PRIOR TO EXECUTION OF
A
DESIGN AGREEMENT
FOR THE
COASTAL TEXAS PROTECTION AND RESTORATION PROJECT

THIS IN-KIND MEMORANDUM OF UNDERSTANDING (hereinafter the “In-Kind MOU”) is entered into this 12TH day of June 2023, by and between the Department of the Army (hereinafter the “Government”), represented by the represented by the District Commander for Galveston District (hereinafter the “District Commander”) and the Gulf Coast Protection District (hereinafter the “Non-Federal Interest”), represented by the Executive Director.

WITNESSETH, THAT:

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)), provides that a cost sharing agreement may provide credit for the value of materials or services provided before the execution of such cost sharing agreement if the Secretary and the non-Federal interest enter into an In-Kind MOU under which the non-Federal interest shall carry out such work and only work carried out following the execution of such In-Kind MOU shall be eligible for credit;

WHEREAS, the Non-Federal Interest understands and acknowledges that any credit for eligible in-kind contributions will be afforded only toward the required non-Federal contribution of funds (i.e. cash contribution) under the Design Agreement for the project or separable element thereof; and

WHEREAS, by letter dated January 6, 2023, the Non-Federal Interest stated its intent to provide certain design work (hereinafter the “Design Work”, as defined in Paragraph 1 of this In-Kind MOU) prior to the execution of the Design Agreement for the Coastal Texas Protection and Restoration Project.

NOW, THEREFORE, the parties agree as follows:

1. The Non-Federal Interest shall provide the Design Work in accordance with the terms and conditions of this In-Kind MOU and requirements of applicable Federal laws and implementing regulations. The Design Work shall consist of data collection related to design work, engaging in Architect/Engineering (A/E) contracts for project management, engineering, design, and plans

and specifications for project features; conducting appropriate environmental, geotechnical, and other field work, sampling, and analysis; conducting cultural resource investigations; and conducting public outreach and coordination, as generally described in the letter from the Non-Federal Interest.

2. The Non-Federal Interest shall keep books, records, documents, and other documentation of costs and expenses incurred for the Design Work in accordance with this In-Kind MOU. The value of the Design Work shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Interest incurred to provide the Design Work. Such costs may include but are not necessarily be limited to: engineering and design, real estate, economic and environmental analyses, and evaluation costs; supervision and administration costs; and documented incidental costs associated with providing the Design Work, 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 Interest's employees.

3. The Non-Federal Interest understands that eligibility for credit for the Design Work is subject to:

a. A determination by the Division Commander for Southwestern Division that the Design Work is integral to the project;

b. Review and verification by the Government that the Design Work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies; and

c. An audit by the Government to determine the reasonableness, allocability, and allowability of such costs.

4. The Non-Federal Interest understands further that:

a. No interest charges or adjustment will be applied to the costs incurred for the Design Work to reflect changes in price levels;

b. Federal program funds may not be used to meet any of its obligations under this In-Kind MOU 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;

c. Only the costs of the Design Work that do not exceed the Government's estimate of the cost of such work if the work had been accomplished by the Government are eligible for credit;

d. No credit will be provided for the value of Design Work obtained at no cost to the Non-Federal Interest or performed prior to the effective date of this In-Kind MOU;

e. Crediting for the costs of the Design Work may be withheld, in whole or in part, as a result of the Non-Federal Interest's failure to comply with the terms of this In-Kind MOU; and

f. Credit may be afforded only if a Design Agreement is executed subsequently by the Government and the Non-Federal Interest.

5. In the exercise of their respective rights and obligations under this In-Kind MOU, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

6. Execution of this In-Kind MOU does not constitute, represent, or imply any Federal assurance or commitment regarding approval of the project or execution of any future agreement that may include provisions for affording credit for Design Work undertaken under this In-Kind MOU. In addition, execution of this In-Kind MOU in no way prevents the Government from modifying the project even if it results in the Design Work provided by the Non-Federal Interest no longer being an integral part of the project.

7. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the project in the future; and nothing herein shall represent, or give rise to, any duty, obligation, or responsibility for the United States. Any activity undertaken by the Non-Federal Interest for the Design Work is solely at the Non-Federal Interest's own risk and responsibility.

8. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this In-Kind MOU 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 Interest:

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 paragraph.

9. This In-Kind MOU may be modified or amended only by written, mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this In-Kind MOU, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

GULF COAST PROTECTION DISTRICT

BY: 
Rhett A. Blackmon
Colonel, U.S. Army
District Commander

BY: 
Rachael N. Sunstrum
Executive Director

DATE: 12 July 2023

DATE: July 12, 2023