

**INTERLOCAL AGREEMENT BETWEEN
GULF COAST PROTECTION DISTRICT
AND
ORANGE COUNTY/ORANGE COUNTY DRAINAGE DISTRICT**

This Interlocal Agreement (the "Agreement") is made this 14th day of December, 2021 between the Gulf Coast Protection District ("GCPD") and Orange County, the "County" and the Orange County Drainage District, the "District", (sometimes collectively referred to as "Orange County").

Pursuant to the authority granted by the "Texas Interlocal Cooperation Act," Chapter 791 Texas Government Code, providing for the cooperation between local governmental bodies, the parties hereto, in consideration of the premises and mutual promises contained herein, agree as follows:

WHEREAS, construction of the Sabine Pass to Galveston Bay Coastal Storm Risk Management Project ("S2G") was authorized by Section 1401(3)(3) of the America's Water Infrastructure Act of 2018, Public Law 115-270;

WHEREAS, the Orange County Coastal Storm Risk Management Project ("Project") is a separable element of S2G;

WHEREAS, federal appropriations provided under Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018, are available to undertake the design and construction of S2G;

WHEREAS, state appropriations provided under Section 68 of Senate Bill 500, 86th Texas Legislature, Regular Session, effective June 6, 2019, ("SB 500") are available to the Texas General Land Office ("GLO") to provide partial funding for the non-Federal cost share to meet the cost sharing requirements applicable to S2G;

WHEREAS, the County and the District entered into an Interlocal Agreement on September 8, 2020 to establish roles and responsibilities for jointly executing 1) a Local Cooperation Agreement ("LCA") with the GLO, whereby the GLO would pay one hundred percent (100%) of the anticipated Non-Federal cost share of the total design costs for the Project, and also to receive funding for the County and the District's Design Participation Costs for the Parties' Design Participation Work as provided in the LCA; and 2) the Design Agreement ("DA") with the U.S. Army Corps of Engineers (the "Corps" or the "Government") to serve as the Non-Federal Sponsors for the design phase of the Project and to pay the Non-Federal costs share equal to thirty-five percent (35%) of the total design costs, for which one hundred percent (100%) of such funds will be provided to the District by and on behalf of the County and the District by the GLO pursuant to the LCA;

WHEREAS, Orange County and the GLO entered into the LCA on September 16, 2020 to fund Orange County for 1) the non-Federal portion of the Total Design Costs as estimated and projected in the DA to be \$56,000,000; 2) Orange County's Design

Participation Costs for their Design Participation Work, which was projected to be \$8,000,000.00 for the period of time covered by the DA; and 3) an Agreed Reserve for costs contingencies for either or both of the non-Federal portion of Total Design Costs and the Design Participation Costs, in the amount of \$10,000,000.00. The funding for the Design Participation Costs was essential for Orange County's participation and performance as the Non-Federal Sponsor in the engineering and design of the Project, and continues to be essential for Orange County's role as the Liaison Representative of the GCPD in the continuing design of the Project. Accordingly, pursuant to a request for legislative interpretation to the Legislative Budget Board ("LBB"), the LBB determined and authorized by email letter dated July 31, 2020 that funding made available by Section 68 of Senate Bill 500, 86th Texas Legislature, Regular Session could be used for the District and the County's participation and performance in the Corps' ongoing engineering and design work and activities for the Project that may not be creditable against the non-Federal share of Total Design Costs for the Project, which includes the Design Participation Costs;

The Design Participation Costs referenced above include the following costs for outside engineers and other consultants, and internal Orange County labor and other resources for: Review of engineering analyses, studies, scopes of work, designs, plans and specifications, and other documents pertaining to the Project; development of data and information specifically requested by the Corps or its consultants; coordination and communication with local governments, industry, stakeholders, utilities, and citizens on actions associated with the planning, engineering and design of the Project; assistance to the Corps' Real Estate Division, and to the Corps' outside consultants for matters relating to determining real estate required for the project, including, but not limited to communications with owners, and escorting-related services; any necessary related legal review and/or work; and any other actions reasonably requested by the Corps' or its consultants for the study, engineering, design, and development of plans and specifications for the Project (hereinafter collectively, the "Design Participation Work");

WHEREAS, Orange County, as the Non-Federal sponsors, and the Corps, entered into a DA on September 18, 2020, to provide to the Corps the Non-Federal Sponsor's 35% of total design costs, based upon funding to be provided to Orange County pursuant to the LCA and as well, to provide Design Participation Work as described in the LCA during the period of design prior to execution of a Project Partnership Agreement ("PPA") by a different entity for the construction of the Project;

WHEREAS, the DA provides that if a PPA for construction of the Project is executed by January 31, 2022, and if the Non-Federal Sponsor for the PPA agrees to assume all responsibility and liability for the Non-Federal share of total design costs under the DA, any deferred Non-Federal share of total design costs under the DA shall be paid in accordance with the terms of the PPA;

WHEREAS, Senate Bill 1160, 87th Texas Legislature, Regular Session, effective June 16, 2021, created the Gulf Coast Protection District (“GCPD”) to serve as the non-Federal sponsor, and to execute the PPA for design and construction of the Project;

WHEREAS, the GCPD, as the non-Federal sponsor, and the U.S. Army Corps of Engineers (the “Government”), for the department of the Army, intends to enter into a PPA for design and construction of the Project;

WHEREAS, the parties intend that upon execution of the PPA and final accounting by the Government, the DA will be terminated and Orange County will have no further liability or obligations pursuant to the DA and as well, that all Non-Federal Sponsor liabilities and obligations for project design shall be incorporated into the PPA and assumed by the GCPD;

WHEREAS, state appropriations provided under Section 18.52 of Senate Bill 1, 87th Texas Legislature, Regular Session, effective September 1, 2021, are available to the GLO for partially funding the GCPD to meet the Non-Federal cost sharing requirements applicable to S2G with additional state funding subject to Legislative appropriations, potential ad valorem tax receipts and other sources of income; however, such funds have not yet been allocated to specific projects by the GCPD;

WHEREAS, the GCPD and the GLO intend to enter into an LCA to utilize state appropriations provided under SB 500 to fund the remainder of Orange County’s Design Participation Costs for their Design Participation Work, which is essential for Orange County’s ongoing participation in the engineering and design of the Project as the representative and liaison of the GCPD in the Design of the Project;

WHEREAS, the GCPD and the GLO also intend to enter into an LCA to utilize state appropriations provided under Section 18.52 of Senate Bill 1, 87th Texas Legislature, Regular Session, effective September 1, 2021, to fund a portion of the non-Federal share of the remaining design costs, including any deferred Non-Federal share of total design costs under the DA, and “construction costs” as defined in the PPA, and Design Participation Costs for additional Orange County Design Participation Work needed for the Project, which is essential for Orange County’s ongoing participation in the engineering and design of the Project as the representative and liaison of the GCPD in the Design of the Project;

WHEREAS, the GCPD desires Orange County to engage and participate with the Corps on the design of the Project which includes conducting required data collection, site investigations, modeling, design analyses, value engineering studies, and review required for development of final plans, specifications and associated documents during the period of design as required for construction contracts to construct the Project (hereinafter collectively the “Design”);

WHEREAS, this contract is made under the authority of the “Texas Interlocal Cooperation Act”, Chapter 791 of the Texas Government Code, providing for the cooperation between

local governmental bodies, and the parties hereto find that the subject of this Agreement is necessary for the benefit of the public to advance the Project and that each party has the legal authority to perform and to provide the governmental function or service which is the subject matter of this contract; furthermore, each party finds that the performance of this Agreement is in the common interest of each party, and that the provision of services set forth herein by each party fairly compensates the other party for the provision of services provided by such other party.

NOW, THEREFORE, for mutual and adequate consideration received by each party, the GCPD and Orange County hereby contract as follows:

TERMS AND CONDITIONS:

1. Orange County's Responsibilities. Pursuant to the request of the GCPD, and as agreed to by Orange County (hereinafter sometimes collectively referred to as the "Parties"), providing that the GCPD executes a PPA for the Project within a time period agreeable to the Corps and the Design Agreement is therefore terminated, Orange County shall:

a. Subject to the other provisions set forth below, as the Liaison Representative acting on behalf of the GCPD, continue to perform the Design Participation Work as defined in the Local Cooperation Agreement that the Parties anticipate will be executed by the GCPD and the GLO for the Project, and thereby engage and participate in the Corps' Design of the Project which shall include, but is not limited to the engagement and/or provision of outside engineers and other consultants, and internal Orange County labor and other resources for:

- i. Reviews of engineering analyses, studies, scopes of work, designs, plans and specifications, and other documents pertaining to the Project;
- ii. Development of data and information specifically requested by the Corps or its consultants;
- iii. Coordination and communications with local governments, industry, stakeholders, utilities, and citizens on actions associated with the planning, engineering and design of the Project;
- iv. Assistance to the Corps' Real Estate Division, and to the Corps' outside consultants for matters relating to determining real estate required for the project, including, but not limited to communications with owners, and escorting – related services;
- v. Any necessary related legal review and/or work;
- vi. Any other actions reasonably requested by the Corps or its consultants for the study, engineering, design, and development of plans and specifications for the Project.

b. submit requests for reimbursement and/or advance payments for SB 500 funds to the GCPD to fund payments for the Design Participation Costs incurred or to be incurred by Orange County pursuant to paragraph 1.a. above. Requests for advance funds may be made to cover anticipated Design Participation Costs for the entire fiscal year ending on August 31st of each year;

c. receive and hold in trust any and all funds advanced by the GCPD for the payment of Design Participation Costs, and make payment to all persons entitled to payment for Design Participation Work as required by contract or employment;

d. assist the GCPD as may be requested in outreach with the Texas Legislature, the Congress, and other entities for obtaining necessary federal and non-federal funding for the Project;

e. provide routine monthly project status and financial reports to the GLO and GCPD on Project expenses, Project funding and Project implementation; and

f. upon request, provide the GCPD with copies of all invoices, receipts, and other evidences of payment made by Orange County for Design Participation Costs and for the Non-Federal share of design costs.

g. upon termination of the DA, return to the GLO or GCPD any remaining advance funds provided to Orange County, under the LCA between Orange County and the GLO, for payment to the Government to meet the 35% Non-Federal share of total design costs.

2. GCPD Responsibilities.

The GCPD intends to:

a. execute the PPA with the Galveston District, U.S. Army Corps of Engineers for the Design, construction, and operation and maintenance of the Project;

b. serve as the Non-Federal sponsor for all Non-Federal sponsor roles and responsibilities defined in the PPA; and

c. assume all responsibility and liability for the Non-Federal share of total design costs under the DA.

If the GCPD executes the PPA, the GCPD shall:

a. submit requests for reimbursement and/or advance payments from SB 500 funds to the GLO for payments to Orange County for the Design Participation Costs, and remit payments to Orange County for the payment of such Design Participation Costs;

b. submit requests for reimbursement and/or advance payments from SB 500 funds to the GLO for payments of the 35% Non-Federal design cost share payments to the Government, to the extent that such funds are available to the GLO for such purpose,

and remit payments to the Government for the 35% Non-Federal cost share as required by the PPA; and

c. assume the leadership role for outreach with the Texas Legislature and other entities for obtaining necessary federal or non-federal funding for the Project.

3. Notwithstanding any other provision, herein, Orange County shall have no responsibility for payment to the Government of the non-Federal cost share of 35% for total design costs, other than the payments made by Orange County prior to the execution of this Agreement.

4. Immunity from Civil Liability. The Parties expressly agree and acknowledge that the Work performed under this Agreement is related to a Homeland Security Activity as that term is defined pursuant to Tex. Gov't. Code Section 421.001(2)(3), such that the GCPD and Orange County and their employees or authorized representatives, shall not be responsible for any civil liability that arises or relates to the Work arising under this Agreement, or for any act or omission resulting in death, damage, or injury while acting in good faith and in the course and scope of its function to provide a service related to a Homeland Security Activity in accordance with Tex. Gov't. Code Section 421.062. Further, nothing herein shall be interpreted as a waiver of any immunity that might exist in the absence of this Agreement or this provision.

5. Other Liability to the Extent Imposed by Law. To the extent that any law or regulation may impose other liability on the Parties, the County and the District expressly agree to disclaim joint and/or several liability such that each Party will only be responsible for their own acts and/or omissions of negligence.

6. No Waiver of Immunity. This Agreement does not waive the GCPD's rights under the legal theory of sovereign immunity, and this Agreement does not waive Orange County's rights under the legal theory of sovereign immunity.

7. Third Party. This Agreement shall not be interpreted to inure to the benefit of a third party not a party to this Agreement. This Agreement may not be interpreted to waive any statutory or common law defense, immunity, including governmental and sovereign immunity, or any limitation of liability, rights or responsibilities of any party to this Agreement otherwise provided by law.

8. Joint Venture, Joint Enterprise and/or Agency. The relationship between the Parties to this Agreement shall not create a partnership, joint venture and/or joint enterprise between the Parties. This Agreement does not appoint any party as agent for the other party; however this provision does not prevent the GCPD from designating Orange County as a representative for communications with the U.S. Army Corps of Engineers regarding the responsibilities of Orange County during the design phase of the Project as set forth above.

9. Effective Date. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

10. Termination of Agreement. This Agreement shall terminate upon the fulfillment or termination of all obligations of the Parties for the Design of the Project. This Agreement may only be modified or amended by written agreement of the Parties hereto.

11. Governing Law. This agreement shall be construed in accordance with the laws of the State of Texas, is subject to all valid laws, rules, or regulations of any governmental authority having jurisdiction, incorporates the entire agreement between the parties, may only be changed or amended by written agreement of the parties hereto, and shall be binding on the parties hereto as well as their successors and assigns.

12. Enforceability of Agreement. If any provision of this agreement, whether a paragraph, section, sentence or any portion thereof, is determined by a court of competent jurisdiction to be null and void or unenforceable, such provision shall be deemed to be severed and the remaining provisions of this agreement shall remain in force and effect. Furthermore, the parties shall negotiate in good faith to modify this agreement so as to give full effect to the original intent of the parties via a provision as similar in terms to such null and void or unenforceable provision as may be possible and as may be legal, valid, and enforceable.

13. Counterparts. This Agreement may be executed in multiple counterparts (one for each party), each of which shall be deemed an original for all purposes, whether or not the parties sign the same document. In making proof of this Agreement, the proponent need not produce or account for more counterparts than are necessary to show execution by or on behalf of both parties.

14. Notice. All notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the Parties at the addresses set forth below, or at such other addresses as may have been specified by written notice delivered in accordance herewith, or (ii) by fax and/or email addressed and sent to the Parties at the addresses as set forth below:

To GCPD:

Gulf Coast Protection District
Executive Director
3200 Southwest Freeway #2600
Houston, Texas 77026
Nicole.sunstrum@gcpdtexas.com

To Orange County:

Orange County
Office of the County Judge
123 South 6th Street
Orange, Texas 77630
gothia@co.orange.tx.us

To Orange County Drainage District:

Orange County Drainage District
General Manager
8081 Old Highway 90
Orange, Texas 77630
dcarona@orangecountydrainage.com

Any party may change its address for receiving notices or communications hereunder by giving notice of such new address in accordance with paragraph 7.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their authorized officers the day and year first above written.

ORANGE COUNTY

GULF COAST PROTECTION DISTRICT

By: Johnny Trahan
Johnny Trahan
County Commissioner and
Judge Pro Tem

By: Rachael N. Sunstrum
Rachael N. Sunstrum
Executive Director

ATTEST:

ATTEST:

Brandy Robertson

Nick Poole

ORANGE COUNTY DRAINAGE
DISTRICT

By: Don Carona
Don Carona
General Manager

ATTEST:

Cindy Lee