

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

WHEREAS, 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"), executed an Interlocal Agreement (the "Agreement") effective December 14, 2021 in anticipation of the GCPD and the U.S. Army Corps of Engineers (the "Corps" or the "Government") executing a Project Partnership Agreement ("PPA") for the Orange County Coastal Storm Risk Management Project (the "Project"), a separable element of Sabine Pass to Galveston Bay Coastal Storm Risk Management Project ("S2G"), on or before January 31, 2022;

WHEREAS, at the time that the Agreement was executed by the GCPD and Orange County, the parties anticipated that the Texas General Land Office ("GLO") would continue to provide the funding for the 35% Non-Federal share of total design costs for the Project and Orange County's Design Participation Costs from funding provided in Section 68 of Senate Bill 500, 86th Texas Legislature, Regular Session, effective June 6, 2019, ("SB 500") and from Section 18.52 of Senate Bill 1, 87th Texas Legislature, Regular Session, effective September 1, 2021 ("SB1") pursuant to the terms of the Local Cooperation Agreement (the "Orange County LCA") between Orange County and the Texas General Land Office ("GLO"), or pursuant to a Local Cooperation Agreement between the GLO and the GCPD (the "GCPD LCA");

WHEREAS, the GCPD and the Corps executed the PPA for the Project on April 29, 2022, which included the expressed intent of the GCPD 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, the GLO recently advised the GCPD and Orange County of its concern that pursuant to legislative requirements, SB 500 funds must be used for S2G purposes by an entity with whom the GLO had a contract on or before June 6, 2021, which date is before the date of the legislative creation of the GCPD, and therefore SB 500 funds cannot be used by the GCPD for purposes of the Project, or for any other purposes for which the GCPD was created.

WHEREAS, the GLO has therefore requested that the Orange County LCA be amended to provide that the SB 500 funds previously allocated to the Project pursuant to the Orange County LCA which have not been expended or obligated by Orange County prior to the date of execution of the PPA by the GCPD and the Corps be reduced from an amount not to exceed \$74,000,000 as set forth in the Orange County LCA to an amount not to exceed \$17,034,931.77, and that GLO thereby be allowed to allocate and provide the difference in such "not to exceed amounts" (\$56,965,068.23) to Jefferson County Drainage District No. 7 for use in its separable element project of S2G, and in exchange thereof, the GLO will make SB 1 funds available to the GCPD for the Project, for use toward both the 35% Non-Federal share of total design costs for the Project and Orange County's Design Participation Costs;

WHEREAS, the GLO has provided a letter to the GCPD dated January 28, 2022, whereby the GLO has advised that SB1 funds can be used by the GCPD, like SB 500 funds, to reimburse Orange County for their Design Participation Costs, which funding was approved by the Legislative Budget Board ("LBB") in a written interpretation dated July 31, 2020 to be used for Orange County's participation and performance in the Government's ongoing engineering and design work and activities for the Project that may not be creditable toward the 35% Non-Federal share of total design costs for the Project;

WHEREAS, the Agreement and this amendment thereto is executed 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;

NOW, THEREFORE, for mutual and adequate consideration received by each party, the Interlocal Agreement between the GCPD and Orange County is amended 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"), 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 Design Participation Work as defined in the Local Cooperation Agreement between Orange County and the GLO, which includes the cost 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 1 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 September 30th 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 nonfederal 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; and

g. perform such other work and tasks in furtherance of the Project that the Parties may mutually agree upon in the future as the Project progresses.

2. GCPD Responsibilities.

The GCPD shall:

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

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

c. upon completion of the final accounting of the Design Agreement by the Corps, and providing that it is determined by the Corps that Orange County owes the Corp an additional amount for the 35% Non-Federal portion of design costs expended or obligated through the date of execution of the PPA by the Corps and the GCPD, provide to Orange County the additional amount of funds owed by Orange County to the Corps to meet the 35% Non-Federal share of total design costs owed by Orange County pursuant to the Design Agreement;

d. in the event that the funds provided to Orange County for Design Participation Costs by the GLO pursuant to the terms of the Orange County LCA are not adequate for payment of all Design Participation Costs incurred by Orange County through the date of the execution of this Amendment to Interlocal Agreement, provide to Orange County the additional amount of funds needed by Orange County for such Design Participation Costs;

e. submit requests for reimbursement and/or advance payments from SB 1 funds to the GLO for payments to Orange County for their Design Participation Costs required pursuant to paragraph 1.a., and remit payments to Orange County for the payment of such Design Participation Costs;

f. submit requests for reimbursement and/or advance payments from SB 1 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

g. assume the leadership role for outreach with the Texas Legislature and other entities for obtaining necessary federal or non-federal funding for the Project, to the extent authorized by law.

All provisions of the Interlocal Agreement that are not in conflict with the terms of this amendment to the Interlocal Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Interlocal Agreement to be executed by their authorized officers effective the 9th day of November, 2022.

ORANGE COUNTY

By:


John Gothia
County Judge

GULF COAST PROTECTION DISTRICT

By:


Rachael N. Sunstrum
Executive Director

ORANGE COUNTY DRAINAGE
DISTRICT

By:


Don Carona
General Manager