

IN-KIND MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND THE  
GULF COAST PROTECTION DISTRICT  
  
FOR CONSTRUCTION WORK PERFORMED  
PRIOR TO EXECUTION OF A  
PROJECT PARTNERSHIP AGREEMENT  
FOR THE  
COASTAL TEXAS PROTECTION AND RESTORATION PROJECT

THIS IN-KIND MEMORANDUM OF UNDERSTANDING (hereinafter the "In-Kind MOU") is entered into this 13<sup>th</sup> day of MAY 2025 by and between the Department of the Army (hereinafter the "Government"), 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 plans to 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 Project Partnership Agreement for the project or separable element thereof, except such credit will not be afforded toward the non-Federal requirement pursuant to the Project Partnership Agreement to pay a cash contribution equal to 5 percent of the construction costs allocated to structural flood risk management; and;

WHEREAS, by letter dated August 29<sup>th</sup>, 2023, the Non-Federal Interest stated its intent to provide certain construction work, including any design required for that construction work, (hereinafter the "Construction Work", as defined in Paragraph 1 of this In-Kind MOU) prior to the execution of the Project Partnership Agreement for the COASTAL TEXAS PROTECTION AND RESTORATION PROJECT.

NOW, THEREFORE, the parties agree as follows:

1. The Non-Federal Interest plans to perform the following Construction Work which must be undertaken in accordance with the terms and conditions of this In-Kind MOU and requirements of applicable Federal laws and implementing regulations. The Construction Work in Chambers,

Galveston, and Harris Counties, Texas consists of performance of investigations for hazardous substances; testing of sediments to be used in construction; engineering and design work associated with construction; data collection related to design work; performance of design or construction related studies for historic preservation activities except data recovery; demolition of buildings on lands required for the project; construction costs, including real estate, economic analysis and evaluation costs; construction management, supervision and administration costs; construction materials and services; documented incidental costs associated with providing the construction work; mitigation; and performance of cost shared monitoring and adaptive management 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 Construction Work in accordance with this In-Kind MOU. The value of the Construction Work shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Interest incurred to provide the Construction Work, which may include engineering and design, real estate, economic, and environmental analyses and evaluation; 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 Interest's employees.

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

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

b. The Non-Federal Interest completing or assuring completion of all necessary environmental coordination and obtaining all applicable Federal, State, and local permits prior to initiating construction of the Construction Work;

c. In acquiring the real property interests for the Construction Work, the Non-Federal Interest assures the Government that it will comply with the following:

(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 Interest will be guided, to the greatest extent practicable under State or Commonwealth law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) displaced persons will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654;

d. The Non-Federal Interest's compliance with applicable Federal labor laws covering non-Federal construction and relocations, 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);

e. Review and verification, including on-site inspection, as applicable, by the Government that the Construction Work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies; and

f. 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 Construction 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 Construction 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 Construction Work obtained at no cost to the Non-Federal Interest or for the cost of construction initiated prior to the effective date of this In-Kind MOU;

e. Any costs incurred for the clean-up of hazardous material regulated by the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"; 42 U.S.C. 9601–9675), that may exist in, on, or under any real property interests required for the Construction Work are a Non-Federal Interest responsibility and no credit shall be afforded for such clean-up costs. In addition, the Non-Federal Interest understands that as between the Government and the Non-Federal Interest, the Non-Federal Interest shall be considered the owner and operator of the Construction Work for the purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Interest shall operate, maintain, repair, replace, and rehabilitate the Construction Work in a manner that will not cause liability to arise under CERCLA;

f. Crediting for the costs associated with providing real property interests, placement area improvements, and relocations required for the Construction Work are not considered part

of the creditable in-kind contributions under this In-Kind MOU. However, such costs may be creditable as part of the non-Federal requirement to provide real property interests, placement area improvements (if applicable), and relocations for construction, operation, and maintenance of the Construction Work pursuant to the terms and conditions in a Project Partnership Agreement;

g. Crediting for the costs of the Construction 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

h. Credit may be afforded only if a Project Partnership 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 Construction 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 Construction 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 Construction 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

BY: 

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

GULF COAST PROTECTION DISTRICT

BY: 

Coalter Baker  
Executive Director

DATE: 13 MAY 2025

DATE: 04/25/2025