

**MINUTES OF MEETING NO. 2308
COMMISSIONERS OF JEFFERSON COUNTY
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7**

Place: 4749 Twin City Highway, Suite 300
Port Arthur, Texas

Date: October 1, 2019

Present: Commissioners
Richard Beaumont
Lester Champagne
Billy Joe Butler
James Gamble, Sr.
Albert Moses, Jr.
Phil Kelley, Manager
Pete Steele, Attorney

Visitors: Brian McZeal-DD7
Ronnie Hollier-DD7
Brady Girouard, DD7
Mike Cabaniss, DD7
Allen Sims, LJA Engineering
Garrett Boudoin, LJA Engineering
Don Howell, Hunton Andrews Kurth
Ray Russo, Consultant
Dan Delich, Dan Delich Consulting
Jane Herrin, Nederland, TX
Sylvia Root, Nederland, TX
Ricky Root, Nederland, TX
Patriciee Quinn, Nederland, TX
Becky Pope, Nederland, TX
Diane Durso, Nederland, TX
Carlo Durso, Nederland, TX
David Wen, Nederland, TX
Kayla Lee, Nederland, TX
Daniel Plumley, Nederland, TX
Michael Whitehead, Nederland, TX
Charles Magliolo, Nederland, TX
Jim Jacobs, Nederland, TX
Vicki Westbrook, Nederland, TX
Ginny Parker, Nederland, TX

The meeting was called to order at 2:00 p.m. by Chairman Beaumont after ascertaining that the Notice of Meeting had been posted in accordance with the law. Commissioner Moses gave the invocation.

Minutes of Meeting No. 2307

The Minutes of Meeting No. 2307 were approved as read.

Consider Progress Payment No. 66 To Allco, Inc. for Alligator Bayou Pump Station Annex Project

A recommendation letter was received from Allen Sims of LJA Engineering for Progress Payment No. 66 to Allco, Inc. in the amount of Six Hundred Ninety Thousand and Five Hundred Ninety-Nine and 85/100 (\$690,599.85) Dollars. Mr. Allen Sims stated that this pay request is for removal of sheet piling, installation of the tank house slab, installation of electrical and HVAC, doors and windows, epoxy coating, painting and miscellaneous piping. The Contractor has completed 97 % of the work using 96 % of the contract time. Commissioner Moses moved to approve Pay Request No. 66 to Allco, Inc. in the amount of Six Hundred Ninety Thousand Five Hundred Ninety-Nine and 85/100 (\$690,599.85) Dollars. Commissioner Butler seconded. The motion carried.

Manager's Miscellaneous Reports/Financials

Since the date of the last Commissioner's meeting, the following work has been done:

HFPL Maintenance/Herbicide Crew

Herbicide Application:

- North Port Acres Ditch B
- Cut small trees from fence on Main B

Levee:

- Closed Hwy 365 Gate structure to prevent the infiltration of rising water from Rodair Gully during Tropical Depression Imelda
- In coordination with TX Dot, DD7 crews Re-opened Hwy 365 gate structure

Misc.:

- Storm Prep
- Storm Duty
- Clean up after Imelda

Contractor:

- GP Evans Contractors, Mowing areas: Floodwall breach areas: 7.8
- Ducks Dragline Service: Removing spoil from HFPL Borrow Pit @ Sta. 1280+00

Ditch Maintenance:

- Routine crossing runs have been done throughout the District, including Beauxart Gardens, Central Gardens, Nederland and Port Neches.
- Cleaned trucks and equipment.
- Cut and cleaned ditches, trees and guardrails throughout the District.
- Cut Pump Stations 7, 8, 9, 10, 11, 12, 13 and 14.
- Cleaned and maintained Pump Stations 8901, 8902, 8905 and 8919.
- Crews addressed several complaints throughout the District.
- Tractor crew continues assisted Ditch Maintenance in its routine cleaning of levees, ditches and Pump Stations throughout the District due to the recent heavy rain event this past week.

Rental Equipment:

- None

Construction Crew:

- Crew cleaned Pump Stations 7, 8, 10, 11, 15 and 16 along the seawall after each rain.
- Made routine trash pickup at warehouse, emptied all trash dumpsters and trash bins.
- Cleaned and maintained equipment and trucks.
- Continued making repairs to concrete and earthen ditches throughout District.

Rental Equipment:

1-LS250x3 Trackhoe, Ducks Dragline Service

District Equipment:

4-5 Yard Dump Trucks
Backhoe, Gradall

Control Center Operation and Pump Station Maintenance

UNIT 2 electric motor, test run motor pumping with enough water, unit overramping, talking problem over and discovered electric vacuum breaker not working properly. We have good power going to vacuum breaker, looking to change vacuum breaker. When manually closing vacuum breaker, amperage came down.

Station 7

Unit 7 Sump Pump-install new 250amp breaker and return unit to Auto.

Station 15

Unit 2-disconnect vacuum breaker for crew to remove, looking for new replacement.

Station 8

generator online, check station, call Entergy, jumper wire off on Entergy pole.

Station 5

Unit 6-replace bad solenoid for cooling water on gear.

Station 11

Entergy fuse out, report problem, check station when power comes back on. All OK.

Station 9

Aug 29-replace security light at station.

Electric Shop

Aug 30-clean shop and truck. Unit 14

Station 16

disconnect trash rake motor for crew to replace base. Reconnect and test.OK

Electric Shop

Sept 5&6-cleaning shop, arrange trash rake spare parts on shelf for easy counts and identification of parts. Separate parts on Lazy Susan parts storage.

Fab Shop

Sept 9&10-working on lights at fab shop, inside and outside.

Station 16

trash rake motor, disconnect for crews to replace baseplate, reconnect and test.

Electric Shop and Station 1

Sept 12-Ovivo tech going thru spare parts to check correct parts for ordering. Check rake at station to verify correct parts for new style hydraulic unit.

Station 19

Sept 13-hookup new sump pump, check rotation and set to Auto.

Stations 1,3,15&19

Sept 16-Check Automatic Rakes

Station 8

Sept 17-Unit 3-test run pump during a rain event, crew had pipe off of vacuum breaker to be sure of closure, motor still running 30 to 40 amps above normal.

Stations 11 thru 15

checking stations during Rain Event.

Construction Notes - Alligator Bayou Pump Station Annex

September 9, 2019 through September 27, 2019

Monday, September 9:

Alligator Project; Allco is working on site today. Weather conditions were sunny and site conditions were dry.

Allco superintendents (3) on site Mike Nunez (1), Terrell (1), Joe Latham (1), with (20) operators/laborers reported.

Allco's crew is working on building forms for fuel tank house walls and North intake's walkway. The pile crew has started to remove the outside waler support from the cofferdam. The pile crew tried to pull on (3) different sheet pile, and the top of the sheets were ripped off on each attempt.

Electrical Specialties is on site (5) working on pulling wire.

Weisinger is on site (5), showing up after lunch. The Weisinger crew is working on aligning the angle gear to the engine of unit #1.

Tuesday, September 10:

Alligator Project; Allco is working on site today. Weather conditions were sunny to partly cloudy and site conditions were dry.

Allco superintendents (3) on site Mike Nunez (1), Terrell (1), Joe Latham (1), with (20) operators/laborers reported.

Allco's crew is working on building forms for North intake's walkway. The crew started pouring 70 yards of concrete for the first 10-foot-high section of the fuel tank house walls at 8:30 am and finished at 10:30 am. The pile crew is welding steel plates to the top of cofferdam sheet piles to reinforce them. The hope is that the pile crew can pull the reinforced sheet pile without tearing the top of the sheet pile off.

Electrical Specialties are on site (5) working on wiring.

Weisinger is on site (5) working on rough aligning engine to angle gear (rough alignment is within 1/16 inch). The main elevation is set for unit # 2, 3, 4, 5, and 6.

Chapman is on site (3) welding flanges onto the ends of the fuel pipe from the tank house and on the second floor of station to get ready to test the pipe.

Wednesday, September 11:

Alligator Project; Allco is working on site today. Weather conditions were cloudy and site conditions were dry.

Today, Scott Snyder called Allen Sims so that Dave could explain why couplings are needed to be bored out .004 inch in order to install the main drive coupling. Allen called Patterson Pump, then Dave was able to talk to Patterson to discuss the path forward.

Allco superintendents (2) on site Mike Nunez (1) and Terrell (1), with (20) operators/laborers reported.

Allco crew is working on building forms for North intake walkway. The pile crew attempted to pull (3) different reinforced sheet pile, the sheet pile would not move. The pile crew's plan is to dig deeper on the inside of the cofferdam to see if that will help with the removal.

Electrical Specialties are on site (5) working on wiring.

Weisinger was on site (5) working and had a problem with interference on the fitting between the coupling to the engine. It was also reported that the input shafts on the angle gears' couplings need to be widen .004 inch so that the couplings can slide on, instead of having to heat the couplings and push them on. Weisinger crew started to drill holes for tapered pins in angle gears for unit # 1 and 2.

Reye's is on site (6) today installing rebar for the fuel tank house walls on the higher section.

Chapman is on site (3) continuing to weld flanges onto the ends of the fuel pipe from the tank house and on the second floor of station to get ready to test the pipe.

Thursday, September 12:

Alligator Project; Allco is working on site today. Weather conditions were partly cloudy and site conditions were dry.

It was reported that Allen Sims tried to call Patterson Pump today to resolve the issue of the boring shaft couplings being .003 inch oversized, but Patterson did not answer/respond by the time of this daily report.

Allco superintendents (3) on site Mike Nunez (1), Terrell (1), Joe Latham (1), with (20) operators/laborers reported.

Allco crew is building forms for the second section up on the fuel tank house walls and for the North intake walkway. The pile crew did not attempt to pull any sheet pile today. It was reported that the crane needs to be worked on again.

Electrical Specialties are on site (5) working on pulling wires.

Weisinger is on site (5) working to finish drilling holes in the angle gears and stands for the tapered pins.

Chapman is on site (3) working on installing the coolant lines to the keel coolers.

DD7 crew members (4) Mike, Daniel, Tony, and James were on site installing a walkway on both sides of unit #1's engine.

Friday, September 13:

Alligator Project; Allco is working on site today. Weather conditions were sunny and site conditions were dry.

The 165-ton crane was reported to still be out of service. Allco's pile crew moved the crane off the cofferdam to the East end of job site so that the crane mechanic can begin working on the crane.

Allco superintendents (3) on site Mike Nunez (1), Terrell (1), Joe Latham (1), with (20) operators/laborers reported.

Allco crew is still building forms for the North intake bay's walkway and the upper section of the fuel tank house walls. Also, the crew is pouring house keeping pads for the fuel return tank and the oil tank on the basement floor level.

Electrical Specialties is on site (5) working on pulling wires.

Chapman is on site (3) working on installing the coolant lines to the keel coolers within the intake bays.

Reye's is on site (6) today installing rebar for the fuel tank house walls on the higher section.

Monday, September 16:

Alligator Project; Allco is working on site today. Weather conditions were sunny in the morning with scattered rain showers starting around 1 pm. The site conditions were dry.

The 165-ton crane was reported as out of service. The crane is unable to pull any sheet pile currently.

Allco superintendents (3) on site Mike Nunez (1), Terrell (1), Joe Latham (1), with (20) operators/laborers reported.

Allco's crew is working on building forms for fuel tank house walls.

Electrical Specialties is on site (5) working on pulling wires.

Reye's is on site (4) today installing rebar for the fuel tank house walls on the higher section.

Tuesday, September 17:

Alligator Project; Allco is not working on site today due to a rain out from Tropical Storm Imelda.

Wednesday, September 18:

Alligator Project; Allco is not working on site today due to a rain out from Tropical Storm Imelda.

Thursday, September 19:

Alligator Project; Allco is not working on site today due to a rain out from Tropical Storm Imelda.

Friday, September 20:

Alligator Project; Allco is not working on site today due to a rain out from Tropical Storm Imelda.

Mr. Brian McZeal stated the Ditch Maintenance Crews are continuing to remove debris, maintain right of ways and mowing. Mr. McZeal presented to the board progress pictures of Pear Ridge Lateral #2 slope repairs.

Mr. Ronnie Hollier reported that the herbicide crews are out continuing to spray.

Checks & Purchase Orders
Maintenance Fund

Ck. No. 1063 – Allco, LTD
\$690, 599.85 – Alligator Bayou Upgrade

Ck. No. 15492 – ACME Truck Line, Inc
\$625.00 - Rental of transport truck 8/31/19

Ck. No. 15493 – Dan Delich Consulting
\$2,486.75 – Legislative Consulting

Ck. No. 15494 – Duck's Dragline Service, Inc
\$7,920.00 – Rental of LS250X4 Trackhoe, 9/13-9/27/19 ; Rental of LS250X2 Trackhoe,
9/13-9/27/19

Ck. No. 15495 – Filmr, LLC
\$284.00 – Shooting Film, Editing Film & Social Media Posts

Ck. No. 15496 – GP Evans Contractors
\$18,044.00 – Levee Mowing

Ck. No. 15497 – Groves Equipment Rental Co., Inc
\$266.00 - Rental of Crane, 9/12/19

Ck. No. 15498 – James Gamble
\$270.00 – Health Insurance Reimbursement

Ck. No. 15499 – Kirk Thomas Dirt Pit
\$19,193.63 – Moving spoil material from borrow pits, 8/14,8/21, 9/11, 9/4, 9/13, 9/12,
8/22, 9/9, 9/10

Ck. No. 15500 – Nerbert Frelow
\$480.00 – Dump Truck Rental, 9/16/19

Ck. No. 15501 – Ray Russo
\$4,863.26 – Legislative Consulting Fees

Ck. No. 15502 – Ritter Forest Products Nederland
\$7,850.00 – Rental of 10 - 8 x 14 Mats, 7 - 4 x 18 Mats, 75 – 8 X 14 Mats

Ck. No. 15503 – TX Water Conservation Assoc.
\$3520.00 – Dues and Subscriptions

Ck. No. 15508 – Function 4

\$185.36 – Rental of copier October 2019

Commissioner Champagne moved that the checks from the Maintenance Fund be approved for payment. Commissioner Butler seconded the motion. The motion carried.

Commissioner Beaumont asked the guests present if anyone would like to address the Board. Mr. Carlos Durso stated he lives on Oak North in Nederland and feels that the drainage in his neighborhood is inadequate. Mr. Durso stated that there has been new development in his area over the years and all new development is feeding into the same drainage. Mr. Durso expressed that he is tired of fighting the storms and asked the Board what can be done to fix the drainage problems in his neighborhood. Mr. Kelley stated that the area north of the airport gravity flows into Rodair Gully which in turn flows into the Taylors Bayou watershed that includes Hillebrandt Bayou. A large area of Beaumont drains into the Taylors Bayou watershed and with the intense rainfall from Imelda, the Taylors Bayou system was inundated which slowed the flow of water from Rodair Gully which contributed to the flooding in his area. Mr. Durso stated that Gulf States put in a 2-mile road next to the drainage ditch and when it rains, water builds up at that road and pushes back into his neighborhood. Mr. Kelley stated that he has spoken with Commissioner Brent Weaver, Precinct 2 on alternative drainage solutions for his area. Mr. Durso expressed additional concerns of the rising cost of insurance if flooding continues in his area. Mr. Ricky Root stated that he has a business that flooded during Tropical Storm Harvey and Tropical Depression Imelda. He stated that in 2000 the District added a ditch going towards the prison and there have been problems ever since. Mr. Kelley stated that the ditch he is referring to

is Lateral 5 and it was an existing channel that DD7 made improvements to. Mr. Root stated that culverts were added to the Central Gardens area that is now feeding additional water into the system. Mr. Root commented that the District keeps adding water to a system that is already overworked. Mr. Root asked the Board were they going to complete concrete lining Rodair Gully. Mr. Kelley stated that the District has been widening Rodair Gully in phases over the last several years from W. Port Arthur Road to Hwy. 69 and has recently awarded a contract to complete the last phase and that some sections were concrete lined and others remained earthen. Ms. Vicki Westbrook expressed her concerns about the two ditches on Oak West and Oak North. She states that with all the new development in the area, the two ditches can't drain properly resulting in flooding. Mr. Kelley stated that the District is working on a Drainage Criteria Manual. This manual will require all new development to be approved by DD7. After some lengthy discussion on suggestions from the residents on how the District could potentially address their drainage issues, Mr. Kelley stated that solutions will take some engineering and possible rerouting. Ms. Diane Durso asked the Board could retention ponds be a solution. Mr. Kelley stated the District is looking for potential areas for a retention pond. Mr. Daniel Plumley and Mr. Michael Whitehead addressed the Board and stated that they are here representing the Lakes of Nederland Homeowners Association. Mr. Plumley stated that 50 homes flooded during Tropical Depression Imelda. Mr. Plumley asked the District if there was anything that could be done to stop flooding from happening in their neighborhood. Mr. Plumley stated there were homes that flooded in Tropical Depression Imelda that did not flood in Tropical Storm Harvey. Mr. Plumley asked the Board how was this possible with less water. Mr.

Kelley stated that the volume of water coming down into Taylors Bayou and Hillebrandt Bayou from Beaumont and surrounding areas wouldn't allow stormwater from Rodair Gully to make its way downstream in a timely manner which created more flooding in his area. There was some discussion about Proposition 8 that will be on the ballot in November to seek voter approval in order to transfer over a billion dollars from the Rainy Day Fund to the Texas Water Development Board to create a State Flood Plan. Mr. Kelley stated that some of these funds will be available for future studies and mitigation grant opportunities. Mr. Jim Jacobs informed the Board that there is an abandon house, 2210 Oak North, Nederland that is bank owned and could potentially be purchased by the District for drainage improvements or detention ponding. Mr. Jacobs stated that he understood that the detention pond will not address the downstream problems his neighborhood is having but their area is not in a flood zone and the neighborhood has flooded twice. Mr. Kelley stated that the District is willing to provide a letter to FEMA indicating that the neighborhood is not protected by the hurricane levee. Mr. Allen Sims stated that in 2000, 2001 he was asked by Commissioner Domingue to identify areas needing attention and at that time he recommended that open ditches replace culverts. At that time, the residents did not want ditches in the area. Mr. Sims stated they are looking to do a study to evaluate options for drainage. Mr. Sims stated that the study wouldn't take long to do, but environmental requirements and pipeline crossings could be an issue. Ms. Westbook asked will Proposition 8 set aside funding for studies of this nature. Mr. Sims answered, yes. Mr. Sims encouraged all those present to support Proposition 8. Mr. Plumley asked the Board how could we make sure The Lakes of Nederland are included in the

study. Mr. Sims replied that all areas that contribute to Rodair Gully will be included in the study. Mr. Plumley asked if the District will give the recommendations of the study to the Lakes of Nederland Homeowners Association so they can begin on improvements. Mr. Kelley stated that the Districts jurisdiction was outside of their lake and wasn't sure if the District could legally get involved with the Homeowners Association to address lowering the lake level to create storage, but the study will be made public and if the Homeowners Association wants to hire an engineer and build a pump station, the District would be willing to share information with their engineers. Ms. Jane Herrin asked will there be any new development at Stillwater Estates. Mr. Brady Girouard replied yes. Ms. Herrin asked if the roadway to the new Entergy sub-station was permanent and Mr. Girouard stated that it is a permanent-private roadway. After some discussion on rather the permanent-private roadway would add to the drainage issues, Mr. Carlos Durso thanked the Board for allowing them to voice their concerns and welcomed any of the District's representatives to reach out to the residents and visit the area. Mr. Allen Sims suggested that residents call the District and request for someone to come out during a rain event. Mr. Sims stated that the best way to address a drainage issue is to see it while its flooding. Commissioner Beaumont thanked the residents for coming and voicing their concerns before the Board.

Executive Session – Consultation With Attorney Pursuant To Section 551.071, Texas Government Code, Regarding Project Partnership Agreement And Local Cooperation Agreement Which Contemplates Condemnation Litigation To Acquire Land Rights For The Sabine Pass To Galveston Bay Project And Pursuant To Section 551.072, Texas Government Code, Consultation Concerning Possible Property Acquisition Regarding The Sabine Pass To Galveston Bay Project

At 3:08 p.m., the Commissioners entered an Executive session for consultation with attorney pursuant to Section 551.071, Texas Government Code, regarding Project

Partnership Agreement and Local Cooperation agreement which contemplates condemnation litigation to acquire land rights for the Sabine Pass to Galveston Bay Project, and pursuant to Section 551.072, Texas Government Code, consultation concerning possible property acquisition regarding the Sabine Pass to Galveston Bay Project.

At 3:39 p.m., the meeting returned to regular session.

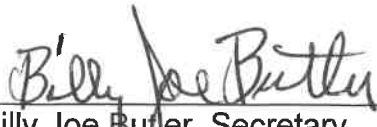
Consider Resolution Granting Manager and District Counsel Authority to Negotiate Final Terms of Local Cooperation Agreement with The General Land Office Substantially in Conformance with Draft Attached

Resolution No. 446, granting Manager and District counsel authority to negotiate final terms of Local Cooperation Agreement with The General Land Office (GLO) substantially in conformance with draft attached was presented to the board for consideration. Commissioner Champagne moved to approved Resolution No. 446. Commissioner Moses seconded. Motion carried. Resolution No. 446 is attached to and made a part of these minutes.

Consider Resolution Granting Manager and District Counsel Authority to Negotiate Final Terms of Project Partnership Agreement with The Department of the Army Substantially in Conformance with Draft Attached

Resolution No. 447, granting Manager and District Counsel authority to negotiate final terms of Project Partnership Agreement with The Department of the Army substantially in conformance with draft attached was presented to the Board for consideration. Commissioner Gamble moved to approve Resolution No. 447. Commissioner Moses seconded. Motion carried. Resolution No. 447 is attached to and made a part of these minutes.

At 3:40 p.m., Commissioner Butler moved that the meeting be adjourned.
Commissioner Moses seconded the motion. The motion carried.


Billy Joe Butler, Secretary


Richard Beaumont, Chairman

RESOLUTION NO. 446
AUTHORIZING MANAGER AND DISTRICT COUNSEL TO NEGOTIATE FINAL
TERMS OF LOCAL COOPERATION AGREEMENT WITH THE GENERAL LAND
OFFICE SUBSTANTIALLY IN CONFORMANCE WITH DRAFT ATTACHED

WHEREAS, Jefferson County Drainage District No. 7 ("District") has undertaken negotiations of terms of agreements with the Texas General Land Office ("GLO") and with the U.S. Army Corps of Engineers ("Federal Government") for additions and enhancements to the District's facilities;

WHEREAS, construction of the Sabine Pass to Galveston Bay coastal storm risk management project was authorized by Section 1401(3)(3) of the America's Water Infrastructure Act of 2018, Public Law 115-270;

WHEREAS, the District, as the non-federal sponsor, and the Federal Government desire to enter into a Project Partnership Agreement (the "PPA") for the construction, operation and maintenance, repair, rehabilitation, and replacement of the Jefferson County/Port Arthur and vicinity element (the "Project") of the authorized project;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project, which includes the non-federal sponsor obligations specified in the PPA;

WHEREAS, the PPA will further specify all obligations required of the District as non-federal sponsor of the Project, as well as the obligations of the U.S. Army Corps of Engineers with respect to the Project;

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 construction of the Project, and to allow for payment of the non-federal cash contributions during the period of construction, and/or the financing of the non-federal cash contributions in accordance with the provisions of the PPA and federal law;

WHEREAS, state appropriations provided under Section 68 of Senate Bill 500, 86th Texas Legislature, Regular Session, effective June 6, 2019, are available to the GLO to provide as non-federal cost share to meet the cost-sharing requirements applicable to the Project;

WHEREAS, pursuant to Senate Bill 2212, 86th Texas Legislature, Regular Session, the District has authority to execute an agreement with the GLO that provides for specific reporting to include future funding requirements;

WHEREAS, the GLO and the District desire to enter into a Contract substantially in conformance with the Local Cooperation Agreement ("LCA") attached hereto as Exhibit

A to facilitate the funding of the non-federal cost-share required for the Project, in accordance with the terms and conditions set forth herein;

WHEREAS, the District has the authority to perform all non-federal sponsor obligations required by the PPA with the Federal Government, including authority to provide all lands, easements, right-of-way, relocation areas, placement areas for borrow and dredged material, and any other real property interests required by the Federal Government for the construction, operation, and maintenance of the Project, authority to perform or cause to be performed all relocations of utilities and facilities determined by the Federal Government to be necessary for the construction, operation, and maintenance of the Project, and authority to operate, maintain, repair, rehabilitate, and replace the Project, including any mitigation features, in accordance with the Project's federally authorized purposes;

WHEREAS, the GLO has the authority to provide state funds to the District to pay for certain Project costs incurred by the District in performance of its non-federal sponsor obligations pursuant to the PPA, to the extent that such funds are made available to the GLO by the Texas Legislature; and

WHEREAS, the GLO and the District have the authority to enter into the LCA, including authority under Chapter 791 of the Texas Government Code, and the District wishes to give authority to its General Manager and counsel to proceed with finalizing the terms of the attached contract and present the final version to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7:

THAT it is in the best interest of the District to negotiate the final terms of the LCA in substantial conformance with the draft attached hereto as Exhibit A.

THAT the General Manager and counsel for the District are authorized to negotiate such terms on behalf of the District and present the District with the final version of the LCA for approval.

I, Billy Joe Butler, Secretary of the Board of Commissioners of Jefferson County Drainage District No. 7, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Commissioners of Jefferson County Drainage District No. 7, at their meeting No. 2308 held on the 1st day of October, 2019, upon

motion made by Commissioner Champagne and seconded by Commissioner
Moses and adopted unanimously by said Board, a quorum being
present.

Given under my hand this 1st day of October, 2019.

Billy Joe Butler
Secretary
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7



**LOCAL COOPERATION AGREEMENT
FOR THE
JEFFERSON COUNTY ELEMENT
OF THE
SABINE PASS TO GALVESTON BAY
COASTAL STORM RISK MANAGEMENT PROJECT**

This local cooperation agreement (the “Contract”) is entered into by and between the **GENERAL LAND OFFICE** (the “GLO”), an agency of the State of Texas, and the **JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7** (the “District”), a political subdivision of the State of Texas.

WHEREAS, construction of the Sabine Pass to Galveston Bay coastal storm risk management project was authorized by Section 1401(3)(3) of the America’s Water Infrastructure Act of 2018, Public Law 115-270;

WHEREAS, the District, as the non-federal sponsor, and the U.S. Army Corps of Engineers desire to enter into a Project Partnership Agreement (the “PPA”) for the construction, operation and maintenance, repair, rehabilitation, and replacement of the Jefferson County/Port Arthur and vicinity element (the “Project”) of the authorized project;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project, which includes the non-federal sponsor obligations specified in the PPA;

WHEREAS, the PPA will further specify all non-federal sponsor obligations required of the District as non-federal sponsor of the Project, as well as the obligations of the U.S. Army Corps of Engineers with respect to the Project;

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 construction of the Project, and to allow for payment of the non-federal cash contributions during the period of construction and/or the financing of the non-federal cash contributions in accordance with the provisions of the PPA and federal law;

WHEREAS, state appropriations provided under Section 68 of Senate Bill 500, 86th Texas Legislature, Regular Session, effective June 6, 2019, are available to the GLO to provide as non-federal cost share to meet the cost-sharing requirements applicable to the Project;

WHEREAS, pursuant to Senate Bill 2212, 86th Texas Legislature, Regular Session, the District has authority to execute an agreement with the GLO that provides for specific reporting to include future funding requirements.

WHEREAS, the GLO and the District desire to enter into this Contract to facilitate the funding of the non-federal cost-share required for the Project, in accordance with the terms and conditions set forth herein;

WHEREAS, the District has the authority to perform all non-federal sponsor obligations required by the PPA with the U.S. Army Corps of Engineers, including authority to provide all lands, easements, right-of-way, relocation areas, placement areas for borrow and dredged material, and any other real property interests required by the Federal Government for the construction, operation, and maintenance of the Project, authority to perform or cause to be performed all relocations of utilities and facilities determined by the Federal Government to be necessary for the construction, operation, and maintenance of the Project, and authority to operate, maintain, repair, rehabilitate, and replace the Project, including any mitigation features, in accordance with the Project's federally authorized purposes;

WHEREAS, the GLO has the authority to provide state funds to the District to pay for certain Project costs incurred by the District in performance of its non-federal sponsor obligations pursuant to the PPA, to the extent that such funds are made available to the GLO by the Texas Legislature; and

WHEREAS, the GLO and the District have the authority to enter into this Contract, including authority under Chapter 791 of the Texas Government Code;

NOW, THEREFORE, in consideration of the foregoing, the GLO and the District (each a "Party" and collectively the "Parties") agree as follows:

I. GENERAL PROVISIONS

1.01 DEFINITIONS

"Administrative and Audit Regulations" means all applicable statutes, regulations, other laws, and standards governing administration or audit of this Contract, including UGMS, 2 C.F.R. Part 200, and Chapters 321 and 2254 of the Texas Government Code.

"Attachment" means documents, terms, conditions, or additional information attached to this Contract following the execution page or incorporated by reference within the body of this Contract.

"Contract" means this entire document, along with any Attachments, both physical and incorporated by reference.

"District" means Jefferson County Drainage District No. 7, its officers, employees, and designees.

"Federal Government" means the Department of the Army, acting by and through the U.S. Army Corps of Engineers.

"Fiscal Year" means the annual accounting period for the State of Texas, beginning September 1 and ending August 31 each year.

"GAAP" means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“General Affirmations” means the statements in **Attachment B** to this Contract.

“GLO” means the Texas General Land Office, its officers, employees, and designees.

“Non-federal sponsor obligations” means the District’s share of costs defined in the PPA for construction of the Project, which includes, but is not limited to, actual costs for acquisition of lands, easements, and rights of way; actual costs for relocation of utilities and facilities; additional cash contribution to bring the District’s share of construction costs to 35% of total Project costs; and any additional cleanup and response costs associated with hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675) that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project and for which the District is responsible under the PPA. For the purposes of this Contract, “Non-federal sponsor obligations” do not include any costs associated with the Non-federal sponsor’s obligations under the PPA for the operation, maintenance, repair, rehabilitation, or replacement of the Project, for the implementation of the District’s flood control management plan or any other costs incurred after the Federal Government has determined that the construction of the Project is complete.

“PPA” means the Project Partnership Agreement between the Federal Government, represented by the U.S. Army Corps of Engineers, and the District for the construction, operation and maintenance, repair, rehabilitation and replacement of the Sabine pass to Galveston Bay Coastal Storm Risk Management Project authorized by Section 1401(3)(3) of the America’s Water Infrastructure Act of 2018, Public Law 115-270.

“Projected Funding Request” means the budget for the Project in **Attachment A**, as amended, to this Contract.

“Public Information Act” means Chapter 552 of the Texas Government Code.

“Subcontractor” means an individual or business that signs a contract to perform part of the obligations of the District under this Contract.

“UGMS” means the Uniform Grant Management Standards issued by Texas Comptroller of Public Accounts.

1.02 INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, of Attachment of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be

construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;

- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the GLO or by the GLO by way of consent, approval, or waiver shall be deemed modified by the phrase "in its/their sole discretion." Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the GLO shall not be unreasonably withheld or delayed;
- (h) All due dates and/or deadlines referenced in this Contract that occur on a weekend or holiday shall be considered as if occurring on the next business day;
- (i) All time periods in this Contract shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received;
- (j) Time is of the essence in this Contract; and
- (k) If any provisions of this Contract and its Attachments conflict, such conflicts shall be resolved in the following order of precedence: Signed Contract; Attachment A, as amended; Attachment B.

II. PROJECT

2.01 PROJECT DESCRIPTION

- (a) The District shall:
 - (i) Be responsible for performing all non-federal sponsor obligations for the Project required by the Federal Government, in accordance with the provisions of the PPA, all applicable federal and state laws and regulations, and any specific directions prescribed by the Federal Government;
 - (ii) Coordinate with the GLO and provide all reports, data, documents, and other information in accordance with the terms and conditions of this Contract, all applicable state laws and regulations, and any specific directions prescribed by the GLO, the Texas Legislature; and
 - (iii) Provide to the GLO, no later than May 1, 2020, and thereafter, on the first day of May in the year immediately preceding the beginning of each subsequent Biennium, an estimate of additional appropriations or additional money that is needed to meet the District's non-federal sponsor obligations for the subsequent Biennium period.

(b) The GLO shall:

- (i) Reimburse or provide advance funding to the District for allowable Project costs identified in the Projected Funding Request in **Attachment A**, as amended, and in accordance with the provisions set forth in Article IV of this Contract;
- (ii) Include in the GLO's 2022-2023 Legislative Appropriation Request for the Biennium beginning on September 1, 2021, a request for funding for the amount of the non-federal sponsor funding obligations under the PPA identified by the District under Section 2.01(a)(iii) of this Contract; and
- (iii) Include in the GLO's 2024-2025 Legislative Appropriation Request for the Biennium beginning on September 1, 2023, and for each subsequent Biennium, the estimate of additional appropriations or additional money that is needed to meet the District's non-federal sponsor obligations for the subsequent Biennium period, as provided by the District under Section 2.01(a)(iii) of this Contract.

2.02 REPORTING REQUIREMENTS

The District shall submit written progress reports to the GLO as specified in **Attachment A**, as amended. If requested by the GLO, the District shall hold monthly meetings or conference calls to provide the GLO with updates on the Project. The GLO shall also have the right to participate in regular status meetings or conference calls with the U.S. Army Corps of Engineers and the District.

III. TERM

3.01 DURATION

This Contract shall be effective upon the date last signed and shall terminate upon completion of the final accounting by the Federal Government as defined in the PPA, and a determination by the Federal Government that the District has provided the non-federal sponsor obligations (plus any accrued interest) for the Project. The Parties may extend this Contract upon mutual, written agreement. The GLO is not obligated to reimburse or disburse any costs incurred prior to the effective date of this Contract or after termination or expiration of this Contract. Any costs incurred before this Contract's effective date or after its termination or expiration are at the District's sole risk.

3.02 EARLY TERMINATION

The GLO may terminate this Contract by giving written notice specifying a termination date at least thirty (30) days after the date of the notice. Such early termination shall be subject to the equitable settlement of any financial obligations of the parties, accrued up to the date of termination.

3.03 ABANDONMENT OR DEFAULT

If the District abandons work on the Project or defaults on this Contract, the GLO reserves the right to cancel the Contract with immediate effect.

IV. PROJECTED FUNDING REQUIREMENTS, REIMBURSEMENTS, AND EXPENDITURES

4.01 PROJECTED FUNDING REQUIREMENTS

The GLO will reimburse the District for allowable Project costs in accordance with the Projected Funding Requirements in **Attachment A**, as amended, up to a total amount not to exceed the non-federal sponsor obligations for the Project, plus any accrued interest, as defined in the PPA. Any changes to the Projected Funding Requirements may only be made through a formal, written amendment to the Contract.

4.02 REIMBURSEMENT REQUESTS

The District will submit reimbursement requests to the GLO on a periodic basis as specified in **Attachment A**, as amended. Reimbursement requests must:

- (a) prominently display the GLO contract number and be submitted on the forms and in the manner approved by the GLO;
- (b) specify the detailed and total expenses for each Projected Funding Requirement cost category set forth in the Projected Funding Requirement in **Attachment A**, as amended; and
- (c) include an itemized statement of costs with supporting documentation such as invoices, receipts, cancelled checks, statements, time sheets, and any other information that, in the judgment of the GLO, provides full substantiation of the costs incurred.

All costs must be allowable, allocable, reasonable, and otherwise consistent with the standards in UGMS, 2 C.F.R. Part 200 (notwithstanding the source of funding for this Contract), and all applicable federal and state laws and regulations.

4.03 ADVANCE FUNDING REQUESTS

The District will submit a projection of funds required to meet the non-federal sponsor obligations for the Fiscal Year, as projected by the Federal Government, to the GLO immediately following execution of the PPA, and in June of each subsequent year. The GLO may immediately disburse funds to the District to pay for the actual costs of acquisition of lands, easements, rights of way, and relocation of utilities/facilities identified in the annual projection of funds required. The GLO may disburse funds to the District to fund the non-federal sponsor obligations for design, construction, and construction management costs identified in the projection of funds required within 60 days prior to award of any construction contract. Advance funding requests must:

- (a) prominently display the GLO contract number and be submitted on the forms and in the manner approved by the GLO;
- (b) specify the detailed and total estimated expenses for each Projected Funding Requirement cost category set forth in the Projected Funding Requirement in **Attachment A**, as amended; and
- (c) provide any other information that, in the judgment of the GLO, is necessary to properly review the request.

Disbursement of advance funding will be allowed at the GLO's sole discretion and based on the GLO's determination that providing such funding is necessary for the Project and/or

in the best interest of the State. Following review of the request, the GLO will notify the District of its determination whether a disbursement of funds will be made and, if so, any additional terms and conditions that will apply to the disbursement.

For any advanced funds, the District must submit monthly reports documenting disbursements of funds to the Federal Government, obligations, and expenditures, as costs are incurred, that comply with Section 4.02 or 4.03 of this Contract. In addition, the District must submit with each report a written reconciliation stating the amount of advanced funds received, total Project costs incurred, total funds disbursed to Subcontractors and to the Federal Government under the PPA, and the balance of advanced funds as of the date of reconciliation. Any remaining balance at the end of the Fiscal Year must be returned to the GLO unless otherwise directed by the GLO.

V. STATE FUNDING

5.01 STATE FUNDING

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, the Parties agree all obligations of the GLO hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate this Contract. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Any claim by the District for damages under this Contract may not exceed the amount of funds due and owing the District or the amount appropriated for payment, but not yet paid to District, under the Projected Funding Requirement in **Attachment A**, as amended, in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.

5.02 RECAPTURE OF FUNDS

The discretionary right of the GLO to terminate for convenience notwithstanding, the GLO may terminate the Contract and recapture and be reimbursed for any payments the GLO makes that (i) exceed the maximum allowable rates; (ii) are not allowed under UGMS, 2 C.F.R. Part 200, or any other applicable state or federal laws, rules, or regulations; or (iii) are otherwise inconsistent with this Contract, including any unapproved expenditures.

5.03 OVERPAYMENT

The District shall be liable to the GLO for any costs disallowed pursuant to audit(s) of funds the District receives under this Contract. The District shall reimburse such disallowed costs from funds which were not provided or otherwise made available to the District under this Contract.

VI. HAZARDOUS SUBSTANCES

6.01 NOTICE OF DISCOVERY

Under the PPA, the District is responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675) ("CERCLA"), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. In the event that it is discovered that hazardous substances regulated under CERCLA exist in, on, or under property interests required for the Project, the District shall notify the GLO of such discovery within 15 calendar days.

6.02 CLEANUP AND RESPONSE COSTS

If hazardous substances are discovered in, on, or under property interests required for the Project, the District shall not proceed or authorize the Corps to proceed with the acquisition of such real property interests until the Parties agree to acquire such property and the GLO has provided written authorization for such acquisition. If the District acquired the real property interests prior to the discovery of the hazardous substances, the Parties shall consider whether the District or Federal Government should initiate construction, suspend construction, or terminate construction before taking any action. The Parties agree that no state funds will be paid by the District directly or provided to the Federal Government as payment for non-federal sponsor obligations for costs associated with hazardous substance cleanup and/or response unless and until the GLO provides prior written authorization.

VII. RECORDS

7.01 BOOKS AND RECORDS

The District shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records sufficient to allow the GLO, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives to determine the District's compliance with this Contract and all applicable laws, rules, and regulations.

7.02 INSPECTION AND AUDIT

- (a) All records related to this Contract, including records of the District and its Subcontractors, shall be subject to the Administrative and Audit Regulations.
- (b) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. Acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The District shall ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through the District and the requirement to cooperate is included in any subcontract it awards.

- (c) State agencies authorized to audit and inspect the District, its records, Subcontractors, and Subcontractors' records include the GLO, the GLO's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, the Texas Comptroller of Public Accounts, and their authorized designees.

7.03 PERIOD OF RETENTION

Each Party shall retain in its records this Contract and all documents related to this Contract. Unless a longer retention period is specified by applicable federal law or regulation, the Parties may destroy the Contract and related documents only after the seventh anniversary of the date: the Contract is completed or expires; or all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Contract or related documents are resolved.

7.04 CONFIDENTIALITY

To the extent permitted by law, the District and the GLO shall keep all information confidential, in whatever form produced, prepared, observed, or received by the District or the GLO to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by the District or the GLO; or (c) information that the District or the GLO is otherwise required to keep confidential by this Contract. District will not advertise that it is doing business with the GLO, use this Contract as a marketing or sales tool, or make any press releases concerning work under this Contract without the prior written consent of the GLO.

7.05 PROJECT DATA AND INTELLECTUAL PROPERTY

The GLO and the District shall jointly own, without limitation, all right, title, and interest in and to all data, reports, drawings, drafts, or any other information or materials, or any intellectual property, acquired or developed under this Contract with each Party having an unlimited right to access and use all such information and materials without the necessity of obtaining authorization from the other Party. In no event shall the GLO, the State of Texas, or the Federal Government be charged or required to pay for the use of any data, or other information or materials, or intellectual property acquired or developed under this Contract.

7.06 PUBLIC RECORDS

The GLO may post this Contract on its website. Information related to this Contract and its performance may be subject to the Public Information Act and will be withheld or disclosed in accordance therewith. The District shall make any information created or exchanged with the state pursuant to the Contract, and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the state/the GLO. The District shall make any information required under the Public Information Act available to the GLO in portable document file (".pdf") format or any other format agreed between the parties. By failing to mark as "confidential" or a "trade secret" any information District believes to be excepted from public disclosure, the District waives all claims it may make against the GLO for releasing such information without prior notice to District. The District shall notify the GLO's Office of General Counsel within twenty-four hours of District's receipt of any third party written requests for information and shall forward a copy of said written requests to PIALegal@glo.texas.gov.

VIII. MISCELLANEOUS PROVISIONS

8.01 INSURANCE

Pursuant to Chapter 2259 of the Texas Government Code entitled, "Self-Insurance by Governmental Units," the District is self-insured and, therefore, is not required to purchase insurance.

8.02 LIABILITY

As governmental entities and as required under the Constitution and laws of the State of Texas, each Party is liable for any personal injuries, property damage, or death resulting from its acts or omissions.

8.03 LEGAL OBLIGATIONS

The District shall procure and maintain for the duration of this Contract any license, authorization, insurance, waiver, permit, qualification, or certification required by federal, state, county, or city statute, ordinance, law, or regulation for the District to fulfill its obligations under this Contract. The District shall pay all taxes, assessments, fees, premiums, permits, and licenses required by law. The District shall pay any such government obligations not paid by its Subcontractors during performance of this Contract.

8.04 ASSIGNMENT AND SUBCONTRACTS

- (a) The District shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of the GLO. Notwithstanding this provision, it is mutually understood and agreed that the District may subcontract with others for some or all of the work to be performed. In no event may the District delegate or transfer its responsibilities regarding the use of funds provided under this Contract.
- (b) In any approved subcontracts, District shall legally bind its Subcontractor to perform and make the Subcontractor subject to all the duties, requirements, and obligations of the District specified in this Contract. Nothing in this Contract shall be construed to relieve District of the responsibility for ensuring that the work performed by the District and/or any of its Subcontractors comply with all the terms and provisions of this Contract. The District must submit a copy of each subcontract to the GLO within ten (10) business days after execution.

8.05 RELATIONSHIP OF THE PARTIES

The District is associated with the GLO only for the purposes and to the extent specified in this Contract. The District is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract creates a partnership or joint venture, employer-employee or principal-agent relationships, or any liability whatsoever with respect to the indebtedness, liabilities, or obligations of District or any other party. The District shall be solely responsible for, and the GLO shall have no obligation with respect to: withholding of income taxes, FICA, or any other taxes or fees; industrial or workers' compensation insurance coverage; participation in any group insurance plans available to employees of the State of Texas; participation or

contributions by the State to the State Employees Retirement System; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by the State.

8.06 GENERAL AFFIRMATIONS

To the extent that they are applicable, the District certifies that the General Affirmations in **Attachment B** have been reviewed, and that the District is in compliance with each of the requirements reflected therein.

8.07 COMPLIANCE WITH OTHER LAWS

In its performance of this Contract, the District shall comply with all applicable federal, state, county, and city laws, statutes, ordinances, and regulations. The District is deemed to know of and understand all applicable laws, statutes, ordinances, and regulations.

8.08 NOTICES

Notices required under this Contract shall be deemed delivered when deposited either in the United States mail, postage paid, certified, return receipt requested or with a common carrier, overnight, signature required, to the address indicated below:

GLO

Texas General Land Office
1700 N. Congress Avenue, Mail Code 158
Austin, TX 78701
Attention: Office of General Counsel

District

Jefferson County Drainage District No. 7
P.O. Box 3244
Port Arthur, TX 77642
Attention: General Manager

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

8.09 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. The District irrevocably waives any objection, including any objection to personal jurisdiction, the laying of venue, or based on forum non conveniens, it has or may have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any related document. **NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE DISTRICT, THE GLO OR THE STATE OF TEXAS.**

8.10 SEVERABILITY

If a court of competent jurisdiction determines any provision of this Contract is invalid, void, or unenforceable, the remaining terms, provisions, covenants, and conditions of this

Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

8.11 FORCE MAJEURE

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the GLO may terminate this Contract immediately upon written notification to the District.

8.12 ENTIRE CONTRACT AND MODIFICATION

This Contract and its Attachment(s) constitute the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in Attachments shall be harmonized with this Contract to the extent possible. Unless an Attachment specifically displays a mutual intent to amend a particular part of this Contract, conflicts in language shall be construed consistently with the terms of this Contract. This Contract and its Attachments may only be amended by a mutual, written agreement executed by authorized representatives of the Parties.

8.13 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

8.14 PROPER AUTHORITY

Each Party represents and warrants that the person executing this Contract on its behalf has the authority to enter into this Contract.

8.15 SURVIVAL OF TERMS AND CONDITIONS

The terms and conditions of this Contract related to the following subjects shall survive the termination or expiration of this Contract: Definitions, interpretive provisions, affirmations and certifications, prohibition on creation of debts, damages claims, recapture of funds and overpayment, record-keeping and record retention, inspection and audit, confidentiality, data and intellectual property, compliance with the Public Information Act, liability, assignment, independent contractor status, compliance with laws, notices, governing law and venue, sovereign immunity, severability, force majeure, merger and integration, amendment, execution authority, and survival of terms and conditions. Other terms and

conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Contract shall so survive.

SIGNATURE PAGE FOLLOWS

DRAFT

SIGNATURE PAGE FOR GLO CONTRACT No. ****

GENERAL LAND OFFICE

**JEFFERSON COUNTY DRAINAGE
DISTRICT No. 7**

Mark A. Havens, Chief Clerk/
Deputy Land Commissioner

Name: _____
Title: _____

Date of execution: _____

Date of execution: _____

OGC _____

DIV _____

DIR _____

DD _____

SDD _____

DGC _____

GC _____

ATTACHMENTS TO THIS CONTRACT:

ATTACHMENT A – BUDGET

ATTACHMENT B – GENERAL AFFIRMATIONS

ATTACHMENTS FOLLOW

RESOLUTION NO. 447
AUTHORIZING MANAGER AND DISTRICT COUNSEL TO NEGOTIATE FINAL
TERMS OF PROJECT PARTNERSHIP AGREEMENT WITH THE DEPARTMENT OF
THE ARMY SUBSTANTIALLY IN CONFORMANCE WITH DRAFT ATTACHED

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 Department of the Army ("Government") and Jefferson County Drainage District No. 7 ("District" or the "Non-Federal Sponsor") desire to enter into a Project Partnership Agreement to construct the Port Arthur and Vicinity separable element of the Authorized Project (hereinafter the "Project", as defined in Article I.A. of the proposed Agreement attached hereto);

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

WHEREAS, 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"), currently estimated at \$863,000,000.00, are available to undertake construction of the Project, and, to the extent that BBA 2018 funds are available and used for such purpose, the Non-Federal Sponsor is allowed, but not required, to finance its required non-Federal cash contributions in accordance with the provisions of Section 103(k) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(k)), with the interest rate for the amount financed determined in accordance with Section 106 of the Water Resources Development Act of 1986 (33 U.S.C. 2216);

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, 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 Non-Federal Sponsor has negotiated an agreement with the Texas General Land Office for funding the Non-Federal Sponsor portion of the Project;

WHEREAS, the Non-Federal Sponsor proposes to accelerate its provision of funds (hereinafter "accelerated funds") for the immediate use by the Government for 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, as amended (42 U.S.C.1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

WHEREAS, the Government and the District desire to enter into a contract substantially in conformance with the Project Partnership Agreement ("PPA") attached hereto as Exhibit A;

WHEREAS, the District has the authority to perform all non-federal sponsor obligations required by the PPA with the Government, including authority to provide all lands, easements, right-of-way, relocation areas, placement areas for borrow and dredged material, and any other real property interests required by the Government for the construction, operation, and maintenance of the Project, authority to perform or cause to be performed all relocations of utilities and facilities determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and authority to operate, maintain, repair, rehabilitate, and replace the Project, including any mitigation features, in accordance with the Project's federally authorized purposes;

WHEREAS, the District has sought and obtained authority from the Board to proceed with negotiations of the final terms of the Local Cooperation Agreement with the Texas General Land Office ("GLO") to provide state funds to the District to pay for certain Project costs incurred by the District in performance of its Non-Federal Sponsor obligations pursuant to the PPA, to the extent that such funds are made available to the GLO by the Texas Legislature; and

WHEREAS, the District wishes to give authority to its General Manager and counsel to proceed with finalizing the terms of the attached contract and present the final version to the Board for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7:

THAT it is in the best interest of the District to negotiate the final terms of the PPA in substantial conformance with the draft attached hereto as Exhibit A.

THAT the General Manager and counsel for the District are authorized to negotiate such terms on behalf of the District and present the District with the final version of the PPA for approval.

I, Billy Joe Butler, Secretary of the Board of Commissioners of Jefferson County Drainage District No. 7, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Commissioners of Jefferson County Drainage District No. 7, at their meeting No. 2308 held on the 1st day of October, 2019, upon motion made by Commissioner Gamble and seconded by Commissioner Butler and adopted unanimously by said Board, a quorum being present.

Given under my hand this 1st day of October, 2019.



Secretary
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7

DRAFT AS OF JULY 8, 2019
PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7
FOR
THE PORT ARTHUR AND VICINITY SEPARABLE ELEMENT
OF THE
SABINE PASS TO GALVESTON BAY, TEXAS
COASTAL STORM RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the **U.S Army Engineer, Galveston District and the Jefferson County Drainage District No. 7** (hereinafter the "Non-Federal Sponsor"), represented by its **Chairman** of the Board of Commissioners.

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 Port Arthur and Vicinity 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 (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, 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"), currently estimated at **\$863,000,000.00**, are available to undertake construction of the Project, and, to the extent that BBA 2018 funds are available and used for such purpose, the Non-Federal Sponsor is allowed, but not required, to finance its required non-Federal cash contributions in accordance with the provisions of Section 103(k) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(k)), with the interest rate for the amount financed determined in accordance with Section 106 of the Water Resources Development Act of 1986 (33 U.S.C. 2216);

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, 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 Non-Federal Sponsor has executed an agreement with the Texas General Land Office that...

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, 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 Port Arthur and Vicinity CSRM Plan would raise approximately 5.5 miles of the existing 27.8 miles of earthen levee to elevations ranging from 14.4 to 17.2 feet North American Vertical Datum (NAVD 88), and construct or reconstruct approximately 5.7 miles of floodwall to elevations ranging from about 14.4 to 19.4 feet NAVD 88. A separate 1,830 feet of new earthen levee would be constructed in the Port Neches area northwest of the existing northern terminus. Additionally, 26 vehicle closure structures would be replaced and erosion protections would be added, as generally described in the Final Feasibility Report for Sabine to Galveston Bay, Texas Coastal Storm Risk Management and Ecosystem Restoration dated May 2017, and approved by the Chief of Engineers, on December 7, 2017.**

B. 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 of engineering, design, and construction; 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, if any; 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; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; any non-compensable costs for removal and relocation of utilities; audits; betterments; or additional work; or the Non-Federal Sponsor's cost of negotiating this Agreement.

C. 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.

D. 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 in

accordance with 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.

E. 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 de-watering pumps and pipes.

F. 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.

G. 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 investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

H. 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.

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

J. 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 undertake design and 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 costs of any cleanup and response related thereto.

2. In providing in-kind contributions, if any, 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 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. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such funds to the Government by delivering a check payable to "FAO, USAED, Galveston (M3)" to the District Commander, 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 providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

a. 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. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government using one of the methods specified in paragraph B.3., above.

b. 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. 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 using one of the methods specified in paragraph B.3., above.

4. In lieu of providing the funds required from the Non-Federal Sponsor as specified in paragraphs B.3., B.3.a. and B.3.b. of this Article, the Non-Federal Sponsor may finance all or part of the required non-Federal funds. In such case, the Government shall charge interest on the non-Federal share of each monthly expenditure of funds by the Government. Interest shall be compounded annually on the anniversary of each monthly amount that is financed until the date construction of the Project is completed or terminated, as applicable. If such anniversary is less than twelve months, the Government will prorate the interest charges.

a. If the Non-Federal Sponsor finances any part of its required non-Federal funds, the Government, within 30 calendar days after completion of the final accounting pursuant to Article VI.C., shall notify the Non-Federal Sponsor in writing of the principal amount, which includes that portion of the non-Federal funds that have been financed plus interest during construction, and the initial annual installments of the principal amount amortized over a period of 30-years using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The required payment period begins on the date the Government notifies the Non-Federal Sponsor of the principal amount and the initial annual installments.

b. The Government shall recalculate the annual installments at five-year intervals by amortizing the outstanding portion of the principal amount over the remaining portion of the payment period using an interest rate determined in accordance with Section 106 of the Water Resources Development Act of 1986. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments. The last installment shall be adjusted upward or downward to assure payment of all the indebtedness.

c. The Non-Federal Sponsor shall pay the first installment no later than 30 calendar days after the date of the Government's notification pursuant to paragraph B.4.a., above, 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.

d. The Non-Federal Sponsor, in its sole discretion, may prepay the principal amount, in whole or in part, at any time without penalty.

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 solicitations for contracts, 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. 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 (NHPA) of 1966, as amended. 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, within 30 calendar days of such determination, the District Commander shall so notify the Non-Federal Sponsor in writing 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. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions prescribed by the Government 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 operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement 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 enter into an Interlocal Agreement with each city and Jefferson County responsible for Federal floodplain management and flood insurance programs pursuant to which Jefferson County and the cities will:

1. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and implement such plan not later than one year after completion of construction of the Project. 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.

2. Publicize floodplain information in the area concerned and provide 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.

H. 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.

I. 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.

J. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, 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.

K. 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.D., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

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 needed 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. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of 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 necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements and shall 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 necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall 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 to the Non-Federal Sponsor 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.D., 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 providing 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 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 Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code 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 Section 4625(c)(3) of Title 42 of the U.S. Code; (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 Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Commander provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, within 15 calendar days of such discovery, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide written notice to each other, and 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.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of 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 solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. In the event of a 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 defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

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, only costs incurred by the Non-Federal Sponsor to acquire real property interests from private owners, to construct placement area improvements, to perform relocations, and to provide in-kind contributions are eligible for credit.

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 interest 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. Such costs shall be 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, unless such real property interests acquired from private owners were required for in-kind contributions covered by an in-kind Memorandum of Understanding (hereinafter "In-Kind MOU"). The Non-Federal Sponsor shall obtain, for each creditable real property interest, 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. For any real property interests acquired from private owners that are required for in-kind contributions covered by an In-Kind MOU, the date of initiation of construction shall be used to determine the fair market value. 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 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 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, unless such incidental costs were required for in-kind contributions covered by an In-Kind MOU. 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, unless such placement area improvements were required for in-kind contributions covered by an In-Kind MOU. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the

improvements, 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. Credit shall be afforded for value of the relocation if the Non-Federal Sponsor is responsible for the relocation under applicable principles of just compensation. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind contributions covered by an In-Kind MOU.

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 by 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 include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. 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. Such costs shall include, but not necessarily be limited to, actual costs of providing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, 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 interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement

unless covered by an In-Kind MOU between the Government and Non-Federal Sponsors or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

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 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 \$863,000,000, with the Government's share of such costs projected to be \$560,950,000 and the Non-Federal Sponsor's share of such costs projected to be \$302,050,000, which includes creditable real property interests, relocations, and placement area improvements projected to be \$51,150,000, creditable in-kind contributions projected to be \$0, and the amount of funds required to meet its cost share projected to be \$250,900,000. Costs for betterments 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. 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 in accordance with Article II.B.4. 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 exceeds 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 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 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. 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 of 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.

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 hazardous substances regulated under CERCLA are 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

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:

**Jefferson County Drainage District No. 7
P.O. Box 3244
Port Arthur, Texas 77642**

If to the Government:

**District Commander
Galveston District
2000 Fort Point Road
Galveston, Texas 77550
ATTN: District Engineer**

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 **Legislature of the State of Texas**, where creating such an obligation would be inconsistent with **Article III, Section 49 or Article VIII, Section 6 of the Texas Constitution**. 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

**JEFFERSON COUNTY DRAINAGE
DISTRICT NO. 7**

BY: _____

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

BY: _____

RICHARD BEAUMONT
Chairman
Board of Commissioners

DATE: _____

DATE: _____