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**MINUTES OF MEETING NO. 2309
COMMISSIONERS OF JEFFERSON COUNTY
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7**

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

Date: October 15, 2019

Present: Commissioners
Richard Beaumont
Lester Champagne
Billy Joe Butler
James Gamble, Sr.

Ronnie Hollier, Supervisor
Pete Steele, Attorney

Absent: Albert Moses, Jr.

Visitors: Brian McZeal-DD7
Dean Depew-DD7
Allen Sims, LJA Engineering
Garrett Boudoin, LJA Engineering
Ray Russo, Consultant
Dan Delich, Dan Delich Consulting
Don Howell, Hunton Andrews Kurth
Mike Cabaniss, Groves
Earl Richard, Nederland
Ginny Parker, Nederland
Jim Jacobs, Nederland
Alton Chapman, Beaumont
Daniel Tran, Beaumont
Gracie Tran, Beaumont
Jody Martin, Beaumont
Israel Torres, Beaumont

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 Gamble gave the invocation.

Minutes of Meeting No. 2308

The Minutes of Meeting No. 2308 were approved as read.

Manager's Miscellaneous Reports/Financials

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

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 continued its routine cutting of Levees and Ditches throughout the District.

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.
- Completed cleaning all Pump Stations with vacuum truck.
- 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

- 8916
Put 3 engines online and pump down canal.
Check station from weekend.
- 8916
Put 2 engines online and pump down canal.
Clean up around the station.
- 8916
Put one engine online and pump down canal.
Refill grease trabons.
Refill diesel vacuum pump.
Work around station.
- 8916
Put 3 engines online and pump down canal.
Kody Read and Bryant James here to train start up.
Receive Fuel
Engine #1- 1000 Gal.
Work around station.
- 8916
Put one engine online and pump down canal.
Kody Read and Bryant James here to train.
Clean around station.
Take out station trash.
Make the station ready for long weekend.
- 8916
Put engine online and pump down canal.
Bryant James and Kody Read here for training.
Work around station.
- 8916
Replacing Chain and Motor base stands on unit #1 trash rakes.
Aligned sprockets for unit #1 rake system, greased chain.
Ran rakes, inspected, all ok.
Cleaned and picked up around station.
Brought cherry picker to Halbouty.
- 8916
Washed trucks.
Mopped and cleaned around station.
Picked up shop.
Checked oils in all 4 engines.
Make station ready for weekend.
Catch up on google drive.
Prep trash rake motor #2 for base replacement.

- Picker delivered to station.
Clean around station.
Gather tools for #2 rake motor base replacement.
8916
- Put engine online and pump down canal.
Replace electric motor base on trash rake #2.
Repair damaged link on rake #2 chain.
8916
- Finish up motorbase replacement on rake #2.
Electricians hooked power up to rake #2, ran rake, all ok.
Check oil in all 4 engines, all ok.
Take out station trash.
8916
- Restock Station
Get forms made to grout around trash rake motor bases.
8916
- Put 2 engines online and pump down canal.
8916
- Put 2 engines online and pump down canal.
Cont. cleaning around station.
8916
- Oil Delivered to station.
8916
- Put 2 engine online and pump down canal.
Receive Fuel.
Clean up trash rake area.
8916
- Put engine online and pump down canal.
Wash Trucks.
Sweep and Mop Office.
Make station ready for weekend.
Refill C&D Oil Bearing Tanks.
Pour Grout around Trash Rake Motor Base #1.
8916
- Replace Trash rake motor base on rake #3.
Electricians gathering supplies to rebuild electrical box around engine #3.
8916
- Put engine online and pump down canal.
Electricians rebuild power box and connected power to rake #3.
8916
- Clean trash rake area.
Look at bearing on Pump #4 @ 8917.

- 8916
Put engine online and pump down canal.
Bryan @ 8917 looking at Pump #4 bearing.
Wash Trucks.
Make station ready for weekend.
- 8916
Bryan and Nate work at 8917 on #4 Pump.
Change oil pads on Engines #1 -#4.

Construction Notes - Alligator Bayou Pump Station Annex
September 23, 2019 through October 4, 2019

Monday, September 23:

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

The 165-ton crane was reported to still be out of service. A mechanic with Bado Equipment is on site working on the crane.

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

Allco's crew is working on removing old caulk from the office's windows and removing outside concrete texture to reseal the caulk outside of the office's windows that leaked during rain from Tropical Storm Imelda. Allco's crew is also working on building wall forms for fuel tank house.

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

Tuesday, September 24:

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

The 165-ton crane was reported to still be out of service. Mechanics with Bado Equipment are on site working on the crane, pulling out the small and big swing brake drums.

Dr. Daniali and Scott Snyder inspected the roof and found several places where water was under the roofing. Scott informed Mike Nunez of their findings after the roof inspection and showed him the locations.

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

Allco's crew is working on caulking around door frames and cleaning up around the station. The crew is also working on building wall forms for the fuel tank house.

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

Wednesday, September 25:

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

The 165-ton crane was reported to still be out of service. Mechanics with Bado Equipment loaded up the big swing brake drum in order to transport the drum to Houston where it will be rebuilt. Bado Equipment did not take the small swing brake drum even though Allco (Terrell) informed Bado that the small swing brake was also not functioning properly.

It was reported that a roof leak had been found in the station. The leak in the roof was dripping onto the main floor in front of unit # 6. Scott Snyder informed Mike Nunez of the leak and Mike proceeded to call the company that installed the roof.

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

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

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

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

Thursday, September 26:

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

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

Allco's crew is working on building the upper wall forms and removing the lower wall forms on the fuel tank house. The crew is also caulking around the outside of the air vent windows on the intake side of station.

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

Chapman is on site (2) working on the coolant pipes.

Friday, September 27:

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

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

Allco's crew is working on the upper wall forms and removing the lower wall forms on the fuel tank house. They started to patch the wall tie hole on the lower wall of the fuel tank house.

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

Chapman is on site (2) working on the coolant pipes.

A meeting was held at the construction office where Phil Kelley, Allen Sims, Dr. Daniali, J. Kyler, Scott Snyder, Billy Patterson, Mike Nunez, and Shane discussed the amount of exhaust fans that are needed for the fuel house and where to install the fresh air vent. How long the 165-ton crane is going to be out of service was also discussed so that a path forward could be determined to start back on trying to pull sheet pile.

Monday, September 30:

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

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

Allco's crew is working on the upper wall forms for the fuel tank house. The crew is blocking out for only one fan in the fuel house. To make room for the fan, the crew is removing a 2-foot by 3-foot section on the top of the middle wall's North side.

Electrical Specialties is on site (5) working on wire. The crew began to set open and close limits on the butterfly valves.

Reye's is on site (4) installing rebar for the North intake's walkway.

Weisinger did not show up on site today.

Tuesday, October 1:

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

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

Allco's crew is removing the old silt fence from the bottom of the levee where clay has been stocked piled so that the levee mowers will be able to start cutting the area again. Allco's crew is also working on the upper wall forms for the fuel tank house and adding rebar to the portion of the wall where the 36 inch block out is for the fan to be installed. The crew began working on cutting the top of stop log guides off to the correct height.

Electrical Specialties is on site (5) working on digging a conduit trench from the station to fuel tank house.

Chapman is on site (2) working on the coolant pipes.

Weisinger did not show up on site today.

Wednesday, October 2:

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

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

Allco's crew is working on the upper wall forms for the fuel tank house. The crew is continuing to work on removing the silt fence from the bottom of levee, just East of the job site.

Electrical Specialties is on site (5) working on installing conduit in the trench from the station to fuel tank house.

Chapman is on site (5) installing pipe brackets on the basement level fuel lines.

Weisinger did not show up on site today.

Thursday, October 3:

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

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

Allco's crew is working on the upper wall forms and bracing the forms for the fuel tank house.

Electrical Specialties is on site (4) working on running conduit to the fuel house and the intake bay for instrumentation.

Chapman is on site (3) working on the basement level fuel lines.

Friday, October 4:

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

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

Allco's crew is working on completing the bracing for the fuel tank house's wall forms. The crew is cleaning up around the fuel house to clear an area for a concrete pump truck and concrete trucks to pour the walls Monday morning. The crew is continuing to work on cutting the top of stop log guides off to the correct height on the North intake's walkway.

Electrical Specialties is on site (5) working on running grounding cable in the trench from the station to the fuel house.

Chapman is on site (3) working on the basement level fuel lines.

Mr. Brian McZeal stated the Construction Crew is making repairs as usual throughout the District. The Ditch Maintenance Crew is finally slowing down and will be making one more full round on mowing throughout the District before finishing up for the winter.

Mr. Ronnie Hollier reported the herbicide crew is continuing to spray ditches and getting caught up. There is one levee repair currently in progress and it is moving along well with the weather cooperating.

Mr. Ronnie Hollier presented the financial statements prepared by FMW, P.C. for the period ended September 30, 2019, and gave a collateral securities report as of September 30, 2019.

Checks & Purchase Orders
Maintenance Fund

Ck. No. 15520 – Brady Girouard

\$1,000.00 – Advance on Expenses to Attend TWCA Fall Conference,
October 16-18, 2019 at the Wyndham San Antonio Riverwalk Hotel

Ck. No. 15521 – James Gamble, Sr.

\$1,000.00 – Advance on Expenses to Attend TWCA Fall Conference,
October 16-18, 2019 at the Wyndham San Antonio Riverwalk Hotel

Ck. No. 15522 – Lester Champagne

\$1,000.00 – Advance on Expenses to Attend TWCA Fall Conference,
October 16-18, 2019 at the Wyndham San Antonio Riverwalk Hotel

Ck. No. 15523 – Medcom

\$1,375.00 – 2019 Annual ACA Employer Reporting

Ck. No. 15524 – Port Arthur News

\$261.90 – Diesel Engine Replacement Program

Ck. No. 15525 – Richard Beaumont

\$1,000.00 – Advance on Expenses to Attend TWCA Fall Conference,
October 16-18, 2019 at the Wyndham San Antonio Riverwalk Hotel

Ck. No. 15526 – Ron Lewis & Associates

\$3,500.00 – Legislative Consulting

Ck. No. 15527 – Ronnie Hollier

\$1,200.00 - \$1,000.00 – Advance on Expenses to Attend TWCA Fall Conference,
October 16-18, 2019 at the Wyndham San Antonio Riverwalk Hotel

Ck. No. 15528 – Richard Beaumont

\$195.58 – Health Insurance Payment

Ck. No. 15529 – Groves Equipment Rental Co., Inc.

\$2,700.00 - Rental 15-Ton Crane, 9/17-10/16/19

Ck. No. 15530 – Nerbert Freelow
\$480.00 – Rental of Dump Truck 9/30/19

Ck. No. 15531 – Ritter Forest Products Nederland
\$488.00 – Rental of 12 – 8 X 14 Mats

Ck. No. 15532 – Sunbelt Rentals
\$1,904.36 – Rental of Trench Roller, 9/3-9/13/19

Ck. No. 15533 – Waukesha-Pearce Industries, Inc.
\$9,720.00 – Rental Komatsu Dozer, 9/17-10/15/19 and
Rental Soil Compactor, 9/17 – 10/15/19

Ck. No. 15571 - Duck's Dragline Service, Inc.
\$12,850.00 – Rental of LS250X4 Trackhoe 9/30-10/4/19, Rental of
LS240X2 Trackhoe 10/4-10/10/19, Rental of LS240X2 9/30 – 10/2/19,
Rental of Cutter Head 10/7-10/10/19 and Rental of SS145 10/7-10/10/19

Ck. No. 15572 - Filmr, LLC
\$336.00 – Shooting and Editing Film and Social Media Posts

Ck. No. 15573 - GP Evans Contractors
\$15,788.00 – Levee Mowing

Ck. No. 15574 – LJA Engineering
\$148,727.59 – Engineering Fees, Stormwater Management Plan, Rodair
Gully Improvements, Dues and Subscriptions, Alligator Bayou Upgrade,
Update Data Operations Systems Control Center and Sabine Pass to
Galveston Bay Project

Ck. No. 15575 – Ronnie Hollier
\$597.74 – Travel Reimbursement

Ck. No. 15576 - Southeast TX Regional Planning Co.
\$150.00 – 2020 Membership Dues

Ck. No. 15577 - KT Trucking & Cattle Co.
\$2,355.00 –Transport Truck Rental

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

Permits

Entergy Overhead Electric Distribution Line Crossing Rodair Gully Lateral 6A - Mr. Garrett Boudoin recommended approval with no permit fee or bond required. Commissioner Butler moved to approve Mr. Boudoin's recommendation. Commissioner Butler seconded the motion. The motion carried

Chairman Beaumont recognized visitors in attendance and asked if anyone would like to address the Board. Mr. Earl Richard of Stillwater Estates stated that he appreciated the tour that Ronnie Hollier and Garrett Boudoin took him on yesterday wherein Mr. Richard concluded there is a bottleneck situation on Rodair Gully. He further stated somehow the District must make some changes and that Stillwater Estates is merely a retention pond. Mr. Jody Martin, also of Stillwater Estates, stated he agrees with what Mr. Richard said and there seems like a lot of watershed is hitting concrete ditches and as it goes across Highway 69 to the South, it just bottlenecks and does not drain. Mr. Martin does not know the answer, but the residents are hurting and are looking to the District for some answers. Ronnie Hollier stated as of yesterday, the District has requested Soutex Surveying to do a Bathymetric Survey of Rodair Gully between West Port Arthur Road and Highway 365. In addition, a Study has been started of the entire Rodair Gully System, and Mr. Allen Sims of LJA Engineering stated he has ordered the Lidar information, which is surveying of the surface, and this should take 2-3 weeks to come in. The Bathymetric Survey, which is everything below the water level, is currently being done. Upon completion of the survey and receipt of the Lidar information, the two will be merged, and the District will have a true survey to work

with. Once the District has this survey, Mr. Sims will input the data into a software program and do an analysis to show what needs to be done as far as changing culverts, enlarging the crossings or ditches and/or construction of a pump station or levee. It should take approximately six (6) weeks to get all the survey data put together, and about three (3) months for the analysis of all information. The timeline for getting work started cannot be projected because it depends on what type of work needs to be done. Culvert replacement could be done quickly, but large ditch improvements could take quite a bit of time. If a pump station needs to be constructed, this could take years. The biggest problem Mr. Sims sees is there are environmentally sensitive areas along West Port Arthur Road, and he has not seen a permit get approved by the Corps of Engineers in less than a year in the last fifteen (15) years. Residents in attendance voiced there has not been two (2) major flooding rain events like we have had in the last fifteen (15) years and they feel everyone should be pushing to get things done quicker. Residents also asked if it would help if they contacted the Corps of Engineers. Mr. Sims stated that when and if permits are requested from the Corps of Engineers, then citizens could contact the Corps. Another issue will be how much the improvements that need to be done will cost. If it is major improvements, it could take some time to get the funding together to do the work. Ms. Ginny Parker asked if the survey will be made public, and Mr. Sims stated the survey will be public and can be viewed at the District's offices. Mr. Sims stated the study done in 1999 can also be viewed, and Mr. Jody Martin asked if that study showed there was a flow issue. Mr. Sims stated the 1999 Study looked at 25-year flooding events (6-8-inch rain), and the biggest problem area

was from Highway 69 to West Port Arthur Road being way too small. The widening and concrete lining improvements were broken into five (5) sections, and the last section is currently underway. The original start date on the contract for this last phase was in August 2019. Mr. Sims stated these improvements should have helped Stillwater Estates. One resident asked if there were any coffer dams put up during Harvey and Imelda on the construction sites, and Mr. Sims stated the contractor was required to remove them ahead of the storm and the coffer dams were removed. Mr. Sims has had recent conversations with the contractor about trouble re-establishing his coffer dams because the flow is still up coming through the system. There is always a flow in Rodair Gully, but there appears to be a little more than usual, and they are trying to find out where it is coming from, although it could just be ground water. Mr. Tran stated something has changed because they now see stagnant water and before the ditch flowed. Mr. Sims stated part of the problem could be that the flow line has been lowered in the construction making the downstream ditches wider and deeper and with that you will have tidal influence coming back upstream. Mr. Sims stated he would have to go look at the area Mr. Tran is talking about to be sure and the culverts at Highway 69 need to be checked to see if there is any siltation to cause it to hold water.

Mr. Tran stated the residents do not understand why they are flooding when they are upstream before areas downstream. After lengthy discussions, Mr. Sims told the residents he wants to talk with each of them to get as much information as he can. His analysis will only be as good as the information that is put in and he needs the information for the models to be accurate. He asked the residents to leave their phone

numbers and stated Garrett Boudoin would be contacting them to get facts about the problems they see and levels of flooding.

Mr. Ronnie Hollier stated that during Harvey most of the rain was from Nederland Avenue South, but during Imelda most of the rain was Winnie, Fannett and Beaumont. Stillwater Estates is the southern end of Beaumont. Hillebrandt Bayou drains approximately 50% of Beaumont and Taylor's Bayou drains a lot of the Fannett area. With Rodair Gully being gravity flow, this is what was slowing down the flow of Rodair Gully and Johns Gully because of the water being so high in Hillebrandt and Taylor's Bayou. The levee gate had to be closed because of the high-water level on the levee so that was like storm surge. As water is flowing by gravity, the tide affects it and any other water coming into it will also affect it. All water inside the levee is pumped out and it does not matter the elevation on the other side of the levee, but when you have gravity flow, it will affect the drainage.

Mr. Allen Sims explained the Study will be using the way the current ditches are today and will be looking at a 100-year storm using Atlas 14, which contains the current rainfall analysis of our area. The information for a 25-year and 100-year storm event are now different from what they were a year ago, and the current numbers in Atlas 14 for a 100-year storm in 24 hours are now 18 inches and for a 25-year storm are now up around 12 inches. A study will be done of the entire District, but the study will start with Rodair Gully because of the residents' current conditions.

Mr. Sims also advised residents that the District has been working with the Corps of Engineers for almost two years, which the District hopes to get funded this

year, on getting a grant for a \$4 million study across the entire District taking everything up to a 100-year storm, and receiving \$350 million after that to make the improvements.

Discussions continued regarding being pro-active and designing the type of ditch that would be required if a Pump Station is needed, the amount of money it would take to build a pump station, the time for obtaining permits from the Corps of Engineers, the building of a new levee and new pump station not being a modification of an existing facility, but an addition to an existing facility, and it taking approximately three (3) years to get approval from the Corps. Mr. Sims stated that after Katrina, the Corps will not take on any other responsibility, and, therefore modifying an existing facility is extremely difficult. Commissioner Champagne stated once the study is complete, other alternatives to solve the problems may surface. Land purchase for detention ponds was discussed and certain areas the District is already looking into. There is a lot of that goes into selecting a location and size for a detention pond. It was also discussed whether the 23 acres of lake located within the Stillwater Estates could be used as a detention pond, and the answer was yes, but it would have to be determined what detention is needed versus what is available. It would have to be kept pumped down with a pump and this may cause problems between the residents in the subdivision. It may be that the idea would need to be brought to the homeowner's association for a vote. Mr. Sims also informed the residents that the District will study the main channels and will not be studying the storm sewers, and if the storm sewers are too small, then that is not something the District can address. Mr. Ronnie Hollier stated the District

would be glad to meet one on one with the residents and answer any questions they have.

Ms. Ginny Parker asked if the District is still looking at other ways to help the Forest Central Addition. Brian McZeal stated the District had gone out and regraded a ditch, and there is still the option to cement line the ditch. He and Allen Sims are looking at another issue that may relieve some pressure off the Forest Central Addition that can be done inhouse by the District and this may give some immediate impact. Mr. McZeal stated once the study is completed, the District will do something about it. It will take time because there are procedures that must be followed.

Mr. Ronnie Hollier also told the residents that he has attended a lot of post Harvey, post Ike Conferences and what is being said is for storms like Imelda and Harvey, we cannot prevent events like those, and we just have to try to mitigate the damages as much as possible. It is not just our area either, it is everywhere. There is a limit that every system can handle.

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 2:58 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 3:11 p.m., the meeting returned to regular session.

Consider and Take Action, if Any, on Items Discussed in Executive Session

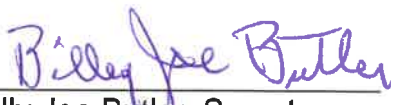
Consider Resolution Authorizing Execution, Delivery and Performance of the Local Cooperation Agreement with Texas General Land Office


Resolution No. 448 authorizing Execution, Delivery and Performance of the Local Cooperation Agreement with the Texas General Land Office was presented to the board for consideration. Commissioner Champagne moved to approved Resolution No. 448. Commissioner Butler seconded the motion. The motion carried. Resolution No. 448 is attached to and made a part of these minutes.

Consider Resolution Authorizing Execution, Delivery and Performance of Project Partnership Agreement with the Department of the Army

Resolution No. 449 authorizing Execution, Delivery and Performance of the Project Partnership Agreement with the Department of the Army was presented to the board for consideration. Commissioner Gamble moved to approved Resolution No. 449. Commissioner Butler seconded the motion. The motion carried. Resolution No. 449 is attached to and made a part of these minutes.

At 3:14 p.m., Commissioner Gamble moved that the meeting be adjourned.
Commissioner Champagne seconded the motion. The motion carried.


Billy Joe Butler, Secretary


Richard Beaumont, Chairman

RESOLUTION NO. 448
AUTHORIZING EXECUTION, DELIVERY AND PERFORMANCE OF
THE LOCAL COOPERATION AGREEMENT
WITH THE TEXAS GENERAL LAND OFFICE

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, as provided under Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018, federal appropriations 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 meet the non-federal cost requirements during construction of 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 of expenditures and future funding requirements;

WHEREAS, the GLO and the District desire to enter into the Local Cooperation Agreement ("LCA") attached hereto as Exhibit A to facilitate the funding of the non-federal obligations required for construction of the Project under the PPA, 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, without limitation, 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 construction 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 Chairman to execute and deliver the attached contract and to authorize the District to perform its obligations under the LCA.

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 enter into the LCA attached hereto as Exhibit A.

THAT the Chairman of the Board of Commissioners for the District is authorized to execute and deliver the LCA on behalf of the District, and the District is authorized to perform its obligations under the LCA.

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. 2309 held on the 15th day of October, 2019, upon motion made

by Commissioner Champagne and seconded by Commissioner
Butler and adopted unanimously by said Board, a quorum being present.

Given under my hand this 15th day of October, 2019.



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
GLO CONTRACT NO. 20-127-000-C102**

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 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 Chapter 321 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) Perform 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 and/or the Federal Government 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 provided 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, 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

SIGNATURE PAGE FOR GLO CONTRACT No. 20-127-000-C102

GENERAL LAND OFFICE

**JEFFERSON COUNTY DRAINAGE
DISTRICT No. 7**

Mark A. Havens, Chief Clerk/
Deputy Land Commissioner

Richard Beaumont, Chairman
Board of Commissioners

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

Projected Funding Request

This Attachment is a preliminary estimate of the budget for the Project at the time of execution of the Contract. The Parties acknowledge that this budget estimate will change as the Project is further developed and progresses, which will necessitate amending this Attachment.

The GLO will reimburse or provide advance funding for the Port Arthur and Vicinity Separable Element of the Sabine Pass to Galveston Bay, Texas Coastal Risk Management Project in accordance with the following schedule for each Cost Category. Total reimbursements or advance funding shall not exceed \$148,072,000 during the period of September 1, 2019 to August 31, 2021, and prior to actual distribution the funds included in this budget shall remain available for allocation to the Orange County and/or Freeport and Vicinity Separable Elements.

Cost Categories

01 – Lands, Easements, Rights of Way; and Relocations

LERRD Estimate thru FY21
Port Arthur \$10M

- Funds will be distributed directly to the Jefferson County Drainage District No. 7 (the “District”) for acquisition of lands, easements and rights of way, subject to receipt of an Appraisal of Fair Market Value consistent with the current Uniform Standards of Professional Appraisal Practice or a cost estimate agreed to in writing by the Facility/Utility Owner and approved by the GLO.

02 – Construction and Construction Management

	FY20 Q1 *	FY20 Q2	FY20 Q3	FY20 Q4	TOTAL NON-FED (35%)
Port Arthur	\$1,744,750	\$3,395,000	\$995,750	\$1,002,750	\$7,138,250

	FY21 Q1 *	FY21 Q2	FY21 Q3	FY21 Q4	TOTAL NON-FED (35%)
Port Arthur	\$1,002,750	\$7,001,750	\$882,000	\$122,046,750	\$130,933,250

* Note: Quarters are based on Federal Government calendar.

- Subject to a request by the District, funds will be distributed directly to the U.S. Army Corps of Engineers, Galveston District 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.
- Funds will be distributed quarterly to cover the Non-Federal Share of Engineering and Design costs.
- Funds will be distributed 60 days prior to construction contract award to cover the Non-Federal Share of Construction and Construction Management Costs.
- Contracts scheduled to be awarded during 2020 to 2021 include:

- FY20 Q2 – Contract #1 Levee Raise
- FY21 Q2 – Contract #2 Floodwall
- FY21 Q4 – Contract #3 Floodwall and Levee Raise
- FY21 Q4 – Contract #3A Floodwall and Levee Raise
- FY21 Q4 – Contract #3B Floodwall and Levee Raise

General Affirmations

To the extent they apply, the District affirms and agrees to the following, without exception:

1. The District represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither the District nor the firm, corporation, partnership, or institution represented by the District, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as the District.
2. If the Contract is for services, the District shall comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
3. Under Section 231.006 of the Family Code, the vendor or applicant [the District] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
4. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the bidder/applicant or each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. The District certifies it has submitted this information to the GLO.
5. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), the District certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code, related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in Title 30 Texas Administrative Code Chapter 328.
6. Pursuant to Section 2155.003 of the Texas Government Code, the District represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Payments due under the Contract shall be directly applied towards eliminating any debt or delinquency the District owes to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
8. Upon request of the GLO, the District shall provide copies of its most recent business continuity and disaster recovery plans.
9. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, the District certifies that it does not employ an individual who has

been employed by the GLO or another agency at any time during the two years preceding the District's submission of its offer to provide consulting services to the GLO or, in the alternative, the District, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

10. If the Contract is not for architecture, engineering, or construction services, the District must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract.
11. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. The District understands that all obligations of the GLO under this Contract are subject to the availability of state funds. If such funds are not appropriated or become unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49(a), of the Texas Constitution.
12. The District certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
13. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, the District certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.
14. The District represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
15. Pursuant to Section 2155.004(a) of the Texas Government Code, the District certifies that neither the District nor any person or entity represented by the District has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004, Government Code, the District certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit the District from providing free technical assistance.
16. The District represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

17. If the Contract is for professional or consulting services governed by Texas Government Code Chapter 2254, the District represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the Contract.
18. The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute that directly names or otherwise identifies its applicability to the GLO.
19. The District represents and warrants that it has disclosed in writing to the GLO all existing or potential conflicts of interest related to the performance of the Contract.
20. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, that occurred after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, the District certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
21. The District understands that the GLO will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material related to this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, the District shall make any information created or exchanged with the State/GLO pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State or the GLO.
22. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of the District and legally empowered to contractually bind the District to the terms and conditions of the Contract and related documents.
23. The District certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
24. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, the District certifies its compliance

with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

25. Pursuant to Section 572.069 of the Texas Government Code, the District certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving the District within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
26. Under Section 2155.0061, Government Code, the vendor [the District] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
27. All records related to the Contract, including records of the District and its Subcontractors, are subject to the Administrative and Audit Regulations.
28. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. The District shall report any possible fraud, waste, or abuse that occurs in connection with the Contract to the GLO in the manner prescribed by the GLO's website.

RESOLUTION NO. 449
AUTHORIZING EXECUTION, DELIVERY AND PERFORMANCE OF PROJECT
PARTNERSHIP AGREEMENT WITH THE DEPARTMENT OF THE ARMY

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 obligations of the District to pay certain cost requirements during construction of the Project and to perform obligations of operation and maintenance of the Project and the authority to operate, maintain, repair, rehabilitate, and replace the Project, including any mitigation features, in accordance with the Project's federally authorized purposes;

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 relating to state funding of certain Non-Federal Sponsor obligations during construction of the Project;

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 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 without limitation 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 authorized execution 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 during construction 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 enter into the PPA and to give authority to its Chairman to execute and deliver the PPA on behalf of the District, and to authorize the District to perform its obligations pursuant to the PPA.

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 enter into the PPA attached hereto as Exhibit A.

THAT the Chairman is authorized to execute and deliver the PPA on behalf of the District, and the District is authorized to perform its obligations under the PPA.

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. 2309 held on the 15th 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 15th day of October, 2019.

A handwritten signature in cursive script that reads "Billy Joe Butler". The signature is written in dark ink and is positioned above a horizontal line.

Secretary

JEFFERSON COUNTY DRAINAGE DISTRICT
NO. 7

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 a Local Cooperation Agreement with the Texas General Land Office regarding current funding, as well as the coordination of future requests to the Texas Legislature for appropriations, related to the Non-Federal Sponsor obligations under this Agreement, 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.

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 at a minimum 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 at a minimum 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. In addition, to the extent practicable, the Government shall obligate funds provided by the Non-Federal Sponsor in excess of the non-Federal share for specific contracts to enable full obligation of such non-Federal funds within the budget cycle associated with such funds. 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 ensure participation in and compliance with applicable Federal floodplain management and flood insurance programs. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such participation and compliance.

H. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall ensure preparation of a floodplain management plan for the Project within one year after the effective date of this Agreement and implementation of such plan not later than one year after completion of construction of the Project. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such preparation and implementation. 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.

I.. The Non-Federal Sponsor shall ensure publication of floodplain information in the area concerned and provision of 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. The Non-Federal Sponsor may execute agreements with other non-Federal entities to ensure such publication and provision.

J. . 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.

K.. 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.

L. . 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.

M. . 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: _____