

**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
and  
BOARD OF COUNTY COMMISSIONERS OF BAY COUNTY,  
FLORIDA  
for  
REHABILITATION OF A FEDERAL EROSION CONTROL AND  
STORM DAMAGE REDUCTION PROJECT**

**THIS AGREEMENT**, entered into this 6<sup>th</sup> day of July, 2020, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Commander, Mobile District, U.S. Army Corps of Engineers, and Board of County Commissioners of Bay County, Florida, (hereinafter referred to as the "Sponsor"), represented by its Chair of the Board of County Commissioners of Bay County.

**WITNESSETH THAT:**

**WHEREAS**, the Panama City Beach Erosion Control and Storm Damage Reduction Project (hereinafter referred to as the Project) was constructed as authorized by Section 501 (a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

**WHEREAS**, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature;

**WHEREAS**, via written correspondence, the Public Sponsor has requested the Government to repair or restore the Project which was damaged by wind, wave, or water action of an other than an ordinary nature, in accordance with 33 U.S.C. 701n, and established policies of the U.S. Army Corps of Engineers; and,

**WHEREAS**, the work to be undertaken is described in a report entitled Panama City Beach Erosion Control and Storm Damage Reduction Project, Project Information Report prepared by the District Engineer, U.S. Army Engineer District Mobile, dated April 2019 and

approved by the Division Engineer on July 6, 2019; and

**WHEREAS**, the Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the Project Rehabilitation Effort in accordance with the terms of this Agreement;

**NOW, THEREFORE**, the Government and the Sponsor agree as follows:

### **ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean full restoration of the Project to its authorized dimensions of the construction template by placing approximately 1,580,000 cubic yards of material between Florida Department of Environmental Protection monument R-1 and R-33 and R-62 to R-91, as generally described in the Panama City Beach Erosion Control and Storm Damage Reduction Project, Project Information Report prepared by the District Engineer, U.S. Army Engineer District Mobile, dated April 2019 and approved by the Division Engineer on July 6, 2019;

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Sponsor and the Government directly related to construction of the Rehabilitation Effort. Such term shall include, but is not necessarily be limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations.

C. The term "betterment" shall mean the design and construction of a

Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

## **ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR**

A. The Government, subject to receiving funds appropriated by the Congress of the United States shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Sponsor shall be afforded the opportunity to review and comment on all solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Project and Rehabilitation Effort.

C. As further specified in Article IV, the Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 0 percent of Rehabilitation Effort costs.

D. The Sponsor shall not use Federal funds to meet its share of Rehabilitation Effort costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

E. The Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, the Project, and any related betterments, except for damages due to the fault or

negligence of the Government or the Government's contractors.

F. The Sponsor agrees to continue to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program and of Title 33, Code of Federal Regulations, Part 208.10 (33 CFR 208.10).

G. The Sponsor may request the Government to accomplish betterments. The Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Sponsor in accordance with Article IV.

### **ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646**

A. The Government shall provide the Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Project and the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Project and the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable

benefits, policies, and procedures in connection with said Act.

#### **ARTICLE IV - METHOD OF PAYMENT**

A. The Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$34,400,000 and the Sponsor's share (cash and services in kind) of Rehabilitation Effort costs is currently estimated to be \$0. In order to meet the Sponsor's cash payment requirements, the Sponsor must provide a cash contribution estimated to be \$0. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Sponsor of the Sponsor's estimated share of the Rehabilitation Effort costs including the Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED Mobile (K5)" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Sponsor of the additional contribution the Sponsor will be required to make to meet the Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Sponsor a final accounting of the Sponsor's share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Sponsor is less than the Sponsor's required share of total Rehabilitation Effort costs, the Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Sponsor's required share of the total project costs.

2. In the event total contribution by the Sponsor is more than the Sponsor's required share of total Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Sponsor; however, the Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Sponsor for excess contributions provided.

## **ARTICLE V - CREDITING OF IN-KIND SERVICES**

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0 for implementation of such services by the Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Sponsor be entitled to any reimbursement

for any excess credit amount.

## **ARTICLE VI- OPERATION AND MAINTENANCE**

A. The Sponsor maintains responsibility for operating and maintaining the Project at all times. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Sponsor with written notice of such determination, the Sponsor shall operate and maintain the Project, to include those areas restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

B. The Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Sponsor for any reason is failing to fulfill the Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Sponsor. If, after 30 calendar days from receipt of such notice, the Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Sponsor of responsibility to meet the Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

## **ARTICLE VII -FEDERAL AND STATE LAWS**

In the exercise of the Sponsor's rights and obligations hereunder, the Sponsor agrees to comply with all applicable Federal and state laws and regulations.

## **ARTICLE VIII- RELATIONSHIP OF PARTIES**

The Government and the Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

## **ARTICLE IX -OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

## **ARTICLE X -COVENANT AGAINST CONTINGENT FEES**

The Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **ARTICLE XI- TERMINATION OR SUSPENSION**

If at any time the Sponsor fails to carry out its obligations under this Agreement, the District Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and the Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to



terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Sponsor elects to proceed with further construction or terminates this Agreement.

## **ARTICLE XII -HAZARDOUS SUBSTANCE**

A. After execution of this Agreement and upon direction by the Contracting Officer, the Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Sponsor and the Government shall provide prompt notice to each other, and the Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Sponsor

determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Sponsor shall be responsible, as between the Government and the Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article X of this Agreement.

D. The Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Sponsor, the Sponsor shall be considered the operator of the Project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

### **ARTICLE XIII –NOTICES**

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Sponsor:

Chairman

Board of County Commissioners of Bay County, Florida

840 West 11<sup>th</sup> Street  
Panama City, Florida 32401

If to the Government:

District Commander  
U.S. Army Corps of Engineers, Mobile District  
P.O. Box 2288  
Mobile, Alabama 36628-0001

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

**IN WITNESS HEREOF**, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

BOARD OF COUNTY  
COMMISSIONERS OF BAY  
COUNTY, FLORIDA

BY: \_\_\_\_\_

BY:  \_\_\_\_\_

Colonel Sebastien P. Joly  
District Commander  
Mobile District

Mr. Philip Griff Griffiths  
Chairman Board of County  
Commissioners

DATE: 6 July 2020

DATE: June 16, 2020

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this 16<sup>th</sup> day of June, 2020



\_\_\_\_\_  
Mr. Philip Griff Griffitts, Chairman  
Board of County Commissioners  
Bay County, FL


**CERTIFICATE OF AUTHORITY**

I, Don Banks and Douglas Sale, do hereby certify that we are the principal legal officers of the Board of County Commissioners of Bay County, Florida and the Bay County Tourist Development Council, respectively, and that the Board of County Commissioners of Bay County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Bay County, Florida, for itself and on behalf of the Bay County Tourist Development Council, an agency of Bay County Florida, in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, and that the persons who have executed this Agreement on behalf of Bay County, Florida have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16<sup>th</sup> day of June 2020.



Don Banks  
County Attorney



Douglas Sale  
Attorney for TDC