

AMENDMENT NO. 1 TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE HARRIS COUNTY FLOOD CONTROL DISTRICT
FOR DESIGN AND CONSTRUCTION OF THE DETENTION ELEMENT OF THE
BRAYS BAYOU (HOUSTON), TEXAS PROJECT

THIS AMENDMENT NO.1 is entered into this 31st day of March, 2010 by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer, Galveston District, and the Harris County Flood Control District (hereinafter the "Non-Federal Sponsor") represented by the Harris County, Texas, Commissioners Court acting by and through the Harris County Judge, as authorized by an official resolution entitled *Order Authorizing Execution on Behalf of Harris County Flood Control District of Amendment No. 1 to the Project Cooperation Agreement Between Harris County Flood Control District and Department of the Army for Design and Construction of the Detention Element of the Brays Bayou (Houston), Texas Project* passed by the Commissioners Court of Harris County, Texas, on 23rd day of March, 2010, a copy of which is attached hereto (Amendment No. 1, Exhibit A).

WITNESSETH, THAT:

WHEREAS, construction of the Buffalo Bayou and Tributaries project (hereinafter the "Authorized Project") at Houston, Texas, was authorized by Section 101(a)(21) of the Water Resources Development Act of 1990, Public Law 101-640, in accordance with the Report of the Chief of Engineers, dated February 12, 1990;

WHEREAS, the Brays Bayou, Texas project is one of six tributary plans included in the Authorized Project and a Limited Reevaluation Report dated January, 1995, identified the Detention and Diversion elements of the Brays Bayou, Texas project as separable elements;

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement, dated March 3, 2000, for design and construction of the National Economic Development (NED) plan for the Detention Element of the Brays Bayou, Texas project (hereinafter the "Upstream NED Plan,");

WHEREAS, Section 211(f)(6) of the Water Resources Development Act of 1996, Public Law 104-303, provides that the Non-Federal Sponsor may, subject to the approval by the Secretary of the Army, design and construct an alternative to the diversion component for the Brays Bayou element of the project for flood control, Buffalo Bayou and Tributaries, Texas.

WHEREAS, on April 3, 2009, the Assistant Secretary of the Army (Civil Works) approved the Brays Bayou Federal Flood Control Project, Harris County, Texas, Alternative to the Diversion Separable Element Final General Reevaluation Report and Environmental Assessment, dated December 19, 2008, and identified an adjusted NED Plan for the Diversion Element (hereinafter the "Downstream Adjusted NED Plan") and a locally preferred plan for the Diversion Element (hereinafter the "Downstream LPP");

WHEREAS, the Non-Federal Sponsor prefers construction of the Upstream NED Plan and the Downstream LPP (hereinafter the "Project") in lieu of a combination of the Upstream NED Plan and Downstream Adjusted NED Plan (hereinafter the "Combined NED Plan") and is willing to pay 100 percent of the costs of the Project which exceed the costs of the Combined NED Plan;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the March 2000 Agreement to address design and construction of the Detention and Diversion elements of the flood damage reduction project for Brays Bayou, Texas under one cost sharing agreement;

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the March 2000 Agreement (hereinafter, as amended, the "Agreement") as follows:

1. The Agreement Title is amended by replacing the existing title with the following:

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE HARRIS COUNTY FLOOD CONTROL DISTRICT
FOR DESIGN AND CONSTRUCTION OF THE
BRAYS BAYOU (HOUSTON), TEXAS PROJECT

2. The third Whereas clause is deleted.
3. The fourth Whereas clause is amended by replacing the existing clause with the following:

"WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of the Brays Bayou project (hereinafter the "Project", as defined in Article I.A. of this Agreement);"

4. The thirteenth Whereas clause is amended by replacing the existing clause with the following:

"WHEREAS, the Non-Federal Sponsor intends to construct the Brays Bayou project;"

5. ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS is amended by replacing the existing article with the following:

"ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean construction of the Upstream NED Plan and Downstream LPP, consisting of a regional detention basin in the mid-reach of Brays Bayou near Sam Houston Parkway with a storage capacity of about 2,500 acre-feet; construction of a regional detention basin near Old Westheimer Road with a storage capacity of about 2,400 acre-feet; construction of a regional detention basin near Eldridge Road with a storage capacity of about 3,200 acre-feet; enlargement of 3.7 miles of Brays Bayou extending from stream mile 24.7 to stream mile 28.4 (State Highway 6); modification of 6.0 miles of earthen channel from the mouth to Calhoun Street with earthen shelves ranging from 180 to 370 feet wide; modification of 6.0 miles of earthen channel from Calhoun Street to Buffalo Speedway above the concrete channel with earthen shelves typically 30 feet wide on both sides; modification of 4.6 miles of earthen channel from Buffalo Speedway to Hillcroft Avenue above the concrete channel with an earthen shelf typically 50 feet wide on one side; modification of an additional 0.9 miles of earthen channel from Hillcroft Avenue to Fondren Road above the concrete channel with an earthen shelf typically 50 feet wide on one side; 12 bridge replacements; 18 bridge modifications; construction of a detention basin on Willow Waterhole Bayou with a storage capacity of approximately 1,875 acre-feet; and mitigation of wetland loss of about 27.9 acres in-kind within the Willow Waterhole detention basin all as generally described in the Letter Report "Brays Bayou (Houston), Texas, Flood Damage Prevention, Detention Separable Element" dated December, 1998, approved by the Chief, Planning Division, Directorate of Civil Works, U.S. Army Corps of Engineers, on March 18, 1999 for the Upstream NED Plan and the Brays Bayou Federal Flood Control Project, Harris County, Texas, Alternative to the Diversion Separable Element Final General Reevaluation Report and Environmental Assessment, dated December 19, 2008, approved by the Assistant Secretary of the Army on April 3, 2009 for the Downstream LPP.

B. The term "Upstream NED Plan" shall mean the regional detention basin in the mid-reach of Brays Bayou near Sam Houston Parkway with a storage capacity of about 2,500 acre-feet; construction of a regional detention basin near Old Westheimer Road with a storage capacity of about 2,400 acre-feet; construction of a regional detention basin near Eldridge Road with a storage capacity of about 3,200 acre-feet; and enlargement of 3.7 miles of Brays Bayou extending from stream mile 24.7 to stream mile 28.4 (State Highway 6) features as generally described in the Letter Report "Brays Bayou (Houston), Texas, Flood Damage Prevention, Detention Separable Element" dated December, 1998, approved by the Chief, Planning Division, Directorate of Civil Works, U.S. Army Corps of Engineers on March 18, 1999.

C. The term "Downstream Adjusted NED Plan" shall mean the modification of 6.0 miles of earthen channel from the mouth to Calhoun Street with earthen shelves ranging from 150 to 210 feet wide; modification of 6.0 miles of earthen channel from Calhoun Street to Buffalo Speedway above the concrete channel with earthen shelves typically 30 feet wide on both sides; modification of 4.6 miles of earthen channel from Buffalo Speedway to Hillcroft Avenue above the concrete channel with an earthen shelf typically 50 feet wide on one side; 9 bridge

replacements; 15 bridge modifications; construction of a detention basin on Willow Waterhole Bayou with approximately 1,875 acre-feet of storage; and mitigation of wetland loss of approximately 27.9 acres in-kind within the detention basin features generally described in the Brays Bayou Federal Flood Control Project, Harris County, Texas, Alternative to the Diversion Separable Element Final General Reevaluation Report and Environmental Assessment, dated December 19, 2008, approved by the Assistant Secretary of the Army on April 3, 2009.

D. The term "Downstream LPP" shall mean the modification of 6.0 miles of earthen channel from the mouth to Calhoun Street with earthen shelves ranging from 180 to 370 feet wide; modification of 6.0 miles of earthen channel from Calhoun Street to Buffalo Speedway above the concrete channel with earthen shelves typically 30 feet wide on both sides; modification of 4.6 miles of earthen channel from Buffalo Speedway to Hillcroft Avenue above the concrete channel with an earthen shelf typically 50 feet wide on one side; modification of an additional 0.9 miles of earthen channel from Hillcroft Avenue to Fondren Road above the concrete channel with an earthen shelf typically 50 feet wide on one side; 12 bridge replacements; 18 bridge modifications; construction of a detention basin on Willow Waterhole Bayou with a storage capacity of approximately 1,875 acre-feet; and mitigation of wetland loss of about 27.9 acres in-kind within the Willow Waterhole detention basin, features generally described as the Locally Preferred Plan in the Brays Bayou Federal Flood Control Project, Harris County, Texas, Alternative to the Diversion Separable Element Final General Reevaluation Report and Environmental Assessment, dated December 19, 2008 (hereinafter the "GRR/EA"), approved by the Assistant Secretary of the Army on April 3, 2009.

E. The "Combined NED Plan" shall mean the features of both the Upstream NED Plan and the Downstream Adjusted NED Plan.

F. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to construction of the Project including those reasonable, allowable, and allocable to this Project which were incurred by the Non-Federal Sponsor prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation investigation in accordance with Article XVIII.A. of this Agreement; costs of developing National Environmental Policy Act of 1969, as amended, (hereinafter "NEPA") documentation; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of way to enable the disposal of dredged or excavated material for which the Government affords credit toward the total project costs in accordance with Article IV of this Agreement for lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of way to enable the disposal of dredged or excavated material that the

Government determines, pursuant to Article III of this Agreement, to be required or necessary for the Project; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

G. The term "total Combined NED Plan costs" shall mean the sum of all costs that would have been incurred by the Non-Federal Sponsor and the Government had the Combined NED Plan been designed and constructed including those reasonable, allowable, and allocable to the Combined NED Plan incurred by the Non-Federal Sponsor prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation investigation in accordance with Article XVIII.A. of this Agreement; costs of developing NEPA documentation; actual construction costs for the Upstream NED Plan and estimated construction costs for the Downstream Adjusted NED Plan, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of way to enable the disposal of dredged or excavated material for which the Government affords credit toward the total project costs in accordance with Article IV of this Agreement for lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of way to enable the disposal of dredged or excavated material that the Government determines, pursuant to Article III of this Agreement, to be required or necessary for the Combined NED Plan; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

H. The term "GRR/EA costs" shall mean Non- Federal Sponsor costs for preparation of the GRR/EA plus the actual costs incurred by the Government for review, approval, and oversight of the Non-Federal Sponsor's efforts in preparing the GRR/EA.

I. The term "incremental costs" shall mean the difference between the total project costs and the total Combined NED Plan costs.

J. The term "Federal share" shall mean the total Combined NED Plan costs, less the non-Federal share of the Combined NED Plan, as required by Article II.J. of this Agreement; plus the GRR/EA costs, less the non-Federal share of the GRR/EA costs, as required by Article II.W. of this Agreement.

K. The term "non-Federal share" shall mean the contributions required by Article II.J., Article II.V., and Article II.W. of this Agreement, as applicable.

L. The term "period of construction" shall mean the time from August 16, 1994 (the award date of the construction contract for the first discrete segment) to the date that the U.S. Army Engineer for the Galveston District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that construction of the Project is complete.

M. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

N. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

O. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

P. The term "discrete segment" shall mean a physical portion of the Project, as described in design documents, in keeping with the project purpose, that is environmentally acceptable, is complete, will not create a hazard, and functions independently enough for the Non-Federal Sponsor to operate and maintain in advance of completion of the entire project or separable element, all as determined by the District Engineer after consultation with the Non-Federal Sponsor.

Q. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

R. The term "Section 211 work" shall mean construction of discrete segments of the Project by the Non-Federal Sponsor in accordance with Article II of this Agreement. The term shall also mean work performed by the Non-Federal Sponsor subsequent to October 1, 1993 that is incidental to its construction of discrete segments of the Project including but not limited to engineering, pre-design, design, construction management, construction surveying, and construction. The Section 211 work does not include any work associated with construction of betterments, or the provision of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the Section 211 work."

6. The first and second sentences of Article II.H. are amended by replacing "total project costs" with "total project costs and total Combined NED Plan costs, as applicable,".

7. Article II.J. is amended by replacing the existing provision with the following:

"J. The Non-Federal Sponsor is required to provide a minimum of 25 percent but not more than 50 percent of total Combined NED Plan costs. The Non-Federal Sponsor's required share of total Combined NED Plan costs shall be determined in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all relocations, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the Combined NED Plan.

2. If the Government determines that the collective value of: (a) the Non-Federal Sponsor's contributions under paragraph J.1. of this Article as determined in accordance with Article IV of this Agreement that are determined by the Government to be attributable to the Combined NED Plan and (b) the Non-Federal Sponsor's contributions under Article V, Article X, and Article XV.A. of this Agreement that are determined by the Government to be attributable to the Combined NED Plan is less than or equal to 20 percent of total Combined NED Plan costs, the Non-Federal Sponsor's required share of total Combined NED Plan costs shall be 25 percent.

3. If the Government determines that the collective value of: (a) the Non-Federal Sponsor's contributions under paragraph J.1. of this Article as determined in accordance with Article IV of this Agreement that are determined by the Government to be attributable to the Combined NED Plan and (b) the Non-Federal Sponsor's contributions under Article V, Article X, and Article XV.A. of this Agreement that are determined by the Government to be attributable to the Combined NED Plan is greater than 20 percent of total Combined NED Plan costs but less than 45 percent of total Combined NED Plan costs, the Non-Federal Sponsor's share of total Combined NED Plan costs shall be the sum of such percentage plus an additional 5 percent of total Combined NED Plan costs.

4. If the Government determines that the collective value of: (a) the Non-Federal Sponsor's contributions under paragraph J.1. of this Article as determined in accordance with Article IV of this Agreement that are determined by the Government to be attributable to the Combined NED Plan and (b) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XV.A. of this Agreement that are determined by the Government to be attributable to the Combined NED Plan is greater than or equal to 45 percent of total Combined NED Plan costs, the Non-Federal Sponsor's share of total Combined NED Plan costs shall be ~~50~~ percent." X

8. Article II.M. is amended by replacing the existing provision with the following:

“M. The Government shall perform a final accounting in accordance with Article VI.C. of this Agreement to determine the contributions required to be provided by the Non-Federal Sponsor in accordance with paragraphs J., K., N., V., and W. of this Article, and Articles V, X, and XV.A. of this Agreement, and to determine whether the Non-Federal Sponsor has met the obligations under paragraphs J., K., N., V., and W. of this Article.”

9. Article II is further amended by adding new paragraphs “U. - W.” as follows:

“U. The Government’s share of total Combined NED Plan costs shall be all costs included in total Combined NED Plan costs that are in excess of the Non-Federal Sponsor’s required share of total Combined NED Plan costs as determined by the Government in accordance with paragraph J. of this Article.

V. The Non-Federal Sponsor is required to provide 100 percent of incremental costs.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all relocations, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the Project that are not otherwise required or necessary for the Combined NED Plan.

2. The Non-Federal Sponsor shall be solely responsible for all contributions under Article V, Article X, and Article XV.A. of this Agreement that are determined by the Government to be attributable to the Project that are not otherwise required for the Combined NED Plan.

W. The Non-Federal Sponsor is required to provide 50 percent of the GRR/EA costs.”

10. Article III.A., Article III.B., and Article III.C. are amended by replacing the existing provisions with the following:

“A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. The Government in that general written description shall delineate which of the required lands, easements, and

rights-of-way are required for the Combined NED Plan, and which are required for the Project but not for the Combined NED Plan. Prior to the end of the period of construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior issuance of the solicitation for each contract for construction of the Project, or prior to the Non-Federal Sponsor incurring any financial obligations for the construction of a portion of the Project using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall certify in writing to the Government that such lands, easements, and rights-of-way have been acquired. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the Project and that were provided by the Non-Federal Sponsor 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 improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basin, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. The Government in that general written description shall delineate which of the required improvements are associated with the Combined NED Plan and which are associated with the Project but not with the Combined NED Plan. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to the issuance of the solicitation for each contract for construction of the Project, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the Project using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and certify in writing to the Government that such improvements have been constructed in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Government in that general written description shall delineate which of the required improvements are associated with the Combined NED Plan and which are ~~associated with the Project but not with the Combined NED Plan.~~ Prior to the end of the period of construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for

each contract for construction of the Project, or prior to the Non-Federal Sponsor incurring any financial obligations for construction of a portion of the Project using the Non-Federal Sponsor's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that work and certify in writing to the Government that such relocations have been performed."

11. The last sentence of Article III.D. is amended by replacing the existing sentence with the following:

"Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contributions, include such value in total project costs and total Combined NED Plan costs, as applicable, and afford credit for such value toward the Non-Federal Sponsor's share of total project costs and total Combined NED Plan costs, as applicable."

12. Article IV.A. is amended by replacing the existing provision with the following:

"A. The Government shall include in total project costs and total Combined NED Plan costs and afford credit toward the Non-Federal Sponsor's share of total Combined NED Plan costs for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement for the Combined NED Plan; for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for the Combined NED Plan; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for the Combined NED Plan. Further, the Government shall include in total project costs and afford credit toward the Non-Federal Sponsor's share of incremental costs for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement for the Project but not for the Combined NED Plan; for the value of the relocations that the Non-Federal Sponsor must perform or for which they must ensure performance pursuant to Article III.B. of this Agreement for the Project but not for the Combined NED Plan; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for the Project but not for the Combined NED Plan. However, no amount shall be included in total project costs or total Combined NED Plan costs, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in total project costs or total Combined NED Plan costs, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using Federal program funds unless the Federal agency

providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law.”

13. Article V.E. is amended by replacing the existing provision with the following:

“E. The costs of participation in the Project Coordination Team shall be included in total project costs and, as determined by the Government included in total Combined NED Plan costs, and shared in accordance with the provisions of this Agreement.”

14. Article VI.A. is amended by replacing the existing provision with the following:

“A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs, total Combined NED Plan costs, incremental costs, and costs due to betterments. By October 31st of each year and periodically as needed thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions and reimbursements to the Non-Federal Sponsor provided to date and the current projections of total project costs, total Combined NED Plan costs, incremental costs, total costs due to betterments, the maximum amount determined in accordance with Article XIX of this Agreement, the components of total project costs and total Combined NED Plan costs, of each party’s share of total project costs and total Combined NED Plan costs, of amounts required in accordance with Articles II.J., II.K., II.N., II.V., and II.W. of this Agreement, of the funds the Government projects it shall reimburse the Non-Federal Sponsor for the upcoming fiscal year, and the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of Amendment No. 1 to this Agreement, total project costs are projected to be \$555,135,000; total Combined NED Plan costs are projected to be \$529,304,000; incremental costs are projected to be \$25,831,000; and the amount of reimbursement by the Government is projected to be \$302,584,000. On the effective date of Amendment No. 1 to this Agreement, GRR/EA costs are projected to be \$6,112,000; and the amount of reimbursement by the Government is projected to be \$2,094,000. Such amounts are estimates 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.”

15. The second sentence of Article VI.C. is amended by replacing “total project costs,” with “total project costs, total Combined NED Plan costs, incremental costs,”.

16. Article VI.C.1. and Article VI.C.2 are amended by replacing “share of total project costs plus” with “shares of total Combined NED Plan costs and incremental costs plus”.

17. Article VI.D. is amended by adding a new sub-paragraph 6 as follows:

“6. No reimbursement shall be made for work that is determined by the Government to be for the Project but not for the Combined NED Plan.”

18. The last sentence of Article X.B. is amended by replacing the existing sentence with the following:

“The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs, and, as determined by the Government included in total Combined NED Plan costs, and shared in accordance with the provisions of this Agreement.”

19. The last sentence of Article X.C. is amended by replacing the existing sentence with the following:

“The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and, as determined by the Government included in total Combined NED Plan costs, and shared in accordance with the provisions of this Agreement.”

20. Article XIV.A. is amended by replacing the references “Articles II.J., II.K., II.N., VI, or XVIII.C.” with “Articles II.J., II.K., II.N., II.V., II.W., VI, or XVIII.C.”

21. The last sentence of Article XV.A. is amended by replacing the existing sentence with the following:

“All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in total project costs and, as determined by the Government included in total Combined NED Plan costs, and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.”

22. The third sentence of Article XV.C. is amended by replacing the existing sentence with the following:

“Such costs shall not be considered a part of total project cost or total Combined NED Plan costs.”

23. Article XVIII.A. and Article XVIII.B. are amended by replacing the existing provisions with the following:

“A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and, as determined by the Government included in total Combined NED Plan costs, and shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291, 16 U.S.c. § 469c(a), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs or total Combined NED Plan costs, up to the statutory limit of one percent of the total amount authorized to be

appropriated for the Combined NED Plan. Any costs of mitigation and data recovery, attributable by the Government to the Project but not the Combined NED Plan, shall be borne entirely by the Non-Federal Sponsor.”

24. The second sentence of Article XVIII.C. is amended by replacing the existing sentence with the following:

“Any costs of mitigation and data recovery, attributable by the Government to the Combined NED Plan, that exceed the one percent limit shall not be included in total project costs or total Combined NED Plan costs, but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government. Any costs of mitigation and data recovery, attributable by the Government to the Project but not the Combined NED Plan, that exceed the one percent limit shall be borne entirely by the Non-Federal Sponsor.”

25. The third sentence of Article XIX is amended by replacing “\$1,270,600,000” with “\$975,077,000” and “October 1, 1998” with “October 1, 2009”.


26. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No.1, which shall become effective upon the date it is signed by the District Engineer.


THE DEPARTMENT OF THE ARMY

HARRIS COUNTY FLOOD CONTROL DISTRICT, HARRIS COUNTY, TEXAS

BY:


David C. Weston
Colonel, Corps of Engineers
District Engineer

BY:


Ed Emmett
County Judge
Harris County, Texas

DATE:

3-31-2010

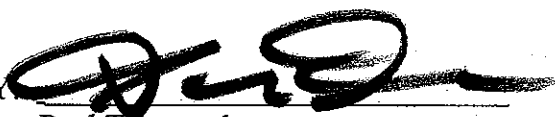
DATE:

3-31-2010

APPROVED AS TO FORM:

VINCE RYAN
COUNTY ATTORNEY

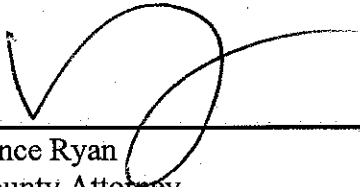
BY:


Paul Taparuskas
Senior Assistant County Attorney

CERTIFICATE OF AUTHORITY

I, Vince Ryan, do hereby certify that I am the principal legal officer of the Harris County Flood Control District, that the Harris County Flood Control District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement as amended by Amendment No. 1 between the Department of the Army and the Harris County Flood Control District in connection with the Brays Bayou (Houston), Texas project and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as provided by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b) and that the persons who have executed this Amendment on behalf of the Harris County Flood Control District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 24th
day of MARCH, 2010.



Vince Ryan
County Attorney

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.



Ed Emmett
County Judge
Harris County, Texas

DATE: 3-31-2010

EXHIBIT A

ORDER AUTHORIZING EXECUTION ON BEHALF OF HARRIS COUNTY FLOOD CONTROL DISTRICT OF AMENDMENT NO. 1 TO THE PROJECT COOPERATION AGREEMENT BETWEEN HARRIS COUNTY FLOOD CONTROL DISTRICT AND DEPARTMENT OF THE ARMY FOR DESIGN AND CONSTRUCTION OF THE DETENTION ELEMENT OF THE BRAYS BAYOU (HOUSTON), TEXAS PROJECT

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement, dated March 3, 2000, for design and construction of the National Economic Development (NED) plan for the Detention Element of the Brays Bayou, Texas project (hereinafter the "Upstream NED Plan");

WHEREAS, on April 3, 2009, the Assistant Secretary of the Army (Civil Works) approved the Brays Bayou Federal Flood Control Project, Harris County, Texas, Alternative to the Diversion Separable Element Final General Reevaluation Report and Environmental Assessment, dated December 19, 2008, and identified an Adjusted NED Plan for the Diversion Element (hereinafter the "Downstream Adjusted NED Plan") and a locally preferred plan for the Diversion Element (hereinafter the "Downstream LPP");

WHEREAS, the Non-Federal Sponsor prefers construction of the Upstream NED Plan and the Downstream LPP (hereinafter the "Project") in lieu of a combination of the Upstream NED Plan and Downstream Adjusted NED Plan (hereinafter the "Combined NED Plan") and is willing to pay 100 percent of the costs of the Project which exceed the costs of the Combined NED Plan;


WHEREAS, the Government and the Non-Federal Sponsor desire to amend the March 2000 Agreement to address design and construction of the Detention and Diversion elements of the flood damage reduction project for Brays Bayou, Texas under one cost sharing agreement.

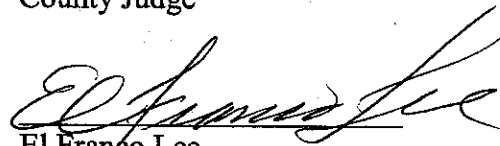
THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS, acting for and on behalf of the Harris County Flood Control District:


1. That County Judge Ed Emmett be authorized to execute, on behalf of the Harris County Flood Control District, an agreement entitled AMENDMENT NO.1 TO THE PROJECT COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE HARRIS COUNTY FLOOD CONTROL DISTRICT FOR DESIGN AND CONSTRUCTION OF THE DETENTION ELEMENT OF THE BRAYS BAYOU (HOUSTON), TEXAS PROJECT, said Agreement being incorporated herein for reference for all purposes as though fully set forth word for word; and


2. That during each year while there is any obligation or liability of the District under said Amendment, Commissioners Court shall compute and ascertain the amount of ad valorem tax, based on the latest approved tax rolls of the Harris County Flood Control District, with full allowances being made for delinquencies and costs of tax collection, which will be sufficient to raise and produce the money required to fulfill the obligations and liabilities of the District under said Amendment during any such year, in no instance to be less than two per cent (2%) of such obligations, together with all interest thereon. Said rate and amount of ad valorem tax is levied against all taxable property in said Harris County Flood Control District for each year while any obligations or liabilities of the District exist under said Amendment, and said ad valorem tax shall be assessed and collected each such year until all of the obligations under said Amendment have been discharged and all liability thereunder discharged.

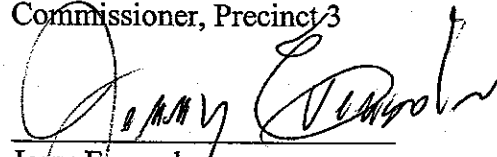
ADOPTED, PASSED AND APPROVED, MAR 23 2010


Ed Emmett
County Judge

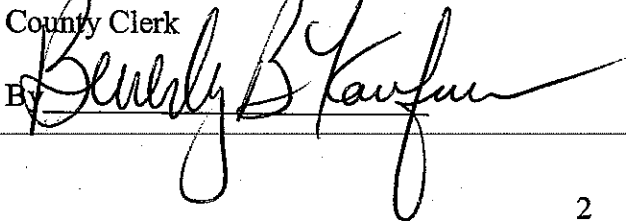

El Franco Lee
Commissioner, Precinct 1


Sylvia R. Garola
Commissioner, Precinct 2


Steve Radack
Commissioner, Precinct 3


Jerry Eversole
Commissioner, Precinct 4

ATTEST:
BEVERLY L. KAUFMAN
County Clerk


Beverly L. Kaufman