



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SOUTHWESTERN DIVISION
1100 COMMERCE STREET
DALLAS, TX 75242-1317

36A

CESWD-PDP

MEMORANDUM FOR Commander, Galveston District

SUBJECT: Approval of the Feasibility Cost Sharing Agreement (FCSA) for the Brazos River Fort Bend County, TX Study Funded with Supplemental Appropriations of the Bipartisan Budget Act of 2018

1. References:

a. Memorandum, CECW-I dated 10 August 2018. Subject: Bipartisan Budget Act of 2018 (BBA 2018) – Model Agreement for New Feasibility Studies.

b. CESWG-ZA-C Memorandum dated 27 September 2018, Subject: Review and Approval of Feasibility Cost Sharing Agreement for the Brazos River Fort Bend County, TX Feasibility Study.

2. In accordance with the guidance provided in Reference 1a; the subject FCSA is approved. Please use the enclosed approved agreement for execution. Signature authority is delegated to the Galveston District Commander.

3. The District should prepare a minimum of four final originals of each approved FCSA for signature by the non-Federal sponsor. After signature by the non-Federal sponsor, the District Counsel shall review the non-Federal signatures on the FCSA, the Certificate of Authority, and the Certification Regarding Lobbying to ensure that the agreement has been signed and dated by the non-Federal sponsor representative and principal legal office in the appropriate locations. The FCSA shall be dated with the date the District Commander executes the agreement. The District shall retain two copies of the executed agreement, and the remaining copies should be provided to the non-Federal sponsor. An electronic copy of the executed agreement, with all appropriate signatures, should be provided to the MSC within 14 days after execution.

4. If you have any questions, please contact Ms. Sue Hughes, Chief of Planning & Policy at 469-487-7154.

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PAUL E. OWEN, P.E.
Brigadier General, USA
Commanding

CF:
CESWG-PM-J (Lawrence)

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
FORT BEND COUNTY
FOR THE
BRAZOS RIVER EROSION MANAGEMENT
FEASIBILITY STUDY

THIS AGREEMENT is entered into this _____ day of October, 2018, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Galveston District (hereinafter the "District Commander") and the Fort Bend County (hereinafter the "Non-Federal Sponsor"), represented by the **County Engineer**.

WITNESSETH, THAT:

WHEREAS, Section 1201 of the Water Resources Development Act of 2016 authorizes a feasibility study for a project for flood damage reduction in the vicinity of the Brazos River, (hereinafter the "Study");

WHEREAS, notwithstanding Section 105(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2215(a)), which specifies the cost-sharing requirements generally applicable to feasibility studies, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018"), authorizes the Government to conduct the Study at full Federal expense to the extent that appropriations provided under the Investigations heading of the BBA 2018 are available and used for such purpose; 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.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using BBA 2018 funds. In the event that there are insufficient BBA 2018 funds to complete the Study, such completion shall be subject to cost-sharing otherwise applicable to the Study and amendment of this Agreement.

1. The Government shall conduct the Study consistent with the Project Management Plan, which specifies the scope, cost, and schedule for Study activities. In consultation with the Non-Federal Sponsor, the Government may modify the Project Management Plan as necessary.

2. The cost of the Study is limited to \$3 million in Federal funds, unless the Assistant Secretary of the Army (Civil Works) approves an exemption for the Study to exceed \$3 million.

3. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts 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.

B. In addition to the ongoing, regular discussions of the parties in the delivery of the Study, the Government and the Non-Federal Sponsor may establish a Study Coordination Team to discuss significant issues or actions. The Non-Federal Sponsor's costs for participation on the Study Coordination Team shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

C. The Non-Federal Sponsor shall not be entitled to any credit or reimbursement for any costs it incurs in performing its responsibilities under this Agreement.

ARTICLE II - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an exemption is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if a Report of the Chief of Engineers, or, if applicable, a Report of the Director of Civil Works, is not signed for the Study within 3 years after the effective date of this Agreement.

B. If the Government determines at any time that BBA 2018 funds made available for the Study are not sufficient to complete the Study, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend the Study until the parties execute an amendment to this Agreement that provides for cost-sharing of the remaining work.

ARTICLE III - 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.

ARTICLE IV - 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 V - NOTICES

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 certified or registered mail, with return receipt, as shown below. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

If to the Non-Federal Sponsor:

**County Engineer
Fort Bend County
301 Jackson Street
Richmond, Texas 77469**

With copy to:

**County Judge
Fort Bend County
401 Jackson Street
Richmond, Texas 77469**

If to the Government:

**District Engineer
Galveston District
2000 Fort Point Road
Galveston, Texas 77550**

ARTICLE VI - 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 VII - 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.

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

DEPARTMENT OF THE ARMY

FORT BEND COUNTY

BY: _____
LARS N. ZETTERSTROM
Colonel, U.S. Army
District Commander

BY:  _____
Robert E. Hebert, County Judge

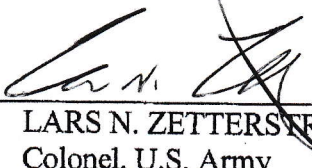
DATE: _____

DATE: 10/8/2018

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

DEPARTMENT OF THE ARMY

BY:


LARS N. ZETTERSTROM
Colonel, U.S. Army
District Commander

FORT BEND COUNTY

BY:


Robert E. Hebert, County Judge

DATE:

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DATE:

10/8/2018

CERTIFICATION REGARDING LOBBYING

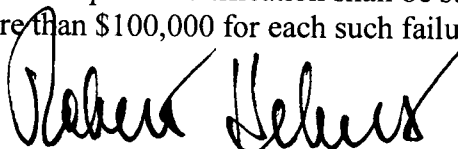
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



[SIGNATURE OF PPA SIGNATORY]

[Robert E. Hebert]


[County Judge]

DATE: 10/8/2018

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, Robert Ed Sturdivant, do hereby certify that I am the Chief Financial Officer [County Auditor] of the [Fort Bend County] (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the [Brazos River Erosion Management Feasibility Study]; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the [Agreement Between The Department of the Army and Fort Bend County for the Brazos River Erosion Management Feasibility Study].

IN WITNESS WHEREOF, I have made and executed this certification this 10th day of October, 2018.

BY: 

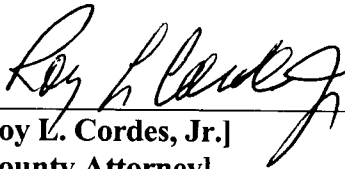
TITLE: County Auditor

DATE: 10/10/2018

CERTIFICATE OF AUTHORITY

I, Roy L. Cordes, Jr., do hereby certify that I am the principal legal officer for the **[Fort Bend County]**, that the **[Fort Bend County]** 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 the **[Fort Bend County]** in connection with the **[Brazos River Erosion Management Feasibility Study]**, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this **[Agreement]**, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this **[Agreement]** on behalf of the **[Fort Bend County]** acted within **[his]** statutory authority.

4th IN WITNESS WHEREOF, I have made and executed this certification this
day of Oct 2018.



[Roy L. Cordes, Jr.]
[County Attorney]