

**CITY OF TEXAS CITY
REGULAR CALLED CITY COMMISSION MEETING**

*** * AGENDA * ***

**WEDNESDAY, JUNE 4, 2008 - 5:00 P.M.
KENNETH T. NUNN COUNCIL ROOM - CITY HALL**

- 1. INVOCATION**
- 2. PLEDGE OF ALLEGIANCE**
- 3. PROCLAMATIONS AND PRESENTATIONS**
- 4. CONSENT AGENDA**
 - a. Consider approval of the Minutes for the May 21, 2008 Regular Called City Commission Meeting.
 - b. Consider approval of **Resolution No. 08-041** approving the **purchase and delivery of one (1) Peterbilt 340 Rear Load Garbage Truck** through the BuyBoard, a Texas Local Government Purchasing Cooperative. (Purchasing Dept.)
 - c. Consider approval of **Resolution No. 08-039** awarding the **semi-annual contract** for the **purchase of Liquid Asphalt Picked-Up Load**. (Purchasing Dept.)
 - d. Consider approval **Resolution No. 08-042** awarding the contract for the **purchase and delivery of (1) 2008-Skid Steer Loader** with land clearing attachment. (Purchasing Dept.)
 - e. Consider approval of **Resolution No. 08-040** award the **annual contract** for the **purchase and delivery of the Imprinted Tee Shirts and Tank Tops**. (Purchasing Dept.)
 - f. Consider approval of **Resolution No. 08-043** awarding the **annual contract** for the **purchase and delivery of Medical Supplies and Equipment**. (Purchasing Dept.)
 - g. Consider approval of **Resolution No. 08-044** awarding the **annual contract** for the **Hauling and Disposal of Municipal Sludge from the Wastewater Treatment Plant**. (Purchasing Dept.)
- 5. REGULAR ITEMS**

- a. Consider approval of **Ordinance No. 08-25** authorizing the **issuance of City of Texas City, Texas, General Obligation Refunding Bonds, Series 2008**; authorizing the redemption prior to maturity of certain outstanding obligations; authorizing the Mayor to approve the amount, the interest rate, price, and terms thereof and certain other procedures and provisions related thereto; authorizing the advance refunding of certain outstanding obligations and the execution and delivery of an escrow agreement and the subscription for and purchase of certain escrowed securities. (Finance Dept.)
- b. Consider approval of **Ordinance No. 08-23 amending** the City of Texas City's fiscal year 2007/2008 **budget to provide additional funding for the Recreation & Tourism's** 2007/2008 budget to offset the increase in cost of electricity for the natatorium and to provide funding for the replacement of A/C units and the installation of an alarm system for the Convention and Lowry Centers. (Finance Dept.)
- c. Consider approval of **Ordinance No. 08-24** appointment of the **Municipal Court Clerk**. (Mayor)
- d. Consider approval of **Resolution No. 08-045** authorizing the Mayor to execute a **Project Partnership Agreement with the USACE** (United States Army Corps of Engineers) **authorizing the USACE to dredge the Texas City Ship Channel** from 40 feet to 45 feet and that the City as the non-federal sponsor agrees to contribute 25% of the total cost of the project. (Dept. of Management Services)
- e. Consider approval of **Resolution No. 08-046** authorizing the Mayor to execute a **Contribution Agreement with the Texas City Terminal Railway Company** in which the Terminal has agreed to contribute the City's portion of the costs of the Texas City Channel Dredging Project. (Dept. of Management Services)

6. **PUBLIC COMMENTS**

7. **MAYOR'S COMMENTS**

8. **COMMISSIONERS' COMMENTS**

NOTICE OF ANY SUBJECT APPEARING ON THIS AGENDA REGARDLESS OF HOW THE MATTER IS STATED MAY BE ACTED UPON BY THE CITY COMMISSION.

NOTICE: The City of Texas City will furnish free transportation to handicapped individuals via a 4-door sedan for anyone wishing to attend the City Commission meetings. Call 948-3111, City Secretary's Office before noon on Monday preceding the meeting to make arrangements.

I CERTIFY THAT THE ABOVE NOTICE OF THE MEETING WAS POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING, 1801 9TH AVENUE NORTH, TEXAS CITY, TEXAS ON THE DATE LISTED BELOW AT 5:00 P.M.

PAMELA A. LAWRENCE

CITY SECRETARY

DATED: _____

4.a.

**Minutes from the May 21, 2008 Regular Called City Commission Meeting
CITY COMMISSION AGENDA 2**

Date: 06/04/2008

Submitted By: Pam Lawrence, Administration

Department: Administration

Agenda Area: Consent

Information

ACTION REQUEST (Brief Summary)

Consider approval of the Minutes for the May 21, 2008 Regular Called City Commission Meeting.

BACKGROUND

ANALYSIS

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link: [CC Minutes
05-21-2008](#)

**CITY OF TEXAS CITY
REGULAR CALLED CITY COMMISSION MEETING**

*** * M I N U T E S * ***

**WEDNESDAY, MAY 21, 2008 – 5:00 P.M.
KENNETH T. NUNN COUNCIL ROOM – CITY HALL**

A **Regular Called Meeting of the City Commission** was held on **Wednesday, March 19, 2008, at 5:00 P.M.** in the Kenneth T. Nunn Council Room in City Hall, Texas City, Texas, with the following in attendance: Mayor Matthew T. Doyle; Commissioners: Tommy Clark, Dee Ann Haney, Dedrick Johnson, Mike Land; Donald Singleton and Carl Sullivan.

The Mayor declared a quorum present and called the meeting to order at 5:00 p.m.

The **Mayor** called upon **Pastor Mills, Trinity Baptist Church**, to offer the **Invocation**. The Mayor thanked **Pastor Ronnie Mills** for his attendance and offering the invocation. **Commissioner Carl Sullivan** led all present in the **recitation of the Pledge of Allegiance**.

PROCLAMATIONS AND PRESENTATIONS

The **Mayor** made the following **presentations**:

RETIREMENT APPRECIATION GIFTS were presented to the following:

CAROLE GRADY	MUNICIPAL COURT	24 YEARS
LESTER STEINBACH	BAYOU GOLF	36 YEARS

SERVICE YEAR AWARD PINS were presented to the following:

DEBRA THOMPSON	RECREATION & TOURISM	10 YEARS
MICHAEL BAKER	SANITATION DEPT.	15 YEARS
PAUL EDINBURGH	POLICE DEPT.	15 YEARS

CANVASS ELECTION RETURNS

The City Commission considered approval of Resolution No. 08-37 which canvasses the election returns for the City's General Election held on Saturday, May 10, 2008.

RESOLUTION NO. 08-37

**A RESOLUTION CANVASSING THE ELECTION RETURNS FOR THE
CITY OF TEXAS CITY'S GENERAL ELECTION HELD ON SATURDAY,
MAY 10, 2008; AND PROVIDING THAT THIS RESOLUTION SHALL
BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND
ADOPTION.**

WHEREAS, on the 21st day of May, 2008, the City Commission of the City of Texas City, Texas, convened in a Regular City Commission Meeting at the regular meeting place thereof, with the following members present, to wit:

Matthew T. Doyle, Mayor
Mike Land, Mayor Pro Tem
Dee Ann Haney, City Commissioner at Large
Donald B. Singleton, City Commissioner District 1
Dedrick D. Johnson, City Commissioner District 3
Tommy Clark, City Commissioner District 4

and the following absent: None, constituting a quorum, and among other proceedings had were the following:

Commissioner Clark introduced a resolution and order and moved its adoption. This motion was seconded by Commissioner Land and the motion carrying with it the adoption and order prevailed by the following vote:

Ayes: All
Nays: None

THE RESOLUTION IS AS FOLLOWS:

FOR CITY:

**A MAYOR AND SIX COMMISSIONERS,
EACH TO SERVE FOR A PERIOD OF TWO YEARS.**

WHEREAS, there came to be considered the returns of the general election held on the 10th day of May, 2008, for the purpose of electing a Mayor and six Commissioners, each to serve for a period of two years, hereinafter named officials, and it appears from said returns, duly and legally made, that there were cast at said election 1,279 valid and legal votes; cumulative and precinct reports are attached hereto as Exhibit "A", and that each of the candidates in said election received the following votes:

Mayor	Number of Votes	Percentage
Matthew T. Doyle	1,033	80.77
Commissioner-At-Large	Number of Votes	Percentage
Darrell Andrews	167	10.14
Dee Ann Haney	716	43.47
Mike Land	764	46.39
Commissioner District 1	Number of Votes	Percentage
Willie D. Mitchell	109	27.18
Donald B. Singleton	292	72.82
Commissioner District 2	Number of Votes	Percentage
J. W. "Scooter" Wilson, Jr.	357	71.69
Steven Lyle	141	28.31
Commissioner District 3	Number of Votes	Percentage
Dedrick D. Johnson, Sr.	Unopposed	76.62
Commissioner District 4	Number of Votes	Percentage

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That said election was duly called, that notice of said election was given in accordance with law, that said election was held in accordance with law, and that the following seven (7) persons were elected to the City Commission of the City of Texas City:

Matthew T. "Matt" Doyle, Mayor
Mike Land, Commissioner At-Large
Dee Ann Haney, Commissioner At-Large
Donald B. Singleton, Commissioner, District 1
J. W. "Scooter" Wilson, Jr., Commissioner, District 2
Dedrick D. Johnson, Commissioner, District 3
Tommy Clark, Commissioner, District 4

SECTION 2: That said above-named parties are hereby declared duly elected to said respective offices, subject to the taking of their oaths of office as provided by the laws of the State of Texas.

SECTION 3: That it is further found and determined that, in accordance with the order of this governing body, the City Secretary posted written notice of the date, place, and subject of this meeting on the bulletin board located in the City Hall, a place convenient to the public, and said notice, having been so posted, remained posted continuously for at least seventy-two (72) hours preceding the date of this meeting.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and adoption.

Commissioner Clark made a MOTION to APPROVE Resolution No. 08-37 which canvasses the election returns for the City's General Election held on Saturday, May 10, 2008, and that the following seven persons were elected to the City Commission: Matthew T. "Matt" Doyle, Mayor; Mike Land, Commissioner At-Large; Dee Ann Haney, Commissioner At-Large; Donald Singleton, Commissioner, District 1; J. W. "Scooter" Wilson, Commissioner, District 2; Dedrick D. Johnson, Commissioner, District 3; Tommy Clark, Commissioner, District 4; the motion was SECONDED by Commissioner Land. All present voted AYE. MOTION CARRIED.

OATH OF OFFICE

The official Oath of Office was administered by the City Secretary with the newly elected officials repeating the oath in unison as follows:

In the name and by the authority of

The State of Texas

OATH OF OFFICE

I, (state your name), do solemnly swear (or affirm), that I will faithfully execute the duties of the office of (state position) of Texas City of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and Laws of the United States and of this State, so help me God.

Following tradition, each elected official was administered the Oath of Office by a person of their choosing.

Commissioner J. W. “Scooter” Wilson called upon his wife, Rhonda and granddaughter, Bailey, to administer the Oath of Office.

Commissioner Donald B. Singleton called upon his wife, Joan, to administer the Oath of Office.

Commissioner at large Dee Ann Haney called upon her friend, Jackie Matthews, to administer the Oath of Office.

Commissioner at large Mike Land called upon his wife, Linda, to administer the Oath of Office.

Commissioner Dedrick Johnson, Sr. called upon his eight-year old son Dedrick Jr., to administer the Oath of Office.

Commissioner Tommy Clark called upon his father-in-law, Jim DeSlatte, to administer the Oath of Office.

Mayor Matthew T. Doyle called upon his daughter, Erin.

The Mayor recommended that Commissioner Mike Land serve as Mayor Pro tem.

Commissioner Clark made a MOTION to APPROVE appointing Mike Land as Mayor Pro tem; the motion was SECONDED by Commissioner Johnson. All present voted AYE. MOTION CARRIED.

Chief Burby presented a **CERTIFICATE OF APPRECIATION** to Michele Rider for courageous actions taken on May 13th. Ms. Rider came to the aid of a neighbor that was being attacked by a pit bull.

PUBLIC HEARING

- a. Bharat Patel requests to rezone from “A” (Single Family Residential) to “E” (General Business) for a strip shopping center which will include a hotel and bank; being part of Lot 1, Blk 2; Lot 5, Blk 2; Lot 6, Blk 2; Subdivision E out of the Kohfeldt’s re-subdivision (approximately 13.825 acres); located at Hwy 146 and 36th Street, Texas City, Texas.

Don Carroll, City Planner, reported that this issue came before the Zoning Commission on April 15, 2008. There were no controversial issues associated with this request. It had no opposition. It is not in conflict with our Land Use Plan and/or Zoning Ordinance. The applicant was made aware that he will be required to coordinate with Tex. Dot for allowed drive way entrances on State right-of-way and he must adhere to all development requirements of the City (in particular the performance standards for E General Business, the GWY Ordinance and Brick Ordinance provisions). The applicant has agreed to all stipulations cited he has an established track record within our city, in the context of past development projects. This proposal is anticipated to be a nice development addition to our community. After hearing all the information presented by Staff and the applicant’s development overview, the Zoning Commission members present unanimously voted to recommend approval of this request. Ms. Carla Erikson and Mr. Patel were both present to answer any questions concerning this request.

- b. Grason Communities requests to rezone form “A” (Single-Family Residential) to “I” (Planned Unit Development) for a commercial and residential development;

being 492.662 acres out of the B.B.B. & C.R.R. Survey, A-629 and the J.S. Jones Survey, A-129; located North of FM 517 and going south to Dickinson Bayou, Texas City, Texas.

This P.U.D. proposal came before both the Planning Board and Zoning Commission February 4, 2008, March 4, 2008 and March 18, 2008. This is a City approved Special District Project that is now moving forward through our development review process. The Planning Board and Zoning Commission were both provided a Power Point presentation highlighting the development intent. The 22 stipulations cited by our Planning consultant and Staff were discussed during that Planning Board presentation and agreed to by the principals for this development. There was opposition raised by a property owner located adjacent and just west of the proposed site. The concerns associated with this opposition are cited in this formal letter. All concerns cited in the letter were addressed by the Zoning Commission. Staff stated that the environmental issues and required coordination with the Corps of Engineers are issues that are required to be addressed by the developer and that Federal Regulatory Agency. The proposal as presented, meets all of the criteria established in our Zoning Ordinance, Land Use and Thoroughfare Plan. The Staff however, did affirm to the Zoning Commission and property owner in opposition, that we would give reasonable care and every reasonable effort possible to make sure the collector street would not traverse his property (located to the west since this is a source of contention). Staff would exhaust all reasonable alternatives regarding the proposed collector road alignment. The other issue that is note worthy is the fact that Dickinson Independent School District is requesting a site for an elementary school which will eliminate the residential housing originally presented. The Zoning members present unanimously recommended approval of the P.U.D. after hearing all comments from stake holders and their review of the data provided by Staff. Mr. Kerry Gilbert gave a power point presentation highlighting the development intent.

Commissioner Land made a MOTION to CLOSE the Public Hearings; Commissioner Singleton SECONDED the motion. All present voted AYE. MOTION CARRIED.

PRELIMINARY ZONING APPROVAL

- a. Consider preliminary rezoning approval for Bharat Patel requests to rezone from "A" (Single Family Residential) to "E" (General Business) for a strip shopping center which will include a hotel and bank.

Commissioner Johnson made a MOTION to APPROVE preliminary rezoning approval for Bharat Patel requests to rezone from "A" (Single Family Residential) to "E" (General Business) for a strip shopping center which will include a hotel and bank; Commissioner Land SECONDED the motion. All present voted AYE. MOTION CARRIED.

- b. Grason Communities requests to rezone form "A" (Single-Family Residential) to "I" (Planned Unit Development) for a commercial and residential development.

Commissioner Singleton made a APPROVE preliminary rezoning approval for Grason Communities requests to rezone form "A" (Single-Family Residential) to "I" (Planned Unit Development) for a commercial and residential development; Commissioner Singleton SECONDED the motion. All present voted AYE. MOTION CARRIED.

CONSENT AGENDA: All of the following items on the Consent Agenda are considered to be routine by the City Commission and will be enacted by one motion. There will not be separate discussion of these items unless a Commission Member or citizen so requests. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.

- a. Consider approval of the Minutes from the May 7, 2008 Regular Called City Commission Meeting.
- b. Consider approval of Resolution No. 08-036 declaring certain items surplus property and authorizing the City to auction surplus property and to properly dispose of items not sold at auction.

RESOLUTION NO. 08-36

A RESOLUTION DECLARING USED VEHICLES, EQUIPMENT, MATERIALS AND OFFICE EQUIPMENT AS SURPLUS PROPERTY AND AUTHORIZING THE CITY TO SELL AND/OR DISPOSE OF THE VEHICLES AND EQUIPMENT; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

- c. Consider approval of Resolution No. 08-035 authorizing the Mayor to enter into an Interlocal Participating Agreement with The Interlocal Purchasing System (TIPS) Program.

RESOLUTION NO. 08-35

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH REGION VIII EDUCATION SERVICE CENTER TO PARTICIPATE IN THE INTERLOCAL PURCHASING SYSTEM (TIPS) PROGRAM TO UTILIZE COOPERATIVE PURCHASING SERVICES; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

- d. Consider approval of Resolution No. 08-037 approving an amendment to the Grand Cay Harbor Development Agreement allowing homes to be constructed no more than 5-feet into the front yard area.

RESOLUTION NO. 08-38

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH GRAND CAY HARBOUR , LTD. TO ALLOW THE PROPERTY OWNERS ASSOCIATION THE AUTHORITY TO GRANT FRONT BUILDING LINE VARIANCES FOR ALL LOTS PLATTED AT THE TIME OF THIS AMENDMENT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

Commissioner Johnson made a MOTION to APPROVE the CONSENT AGENDA; the motion was SECONDED by Commissioner Clark. All present voted AYE. MOTION CARRIED.

REGULAR ITEMS

- a. Consider approval of Ordinance No. 08-21 amending the Code of Ordinances of the City of Texas City, Chapter 14, "Amusements and Entertainments", Section 14-37, by amending provisions regulating the permitting of amusement redemption machine ("eight-liner") devices within the city limits.

ORDINANCE NO. 08-21

AN ORDINANCE AMENDING CHAPTER 14 OF THE CITY CODE "AMUSEMENTS AND ENTERTAINMENTS," SECTION 14-37, BY AMENDING PROVISIONS REGULATING THE PERMITTING OF AMUSEMENT REDEMPTION MACHINE ("EIGHT-LINER") DEVICES WITHIN THE CITY LIMITS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION AND PUBLICATION BY CAPTION ONLY IN THE OFFICIAL NEWSPAPER OF THE CITY.

Fees for Licensing and Permitting of the "eight-liner" devices were increased as follows:

a) Licensing and Permitting.

Permit. No person shall operate an amusement redemption machine in the City of Texas City without first obtaining a permit from the Chief of Police. No permit shall be issued until the occupation tax has been paid by the operator, as required by section 14-33. The permit shall be attached to the amusement redemption machine. The annual permit fee shall be \$100 per machine. The permit fee shall apply to all amusement redemption machines, regardless if located in an Amusement Redemption Machine Game Room. Permits shall automatically expire on the 31st day of December following date of issuance.

Local License fee for Amusement Redemption Machine Game Room Required. An Amusement Redemption Machine Game Room shall be required to secure a license by paying to the City an annual inspection and Amusement Redemption Machine Game Room license fee of one thousand dollars (\$1,000.00).

Commissioner Land made a MOTION to APPROVE Ordinance No. 08-21 amending the Code of Ordinances of the City of Texas City, Chapter 14, "Amusements and Entertainments", Section 14-37, by amending provisions regulating the permitting of amusement redemption machine ("eight-liner") devices within the city limits; the motion was SECONDED by Commissioner Johnson. All present voted AYE. MOTION CARRIED.

- b. Consider approval of Ordinance No. 08-22 amending the Code of Ordinances of the City of Texas City, Chapter 54, Fire Prevention and Protection, by amending Section 53-32 pertaining to the requirements for appointing the Fire Marshal.

ORDINANCE NO. 08-22

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF TEXAS CITY, CHAPTER 54. *FIRE PREVENTION AND PROTECTION*, BY AMENDING SECTION 53-32 PERTAINING TO THE REQUIREMENTS FOR APPOINTING THE FIRE MARSHAL; REPEALING ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

The amendments to the Code of Ordinance, City of Texas City, Chapter 54 are as follows:

Article II Sec. 53-32: Remove requirement for City Commission to approve Fire Marshal.

Additional amendment for Article II Sec. 53-32 Chief appoints Fire Marshal from any classification.

Minimum requirements to be appointed Fire Marshal. (Article II Sec. 53-32)

- a) Certified Basic Inspector by Texas Commission on Fire Protection
- b) Each section of examination, Inspector 1, Inspector 2, and Plans Examiner1, must be passed with a minimum score of 70%.
- c) Certified Basic Fire Investigator by Texas Commission on Fire Protection.
- d) Certified Intermediate Structural Fire Fighter. Exception: has obtained educational requirements, and waiting on time in grade only.

Commissioner Johnson made a MOTION to APPROVE Ordinance No. 08-22 amending the Code of Ordinances of the City of Texas City, Chapter 54, Fire Prevention and Protection, by amending Section 53-32 pertaining to the requirements for appointing the Fire Marshal; the motion was SECONDED by Commissioner Wilson. All present voted AYE. MOTION CARRIED.

PUBLIC COMMENTS

None.

MAYOR'S COMMENTS

Important dates:

- May 22, 2008 – City Employee Safety and Health Fair Luncheon
- May 24, 2008 – Barbour's Chapel 95th Anniversary Gala
- May 25, 2008 – Vietnam Veterans of America Watchfire
- May 26, 2008 – City Offices Closed
Memorial Park Ceremony at Memorial Park for Fallen Soldiers

COMMISSIONERS' COMMENTS

Having no further business, **Commissioner Land made a MOTION to ADJOURN at 6:10 p.m.; the motion was SECONDED by Commissioner Haney. All present voted AYE. MOTION CARRIED.**

MATTHEW T. DOYLE, MAYOR

ATTEST:

Pamela A. Lawrence, City Secretary

pal: 08-27-2008

Purchase of Rear Load Garbage Truck CITY COMMISSION AGENDA 2

Date: 06/04/2008

Submitted By: Rita Williams, Purchasing

Department: Purchasing

Agenda Area: Consent

Information

ACTION REQUEST (Brief Summary)

Approve the purchase and delivery of one (1) Peterbilt 340 Rear Load Garbage Truck through BuyBoard, a Texas Local Government Purchasing Cooperative. The vehicle will be utilized by the City's Sanitation Department.

The BuyBoard pricing sheet is attached for your review.

The delivering dealer is Rush Truck Center in Houston.

BACKGROUND

The BuyBoard Contract price for the truck is \$160,781.00. Funds are available in the Sanitation Capital Equipment Replacement Fund.

ANALYSIS

It is my recommendation to award the purchase and delivery of the Peterbilt 340 Rear Load Garbage Truck, for the total contract price of \$160,781.00 through BuyBoard.

Thank you

ALTERNATIVES CONSIDERED

Fiscal Impact

Funds Available Y/N: Yes-\$170,000

Amount Requested: \$160,781.00

Source of Funds: Capital Equipment

Account #: 602-302-55020

Fiscal Impact:

Attachments

Link:

Res.

08-041

Link:

Exhibit A

RESOLUTION NO. 08-041

A RESOLUTION APPROVING THE PURCHASE AND DELIVERY OF ONE (1) PETERBILT 340 REAR LOAD GARBAGE TRUCK THROUGH THE BUYBOARD, A TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, FOR THE SANITATION DEPARTMENT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, funds are available in the Sanitation Capital Equipment Replacement Fund for the purchase and delivery of one (1) Peterbilt 340 Rear Load Garbage Truck for \$160,781.00; and

WHEREAS, the Purchasing Coordinator is recommending that the City purchase one (1) Peterbilt 340 Rear Load Garbage Truck through BuyBoard, a Texas Local Government Purchasing Cooperative, for the Sanitation Department, for a price of \$160,781.00; and,

WHEREAS, the delivering dealer for the Peterbilt 340 Rear Load Garbage Truck is Rush Truck Center of Houston, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby approves the purchase and delivery of one (1) Peterbilt 340 Rear Load Garbage Truck for the price of \$160,781.00, through BuyBoard, a Texas Local Government Purchasing Cooperative.

SECTION 2: That the Mayor is hereby authorized to negotiate and execute any documentation necessary for the purchase and delivery of one (1) Peterbilt 340 Rear Load Garbage Truck through BuyBoard, a Texas Local Government Purchasing Cooperative, to be delivered by Rush Truck Center in Houston, for the purchase price of \$160,781.00, as set out on the attached Exhibit "A".

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

Pamela A. Lawrence
City Secretary

APPROVED AS TO FORM:

Robert Gervais
City Attorney

The following details shall be provided with any BuyBoard purchase order (Fax Purchase Order to {800}211-54:

BuyBoard Vendor:	<u>Rush Truck Center, Houston</u>	Prepared By:	
[Address P.O. to:]	<u>10200 A N. Loop East</u>	Vendor Phone:	
	<u>Houston, Texas 77029</u>	Vendor Fax:	
		Vendor Toll Free	
		Date Prepared	
Government Agency:	<u>TEXAS CITY, CITY OF</u>	Gov. Agency	<u>TEXAS CITY, C</u>
[Ship to:]	<u>301 6TH STREET NORTH</u>	[Bill to:]	<u>P. O. BOX 2608</u>
	<u>TEXAS CITY, TEXAS 77590</u>		<u>TEXAS CITY, TI</u>
Contacts Name:	<u>MIKE STUMP</u>	Gov. Agn. Phone No:	<u>(409) 643-5814</u>
Product Description:	<u>PETERBILT 340 CHASSIS AND NEW WAY KING COBRA 25 YD</u>		
		G. A. Fax No:	

I: <u>BuyBoard Contract #281-07</u>		Price List:	<u>PETERBILT # 4</u>	Base Price
II: <u>Base Bid Options:</u>	(Itemize Below)			
* <u>Please See Attached List</u>	\$	47,236.09	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u>NEW WAY KING COBRA</u>	\$	58,263.00	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
* <u></u>	\$	-	*	\$ -
Subtotal	\$	105,499.09	*	\$ -

III: Unpublished Options added to Contract Price (Subtotal of Co. 1 & Col 2)

IV: Total **IV + VI**

V: Non-Base Options (Itemize below) NON-BASE = -0.03 %

VI: Non-Published Options (Please see attached) EACH

VII: Unit Cost with Discount

VIII **Quantity Ordered** Units: 1 x "E"

IX: Trade-in or other Credit(s)

\$ - 0

X: **TOTAL PURCHASE PRICE INCLUDING VIII + IX**

With Body: completed delivery to City of TEXAS CITY 120 DAYS A.R.O.

CONTRACT 10/1/2007 TO 9/30/2010

Fax all Purchase Orders to BuyBoard at (800) 211-5454

BuyBoard

Rush Truck Center - Houston

154

Charlie Plouse

(713) 495-6300

(713) 695-9620

(800) 580-7383

May 20, 2008

ITY OF

EXAS 77592-2608

(409) 942-1073

\$ 58,109.00

\$ 105,499.09

\$	163,608.09
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\$ (4,494.09)

\$	159,114.00
----	------------

\$ 159,114.00

\$ -

\$ 159,114.00

Fax all Purchase Orders to BuyBoard at (800) 211-5454

Bid # 2008-906 Liquid Asphalt Picked-Up Load 6 mos. Annual Contract CITY COMMISSION AGENDA 2

Date: 06/04/2008

Submitted By: Rita Williams, Purchasing

Department: Purchasing

Agenda Area: Consent

Information

ACTION REQUEST (Brief Summary)

Approve and award Bid # 2008-906 for the purchase of Liquid Asphalt Picked-Up Load 6 mos. Annual Contract.

BACKGROUND

Bid packets were mailed to two (2) area vendors on May 6, 2008. A bid tabulation is attached for your review.

Bids opened Tuesday, May 20, 2008 at 2:00 p.m.

ANALYSIS

The low responsible bid meeting all specifications was received as follows, for the unit prices bid:

Martin Asphalt Company Inc.	
CRS-2	\$ 1.65 per gallon
SS-1	\$ 1.67 per gallon
AE-P	\$ 2.25 per gallon
CSS-1	\$ 1.75 per gallon

The HFRS-2 was No Bid and will be substituted with one of the other materials bid.

The PGA-1 and PGA-2 are not used as often and will be excluded from the contract upon expiration.

It is my recommendation to award the 6 mos. annual contract to Martin Asphalt Company, Inc., in South Houston, for the unit prices bid and that the Mayor is authorized to execute a contract on behalf of the City Commission.

Thank you

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link:

Res.

08-039

Link:

Exhibit A

RESOLUTION NO. 08-039

A RESOLUTION AWARDED A BID AND AUTHORIZING THE MAYOR TO ENTER INTO A SIX (6) MONTH CONTRACT WITH MARTIN ASPHALT COMPANY, INC. FOR LIQUID ASPHALT PICKED UP LOADS; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, on May 20, 2008, bids were opened for liquid asphalt picked up loads, Bid No. 2008-906; and,

WHEREAS, bid packets were mailed to two (2) area vendors on May 6, 2008; and

WHEREAS, the lowest bid meeting specifications for liquid asphalt picked up load was submitted by the following for the unit prices bid per gallon as shown below and on the bid tabulation attached:

Martin Asphalt Company

CRS-2	\$1.65 per gallon
SS-1	\$1.67 per gallon
AE-P	\$2.25 per gallon
CSS-1	\$1.75 per gallon

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the successful bidder for the six (6) month contract for liquid asphalt picked up loads is Martin Asphalt Company, Inc.

SECTION 2: That the Mayor is hereby authorized to enter into a contract with Martin Asphalt Company, Inc., for liquid asphalt picked up loads for the unit prices bid per gallon as shown on the bid tabulation.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

Pamela A. Lawrence
City Secretary

APPROVED AS TO FORM:

Robert Gervais
City Attorney

BID TABULATION

LIQUID ASPHALT PICKED-UP LOAD 6 MOS. ANNUAL CONTRACT BID #2008-906

Bid Opening: Tuesday, May 20, 2008 @ 2:00 p.m.

Description	Martin Asphalt Company, Inc. South Houston, Texas	Cleveland Asphalt Houston, Texas	Previous Contract Pricing
CRS-2	\$1.65 per gallon	NO BID – distance to distribution plant is too far	\$1.36
SS-1	\$1.67 per gallon	NO BID	\$1.42
HFRS-2*	NO BID	NO BID	\$1.25
AE-P	\$2.25 per gallon	NO BID	\$1.68
CSS-1	\$1.75 per gallon	NO BID	\$1.42
PGA-1**	NO BID	NO BID	\$1.75
PGA-2**	NO BID	NO BID	\$1.85

*** One of the other materials listed will be used as a substitution.**

**** Materials are not used as often as others and will be excluded from the contract upon expiration.**

**Bid # 2008-179 (1) 2008 Skid Steer Loader
CITY COMMISSION AGENDA 2**

Date: 06/04/2008

Submitted By: Rita Williams, Purchasing

Department: Purchasing

Agenda Area: Consent

Information

ACTION REQUEST (Brief Summary)

Approve and award Bid # 2008-179 for the purchase and delivery of (1) 2008-Skid Steer Loader with land clearing attachment. Funds are available in the Public Works Capital Equipment Replacement Fund.

BACKGROUND

Bid packets were mailed to four (4) area vendors on May 8, 2008. A bid tabulation is attached for your review.

Bids opened Wednesday, May 21, 2008 at 2:00 p.m.

ANALYSIS

The low responsible bid meeting all specifications was received from Jasper Equipment, in Jasper, for the total bid amount of \$ 87,797.90.

It is my recommendation to award the purchase of the Skid Steer Loader with land clearing attachment to Jasper Equipment, for the total bid amount of \$87,797.90.

Thank you

ALTERNATIVES CONSIDERED

Fiscal Impact

Funds Available Y/N: Yes

Amount Requested: \$87,797.90

Source of Funds: Capital Equipment

Account #: 602-301-55020

Fiscal Impact:

Attachments

Link:

Res.

08-042

Link:

Exhibit A

RESOLUTION NO. 08-042

A RESOLUTION AWARING A BID AND AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO PURCHASE ONE 2008 SKID STEER LOADER FROM JASPER EQUIPMENT, FOR THE PUBLIC WORKS DEPARTMENT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, funds are available in the Public Works Capital Equipment Replacement Fund for the purchase and delivery of one (1) 2008-Skid Steer Loader with land clearing attachment; and

WHEREAS, on May 21, 2008, bids were opened for the purchase and delivery of one (1) 2008-Skid Steer Loader with land clearing attachment; Bid No. 2008-179; and,

WHEREAS, bid packets were mailed to four (4) area vendors on May 8, 2008; and

WHEREAS, the lowest bid meeting specifications for the 2008-Skid Steer Loader with land clearing attachment as shown on the attached bid tabulation (Exhibit "A"), was Jasper Equipment of Jasper, Texas, for \$87,797.90.

WHEREAS, the Purchasing Coordinator is recommending that the City purchase one (1) 2008-Skid Steer Loader with land clearing attachment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the successful bidder for the 2008-Skid Steer Loader with land clearing attachment is Jasper Equipment of Jasper, Texas.

SECTION 2: That the Mayor is hereby authorized to enter into a contract with Jasper Equipment for the purchase of the 2008-Skid Steer Loader with land clearing attachment for the price of \$87,797.90, as shown on the attached Exhibit "A".

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

Pamela A. Lawrence
City Secretary

APPROVED AS TO FORM:

Robert Gervais
City Attorney

BID TABULATION

2008 SKID STEER LOADER BID #2008-179

Bid Opening: Wednesday, May 21, 2008 @ 2:00 p.m.

VENDOR	TOTAL BID	DELIVERY
Jasper Equipment Jasper, Texas	\$87,797.90	7 working days
Alvin Equipment Company	\$88,689.00	20 – 45 days
Texas Timberjack Inc. Cleveland, Texas	\$96,000.00	10 working days
Dixequip, Inc. Houston, Texas	Does not meet specifications	NA
Mustang Houston, Texas	Does not meet specifications	NA

**Bid # 2008-903 Imprinted Tee Shirts and Tank Tops Annual Contract
CITY COMMISSION AGENDA 2**

Date: 06/04/2008

Submitted By: Rita Williams, Purchasing

Department: Purchasing

Agenda Area: Consent

Information**ACTION REQUEST (Brief Summary)**

Approve and award the purchase and delivery of the Imprinted Tee Shirts and Tank Tops Annual Contract.

BACKGROUND

Bid packets were mailed to five (5) area vendors on April 21, 2008. A bid tabulation is attached for your review.

Bids opened Tuesday, May 5, 2008 at 2:00 p.m.

ANALYSIS

The art work is the most important element of this contract to the Recreation & Tourism staff. It is imperative to be able to meet directly with the printer to design the art work and discuss any issues the City staff may have.

Inline Graphix is located in Texas City and have had the Tee Shirt contract in the past. The City staff is familiar with their work and have been very satisfied.

It is my recommendation to award the Tee Shirts and Tank Tops annual contract to Inline Graphix, in Texas City, for the unit prices bid and that the Mayor is authorized to execute a contract on behalf of the City Commission.

Thank you

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link:

Res.

08-040

Link:

Exhibit A

RESOLUTION NO. 08-040

A RESOLUTION AWARDING A BID AND AUTHORIZING THE MAYOR TO ENTER INTO AN ANNUAL CONTRACT WITH INLINE GRAPHIX FOR THE PURCHASE AND DELIVERY OF IMPRINTED TEE-SHIRTS AND TANK TOPS; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, on May 5, 2008, bids were opened for the annual contract for the purchase and delivery of Imprinted Tee-Shirts and Tank Tops; and

WHEREAS, the art work is the most important element of this contract to the Recreation & Tourism staff, making it imperative to be able to meet with the printer to design the art work and discuss issues; and

WHEREAS, Inline Graphix is located in Texas City and has had the Tee Shirt contract in the past and the City staff is familiar with and very satisfied with their work, it is recommended that Inline Graphix be awarded the annual contract for the unit prices bid in Exhibit "A" attached.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the Annual Contract for the purchase and delivery of Imprinted Tee-Shirts and Tank Tops be awarded to Inline Graphix in Texas City.

SECTION 2: That the Mayor is hereby authorized to enter into an annual contract with Inline Graphix for the purchase and delivery of Imprinted Tee-Shirts and Tank Tops, Bid No. 2008-903, as described and priced in Exhibit "A" attached hereto and made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

Pamela A. Lawrence
City Secretary

APPROVED AS TO FORM:

Robert Gervais
City Attorney

Attachment - Exhibit "A"

BID TABULATION
BID # 2008-903
IMPRINTED TEE SHIRTS AND TANK TOPS

WHITE TEE SHIRTS – SHORT SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	6.20	No Bid	6.58	2.65
1 color 12 – 24	6.20	5.91	6.58	2.65
1 color 25 – 48	4.92	3.77	4.58	3.30
1 color 49 – 72	4.67	3.08	4.08	3.15
1 color 73 – 143	4.13	2.57	3.83	3.05
1 color 144 – 249	3.83	2.25	3.58	3.05
1 color 250 – 499	3.64	2.01	3.33	2.45
1 color 500 – 999	3.00	1.89	3.08	2.40
1 color 1000 +	2.85	1.85	2.83	2.10
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.50	.75
Additional XXXL	1.75	1.50	1.50	1.00
Column Sum	52.69	26.33	56.47	
TWO COLOR				
2 color 6 – 11	8.15	No Bid	8.58	3.40
2 color 12 – 24	8.15	6.21	8.58	3.40
2 color 25 – 48	6.25	4.02	5.33	4.05
2 color 49 – 72	5.89	3.28	4.58	3.95
2 color 73 – 143	5.13	2.77	4.08	3.50
2 color 144 – 249	4.65	2.35	3.83	3.05
2 color 250 – 499	4.44	2.07	3.58	2.65
2 color 500 – 999	3.28	1.94	3.33	2.45
2 color 1000 +	3.00	1.90	3.08	2.10
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.50	.75
Additional XXXL	1.75	1.50	1.50	\$1.00
Column Sum	72.16	27.54	77.97	
THREE COLOR				
3 color 6 – 11	10.10	No Bid	10.58	4.00
3 color 12 – 24	10.10	6.51	10.58	4.00
3 color 25 – 48	7.58	4.27	6.08	4.10
3 color 49 – 72	7.04	3.48	5.08	4.05
3 color 73 – 143	6.12	2.97	4.33	4.00
3 color 144 – 249	5.46	2.45	4.08	3.45
3 color 250 – 499	5.22	2.13	3.83	3.05
3 color 500 – 999	3.48	1.99	3.58	3.00
3 color 1000 +	3.15	1.95	3.33	2.45
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.50	.75
Additional XXXL	1.75	1.50	1.50	1.00
Column Sum	91.50	28.75	99.47	

WHITE TEE SHIRTS-SHORT SLEEVE-CONTINUED

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
FOUR COLOR				
4 color 6 – 11	11.90	No Bid	12.58	4.45
4 color 12 – 24	11.90	6.81	12.58	4.45
4 color 25 – 48	8.76	4.52	6.58	4.50
4 color 49 – 72	8.06	3.68	5.58	4.15
4 color 73 – 143	6.97	3.17	4.58	3.95
4 color 144 – 249	6.13	2.55	4.33	3.85
4 color 250 – 499	5.90	2.19	4.08	3.80
4 color 500 – 999	3.68	2.04	3.83	3.15
4 color 1000 +	3.25	2.00	3.58	2.70
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.50	.75
Additional XXXL	1.75	1.50	1.50	1.00
Column Sum	109.80	29.96	120.72	

COLORED TEE SHIRTS – LIGHTS – SHORT SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	6.95	No Bid	7.39	3.00
1 color 12 – 24	6.95	6.33	7.39	3.00
1 color 25 – 48	5.70	4.19	5.39	4.40
1 color 49 – 72	5.40	3.50	4.89	4.35
1 color 73 – 143	4.65	2.99	4.64	4.00
1 color 144 – 249	4.50	2.67	4.39	4.00
1 color 250 – 499	3.75	2.43	4.14	3.25
1 color 500 – 999	3.50	2.31	3.89	3.10
1 color 1000 +	3.40	2.27	3.64	2.50
Screen charge	10.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	58.05	29.69	64.26	
TWO COLOR				
2 color 6 – 11	8.90	No Bid	9.39	3.95
2 color 12 – 24	8.90	6.63	9.39	3.95
2 color 25 – 48	7.00	4.44	6.14	4.25
2 color 49 – 72	6.65	3.70	5.39	4.05
2 color 73 – 143	5.90	3.19	4.89	4.05
2 color 144 – 249	5.45	2.77	4.64	4.00
2 color 250 – 499	5.19	2.49	4.39	3.50
2 color 500 – 999	4.00	2.36	4.14	2.95
2 color 1000 +	3.75	2.32	3.89	2.70
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	78.99	30.90	85.76	
THREE COLOR				
3 color 6 – 11	10.85	No Bid	11.39	4.40
3 color 12 – 24	10.85	6.93	11.39	4.40
3 color 25 – 48	8.25	4.49	6.89	4.40
3 color 49 – 72	7.80	3.90	5.89	4.30
3 color 73 – 143	6.87	3.39	5.14	4.15
3 color 144 – 249	6.25	2.81	4.89	4.00
3 color 250 – 499	6.00	2.55	4.64	3.80
3 color 500 – 999	4.30	2.41	4.39	3.85
3 color 1000 +	3.90	2.37	4.14	2.90
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	98.32	32.11	107.26	

COLORED TEE SHIRTS-LIGHTS-CONTINUED

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
FOUR COLOR				
4 color 6 – 11	12.65	No Bid	13.39	4.75
4 color 12 – 24	12.65	7.23	13.39	4.75
4 color 25 – 48	9.50	4.94	7.39	4.75
4 color 49 – 72	8.81	4.10	6.39	4.70
4 color 73 – 143	7.75	3.59	5.39	4.40
4 color 144 – 249	6.83	2.97	5.14	4.20
4 color 250 – 499	6.65	2.61	4.89	3.95
4 color 500 – 999	4.40	2.47	4.64	3.75
4 color 1000 +	4.00	2.42	4.39	3.45
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	116.49	33.33	128.51	

COLORED TEE SHIRTS – DARKS – SHORT SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	7.74	No Bid	7.39	4.50
1 color 12 – 24	7.74	6.58	7.39	4.50
1 color 25 – 48	6.34	4.44	5.39	4.40
1 color 49 – 72	6.03	3.75	4.89	4.15
1 color 73 – 143	5.43	3.24	4.64	3.85
1 color 144 – 249	5.08	2.92	4.39	3.60
1 color 250 – 499	4.32	2.68	4.14	3.55
1 color 500 – 999	3.90	2.56	3.89	3.50
1 color 1000 +	3.70	2.52	3.64	2.95
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	63.53	31.69	64.26	
TWO COLOR				
2 color 6 – 11	9.69	No Bid	9.39	4.70
2 color 12 – 24	9.69	6.88	9.39	4.70
2 color 25 – 48	7.67	4.69	6.14	4.55
2 color 49 – 72	7.22	3.95	5.39	4.40
2 color 73 – 143	6.43	3.44	4.89	4.20
2 color 144 – 249	5.90	3.02	4.64	4.10
2 color 250 – 499	4.83	2.74	4.39	3.85
2 color 500 – 999	4.29	2.61	4.14	3.80
2 color 1000 +	4.00	2.57	3.89	3.75
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	82.97	32.90	85.76	
THREE COLOR				
3 color 6 – 11	11.64	No Bid	11.39	4.90
3 color 12 – 24	11.64	7.18	11.39	4.90
3 color 25 – 48	9.00	4.94	6.89	4.80
3 color 49 – 72	8.40	4.15	5.89	4.70
3 color 73 – 143	7.42	3.64	5.14	4.40
3 color 144 – 249	6.71	3.12	4.89	4.30
3 color 250 – 499	5.34	2.80	4.64	4.15
3 color 500 – 999	4.68	2.66	4.39	3.90
3 color 1000 +	4.20	2.62	4.14	3.80
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	102.28	34.11	107.26	

COLORED TEE SHIRTS-DARK-SHORT SLEEVE-CONTINUED

Inline Graphix	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
FOUR COLOR				
4 color 6 – 11	13.44	No Bid	13.39	5.10
4 color 12 – 24	13.44	7.48	13.39	5.10
4 color 25 – 48	10.18	4.94	7.39	5.00
4 color 49 – 72	9.42	4.15	6.39	4.85
4 color 73 – 143	8.27	3.64	5.39	4.65
4 color 144 – 249	7.38	3.12	5.14	4.35
4 color 250 – 499	5.85	2.80	4.89	4.20
4 color 500 – 999	5.10	2.66	4.64	4.15
4 color 1000 +	4.50	2.62	4.39	3.90
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	120.83	34.11	128.51	

COLORED TEE SHIRTS – PREMIUMS – SHORT SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	7.74	No Bid	7.39	4.50
1 color 12 – 24	7.74	6.75	7.39	4.50
1 color 25 – 48	6.34	4.61	5.39	4.40
1 color 49 – 72	6.03	3.92	4.89	4.15
1 color 73 – 143	5.43	3.41	4.64	3.85
1 color 144 – 249	5.08	3.09	4.39	3.60
1 color 250 – 499	4.32	2.85	4.14	3.55
1 color 500 – 999	3.90	2.73	3.89	3.50
1 color 1000 +	3.70	2.69	3.64	2.95
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	63.53	33.05	64.26	
TWO COLOR				
2 color 6 – 11	9.69	No Bid	9.39	4.70
2 color 12 – 24	9.69	7.05	9.39	4.70
2 color 25 – 48	7.67	4.86	6.14	4.55
2 color 49 – 72	7.22	4.12	5.39	4.40
2 color 73 – 143	6.43	3.61	4.89	4.20
2 color 144 – 249	5.90	3.19	4.64	4.10
2 color 250 – 499	4.83	2.91	4.39	3.85
2 color 500 – 999	4.29	2.78	4.14	3.80
2 color 1000 +	4.00	2.74	3.89	3.75
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	82.97	34.26		
THREE COLOR				
3 color 6 – 11	11.64	No Bid	11.39	4.90
3 color 12 – 24	11.64	7.35	11.39	4.90
3 color 25 – 48	9.00	5.11	6.89	4.80
3 color 49 – 72	8.40	4.32	5.89	4.70
3 color 73 – 143	7.42	3.81	5.14	4.40
3 color 144 – 249	6.71	3.29	4.89	4.30
3 color 250 – 499	5.34	2.97	4.64	4.15
3 color 500 – 999	4.68	2.83	4.39	3.90
3 color 1000 +	4.20	2.79	4.14	3.80
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	102.28	35.47	107.26	

COLORED TEE SHIRTS-PREMIUM-SHORT SLEEVE-CONTINUED

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
FOUR COLOR				
4 color 6 – 11	13.44	No Bid	13.39	5.10
4 color 12 – 24	13.44	7.65	13.39	5.10
4 color 25 – 48	10.18	5.36	7.39	5.00
4 color 49 – 72	9.42	4.52	6.39	4.85
4 color 73 – 143	8.27	4.01	5.39	4.65
4 color 144 – 249	7.38	3.39	5.14	4.35
4 color 250 – 499	5.85	3.03	4.89	4.20
4 color 500 – 999	5.10	2.89	4.64	4.15
4 color 1000 +	4.50	2.24	4.39	3.90
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.75	.75
Additional XXXL	1.75	1.50	1.75	1.00
Column Sum	120.83	36.69	128.51	

WHITE TEE SHIRTS – LONG SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	8.20	No Bid	8.16	5.50
1 color 12 – 24	8.20	6.93	8.16	5.50
1 color 25 – 48	6.92	4.79	6.16	5.50
1 color 49 – 72	6.67	4.10	5.66	5.50
1 color 73 – 143	6.13	3.59	5.41	5.50
1 color 144 – 249	5.83	3.27	5.16	5.40
1 color 250 – 499	5.64	3.03	4.91	5.25
1 color 500 – 999	5.00	2.91	4.66	3.95
1 color 1000 +	4.85	2.87	4.41	3.95
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.50	.90
Column Sum	68.94		69.19	
TWO COLOR				
2 color 6 – 11	10.15	No Bid	10.16	6.00
2 color 12 – 24	10.15	7.23	10.16	6.00
2 color 25 – 48	8.25	5.04	6.91	6.00
2 color 49 – 72	7.86	4.30	6.16	5.75
2 color 73 – 143	7.13	3.79	5.66	5.70
2 color 144 – 249	6.65	3.37	5.41	5.25
2 color 250 – 499	6.44	3.09	5.16	5.25
2 color 500 – 999	5.28	2.96	4.91	3.90
2 color 1000 +	5.00	2.92	4.66	3.80
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.50	.90
Column Sum	88.41	34.20	90.69	
THREE COLOR				
3 color 6 – 11	12.10	No Bid	12.16	6.25
3 color 12 – 24	12.10	7.53	12.16	6.25
3 color 25 – 48	9.58	5.29	7.66	6.15
3 color 49 – 72	9.04	4.50	6.66	6.05
3 color 73 – 143	8.12	3.99	5.91	5.90
3 color 144 – 249	7.46	3.47	5.66	5.90
3 color 250 – 499	7.22	3.15	5.41	5.70
3 color 500 – 999	5.48	3.01	5.16	5.45
3 color 1000 +	5.15	2.97	4.91	5.20
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.50	.90
Column Sum	107.75	35.41	112.19	

WHITE TEE SHIRTS – LONG SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
FOUR COLOR				
4 color 6 – 11	13.90	No Bid	14.16	6.35
4 color 12 – 24	13.90	7.83	14.16	6.35
4 color 25 – 48	10.76	5.54	8.19	6.35
4 color 49 – 72	10.06	4.77	7.16	6.15
4 color 73 – 143	8.97	4.19	6.16	6.10
4 color 144 – 249	8.13	3.57	5.91	6.00
4 color 250 – 499	7.90	3.21	5.66	5.75
4 color 500 – 999	5.68	3.06	5.41	5.55
4 color 1000 +	5.25	3.02	5.16	5.50
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.75	.90
Column Sum	126.05	36.62	133.44	

COLORED TEE SHIRTS – LIGHTS – LONG SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	8.95	No Bid	8.63	6.40
1 color 12 – 24	8.95	7.39	8.63	6.40
1 color 25 – 48	7.70	5.25	6.63	6.20
1 color 49 – 72	7.40	4.56	6.13	6.05
1 color 73 – 143	6.65	4.05	5.88	5.95
1 color 144 – 249	6.50	3.73	5.63	5.90
1 color 250 – 499	5.75	3.49	5.38	5.80
1 color 500 – 999	5.50	3.37	5.13	5.65
1 color 1000 +	5.40	3.33	4.88	5.50
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	74.30	36.67	73.67	
TWO COLOR				
2 color 6 – 11	10.90	No Bid	10.63	6.50
2 color 12 – 24	10.90	7.69	10.63	6.50
2 color 25 – 48	9.00	5.50	7.38	6.40
2 color 49 – 72	8.26	4.76	6.63	6.25
2 color 73 – 143	7.90	4.25	6.13	6.10
2 color 144 – 249	7.45	3.83	5.88	6.00
2 color 250 – 499	7.19	3.55	5.63	5.90
2 color 500 – 999	6.00	3.42	5.38	5.85
2 color 1000 +	5.75	3.38	5.13	5.70
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	95.24	37.88	95.17	
THREE COLOR				
3 color 6 – 11	12.85	No Bid	12.63	6.70
3 color 12 – 24	12.85	7.99	12.63	6.70
3 color 25 – 48	10.25	5.75	8.13	6.60
3 color 49 – 72	9.80	4.96	7.13	6.40
3 color 73 – 143	8.87	4.45	6.38	6.30
3 color 144 – 249	8.25	3.93	6.13	6.20
3 color 250 – 499	8.00	3.61	5.88	6.10
3 color 500 – 999	6.30	3.47	5.63	6.00
3 color 1000 +	5.90	3.43	5.38	5.75
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	114.57	39.09	116.67	
FOUR COLOR				
4 color 6 – 11	14.65	No Bid	14.63	6.85
4 color 12 – 24	14.65	8.29	14.63	6.85
4 color 25 – 48	11.50	6.00	8.63	6.70
4 color 49 – 72	10.81	5.16	7.63	6.50
4 color 73 – 143	9.75	4.65	6.63	6.50
4 color 144 – 249	8.83	4.03	6.38	6.25
4 color 250 – 499	8.65	3.67	6.13	6.15
4 color 500 – 999	6.40	3.53	5.88	6.05
4 color 1000 +	6.00	3.48	5.63	6.00
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	132.74	40.31	137.92	

COLORED TEE SHIRTS – DARKS – LONG SLEEVE

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	9.74	No Bid	8.63	6.60
1 color 12 – 24	9.74	7.69	8.63	6.60
1 color 25 – 48	8.34	5.55	6.63	6.20
1 color 49 – 72	8.03	4.86	6.13	6.10
1 color 73 – 143	7.43	4.35	5.88	6.00
1 color 144 – 249	7.08	4.03	5.63	5.45
1 color 250 – 499	6.32	3.79	5.38	5.20
1 color 500 – 999	5.90	3.67	5.13	5.10
1 color 1000 +	5.70	3.63	4.88	4.90
Screen charge	10.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	79.78	39.07	95.17	
TWO COLOR				
2 color 6 – 11	11.69	No Bid	10.63	6.80
2 color 12 – 24	11.69	7.99	10.63	6.75
2 color 25 – 48	9.67	5.80	7.38	6.60
2 color 49 – 72	9.22	5.06	6.63	6.50
2 color 73 – 143	8.43	4.55	6.13	6.40
2 color 144 – 249	7.90	4.13	5.88	6.25
2 color 250 – 499	6.83	3.85	5.63	6.10
2 color 500 – 999	6.29	3.72	5.38	6.10
2 color 1000 +	6.00	3.68	5.13	5.90
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	99.22	40.28	95.17	
THREE COLOR				
3 color 6 – 11	13.64	No Bid	12.63	6.90
3 color 12 – 24	13.64	8.59	12.63	6.90
3 color 25 – 48	11.00	6.30	8.13	6.75
3 color 49 – 72	10.40	5.46	7.13	6.65
3 color 73 – 143	9.42	4.95	6.38	6.55
3 color 144 – 249	8.71	4.33	6.13	6.40
3 color 250 – 499	7.34	3.97	5.88	6.25
3 color 500 – 999	6.68	3.83	5.63	6.00
3 color 1000 +	6.20	3.78	5.38	5.95
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	118.53	41.49	116.67	

COLORED TEE SHIRTS-DARKS-LONG SLEEVE-CONTINUED

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
FOUR COLOR				
4 color 6 – 11	15.44	No Bid	14.63	7.00
4 color 12 – 24	15.44	8.59	14.63	7.00
4 color 25 – 48	12.18	6.30	8.63	6.95
4 color 49 – 72	11.42	5.46	7.63	6.80
4 color 73 – 143	10.27	4.95	6.63	6.65
4 color 144 – 249	9.38	4.33	6.38	6.55
4 color 250 – 499	7.85	3.97	6.13	6.40
4 color 500 – 999	7.10	3.83	5.88	6.30
4 color 1000 +	6.50	3.78	5.63	5.90
Screen charge	40.00	Included	60.00	000
Additional XXL	1.50	1.50	1.75	1.00
Column Sum	137.08	42.71	137.92	

WHITE TANK TOPS – HIGH UNDER ARM CUT

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	6.95	No Bid	7.53	4.95
1 color 12 – 24	6.95	6.26	7.53	4.95
1 color 25 – 48	5.70	4.12	5.53	4.75
1 color 49 – 72	5.40	3.43	5.03	4.60
1 color 73 – 143	4.65	2.92	4.78	4.50
1 color 144 – 249	4.50	2.60	4.53	4.40
1 color 250 – 499	3.75	2.36	4.28	4.20
1 color 500 – 999	3.50	2.24	4.03	4.00
1 color 1000 +	3.40	2.20	3.78	3.85
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.25	.90
Column Sum	56.30	27.63	63.27	
TWO COLOR				
2 color 6 – 11	8.90	No Bid	9.53	5.20
2 color 12 – 24	8.90	6.86	9.53	5.20
2 color 25 – 48	7.00	4.62	6.28	5.00
2 color 49 – 72	6.65	3.83	5.53	4.90
2 color 73 – 143	5.90	3.32	5.03	4.80
2 color 144 – 249	5.45	2.80	4.78	4.65
2 color 250 – 499	5.19	2.48	4.53	4.55
2 color 500 – 999	4.00	2.34	4.28	4.40
2 color 1000 +	3.75	2.30	4.03	4.35
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.25	.90
Column Sum	77.24	30.05	84.77	
THREE COLOR				
3 color 6 – 11	10.85	No Bid	11.53	5.45
3 color 12 – 24	10.85	7.16	11.53	5.45
3 color 25 – 48	8.25	4.87	7.03	5.40
3 color 49 – 72	7.80	4.03	6.03	5.20
3 color 73 – 143	6.87	3.52	5.28	5.05
3 color 144 – 249	6.25	2.90	5.03	4.95
3 color 250 – 499	6.00	2.54	4.78	4.75
3 color 500 – 999	4.30	2.39	4.53	4.60
3 color 1000 +	3.90	2.35	4.28	4.50
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.25	.90
Column Sum	96.57	31.26	106.27	
FOUR COLOR				
4 color 6 – 11	12.65	No Bid	13.53	5.70
4 color 12 – 24	12.65	7.16	13.53	5.70
4 color 25 – 48	9.50	4.87	7.53	5.65
4 color 49 – 72	8.81	4.03	6.53	5.30
4 color 73 – 143	7.75	3.52	5.53	5.20
4 color 144 – 249	6.83	2.90	5.28	5.15
4 color 250 – 499	6.65	2.54	5.03	5.05
4 color 500 – 999	4.40	2.39	4.78	4.95
4 color 1000 +	4.00	2.35	4.53	4.80
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.25	.90
Column Sum	114.74	31.26	127.52	

WHITE TANK TOPS – LOW UNDER ARM CUT

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	6.95	No Bid	7.35	4.85
1 color 12 – 24	6.95	6.21	7.35	4.80
1 color 25 – 48	5.70	4.07	5.38	4.70
1 color 49 – 72	5.40	3.38	4.88	4.40
1 color 73 – 143	4.65	2.87	4.63	4.25
1 color 144 – 249	4.50	2.55	4.38	4.15
1 color 250 – 499	3.75	2.31	4.13	4.05
1 color 500 – 999	3.50	2.19	3.88	3.90
1 color 1000 +	3.40	2.15	3.68	3.75
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.25	1.00
Column Sum	56.30	27.23	61.86	
TWO COLOR				
2 color 6 – 11	8.90	No Bid	9.38	4.65
2 color 12 – 24	8.90	6.51	9.38	4.95
2 color 25 – 48	7.00	4.32	6.13	4.90
2 color 49 – 72	6.65	3.58	5.38	4.70
2 color 73 – 143	5.90	3.07	4.88	4.50
2 color 144 – 249	5.45	2.65	4.63	4.45
2 color 250 – 499	5.19	2.37	4.38	4.30
2 color 500 – 999	4.00	2.24	4.13	4.20
2 color 1000 +	3.75	2.20	3.88	4.10
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.25	1.00
Column Sum	77.24	28.44	83.42	
THREE COLOR				
3 color 6 – 11	10.85	No Bid	11.38	5.20
3 color 12 – 24	10.85	6.81	11.38	5.20
3 color 25 – 48	8.25	4.57	6.88	5.15
3 color 49 – 72	7.80	3.78	5.88	4.90
3 color 73 – 143	6.87	3.27	5.13	4.75
3 color 144 – 249	6.25	2.75	4.88	4.70
3 color 250 – 499	6.00	2.34	4.63	4.60
3 color 500 – 999	4.30	2.29	4.38	4.40
3 color 1000 +	3.90	2.25	4.13	4.20
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.25	1.00
Column Sum	96.57	29.65	104.92	
FOUR COLOR				
4 color 6 – 11	12.65	No Bid	13.38	5.45
4 color 12 – 24	12.65	7.11	13.38	5.45
4 color 25 – 48	9.50	4.82	7.38	5.40
4 color 49 – 72	8.81	3.98	6.38	5.10
4 color 73 – 143	7.75	3.47	5.38	5.00
4 color 144 – 249	6.83	2.85	5.13	4.90
4 color 250 – 499	6.65	2.49	4.88	4.75
4 color 500 – 999	4.40	2.34	4.63	4.55
4 color 1000 +	4.00	2.30	4.38	4.40
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.25	1.00
Column Sum	114.57	29.65	126.17	

COLORED TANK TOPS – HIGH UNDER ARM CUT

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	7.70	No Bid	8.23	5.20
1 color 12 – 24	7.70	6.89	8.23	5.20
1 color 25 – 48	6.45	4.75	6.23	5.10
1 color 49 – 72	6.15	4.06	5.73	4.90
1 color 73 – 143	5.50	3.55	5.48	4.80
1 color 144 – 249	5.25	3.23	5.23	4.65
1 color 250 – 499	4.50	2.99	4.98	4.50
1 color 500 – 999	4.25	2.87	4.73	4.40
1 color 1000 +	4.10	2.83	4.48	4.30
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	63.10	32.67	69.82	
TWO COLOR				
2 color 6 – 11	9.65	No Bid	10.23	5.30
2 color 12 – 24	9.65	7.19	10.23	5.30
2 color 25 – 48	7.75	5.00	6.98	5.15
2 color 49 – 72	7.40	4.26	6.23	5.05
2 color 73 – 143	6.65	3.75	5.73	4.95
2 color 144 – 249	6.20	3.33	5.48	4.80
2 color 250 – 499	5.90	3.05	5.23	4.70
2 color 500 – 999	4.75	2.92	4.98	4.60
2 color 1000 +	4.40	2.88	4.73	4.40
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	83.85	33.88	91.32	
THREE COLOR				
3 color 6 – 11	11.65	No Bid	12.23	5.40
3 color 12 – 24	11.65	7.49	12.23	5.40
3 color 25 – 48	9.00	5.25	7.73	5.25
3 color 49 – 72	8.55	4.46	6.73	5.15
3 color 73 – 143	7.65	3.95	5.98	5.05
3 color 144 – 249	7.00	3.43	5.73	4.90
3 color 250 – 499	6.75	3.11	5.48	4.80
3 color 500 – 999	5.05	2.97	5.23	4.70
3 color 1000 +	4.65	2.93	4.98	4.60
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	103.45	35.09	112.82	
FOUR COLOR				
4 color 6 – 11	13.45	No Bid	14.23	5.50
4 color 12 – 24	13.45	7.79	14.23	5.50
4 color 25 – 48	10.25	5.50	8.23	5.40
4 color 49 – 72	9.65	4.66	7.23	5.25
4 color 73 – 143	8.50	4.15	6.23	5.15
4 color 144 – 249	7.55	3.23	5.98	5.05
4 color 250 – 499	7.40	3.17	5.73	4.90
4 color 500 – 999	5.10	3.03	5.48	4.75
4 color 1000 +	4.75	2.98	5.23	4.70
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	121.60	36.31	134.07	

COLORED TANK TOPS – LOW UNDER ARM CUT

Description	Inline Graphix	Fruit of the Loom	One H Studio	Previous Contract
ONE COLOR				
1 color 6 – 11	7.70	No Bid	8.20	5.20
1 color 12 – 24	7.70	6.77	8.20	5.20
1 color 25 – 48	6.45	4.63	6.20	5.10
1 color 49 – 72	6.15	3.94	5.70	4.90
1 color 73 – 143	5.50	3.43	5.45	4.80
1 color 144 – 249	5.25	3.11	5.20	4.65
1 color 250 – 499	4.50	2.87	4.95	4.50
1 color 500 – 999	4.25	2.75	4.70	4.40
1 color 1000 +	4.10	2.71	4.45	4.30
Screen charge	10.00	Included	15.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	63.10	31.71	69.55	
TWO COLOR				
2 color 6 – 11	9.65	No Bid	10.20	5.30
2 color 12 – 24	9.65	7.07	10.20	5.30
2 color 25 – 48	7.75	4.88	6.95	5.15
2 color 49 – 72	7.40	4.14	6.30	5.05
2 color 73 – 143	6.65	3.63	5.70	4.95
2 color 144 – 249	6.20	3.21	5.45	4.80
2 color 250 – 499	5.90	2.93	5.20	4.70
2 color 500 – 999	4.75	2.80	4.95	4.60
2 color 1000 +	4.40	2.76	4.70	4.40
Screen charge	20.00	Included	30.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	83.85	32.92	91.15	
THREE COLOR				
3 color 6 – 11	11.65	No Bid	12.20	5.40
3 color 12 – 24	11.65	7.37	12.20	5.40
3 color 25 – 48	9.00	5.13	7.70	5.25
3 color 49 – 72	8.55	4.34	6.70	5.15
3 color 73 – 143	7.65	3.83	6.30	5.05
3 color 144 – 249	7.00	3.31	5.70	4.95
3 color 250 – 499	6.75	2.99	5.45	4.80
3 color 500 – 999	5.05	2.85	5.20	4.70
3 color 1000 +	4.65	2.81	4.95	4.60
Screen charge	30.00	Included	45.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	103.45	34.13	112.55	
FOUR COLOR				
4 color 6 – 11	13.45	No Bid	14.20	5.50
4 color 12 – 24	13.45	7.67	14.20	5.50
4 color 25 – 48	10.25	5.38	8.20	5.40
4 color 49 – 72	9.65	4.54	7.20	5.25
4 color 73 – 143	8.50	4.03	6.20	5.15
4 color 144 – 249	7.55	3.41	5.95	5.05
4 color 250 – 499	7.40	3.05	5.70	4.90
4 color 500 – 999	5.10	2.91	5.45	4.75
4 color 1000 +	4.75	2.86	5.20	4.70
Screen charge	40.00	Included	60.00	0.00
Additional XXL	1.50	1.50	1.50	1.00
Column Sum	121.60	35.35	133.80	

Bid # 2008-905 Emergency Medical Supplies and Equipment Annual Contract**CITY COMMISSION AGENDA 2**

Date: 06/04/2008

Submitted By: Rita Williams, Purchasing

Department: Purchasing

Agenda Area: Consent

Information**ACTION REQUEST (Brief Summary)**

Approve and award the annual contract for the purchase and delivery of Medical Supplies and Equipment.

BACKGROUND

Bid packets were mailed to area vendors on April 29, 2008. A bid tabulation is attached for your review.

Bids opened Thursday, May 15, 2008 at 2:00 p.m.

ANALYSIS

The responsible bids meeting all specifications were received as follows, for the unit prices bid per section:

Bound Tree Medical LLC

Sections #1, 2, 3, 4, 5, 6 and 7

Physio-Control, Inc.

Sections # 8 and 9

Preference was given to the vendor(s) who bid on each item in a section.

It is my recommendation to award the Emergency Supplies and Equipment annual contract to Bound Tree Medical LLC - all items in Sections #1, 2, 3, 4, 5, 6 and 7 and Physio-Control, Inc. - Sections 8 and 9, for the unit prices bid and that the Mayor is authorized to execute a contract on behalf of the City Commission.

Thank you

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link:
Res.
08-043

Link:
Exhibit
A

RESOLUTION NO. 08-043

A RESOLUTION AWARDING BIDS AND AUTHORIZING THE MAYOR TO ENTER INTO AN ANNUAL CONTRACT FOR THE PURCHASE AND DELIVERY OF EMERGENCY MEDICAL SUPPLIES AND EQUIPMENT WITH BOUND TREE MEDICAL, LLC AND PHYSIO-CONTROL, INC.; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, on April 29, 2008, bid packets were mailed to six (6) area vendors for the purchase and delivery of Emergency Medical Supplies and Equipment Annual Contract, Bid No. 2008-905; and,

WHEREAS, the request for proposals opened on Thursday, May 15, 2008, at 2:00 p.m.; and,

WHEREAS, the bids received meeting specifications for unit prices bid per section for the purchase and delivery of emergency medical supplies on an annual contract were:

Bound Tree Medical, LLC, for Sections 1, 2, 3, 4, 5, 6 and 7.

Physio-Control, Inc. for Section 8 and 9.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the successful bidders for the purchase and delivery of Emergency Medical Supplies and Equipment Annual Contract is Bound Tree Medical for Sections 1, 2, 3, 4, 5, 6 and 7 and Physio-Control, Inc. for Sections 8 and 9, on the attached EXHIBIT "A".

SECTION 2: That the Mayor is hereby authorized to enter into an annual contract with Bound Tree Medical, LLC and Physio-Control, Inc. for the purchase and delivery of Emergency Medical Supplies and Equipment Annual Contract, Bid No. 2008-905, for the price bid in Exhibit "A" attached and made a part hereof for all intent and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

Pamela A. Lawrence
City Secretary

APPROVED AS TO FORM:

Robert Gervais
City Attorney

BID TABULATION

**Bid #2008-905
EMERGENCY MEDICAL
SUPPLIES AND EQUIPMENT ANNUAL CONTRACT**

	VENDOR					
	Bound Tree Medical , LLC	Physio-Control, Inc.	Matrx Medical	Tri-Anim Health Services	Ever Ready First Aid	Laerdal Medical Corporation
Section 1	\$1,314.80	No Bid	\$1,062.87	\$37,940.15	\$1,433.00	No Bid
Section 2	\$124.37	No Bid	\$31.91	\$18,817.09	\$23.02	No Bid
Section 3	\$207.27	No Bid	\$4.63 (IC)	\$13,699.50	\$206.355	No Bid
Section 4	\$1,269.85	No Bid	\$1,150.08	\$97,457.65	\$1,499.95	No Bid
Section 5	\$885.70	No Bid	\$419.863 (IC)	\$1,557.00	No Bid	No Bid
Section 6	\$108.81	No Bid	\$19.63	\$1,068.91	\$32.565	No Bid
Section 7	\$10,171.60	\$3,504.55 (IC)	\$7,151.22 (IC)	\$18,653.64 (IC)	\$2,433.137 (IC)	No Bid
Section 8	No Bid	\$2,167.00	\$2,058.45	No Bid	No Bid	No Bid
Section 9	No Bid	\$9,561.85	No Bid	No Bid	No Bid	No Bid
Delivery	2 Days	2 Days	2 Days	2-3 Days	14-21 Days	-

IC – Incomplete: did not bid on all items in section.

Bid # 2008-908 Hauling and Disposal of Municipal Sludge Annual Contract**CITY COMMISSION AGENDA 2**

Date: 06/04/2008

Submitted By: Rita Williams, Purchasing

Department: Purchasing

Agenda Area: Consent

Information**ACTION REQUEST (Brief Summary)**

Approve and award Bid # 2008-908 for the Hauling and Disposal of Municipal Sludge from the Wastewater Treatment Plant Annual Contract.

BACKGROUND

Bid packets were mailed to three (3) area vendors on May 14, 2008. A bid tabulation is attached for your review.

Bids opened Wednesday, May 28, 2008 at 2:00 p.m.

ANALYSIS

The low responsible bid meeting all specifications was received from Republic Waste Services of Texas, in Angleton, for the unit prices bid.

It is my recommendation to award the annual contract to Republic Waste Services of Texas, for the unit prices bid and that the Mayor is authorized to execute a contract on behalf of the City Commission.

Thank you

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link:

Res.

08-044

Link:

Exhibit A

RESOLUTION NO. 08-044

A RESOLUTION AWARDDING A BID AND AUTHORIZING THE MAYOR TO ENTER INTO AN ANNUAL CONTRACT WITH REPUBLIC WASTE SERVICES OF TEXAS FOR THE HAULING AND DISPOSAL OF MUNICIPAL SLUDGE FROM THE WASTEWATER TREATMENT PLANT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, on May 28, 2008, bids were received for the hauling and disposal of Municipal Sludge from the Wastewater Treatment Plant, Bid No. 2008-908; and,

WHEREAS, the lowest bid meeting specifications was submitted by Republic Waste Services of Texas; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the successful bidder for the hauling and disposal of Municipal Sludge from the Wastewater Treatment Plant, as set out on the attached Bid Tabulation (Exhibit "A") for Bid No. 2008-908 is Republic Waste Services of Texas, for a unit price bid of FOUR HUNDRED TWENTY AND 50/100 (\$420.50) per 20 yard container.

SECTION 2: That the Mayor is hereby authorized to enter into an agreement with Republic Waste Services of Texas for the hauling and disposal of Municipal Sludge from the Wastewater Treatment Plant, Bid No. 2008-908, for an amount not to exceed the unit price bid of FOUR HUNDRED TWENTY AND 50/100 (\$420.50) per 20 yard container.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Pamela A. Lawrence
City Secretary

Robert Gervais
City Attorney

BID TABULATION

**Bid # 2008-908
Hauling and Disposal of Municipal Sludge
From Wastewater Treatment Plant Annual Contract**

Bid Opening: Wednesday, May 28, 2008 @ 2:00 p.m.

VENDOR	UNIT PRICE 450 20 yard Roll-offs	EXTENSION Estimated Yearly Cost	UNIT PRICE 350 20 yard Roll-offs	EXTENSION Estimated Yearly Cost	UNIT PRICE 200 20 yard Roll-offs	EXTENSION Estimated Yearly Cost
Republic Waste Services of Texas Angleton, Texas	\$420.50	\$189,225.00	\$420.50	\$147,175.00	\$420.50	\$84,100.00
Allied Waste Services Houston, Texas	\$463.25	\$208,462.50	\$463.25	\$162,137.50	\$463.25	\$92,700.00
Waste Management of Texas Houston, Texas	\$669.00	\$301,050.00	\$674.00	\$235,900.00	\$694.00	\$138,800.00
Synagro of Texas Houston, Texas	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
Previous Contract Pricing	\$395.00	\$177,750.00	\$395.00	\$138,250.00	\$395.00	\$79,000.00

5.a.

APPROVE AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF TEXAS CITY, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2008.

CITY COMMISSION AGENDA 2

Date: 06/04/2008

Submitted By: Cheryl Hunter, Finance

Submitted For: Cheryl Hunter

Department: Finance

Agenda Area: Regular Items

Information

ACTION REQUEST (Brief Summary)

APPROVE AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF TEXAS CITY, TEXAS, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2008; AUTHORIZING THE REDEMPTION PRIOR TO MATURITY OF CERTAIN OUTSTANDING OBLIGATIONS; AUTHORIZING THE MAYOR TO APPROVE THE AMOUNT, THE INTEREST RATE, PRICE, AND TERMS THEREOF AND CERTAIN OTHER PROCEDURES AND PROVISIONS RELATED THERETO; AUTHORIZING THE ADVANCE REFUNDING OF CERTAIN OUTSTANDING OBLIGATIONS AND THE EXECUTION AND DELIVERY OF AN ESCROW AGREEMENT AND THE SUBSCRIPTION FOR AND PURCHASE OF CERTAIN ESCROWED SECURITIES.

BACKGROUND

ANALYSIS

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

*No
file(s)
attached.*

5.b.

Consider approval of a request to amend the City of Texas City's fiscal year 2007/2008 budget.

CITY COMMISSION AGENDA 2

Date: 06/04/2008

Submitted By: Cheryl Hunter, Finance

Submitted For: Cheryl Hunter

Department: Finance

Agenda Area: Regular Items

Information

ACTION REQUEST (Brief Summary)

Consider approval of a request to amend the City of Texas City's fiscal year 2007/2008 budget.

BACKGROUND

A budget amendment is needed to provide additional funding for the Recreation & Tourism's 2007/08 budget. Additional funding is needed in the line items Utilities (101-401-53200) and Building Maintenance (101-401-53540). The Utilities budget will need an additional \$200,000 due to the increase cost in electricity for the Natatorium, and the Building Maintenance budget will need an additional \$100,000 for the replacement of A/C units and the installation of an alarm system for the Convention & Lowry Centers.

ANALYSIS

The budget amendment is as follows:

General Fund (101)-Recreation & Tourism (401):	
101-401-53200-Utilities	\$200,000
101-401-53540-Maintenance-Bldg & Grounds	\$100,000
101-000-79999-Undesignated Budget Balance	<\$300,000>

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link:

Ord.

08-23

ORDINANCE NO. 08-23

AN ORDINANCE AMENDING ORDINANCE NO. 07-32, ADOPTING THE 2007-2008 FISCAL YEAR BUDGET TO PROVIDE ADDITIONAL FUNDING FOR RECREATION & TOURISM'S BUDGET FOR UTILITIES AND BUILDING MAINTENANCE; DIRECTING THE CHIEF EXECUTIVE OFFICER TO FILE OR CAUSE TO BE FILED A COPY OF THE AMENDED BUDGET IN THE OFFICE OF THE GALVESTON COUNTY CLERK AND THE STATE COMPTROLLER'S OFFICE; DISPENSING WITH THE REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, by Ordinance No. 07-32, the City Commission of the City of Texas City, Texas, adopted its budget for Fiscal Year 2007-2008; and

WHEREAS, a budget amendment is needed to provide additional funding for the Recreation & Tourism's 2007/2008 budget; and

WHEREAS, the additional funding is needed under Recreation & Tourism's Utilities budget in the amount of \$200,000 due to the increased cost in electricity for the Natatorium and in Recreation & Tourism's Building Maintenance budget in the amount of \$100,000 for the replacement of A/C units and the installation of an alarm system for the Convention & Lowry Centers.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2: That the budget for Fiscal Year 2007-2008 of the City of Texas City, Texas, is hereby amended as follows:

General Fund (101) – Recreation & Tourism (401):

101-401-53200- Utilities	\$200,000.00
101-401-53540-Maintenance-Bldg & Grounds	\$100,000.00
101-000-79999-Undesignated Budget Balance	<\$300,000.00>

SECTION 3: That the chief executive officer shall file or cause to be filed a copy of this budget amendment in the office of the Galveston County Clerk and the State Comptroller's Office.

SECTION 4: That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of all members of the City Commission.

SECTION 5: That this Ordinance shall be finally passed and adopted on the date of its introduction and shall become effective from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Pamela A. Lawrence
City Secretary

Robert Gervais
City Attorney

CITY COMMISSION AGENDA 2

Date: 06/04/2008
Submitted By: Pam Lawrence, Administration
Submitted For: Matthew Doyle
Department: Mayor's Office
Agenda Area: Regular Items

Information

ACTION REQUEST (Brief Summary)

Consider approval of the appointment of Ellen Guerrant as Municipal Court Clerk.

Judge Tom Cain will administer the Oath of Office to Ms. Guerrant, Municipal Court Clerk.

BACKGROUND

ANALYSIS

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link: [Ord. 08-24](#)
Link: [Oath of](#)
[Office-Ellen Guerrant](#)

ORDINANCE NO. 08-24

AN ORDINANCE APPOINTING ELLEN GUERRANT AS THE MUNICIPAL COURT CLERK FOR THE CITY OF TEXAS CITY, TEXAS, PURSUANT TO ARTICLE X, SECTION 5 OF THE CITY CHARTER; DISPENSING WITH THE CHARTER REQUIREMENT FOR READING THIS ORDINANCE ON THREE (3) SEPARATE DAYS; AND PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, *Article X, section 5* of the *City Charter* requires that the Municipal Court Clerk be appointed by the City Commission; and

WHEREAS, Ellen Guerrant is to serve as the Municipal Court Clerk for the City of Texas City, immediately upon the retirement of Carole Grady; and

WHEREAS, *section 29.010* of the *Texas Government Code* requires that a Municipal Court Clerk be appointed for a term not to exceed two (2) years and that said term shall run concurrently with the term of the Municipal Court Judge; and

WHEREAS, the City Commission of the City of Texas City approves the appointment of Ellen Guerrant to the position of Municipal Court Clerk for the City of Texas City, Texas, for a term concurrent with the term of the Municipal Court Judge, not to exceed two years.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission hereby appoints Ellen Guerrant as the Municipal Court Clerk for the City of Texas City, Texas, pursuant to *Article X, section 5* of the *City Charter*. The term of said appointment shall run concurrently with the term of the Municipal Court Judge, as required by law, and shall not exceed two years.

SECTION 2: That the Charter requirement for reading this Ordinance on three (3) separate days has been dispensed by a majority vote of the City Commission.

SECTION 3: That this Ordinance shall be passed and adopted on the date of its introduction, and shall become effective from and after its passage and adoption.

PASSED and ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

Pamela A. Lawrence
City Secretary

APPROVED AS TO FORM:

Robert Gervais
City Attorney

In the name and by the authority of

The State of Texas

OATH OF OFFICE

I, Ellen Guerrant, do solemnly swear (or affirm), that I will faithfully execute the duties of Municipal Court Clerk of Texas City of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and Laws of the United States and of this State, so help me God.

Affiant

SWORN TO and subscribed before me by affiant on this 4th day of June 2008.

Signature of Person Administering Oath

(Seal)

Printed Name

Title

Agreement with USACE to dredge the TC Ship Channel CITY COMMISSION AGENDA 2

Date: 06/04/2008

Submitted By: Pam Lawrence, Administration

Submitted For: Doug Hoover

Department: Management Services

Agenda Area: Regular Items

Information

ACTION REQUEST (Brief Summary)

Authorize the Mayor to execute a Project Partnership Agreement with the USACE (United States Army Corps of Engineers) authorizing the USACE to dredge the Texas City Ship Channel from 40 feet to 45 feet and that the City as the non-federal sponsor agrees to contribute 25% of the total cost of the project. (Dept. of Management Services)

BACKGROUND

ANALYSIS

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link: [Res. 08-045](#)

Link: [Project
Partnership
Agreement for
construction of TC
Channel](#)

RESOLUTION NO. 08-045

A RESOLUTION APPROVING AN AGREEMENT WITH THE UNITED STATES ARMY CORPS OF ENGINEERS TO DREDGE THE TEXAS CITY SHIP CHANNEL FROM 40 TO 45 FEET WITH THE CITY CONTRIBUTING TWENTY-FIVE PERCENT OF THE PROJECT COST; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, federal support for the dredging of the Texas City Channel from 40 feet to 45 feet (Project) was authorized by Section 201 of the Water Resources Development Act of 1986, Public Law 99-662, dated 17 November 1986;

WHEREAS, the United States Army Corps of Engineers (USACE) and the City, as “Non-Federal Sponsor,” desire to enter into a Project Partnership Agreement for construction of the Project;

WHEREAS, the City, as the Non-Federal Sponsor, is agreeable to contributing the required share of twenty-five percent (25%) of the total cost of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby approves the Project Partnership Agreement in substantially the same form as the agreement attached as Exhibit “A” hereto, with the USACE, to dredge the Texas City Ship Channel from 40 feet to 45 feet. The City Commission of the City of Texas City, as the Non-Federal Sponsor, agrees to contribute twenty-five percent (25%) of the total cost of the Project.

SECTION 2: The Mayor is authorized to execute the Agreement.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Pamela A. Lawrence
City Secretary

Robert Gervais
City Attorney

PROJECT ~~PARTNERSHIP~~ AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF TEXAS CITY
FOR CONSTRUCTION
OF THE
TEXAS CITY CHANNEL, TEXAS PROJECT

THIS AGREEMENT entered into this [REDACTED] day of [REDACTED], [REDACTED], by and between the Department of the Army (hereinafter the "Government") represented by the Assistant Secretary of the Army (Civil Works), and the City of Texas City, (hereinafter the "Non-Federal Sponsor"), represented by the Mayor of Texas City.

WITNESSETH, THAT:

WHEREAS, construction of the Texas City Channel, Texas Project, (hereinafter the "Project", as defined in Article I.A. of this Agreement) at Texas City, Galveston County, Texas, was authorized by Section 201 of the Water Resources Development Act of 1986, Public Law 99-662, dated 17 November 1986;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the *Project*;

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 217(a) of the Water Resources Development Act of 1996, Public Law 104-303 (33 U.S.C. 2326a(a)), provides that the Government may provide additional capacity at a *dredged or excavated material disposal facility* constructed by the Government beyond the capacity that would be required for water resources project purposes, if a non-Federal sponsor agrees to pay all costs associated with the construction of the additional capacity;

WHEREAS, Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), establishes the maximum amount of costs for the *Project* and sets forth procedures for adjusting such maximum amount;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

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Deleted: COOPERATION

Deleted: [FULL NAME OF NON-FEDERAL SPONSOR]

Deleted: [FULL NAME OF PROJECT OR SEPARABLE ELEMENT]

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Deleted: [SEE NOTE - 3]

Deleted: [FULL NAME OF NON-FEDERAL SPONSOR] [SEE NOTE - 4]

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[SEE NOTE - 6]¶

OPTION 1 - (FOLLOWING TWO WHEREAS CLAUSES)¶

Deleted: [FULL NAME OF THE AUTHORIZED PROJECT]

Deleted: [SPECIFIC LOCATION OF THE AUTHORIZED PROJECT, INCLUDING STATE, COMMONWEALTH, OR TERRITORY]

Deleted: [CITE AUTHORITY INCLUDING PUBLIC LAW NUMBER]

Deleted: OPTION 2 - (FOLLOWING TWO WHEREAS CLAUSES)¶

WHEREAS, construction of the [FULL NAME OF THE AUTHORIZED PROJECT] (hereinafter the "Authorized Project") at [SPECIFIC LOCATION OF THE AUTHORIZED PROJECT, INCLUDING STATE, COMMONWEALTH, OR TERRITORY] was authorized by [CITE AUTHORITY INCLUDING PUBLIC LAW NUMBER]: ¶

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the [NAME OF THE SEPARABLE ELEMENT OF THE PROJECT] ... [1]

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Deleted: (2) Authorized Project]

Deleted: [SEE NOTE - 8] ¶

WHEREAS, the Government and [REDACTED] ... [2]

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean the *general navigation features*; all *removals* accomplished in accordance with Article II of this Agreement; and all lands, easements, rights-of-way, and *relocations* that the Government, in accordance with Article III of this Agreement, determines to be necessary for construction or operation and maintenance of the *general navigation features*, but shall not include *aids to navigation*.

B. The term “*general navigation features*” shall mean the *initial general navigation features* and the *subsequent dredged or excavated material disposal facilities*. The *general navigation features* shall consist of the deepening and incidental widening of the Texas City Channel and Turning Basin from the current depth of 40 feet to 45 feet with a bottom width of 400 feet, for a distance of approximately 6.8 miles from Bolivar Roads at the Houston Ship Channel to the Turning Basin. Incidental widening for bend easing will occur between Station 19+339.69 to Station 21+716.78. The channel will be deepened to 45 feet with three foot advanced maintenance and two foot allowable over depth. The Turning Basin is 40 feet deep, 4,253 feet long and ranges from 1,000 to 1,200 feet wide. The Turning Basin will be deepened to 45 feet with two foot advanced maintenance and 1 foot allowable over depth. Existing upland dredged material placement areas (PAs) 5 and 6 on Shoal Point will be utilized, along with six new PAs that would be created just offshore of the southeast side of Shoal Point and one adjacent to the western side of Pelican Island. Two dredged material PAs located on the north side of the Texas City Dike will be utilized for sandy maintenance material. A third PA will be developed adjacent to the existing PAs, along with two finger groins near the eastern tip of the north side of the Dike. All *general navigation features* are described in the Texas City Channel Deepening Project, General Reevaluation Report and Environmental Assessment, dated October 2007, and approved by the Southwestern Division Commander on November 9, 2007. The term does not include any lands, easements, rights-of-way, *relocations*; *removals*; *betterments*; any capacity provided pursuant to II.M.3. of this Agreement; or *aids to navigation*.

Deleted: [SEE NOTE - 10 - CHOOSE: (1)]

Deleted: (2) *relocations*, and *deep draft utility relocations*]

Deleted: [SEE NOTE - 11 - CHOOSE: (1) *aids to navigation* or the *local service facilities*. (2)]

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Deleted: _____ and the _____ *dredged or excavated material disposal facilities* at _____, as generally

Deleted: [FULL TITLE OF DECISION DOCUMENT],

Deleted: _____, _____

Deleted: _____ on _____, _____.

Deleted: [SEE NOTE - 10 - CHOOSE: (1)]

Deleted: (2) *relocations*, or *deep draft utility relocations*;

Deleted: [SEE NOTE - 11 - CHOOSE: (1) *aids to navigation*; or *local service facilities*. (2)]

Deleted:]

Deleted: [SEE NOTE - 13]¶

C. The term “*initial general navigation features*” shall mean the channel and Turning Basin and the *dredged or excavated material disposal facilities* other than the *subsequent dredged or excavated material disposal facilities*.

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D. The term “*subsequent dredged or excavated material disposal facilities*” shall mean any *dredged or excavated material disposal facilities* that will contain material from the operation and maintenance, but not the construction, of the *initial general navigation features*.

E. The term “*initial period of construction*” shall mean the time from the date that the Government either issues the solicitation for the first construction contract for the *initial general navigation features* or commences construction of the *initial general navigation features* using the Government’s own forces, whichever is earlier, to the date that construction of the *initial general navigation features* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIV or Article XV.C. of this Agreement, whichever is earlier.

Deleted: [SEE NOTE - 11 - CHOOSE: (1) Article XV.D. (2)

Deleted:]

F. The term “*subsequent period of construction*” shall mean the time during which the engineering and design or construction is performed on a *subsequent dredged or excavated material disposal facility*. The commencement of each *subsequent period of construction* shall be the date that the Government issues the solicitation for the first contract for any work on such facility, or the date that the Government makes the first financial obligation for the Government’s own forces to perform any work on such facility, whichever is earlier. The end of each *subsequent period of construction* shall be the date that construction of such facility is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIV or Article XV.C. of this Agreement, whichever is earlier.

Deleted: [SEE NOTE - 11 - CHOOSE: (1) Article XV.D. (2)

Deleted:]

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G. The term “*total costs of construction of the general navigation features*” shall mean all costs incurred by the Non-Federal Sponsor or the Government in accordance with the terms of this Agreement directly related to construction of the *general navigation features*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s Preconstruction Engineering and Design costs; the Government’s engineering and design costs during construction; the Non-Federal Sponsor’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Articles XVIII.A.1. and XVIII.C.1. of this Agreement; the Government’s actual construction costs (including the costs of alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*); the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; in accordance with Article II.L.3. of this Agreement, incidental costs incurred by the Non-Federal Sponsor in accomplishing *removals*; direct and incidental costs of *removals* accomplished by the Government in accordance with Article II.K. of this Agreement; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Articles X.B. and X.C. of this Agreement. The term does not include the value of any lands, easements, rights-of-way, or

Deleted: [SEE NOTE - 15: the Government’s Continuing Planning and Engineering costs incurred after October 1, 1985;] [SEE NOTE - 16: the Government’s Advanced Engineering and Design costs;]

Deleted: [SEE NOTE - 8 - CHOOSE: (1) the value of the contributions provided by a non-Federal interest under the terms of the Design Agreement; (2) the costs of the Non-Federal Sponsor’s Design Coordination Team Activities;]

Deleted: [SEE NOTE - 10 - CHOOSE: (1)

relocations; any costs incurred by the Non-Federal Sponsor in accomplishing removals other than incidental costs; any financial obligations for operation and maintenance of the general navigation features; any costs allocated by the Government to a preexisting Federal or non-Federal navigation project in accordance with Article II.C. of this Agreement; any costs of additional work under Articles II.M.2. and II.M.3. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; any costs of aids to navigation; or the Non-Federal Sponsor's costs of negotiating this Agreement.

Deleted: (2) relocations, or deep draft utility relocations;]

Deleted: [SEE NOTE - 11 - CHOOSE: (1) any costs of aids to navigation; any costs of construction or operation and maintenance of the local service facilities; or the Non-Federal Sponsor's costs of negotiating this Agreement. (2)

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H. The term "total costs of initial construction" shall mean that portion of total costs of construction of the general navigation features incurred for the initial general navigation features.

I. The term "total costs of subsequent construction" shall mean that portion of total costs of construction of the general navigation features incurred for the subsequent dredged or excavated material disposal facilities.

J. The term "financial obligation for initial construction" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in total costs of initial construction.

K. The term "financial obligation for subsequent construction" shall mean a financial obligation of the Government that results or would result in a cost that is or would be included in total costs of subsequent construction.

L. The term "non-Federal proportionate share of financial obligations for initial construction" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement to total financial obligations for initial construction, as projected by the Government.

M. The term "non-Federal proportionate share of financial obligations for subsequent construction" shall mean the ratio of the Non-Federal Sponsor's contribution of funds required by Article II.F. of this Agreement to financial obligations for subsequent construction, as projected by the Government.

N. The term "highway" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

O. The term "bridge over navigable waters of the United States" shall mean a lawful bridge over the navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a state, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.

P. The term "relocation" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (including any bridge thereof), or public facility,

excluding any *bridge over navigable waters of the United States*, when such action is authorized in accordance with applicable legal principles of just compensation or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a *relocation*, 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 demolition of the affected facility or part thereof.

Q. The term “*removal*” shall mean eliminating an obstruction (other than a *bridge over the navigable waters of the United States*) where the Government determines, after consultation with the Non-Federal Sponsor, that: 1) elimination is necessary for construction or operation and maintenance of the *general navigation features*, including the borrowing of material or the disposal of dredged or excavated material associated therewith; and 2) the Non-Federal Sponsor, the State of **Texas**, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof.

R. The term “*betterment*” shall mean a difference in the engineering and design or construction of an element of the *general navigation features* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the engineering and design or construction of that element. The term does not include features in addition to the *general navigation features*, nor does it include capacity provided, pursuant to Article II.M.3. of this Agreement, at any *dredged or excavated material disposal facility* for disposal of dredged or excavated material from outside the *general navigation features*.

S. The term “*dredged or excavated material disposal facility*” shall mean improvements necessary on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material associated with construction or operation and maintenance of the other *general navigation features*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, or de-watering pumps or pipes. The term also includes modifications to a dredged or excavated material disposal facility to increase capacity beyond that created by regularly recurring operation and maintenance activities.

T. The term “*over-depth*” shall mean additional dimensions associated with a given depth that are required to accomplish advance maintenance, if any, and to compensate for dredging inaccuracies at that depth.

U. The term “*utility*” shall mean that which is defined as a public utility pursuant to generally applicable law of the State of **Texas**.

V. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

W. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

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¶
Q. The term “*deep draft utility relocation*” shall mean providing a functionally equivalent facility to the owner of a *utility* that may take the form of alteration, lowering, raising, or replacement and attendant demolition of the *utility* owner’s existing facility, or part thereof, that serves the general public when such action is necessary for the construction or operation and maintenance of *general navigation features* with an authorized depth of greater than 45 feet, excluding associated *over-depth* and entrance wave allowances, and when such action is not a *relocation*, as defined in paragraph P. of this Article. ¶

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[SEE NOTE – 10] ¶

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OPTION 1¶
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R. The term “*removal*” shall mean eliminating an obstruction (other than a *bridge over the navigable waters of the United States*) where the Government determines, after consultation with the Non-Federal Sponsor, that: 1) elimination is necessary for construction or operation and maintenance of the *general navigation features*, including the borrowing of material or the disposal of dredged or excavated material associated therewith; 2) the Non-Federal Sponsor, the [SEE NOTE - 17] State of _____, or the Government has the legal capability to accomplish elimination of the obstruction at the expense of the owner or operator thereof; and 3) eliminating the obstruction is not part of a *deep draft utility relocation* as defined in paragraph Q. of this Article.¶

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[SEE NOTE - 18]¶

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ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND
THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the *general navigation features* (including alteration, lowering, raising, or replacement and attendant demolition of any *bridge over navigable waters of the United States*), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first construction contract for the *initial general navigation features* or commence construction of the *initial general navigation features* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *general navigation features* shall be exclusively within the control of the Government.

3. At the time the U.S. Army Engineer for the Galveston District (hereinafter the "District Engineer") furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract for the *general navigation features*, the District Engineer shall furnish the Non-Federal Sponsor with a copy thereof.

4. Notwithstanding paragraph A.2. of this Article, if the award of any contract for the *initial general navigation features*, or continuation of construction on any remaining *initial general navigation features* using the Government's own forces would result in *total costs of initial construction* exceeding \$ 70,000,000, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for the *initial general navigation features*, and continuation of construction on any remaining *initial general navigation features* using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the *initial general navigation features* or the continuation of construction on any remaining *initial general navigation features* using the Government's own forces, but in no event shall the award of

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[SEE NOTE - 19]¶

¶
Y. The term "*fiscal year of the Non-Federal Sponsor*" shall mean one year beginning on _____ and ending on _____.

¶
[SEE NOTE - 11]¶

¶
Z. The term "*local service facilities*" shall mean those facilities that the Non-Federal Sponsor must construct or operate and maintain to realize the benefits of the *general navigation features*. The *local service facilities* are _____, as generally described in the _____, dated _____, and approved by the _____ on _____.

¶
[SEE NOTE - 8] – (FOLLOWING TWO PARAGRAPHS)¶

¶
AA. The term "*Design Coordination Team Activities*" shall mean the oversight of issues related to: engineering and design, including scheduling of reports and work products; development of plans and specifications; real property and relocation requirements of the *Project*; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation and maintenance of the *Project*; and other related matters. ¶

¶
BB. The term "*costs of the Non-Federal Sponsor's Design Coordination Team Activities*" shall mean the costs that are incurred by the Non-Federal Sponsor for *Design Coordination Team Activities* on or after October 1, 1996 and before the effective date of this Agreement, as determined by the Government and subject to an audit for reasonableness, allowability, and allocability in accordance with Article X.C. of this Agreement.¶

¶
[SEE NOTE - 10]¶

¶
CC. The term "*deep draft portion of financial obligations for operation and maintenance*" shall mean an amount equal to the Government's total fit ... [3]

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contracts or the continuation of construction using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, the Government may award a contract or contracts, or continue with construction using the Government's own forces, after consultation with the Non-Federal Sponsor and after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of construction using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm.

5. As of the effective date of this Agreement, \$ 2,460,000 of Federal funds have been made available for the *Project*. The Government makes no commitment to budget additional Federal funds for the *Project*. Notwithstanding any other provision of this Agreement, the Government's financial participation in the *Project* is limited to this amount together with any additional funds that the Congress may appropriate for the *Project*. In the event that the Congress does not appropriate funds for the *Project* sufficient to meet the Federal share of the costs of work on the *Project* in the then-current or upcoming *fiscal year*, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the *Project*, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Articles II.D. and II.E. or Article II.F. of this Agreement, as applicable, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

B. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those necessary for the borrowing of material or the disposal of dredged or excavated material, that the Government determines the Non-Federal Sponsor must provide for construction or operation and maintenance of the *general navigation features*, and shall perform or ensure performance of all *relocations* that the Government determines to be necessary for construction or operation and maintenance of the *general navigation features*.

C. The Government shall allocate *total costs of construction of the general navigation features* between *total costs of initial construction* and *total costs of subsequent construction* and shall allocate *total costs of subsequent construction* among the *subsequent periods of construction*. The Government also shall allocate *total costs of initial construction* and *total costs of subsequent construction* to the final dredged depth, excluding associated *over-depth* and entrance channel wave allowances. Finally, the Government shall allocate to any preexisting Federal or non-Federal navigation project all costs associated with the dredging, excavation, and disposal of material from the dimensions, including associated *over-depth* and entrance channel wave allowances, of such project.

D. The Non-Federal Sponsor shall contribute 25 percent of *total costs of initial construction*. If the Government projects that the Non-Federal Sponsor's contributions under paragraph L.3. of this Article and under Articles V, X, and XV.A. of this Agreement that are allocated by the Government to *total costs of initial construction* will be less than the Non-

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¶ 5. As of the effective date of this Agreement, \$ _____ of Federal funds have been made available for the Authorized Project of which \$ _____ is available for the *Project*. The Government makes no commitment to budget additional Federal funds for the Authorized Project. Notwithstanding any other provision of this Agreement, the Government's financial participation in all elements of the Authorized Project, including the *Project*, is limited to \$ _____ plus any additional funds that the Congress may appropriate for the Authorized Project. In the event that the Congress does not appropriate funds for the Authorized Project sufficient to meet the Federal share of the costs of work on the *Project* and other elements of the Authorized Project in the then-current or upcoming *fiscal year*, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the *Project*, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the *Project* and an equal percentage of the total funds contr[... [4]

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Deleted: (2) *relocations* and *deep draft utility relocations*]

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¶ OPTION 1 - (PARAGRAPHS C. AND D.)¶

Deleted: C. The Government shall allocate *total costs of construction of the general navigation features* between *total costs of initial construction* and *total costs of subsequent construction* at [... [5]

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Federal Sponsor's share required by this paragraph, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph.

E. In accordance with Article VI.B. of this Agreement, the Non-Federal Sponsor shall pay 100 percent of the costs allocated by the Government pursuant to paragraph C. of this Article to a preexisting non-Federal navigation project. The Non-Federal Sponsor shall have no obligation under this Agreement to pay any costs allocated by the Government pursuant to paragraph C. of this Article to a preexisting Federal navigation project.

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F. The Non-Federal Sponsor shall contribute 25 percent of *total costs of subsequent construction* incurred for each *subsequent period of construction*. If the Government projects that the Non-Federal Sponsor's contributions under paragraph L.3. of this Article and under Articles V, X, and XV.A. of this Agreement that are allocated by the Government to *total costs of subsequent construction* for that *subsequent period of construction* will be less than the Non-Federal Sponsor's share required by this paragraph for that *subsequent period of construction*, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph for that *subsequent period of construction*.

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G. In accordance with Article VI.E. of this Agreement, the Non-Federal Sponsor shall pay an additional amount equal to 10 percent of *total costs of construction of the general navigation features* less the amount of credit afforded by the Government for the value of the lands, easements, rights-of-way, and *relocations*. The Non-Federal Sponsor shall not be entitled to reimbursement for any value of lands, easements, rights-of-way, and *relocations* provided or performed pursuant to Article III of this Agreement that exceeds 10 percent of *total costs of construction of the general navigation features*.

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H. The District Engineer shall promptly notify the Non-Federal Sponsor in writing of the conclusion of the *initial period of construction* and the conclusion of each *subsequent period of construction*. Upon providing each notification, the Government shall conduct an accounting, in accordance with Article VI of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features* in accordance with Article VIII of this Agreement. The Government shall be responsible for all financial obligations for operation and maintenance of the *general navigation features*.

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J. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of funds for such purpose is expressly authorized by Federal law.

K. The Government shall accomplish all *removals* that neither the Non-Federal Sponsor nor the State of Texas has the legal capability to accomplish where both the Non-Federal

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Sponsor and the State of Texas make a written request for the Government to accomplish such *removals*. Further, the Government shall accomplish all *removals* that the authorizing legislation for the *Project*, or any report referenced therein, expressly requires the Government to accomplish.

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1. All costs incurred by the Government in accomplishing *removals* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. However, in the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such *removal* shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform or ensure performance of *relocations*, as applicable, pursuant to Article II.B. of this Agreement.

L. The Non-Federal Sponsor shall accomplish all *removals*, other than those *removals* specifically assigned to the Government by paragraph K. of this Article, in accordance with the provisions of this paragraph.

1. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *removals*, 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 accomplishing such *removals*. Unless the Government agrees to a later date in writing, prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of the *general navigation features* using the Government's own forces, the Non-Federal Sponsor shall accomplish all *removals* set forth in such descriptions that the Government determines to be necessary for that work.

2. In the event a court determines that the owner of an obstruction is entitled to payment of just compensation as the result of elimination of the obstruction, such *removal* shall be reclassified as part of the Non-Federal Sponsor's responsibility to provide lands, easements, and rights-of-way, or to perform or ensure performance of *relocations*, as applicable, pursuant to Article II.B. of this Agreement.

3. The documented incidental costs incurred by the Non-Federal Sponsor in accomplishing *removals* shall be included in *total costs of construction of the general navigation features*, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs, and shared in accordance with the provisions of this Agreement. Incidental costs may include legal and administrative costs (such as owner or operator notification costs, public notice or hearing costs, attorney's fees, and litigation costs) incurred by the Non-Federal Sponsor in accomplishing *removals*, but shall not include any costs that the Non-Federal Sponsor or the State of Texas has the legal capability to require of, assign to, or recover from the owner or operator of the obstruction.

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M. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.F. of this Agreement.

1. Acquisition of lands, easements, or rights-of-way or performance of *relocations* for the *general navigation features*. Notwithstanding the acquisition of lands, easements, or rights-of-way or performance of *relocations* by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XV.C. of this Agreement.

2. Inclusion of *betterments* in the engineering and design or construction of the *general navigation features*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *general navigation features* that include *betterments* between *total costs of construction of the general navigation features* and the costs of the *betterments*.

3. Provision of capacity at a *dredged or excavated material disposal facility* for dredged or excavated material from outside the *general navigation features*. In the event the Government elects to provide such capacity, the Government shall allocate the costs of engineering and design, or construction of that *dredged or excavated material disposal facility* between *total costs of construction of the general navigation features* and the costs of such extra capacity. The Government also shall allocate any operation and maintenance costs of that *dredged or excavated material disposal facility* between the costs of operation and maintenance for the *general navigation features* and the costs of such extra capacity.

ARTICLE III - LANDS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features*, including those necessary for the borrowing of material, the disposal of dredged or excavated material, and *relocations*, and including those that the Government determines to be subject to the navigation servitude. The Government also shall determine which of such lands, easements, and rights-of-way are necessary for the *initial general navigation features* and which are necessary for the *subsequent dredged or excavated material disposal facilities*. 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

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4. Engineering and design, construction, or operation and maintenance of the *local service facilities* in conjunction with the engineering and design, construction, or operation and maintenance of the associated *general navigation features*. Notwithstanding the performance of this additional work by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XV.D. of this Agreement. ¶

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N. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall construct [SEE NOTE - 24: or cause to be constructed] the *local service facilities*, including dredging, excavation, and disposal of material therefrom, and shall be responsible for taking all actions to enable such construction. The Government shall have no obligation under this Agreement for construction of the *local service facilities* or construction of any other facilities to be provided by the Non-Federal Sponsor or a third party. ¶

O. In accordance with Article VIII.D. of this Agreement, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain [SEE NOTE - 24: or cause to be operated and maintained] the *local service facilities*, including dredging, excavation, and disposal of material therefrom. The Government shall have no obligation under this Agreement for operation and maintenance of the *local service facilities* or operation and maintenance of any other facilities to be provided by the Non-Federal Sponsor or a third party. ¶

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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. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government'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 provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *initial period of construction*, or prior to the end of any *subsequent period of construction*, as applicable, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way necessary for construction or operation and maintenance of the applicable *general navigation features*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. For so long as the *Project* remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the *general navigation features* 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 *relocations* necessary for construction or operation and maintenance of the *general navigation features*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government also shall determine which of such *relocations* are necessary for the *initial general navigation features* and which are necessary for the *subsequent dredged or excavated material disposal facilities*. 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*. Prior to the issuance of the solicitation for each Government contract for construction or operation and maintenance of the *general navigation features*, or prior to the Government incurring any financial obligation for construction or operation and maintenance of a *general navigation feature* using the Government'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.

C. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way necessary for construction or operation and maintenance of the *general navigation features*, including those necessary for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

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¶ C. Nothing in this Agreement shall be deemed to affect any rights the Non-Federal Sponsor may have to seek and receive contributions from a utility owner, in accordance with Section 101(a)(4) of Public Law 99-662, as amended (33 U.S.C. 2211(a)(4)), for the owner's share of deep draft utility relocation costs.¶

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ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

A. To determine the additional amount owed by the Non-Federal Sponsor pursuant to Article II.G. of this Agreement, the Government shall afford credit toward an amount equal to 10 percent of *total costs of construction of the general navigation features* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement, and for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, no credit shall be afforded for the value of any lands, easements, rights-of-way, or *relocations* that have been provided previously as an item of cooperation for another Federal project. In addition, no credit shall be afforded for the value of lands, easements, rights-of-way, or *relocations* 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.

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B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A. or III.B. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contribution for the purpose of determining the amount of credit to be afforded in accordance with the provisions of this Article.

C. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement and except as otherwise provided in paragraph D. of this Article, the value of lands, easements, and rights-of-way, including those necessary for the *relocations*, *borrowing* of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

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1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way 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. General Valuation Procedure. Except as provided in paragraph C.3. or C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The

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fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, 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 amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate

amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are necessary for construction or operation and maintenance of the *general navigation features*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but are not necessarily limited to, 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.C. of this Agreement, 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 in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals prepared for crediting purposes pursuant to paragraph C.2.a. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal for the purpose of determining the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. For the sole purpose of determining the amount of credit to be afforded in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, that the Government acquires on behalf of the Non-Federal Sponsor pursuant to Article II.M.1. of this Agreement shall be the fair market value of the real property interests, plus certain

incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. The fair market value of such real property interests shall be the amount paid by the Government.

2. The value of the interest shall include the documented incidental costs of acquiring the interest. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, and actual amounts expended for payment of any relocation assistance benefits in accordance with Public Law 91-646, as amended.

E. After consultation with the Non-Federal Sponsor, the Government shall determine the value of ~~relocations~~ in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway* or a *utility*, 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.

2. For a *relocation* of a *highway*, 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.

3. For a *relocation* of a *utility*, the value shall be only that portion of *relocation* costs borne by the Non-Federal Sponsor 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.

4. *Relocation* costs shall include, but not necessarily be limited to, 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 shall not include any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

F. Any credit afforded for the value of ~~relocations~~ performed within the *Project* boundaries 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 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Crediting 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.

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OPTION 1 – (PARAGRAPH 4 ONLY)

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4. The value of a *deep draft utility relocation* shall be that portion of the *deep draft utility relocation* costs borne by the Non-Federal Sponsor, but not to exceed 50 percent of the total *deep draft utility relocation* costs, that the Government determines are necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

5. *Relocation* costs and *deep draft utility relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation* or the *deep draft utility relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation* or the *deep draft utility relocation*, as determined by the Government. *Relocation* costs and *deep draft utility relocation* costs shall not include any additional cost of using new material when suitable used material is available. *Relocation* costs and *deep draft utility relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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ARTICLE V - PROJECT COORDINATION TEAM

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A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *initial period of construction* and during each *subsequent period of construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *initial period of construction* and during each *subsequent period of construction*, as applicable, the Project Coordination Team shall generally oversee the *Project*, including but not necessarily limited to matters related to: engineering and design; plans and specifications; scheduling; real property, *relocation*, and *removal* requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations*; the Government's cost projections; final inspection of the entire *Project* or functional portions of the *Project*; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operation and maintenance of the *general navigation features*; and other matters related to the *Project*. The Project Coordination Team shall also generally oversee the coordination of schedules for *the Project*. Oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

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D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the *general navigation features*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total costs of construction of the general navigation features* 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 costs. The Government's costs of participation in the Project Coordination Team shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records of, and provide to the Non-Federal Sponsor current projections of, costs, financial obligations, contributions provided by the parties, and credit afforded for the value of lands, easements, rights-of-way, and relocations. As of the effective date of this Agreement, total costs of construction of the general navigation features are projected to be \$ 69,720,000, total costs of initial construction are projected to be \$ 69,720,000, the Non-Federal Sponsor's contribution of funds required by Article II.D. of this Agreement is projected to be \$ 17,430,000, the non-Federal proportionate share of financial obligations for initial construction is projected to be 25 percent, the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement are projected to be \$ 0, the Government's total financial obligations for additional work to be incurred through the end of the initial period of construction and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.M. of this Agreement are projected to be \$ 0, 10 percent of total costs of construction of the general navigation features as of the end of the initial period of construction is projected to be \$ 6,972,000, the credit to be afforded for the value of lands, easements, rights-of-way, and relocations to be provided or performed through the end of the initial period of construction is projected to be \$ 0, the additional amount required by Article II.G. of this Agreement as of the end of the initial period of construction is projected to be \$ 6,972,000, total costs of subsequent construction are projected to be \$ 0, the Non-Federal Sponsor's total contribution of funds required by Article II.F. of this Agreement for all subsequent periods of construction is projected to be \$ 0, and the Government's total financial obligations for the additional work to be incurred after the initial period of construction and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.M. of this Agreement are projected to be \$ 0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

1. By [REDACTED] and by each quarterly anniversary thereof until the conclusion of the initial period of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: total costs of construction of the general navigation features; total costs of initial construction; the Non-Federal Sponsor's total contribution of funds required by Article II.D. of this Agreement; the non-Federal proportionate share of financial obligations for initial construction; the costs allocated by the Government to a preexisting non-Federal navigation project and the Non-Federal Sponsor's contribution of funds required by Article II.E. of this Agreement; the Government's total financial obligations for additional work incurred through the end of the initial period of construction and the Non-Federal Sponsor's contribution of funds for such obligations required by Article II.M. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the forthcoming fiscal year; the maximum amount determined in accordance with Article XXI of this Agreement; 10 percent of total costs of construction of the general navigation features as of the date of the final accounting for the initial period of construction; the credit to be afforded for the value of lands, easements, rights-of-way, and

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relocations, to be provided or performed through the end of the *initial period of construction*; the additional amount required by Article II.G. of this Agreement as of the end of the *initial period of construction*; the annual installments calculated in accordance with paragraph E. of this Article; *total costs of subsequent construction*; the Non-Federal Sponsor's total contribution of funds required by Article II.F. of this Agreement for all *subsequent periods of construction*; and the Government's total financial obligations for additional work incurred after the *initial period of construction* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.M. of this Agreement.

2. By [REDACTED] and by each quarterly anniversary thereof during each *subsequent period of construction* and until resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total costs of construction of the general navigation features*; *total costs of initial construction*; *total costs of subsequent construction*; the Non-Federal Sponsor's contribution of funds required by Article II.F. of this Agreement for all *subsequent periods of construction*; *total costs of subsequent construction* incurred for that *subsequent period of construction*; the Non-Federal Sponsor's contribution of funds required by Article II.F. of this Agreement for that *subsequent period of construction*; the *non-Federal proportionate share of financial obligations for subsequent construction* for that *subsequent period of construction*; the Government's total financial obligations for additional work incurred during that *subsequent period of construction* and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.M. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the forthcoming *fiscal year*; the maximum amount determined in accordance with Article XXI of this Agreement; 10 percent of *total costs of construction of the general navigation features* as of the date of the final accounting for that *subsequent period of construction*; the credit to be afforded for the value of lands, easements, rights-of-way, and *relocations*, to be provided or performed through the end of that *subsequent period of construction*; and the additional amount required by Article II.G. of this Agreement as of the end of that *subsequent period of construction*.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Articles II.D., II.E., and II.F. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *initial general navigation features* or commencement of construction of the *initial general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for initial construction* incurred prior to the commencement of the *initial period of construction*; (b) the Government's financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project incurred prior to the commencement of the *initial period of construction*; (c) the projected *non-Federal proportionate share of financial obligations for initial construction* to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant

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¶ 1. Not less than [SEE NOTE - 31] calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *initial general navigation features* or commencement of construction of the *initial general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Articles II.D. and II.E. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer, or 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 by presenting the Government with an irrevocable letter of credit acceptable to the Government[... (8)

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to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for initial construction* through the first *fiscal year*; and (d) the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project through the first *fiscal year*. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, **Galveston District**" to the District Engineer, or 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 by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

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2. Thereafter, until the construction of all the *general navigation features* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make financial obligations for engineering and design or construction of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for initial construction* for that *fiscal year* for such continuing contract; (b) the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project for that *fiscal year* for such continuing contract; and (c) the *non-Federal proportionate share of financial obligations for subsequent construction* for that *fiscal year* for such continuing contract. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

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b. For each contract where the Government will not use a continuing contract to make financial obligations for engineering and design or construction of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for initial construction* to be incurred for such contract; (b) the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project to be incurred for such contract; and (c) the *non-Federal proportionate share of financial obligations for subsequent construction* to be incurred for such contract. No later than such

scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make financial obligations for engineering and design or construction of the *general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the projected *non-Federal proportionate share of financial obligations for initial construction* using the Government's own forces for that *fiscal year*; (b) the Government's projected financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project using the Government's own forces for that *fiscal year*; and (c) the *non-Federal proportionate share of financial obligations for subsequent construction* using the Government's own forces for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the Non-Federal Sponsor shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for initial construction* incurred prior to the commencement of the *initial period of construction*; (b) the *non-Federal proportionate share of financial obligations for initial construction* as *financial obligations for initial construction* are incurred; (c) the full amount of the Government's financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project as those financial obligations are incurred; and (d) the *non-Federal proportionate share of financial obligations for subsequent construction* as *financial obligations for subsequent construction* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations in the *fiscal year*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are 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 through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *initial period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for the *initial period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting for the *initial period of construction* from being conducted in a timely manner, the Government shall conduct an interim accounting for the *initial period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings for the *initial period of construction* are resolved, the Government shall amend the interim accounting for the *initial period of construction* to complete the final

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accounting for the *initial period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting, as applicable, for the *initial period of construction* shall determine *total costs of initial construction* and the costs allocated by the Government for operation and maintenance of any preexisting non-Federal navigation project as of the date of such accounting. In addition, for each set of costs, the final or interim accounting, as applicable, for the *initial period of construction* shall determine each party's required share thereof and each party's total contributions thereto as of the date of such accounting.

1. Should the final or interim accounting, as applicable, for the *initial period of construction* show that the Non-Federal Sponsor's total required shares of *total costs of initial construction* and the costs allocated by the Government to a preexisting non-Federal navigation project exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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2. Should the final or interim accounting, as applicable, for the *initial period of construction* show that the total contributions provided by the Non-Federal Sponsor for *total costs of initial construction* and for the costs allocated by the Government to a preexisting non-Federal navigation project exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph E. of this Article.

D. Upon conclusion of each *subsequent period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting for such *subsequent period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting for such *subsequent period of construction* from being conducted in a timely manner, the Government shall conduct an interim accounting for such *subsequent period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings for such *subsequent period of construction* are resolved, the Government shall amend the interim accounting for such *subsequent period of construction* to complete the final accounting for such *subsequent period of construction* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The final or interim accounting, as applicable, for such *subsequent period of construction* shall determine *total costs of subsequent construction* for that *subsequent period of construction*, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the final or interim accounting, as applicable, for such *subsequent period of construction* show that the Non-Federal Sponsor's total required share of *total costs of subsequent construction* for that *subsequent period of construction* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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2. Should the final or interim accounting, as applicable, for such *subsequent period of construction* show that the total contributions provided by the Non-Federal Sponsor for *total costs of subsequent construction* for that *subsequent period of construction* exceed the Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph E. of this Article.

E. The Non-Federal Sponsor shall pay, with interest, any additional amount required by Article II.G. of this Agreement in accordance with the provisions of this paragraph.

1. Each time the Government conducts a final or interim accounting for the *initial period of construction* and for each *subsequent period of construction*, the Government shall determine:

a. an amount equal to 10 percent of *total costs of construction of the general navigation features* as of the end of the *initial period of construction* or the most recent *subsequent period of construction*, whichever is latest;

b. the value, in accordance with Article IV of this Agreement, of the lands, easements, rights-of-way, and *relocations* provided or performed pursuant to Article III of this Agreement as of the end of the *initial period of construction* or the most recent *subsequent period of construction*, whichever is latest; and

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c. the additional amount to be paid by the Non-Federal Sponsor as of the end of the *initial period of construction* or the most recent *subsequent period of construction*, whichever is latest. The additional amount is equal to the amount determined pursuant to paragraph E.1.a. of this Article reduced by the credit afforded for the value of the lands, easements, rights-of-way, and *relocations* determined pursuant to paragraph E.1.b. of this Article. In the event the result of the aforesaid calculation is a negative number, the additional amount shall be zero.

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2. At the time of the first final or interim accounting in which the Government determines that the additional amount is greater than zero, the Government shall calculate annual

installments for payment of the additional amount, and such annual installments shall be substantially equal. To calculate the annual installments, the Government shall amortize the additional amount over a period of ~~30~~ years (hereinafter the “payment period”), beginning on the date the Government notifies the Non-Federal Sponsor of the additional amount, using an interest rate determined by the Secretary of the Treasury in accordance with this paragraph. The Government shall notify the Non-Federal Sponsor in writing of the additional amount and the annual installments.

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a. If the calculation that first determined that the additional amount is greater than zero was based upon the final or interim accounting for the *initial period of construction*, the Secretary of the Treasury, in determining the interest rate used to calculate the annual installments, shall take into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which the *initial period of construction* commences, plus a premium of one-eighth of one percentage point for transaction costs.

b. If the calculation that first determined the additional amount is greater than zero was based upon the final or interim accounting for a *subsequent period of construction*, the Secretary of the Treasury, in determining the interest rate used to calculate the annual installments, shall take into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which such *subsequent period of construction* commences, plus a premium of one-eighth of one percentage point for transaction costs.

3. Thereafter, at the time of each subsequent final or interim accounting until the payment period has elapsed, the Government shall recalculate the annual installments by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the remaining portion of the payment period during the month preceding the *fiscal year* in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount and the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

4. Thereafter, at the time of each final or interim accounting after the payment period has elapsed, the Government shall notify the Non-Federal Sponsor in writing of the recalculated additional amount. The Non-Federal Sponsor, not later than 90 days from receipt of such notice, shall pay to the Government the outstanding portion of the additional amount by delivering a check payable to “FAO, USAED, ~~Galveston~~” to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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5. In addition to any recalculation of the annual installments in accordance with paragraph E.3. of this Article, the Government shall recalculate the annual installments at five year intervals by amortizing the outstanding portion of the additional amount over the remaining portion of the payment period using an interest rate determined by the Secretary of the Treasury, taking into consideration such average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the payment period during the month preceding the *fiscal year* in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The Government shall notify the Non-Federal Sponsor in writing of the recalculated annual installments and the Non-Federal Sponsor shall pay the recalculated annual installments in lieu of the previous annual installments.

6. Subject to paragraphs C.2., D.2., and F.3.b. of this Article, the Non-Federal Sponsor shall pay the installments calculated or recalculated pursuant to paragraphs E.2., E.3., or E.5. of this Article each year on the anniversary of the date the Government notifies the Non-Federal Sponsor of the additional amount, over a period not to exceed the payment period, by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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7. Notwithstanding paragraph E.6. of this Article, the Non-Federal Sponsor, in its sole discretion, may prepay the additional amount, in whole or in part, at any time. Notwithstanding paragraphs E.2., E.3., or E.5. of this Article, there shall be no charges for interest on any portion of the additional amount that is paid within 90 days after the Government notifies the Non-Federal Sponsor of the additional amount, nor shall there be interest charges on any portion of an increase to the additional amount that is caused by recalculation of the additional amount and that is paid within 90 days after the Government notifies the Non-Federal Sponsor of such recalculated additional amount.

8. If the Government determines that the Non-Federal Sponsor has made payments towards the additional amount that exceed the additional amount, the Government, subject to the availability of funds, shall refund the amount of the excess, without interest. In the event funds are not available to make such refund, the Government shall seek such appropriations as are necessary to make such refund.

F. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.M. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

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2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required.

Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

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3. At the time the Government conducts the final or interim accounting, as applicable, for the *initial period of construction* or the final or interim accounting, as applicable, for each *subsequent period of construction* or at the end of each *fiscal year* in which the Government incurs costs for additional work provided or performed prior to the *initial period of construction* or after all *subsequent periods of construction*, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred during the applicable period and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals and eminent domain proceedings prevent a final accounting of additional work incurred during such applicable period from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work incurred during such applicable period and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work incurred during such applicable period to complete the final accounting of additional work incurred during such applicable period and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final or interim accounting, as applicable, shall determine the Government's total financial obligations for additional work incurred during the applicable period and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the final or interim accounting, as applicable, show that the total obligations for additional work incurred during the applicable period exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

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b. Should the final or interim accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work during the applicable period exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations are not received, the

Government shall apply the excess toward the Non-Federal Sponsor's upcoming installment payment, if any, in accordance with paragraph E. of this Article.

ARTICLE VII - 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 both parties. The parties each 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 VIII - OPERATION AND MAINTENANCE

A. The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *general navigation features*.

B. The Non-Federal Sponsor hereby authorizes the Government to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of operating and maintaining the *general navigation features*. However, nothing contained herein shall convey to the Government any interest in real property owned or controlled by the Non-Federal Sponsor.

C. The Non-Federal Sponsor hereby authorizes the Government to perform all activities on the lands, easements, and rights-of-way provided by the Non-Federal Sponsor to enable the disposal of dredged or excavated material that, in the Government's sole discretion, are necessary for the operation and maintenance of the *general navigation features*. Such activities include, but are not necessarily limited to, construction or operation and maintenance of the *dredged or excavated material disposal facilities* and management of disposal of dredged or excavated material associated with construction or operation and maintenance of the other *general navigation features*. In addition, as between the Government and the Non-Federal Sponsor, for so long as a *dredged or excavated material disposal facility* is required for construction or operation and maintenance of the other *general navigation features* as determined by the Government, the Government shall have the full authority and exclusive right to operate and maintain or manage such facility including the exclusive right to place, remove, use, or reuse the materials therein for any purpose without charge to the Government.

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¶ G. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.I. of this Agreement in accordance with the provisions of this paragraph.¶

¶ 1. By _____ of each year, the Government shall provide the Non-Federal Sponsor with the current projections, for the upcoming *fiscal year*, of the Government's total financial obligations for operation and maintenance, of the *deep draft portion of financial obligations for operation and maintenance*, and of the funds required from the Non-Federal Sponsor to cover its share of the *deep draft portion of financial obligations for operation and maintenance*.¶

¶ 2. The Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.¶

¶ a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make financial obligations for operation and maintenance of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each [SEE NOTE - 33 - CHOOSE: (1) *fiscal year* (2) *quarter* (3) *fiscal year of the Non-Federal Sponsor*] in which the Government projects that it will m[... 9]

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¶ D. Subject to applicable Federal laws and regulations and for so long as the *Project* remains authorized, and commensurate with the Government's operation and maintenance of the *general navigation features*, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain [SEE NOTE - 24: or cause to be operated and maintained] the *local service facilities* in a manner compatible with the authorized purposes of the *Project* including dredging, excavation, and disposal of material therefrom. The Non-Federal Sponsor shall be responsible for taking all actions to enable such operation and maintenance. ¶

ARTICLE IX - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from construction or operation and maintenance of the *Project* and any *betterments*, and the provision of capacity pursuant to Article II.M.3. of this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

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ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. Sections 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. 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 *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. 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.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the *general navigation features* 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 the *Project*.

B. If the Government determines that Federal funds for the *Project* are not sufficient to meet the Federal share of the costs of work on *the Project* in the then-current or upcoming *fiscal year*, the Government shall so notify the Non-Federal Sponsor in writing, and within 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend

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Deleted: (2) Authorized Project]

future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient Federal funds for the *Project* or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement, whichever is earlier.

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C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement, or an accounting in accordance with Article VI.D. of this Agreement, as applicable.

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D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor 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.

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ARTICLE XV - HAZARDOUS SUBSTANCES

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A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary 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. Sections 9601-9675), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer 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.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances that are determined by the Government to be attributable to the *general navigation features* shall be included in *total costs of construction of the general navigation features* 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 costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances that are determined by the Government to be attributable to the *general*

navigation features shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction or operation and maintenance of the *general navigation features*, or, if already in construction or operation and maintenance of the *general navigation features*, whether to continue with construction or operation and maintenance of the *general navigation features*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be necessary for construction or operation and maintenance of the *general navigation features*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction or operation and maintenance of the *general navigation features* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, 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 *total costs of construction of the general navigation features*. In the event 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 paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *general navigation features*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. To the maximum extent practicable, the Government and the Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause liability to arise under CERCLA.

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C

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ARTICLE XVI - 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 sent by telegram or mailed by first-class, registered, or certified mail, as follows:

▼ ----- If to the Non-Federal Sponsor:

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¶

----- Office of the Mayor
----- City of Texas City
----- 1801 9th Avenue North
----- P.O. Drawer 2608
----- Texas City, TX 77592-2608

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----- If to the Government:

----- Department of the Army
----- Galveston District, Corps of Engineers
----- P.O. Box 1229
----- Galveston, TX 77553-1229

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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - 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 XVIII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties.

1. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of identification, survey, and evaluation of historic properties determined by the Government to be attributable to operation and maintenance of the *general*

navigation features shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.I. of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform any archeological data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523, as renumbered and amended by Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total costs of construction of the general navigation features*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *general navigation features*.

C. The Government shall not incur costs for archeological data recovery activities that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit (and the Secretary of the Interior has concurred in the waiver) in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)).

1. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to construction of the *general navigation features* shall be included in *total costs of construction of the general navigation features* and shared in accordance with the provisions of this Agreement.

2. Any costs of archeological data recovery activities that exceed the one percent limit and are determined by the Government to be attributable to operation and maintenance of the *general navigation features* shall be considered financial obligations for operation and maintenance of the *general navigation features* and shared in accordance with Article II.I. of this Agreement.

ARTICLE XIX - 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 party to this Agreement.

Deleted: [SEE NOTE – 39] –
(FOLLOWING TWO ARTICLES)¶

ARTICLE XX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsor, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

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ARTICLE XXI - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280), and understands that it establishes for the *Project* the maximum amount for *total costs of construction of the general navigation features*. Notwithstanding any other provision of this Agreement, the Government shall not make a new financial obligation or expenditure for the *general navigation features* or include any additional contribution provided by the Non-Federal Sponsor in *total costs of construction of the general navigation features*, if such obligation, expenditure, or inclusion would cause *total costs of construction of the general navigation features* to exceed this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$ 403,728,000, as calculated in accordance with ER 1105-2-100 using October 1, 2008, price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280).

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

CITY OF TEXAS CITY

BY: MR. JOHN PAUL WOODLEY, JR.
Assistant Secretary of the Army

BY: MATTHEW T. DOYLE
Mayor

DATE: _____

DATE: _____

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¶

Deleted: [SEE NOTE - 6 - CHOOSE:
(1)

Deleted: (2) for the Authorized Project]

Deleted: [SEE NOTE - 40: plus the costs of the *local service facilities*] [SEE NOTE - 41: plus the value, as determined in accordance with Article IV of this Agreement, of the contributions provided or performed by the Non-Federal Sponsor in accordance with Article III of this Agreement] [SEE NOTE - 6: and for corresponding amounts for other elements of the Authorized Project]

Deleted: [SEE NOTE - 40: , plus the costs of the *local service facilities*] [SEE NOTE - 41: , plus the value, as determined in accordance with Article IV of this Agreement, of any contributions provided or performed by the Non-Federal Sponsor in accordance with Article III of this Agreement] [SEE NOTE - 6: , together with the corresponding amounts for other elements of the Authorized Project,]

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ARTICLE XXII - OBLIGATIONS OF FUTURE APPROPRIATIONS¶

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ [SEE NOTE - 43: , where creating such an ob[... [10]

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Deleted: . [TYPED NAME]

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CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the City of Texas City, that the City of Texas City 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 City of Texas City in connection with the Texas City Channel Deepening Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required 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 Agreement on behalf of the City of Texas City have acted within their statutory authority.

Deleted: [FULL NAME OF NON-FEDERAL SPONSOR]

Deleted: [FULL NAME OF NON-FEDERAL SPONSOR]

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Deleted: [FULL NAME OF NON-FEDERAL SPONSOR]

Deleted: [FULL NAME OF PROJECT]

Deleted: [FULL NAME OF NON-FEDERAL SPONSOR]

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____.

MATTHEW T. DOYLE
Mayor

Deleted: [SIGNATURE]

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Deleted: [TITLE IN FULL]

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 Section 1352, Title 31, U.S. Code. 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.

MATTHEW T. DOYLE
Mayor

DATE: _____

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SIGNATORY]

Deleted: [TYPED NAME]

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OPTION 2 – (FOLLOWING TWO WHEREAS CLAUSES)

WHEREAS, construction of the [FULL NAME OF THE AUTHORIZED PROJECT] (hereinafter the “Authorized Project”) at [SPECIFIC LOCATION OF THE AUTHORIZED PROJECT, INCLUDING STATE, COMMONWEALTH, OR TERRITORY] was authorized by [CITE AUTHORITY INCLUDING PUBLIC LAW NUMBER];

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the “Agreement”) for construction of the [NAME OF THE SEPARABLE ELEMENT OF THE AUTHORIZED PROJECT] (a separable element of the Authorized Project and hereinafter the “*Project*”, as defined in Article I.A. of this Agreement);

[SEE NOTE - 8]

WHEREAS, the Government and a non-Federal interest entered into an agreement, dated [SEE NOTE - 9] _____, for engineering and design of the *Project* (hereinafter the “Design Agreement”), under the terms of which the non-Federal interest contributed a portion of the costs for engineering and design;

[SEE NOTE - 19]

Y. The term “*fiscal year of the Non-Federal Sponsor*” shall mean one year beginning on _____ and ending on _____.

[SEE NOTE - 11]

Z. The term “*local service facilities*” shall mean those facilities that the Non-Federal Sponsor must construct or operate and maintain to realize the benefits of the *general navigation features*. The *local service facilities* are _____, as generally described in the _____, dated _____, _____ and approved by the _____ on _____, _____.

[SEE NOTE - 8] – (FOLLOWING TWO PARAGRAPHS)

AA. The term “*Design Coordination Team Activities*” shall mean the oversight of issues related to: engineering and design, including scheduling of reports and work products; development of plans and specifications; real property and *relocation* requirements of the *Project*; contract awards and modifications; contract costs; the

Government's cost projections; anticipated requirements and needed capabilities for performance of operation and maintenance of the *Project*; and other related matters.

BB. The term "*costs of the Non-Federal Sponsor's Design Coordination Team Activities*" shall mean the costs that are incurred by the Non-Federal Sponsor for *Design Coordination Team Activities* on or after October 1, 1996 and before the effective date of this Agreement, as determined by the Government and subject to an audit for reasonableness, allowability, and allocability in accordance with Article X.C. of this Agreement.

[SEE NOTE – 10]

CC. The term "*deep draft portion of financial obligations for operation and maintenance*" shall mean an amount equal to the Government's total financial obligations for operation and maintenance of the *Project* (including associated *over-depth* and entrance channel wave allowances) less the estimated total financial obligations for operation and maintenance of the *Project* (including associated *over-depth* and entrance channel wave allowances) if the *Project* had an authorized depth of 45 feet.

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OPTION 2

5. As of the effective date of this Agreement, \$_____ of Federal funds have been made available for the Authorized Project of which \$_____ is available for the *Project*. The Government makes no commitment to budget additional Federal funds for the Authorized Project. Notwithstanding any other provision of this Agreement, the Government's financial participation in all elements of the Authorized Project, including the *Project*, is limited to \$_____ plus any additional funds that the Congress may appropriate for the Authorized Project. In the event that the Congress does not appropriate funds for the Authorized Project sufficient to meet the Federal share of the costs of work on the *Project* and other elements of the Authorized Project in the then-current or upcoming *fiscal year*, the Government shall notify the Non-Federal Sponsor of the insufficiency of funds and the parties, within the Federal and non-Federal funds available for the *Project*, shall suspend construction or terminate this Agreement in accordance with Article XIV.B. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with [SEE NOTE - 10 - CHOOSE: (1) Articles II.D. and II.E. or Article II.F. (2) Articles II.D. and II.E., Article II.F., or Article II.I.] of this Agreement, as applicable, as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

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C. The Government shall allocate *total costs of construction of the general navigation features* between *total costs of initial construction* and *total costs of subsequent construction* and shall allocate *total costs of subsequent construction* among the *subsequent periods of construction*. The Government also shall allocate *total costs of initial construction* among one or more of the following depth increments: not in excess of 20 feet, excluding associated *over-depth* and entrance channel wave allowances; or in

excess of 20 feet but not in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances [SEE NOTE - 10: ; or in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances]. Further, the Government shall allocate *total costs of subsequent construction* to the final dredged depth, excluding associated *over-depth* and entrance channel wave allowances. Finally, the Government shall allocate to any preexisting Federal or non-Federal navigation project all costs associated with the dredging, excavation, and disposal of material from the dimensions, including associated *over-depth* and entrance channel wave allowances, of such project.

D. The Non-Federal Sponsor shall contribute 10 percent of that portion of *total costs of initial construction* allocated by the Government to a depth not in excess of 20 feet, excluding associated *over-depth* and entrance channel wave allowances; plus 25 percent of that portion of *total costs of initial construction* allocated by the Government to a depth in excess of 20 feet but not in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances [SEE NOTE - 10: ; plus 50 percent of that portion of *total costs of initial construction* allocated by the Government to a depth in excess of 45 feet, excluding associated *over-depth* and entrance channel wave allowances]. If the Government projects that [SEE NOTE - 8 - CHOOSE: (1) the value of the contributions provided by a non-Federal interest under the terms of the Design Agreement and (2) the *costs of the Non-Federal Sponsor's Design Coordination Team Activities* and] the Non-Federal Sponsor's contributions under paragraph L.3. of this Article and under Articles V, X, and XV.A. of this Agreement that are allocated by the Government to *total costs of initial construction* will be less than the Non-Federal Sponsor's share required by this paragraph, the Non-Federal Sponsor, in accordance with Article VI.B. of this Agreement, shall provide additional funds in the amount necessary to meet the Non-Federal Sponsor's share required by this paragraph.

OPTION 2 – (PARAGRAPHS C. AND D.)

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[SEE NOTE - 8 - CHOOSE: (1) the value of the contributions provided by a non-Federal interest under the terms of the Design Agreement and (2) the *costs of the Non-Federal Sponsor's Design Coordination Team Activities* and]

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[SEE NOTE - 11] – (FOLLOWING TWO PARAGRAPHS)

N. Subject to applicable Federal laws and regulations, the Non-Federal Sponsor, at no cost to the Government and in a timely manner, shall construct [SEE NOTE - 24: or cause to be constructed] the *local service facilities*, including dredging, excavation, and disposal of material therefrom, and shall be responsible for taking all actions to enable such construction. The Government shall have no obligation under this Agreement for construction of the *local service facilities* or construction of any other facilities to be provided by the Non-Federal Sponsor or a third party.

O. In accordance with Article VIII.D. of this Agreement, the Non-Federal Sponsor, at no cost to the Government, shall operate and maintain **[SEE NOTE - 24: or cause to be operated and maintained]** the *local service facilities*, including dredging, excavation, and disposal of material therefrom. The Government shall have no obligation under this Agreement for operation and maintenance of the local service facilities or operation and maintenance of any other facilities to be provided by the Non-Federal Sponsor or a third party.

[SEE NOTE - 25]

B. The Non-Federal Sponsor shall provide the contributions of funds required by Articles II.D., II.E., and II.F. of this Agreement in accordance with the provisions of this paragraph.

[SEE NOTE – 30]

1. Not less than **[SEE NOTE - 31]** calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *initial general navigation features* or commencement of construction of the *initial general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Articles II.D. and II.E. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, **[APPROPRIATE USACE DISTRICT & EROC]**" to the District Engineer, or 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 by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Not less than **[SEE NOTE - 31]** calendar days prior to the scheduled date for either issuance of the solicitation for the first contract for any engineering and design work on a *subsequent dredged or excavated material disposal facility* or commencement of engineering and design work on a *subsequent dredged or excavated material disposal facility* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.F. of this Agreement for the applicable *subsequent period of construction*. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for initial construction* incurred prior to the commencement of the *initial period of construction*; (b) the *non-Federal proportionate share of financial obligations for initial construction as financial obligations for initial construction* are incurred; (c) the full amount of financial obligations for costs allocated by the Government to a preexisting non-Federal navigation project as those financial obligations are incurred; and (d) the *non-Federal proportionate share of financial obligations for subsequent construction as financial obligations for subsequent construction* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within **[NOT TO EXCEED 60 - SEE NOTE - 32]** calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

OPTION 2 – (PARAGRAPHS B. AND B.1. – B.3.)

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[SEE NOTE - 10]

G. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.I. of this Agreement in accordance with the provisions of this paragraph.

1. By _____ of each year, the Government shall provide the Non-Federal Sponsor with the current projections, for the upcoming *fiscal year*, of the Government's total financial obligations for operation and maintenance, of the *deep draft portion of financial obligations for operation and maintenance*, and of the funds required from the Non-Federal Sponsor to cover its share of the *deep draft portion of financial obligations for operation and maintenance*.

2. The Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make financial obligations for operation and maintenance of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each **[SEE NOTE - 33 - CHOOSE: (1) fiscal year (2) quarter (3) fiscal year of the Non-Federal Sponsor]** in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any excess for which a refund is

outstanding under paragraph G.4.b. of this Article, to meet the Non-Federal Sponsor's share of the *deep draft portion of financial obligations for operation and maintenance* for that **[SEE NOTE - 33 - CHOOSE: (1) fiscal year (2) quarter (3) fiscal year of the Non-Federal Sponsor]** for such continuing contract. No later than 30 calendar days prior to the beginning of that **[SEE NOTE - 33 - CHOOSE: (1) fiscal year, (2) quarter, (3) fiscal year of the Non-Federal Sponsor,]** the Non-Federal Sponsor shall make the full amount of such required funds for that **[SEE NOTE - 33 - CHOOSE: (1) fiscal year (2) quarter (3) fiscal year of the Non-Federal Sponsor]** available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract where the Government will not use a continuing contract to make financial obligations for operation and maintenance of the *general navigation features*, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any excess for which a refund is outstanding under paragraph G.4.b. of this Article, to meet the Non-Federal Sponsor's share of the *deep draft portion of financial obligations for operation and maintenance* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

c. Where the Government projects that it will make financial obligations for operation and maintenance of the *general navigation features* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each **[SEE NOTE - 33 - CHOOSE: (1) fiscal year (2) quarter (3) fiscal year of the Non-Federal Sponsor]** in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsor, after consideration of any excess for which a refund is outstanding under paragraph G.4.b. of this Article, to meet the Non-Federal Sponsor's share of the *deep draft portion of financial obligations for operation and maintenance* using the Government's own forces for that **[SEE NOTE - 33 - CHOOSE: (1) fiscal year. (2) quarter. (3) fiscal year of the Non-Federal Sponsor.]** No later than 30 calendar days prior to the beginning of that **[SEE NOTE - 33 - CHOOSE: (1) fiscal year, (2) quarter, (3) fiscal year of the Non-Federal Sponsor,]** the Non-Federal Sponsor shall make the full amount of such required funds for that **[SEE NOTE - 33 - CHOOSE: (1) fiscal year (2) quarter (3) fiscal year of the Non-Federal Sponsor]** available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Non-Federal Sponsor's share of the *deep draft portion of financial obligations for operation and maintenance* as financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such *deep draft portion of financial obligations for*

operation and maintenance in the current [SEE NOTE - 33 - CHOOSE: (1) *fiscal year* (2) *quarter* (3) *fiscal year of the Non-Federal Sponsor*], the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within [NOT TO EXCEED 60 - SEE NOTE - 32] calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

4. Upon completion of each *fiscal year* in which the Government incurs financial obligations for operation and maintenance, the Government shall conduct an accounting of the Government's financial obligations for operation and maintenance incurred in that *fiscal year* and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting for such *fiscal year* from being conducted in a timely manner, the Government shall conduct an interim accounting for such *fiscal year* and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals for such *fiscal year* are resolved, the Government shall amend the interim accounting for such *fiscal year* to complete the final accounting for such *fiscal year* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such final or interim accounting, as applicable, shall determine the Government's total financial obligations for operation and maintenance incurred in that *fiscal year*, the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year*, each party's contribution provided for the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year* as of the date of such accounting, and each party's required share of the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year*.

a. Should the final or interim accounting, as applicable, show that the Non-Federal Sponsor's required share of the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year* exceeds the total contribution of funds provided thereto by the Non-Federal Sponsor, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, [APPROPRIATE USACE DISTRICT & EROC]" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the final or interim accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for the *deep draft portion of financial obligations for operation and maintenance* incurred in that *fiscal year* exceeds its required share thereof, the Government, subject to the availability of funds, shall refund the excess to the Non-Federal Sponsor no later than 90 calendar days after providing written notice. In the event funds are not available to refund the excess, the Government shall seek such appropriations as are necessary to make the refund. To the extent that such appropriations for the refund are not received, the Government shall

apply the excess toward the Non-Federal Sponsor's next contribution of funds in accordance with paragraph G.2. of this Article.

[SEE NOTE - 42]

ARTICLE XXII - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ [SEE NOTE - 43: , where creating such an obligation would be inconsistent with _____ of the _____ of _____].

B. The Non-Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that [SEE NOTE - 44 - CHOOSE: (1) year, (2) biennium,] and shall use all reasonable and lawful means to secure those appropriations. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

TC Terminal Contribution Agreement for the Deepening of the Channel Project

CITY COMMISSION AGENDA 2

Date: 06/04/2008
Submitted By: Pam Lawrence, Administration
Submitted For: Doug Hoover
Department: Management Services
Agenda Area: Regular Items

Information

ACTION REQUEST (Brief Summary)

Consider giving the Mayor authorization to execute a Contribution Agreement with the Texas City Terminal Railway Company. Terminal has agreed to contribute the City's portion of the costs of the Project and additional costs up to a total amount of \$24,500,000.00, through the collection of a special Crude Oil Surcharge.

BACKGROUND

ANALYSIS

ALTERNATIVES CONSIDERED

Fiscal Impact

Attachments

Link: [Res. 06-046](#)

Link: [Contribution Agreement](#)

RESOLUTION NO. 08-046

A RESOLUTION APPROVING A CONTRIBUTION AGREEMENT WITH TEXAS CITY TERMINAL RAILWAY COMPANY D/B/A PORT OF TEXAS CITY FOR THE COST OF THE CITY'S PORTION OF THE TEXAS CITY SHIP CHANNEL 45FT DEEPENING PROJECT; PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the City and United States Army Corps of Engineers (USACE) are entering into a Project Cooperation Agreement for the Texas City Ship Channel 45ft Deepening Project (Project); and

WHEREAS, the City, as the Non-Federal Sponsor, is responsible for contributing a required share of twenty-five percent (25%) of the total cost of the Project; and

WHEREAS, the City of Texas City and Texas City Terminal Railway Company (TCTR) have agreed to execute a Contribution Agreement, Exhibit "A" attached, wherein TCTR has agreed to pay the City's share of the costs of the Project Partnership Agreement and additional costs (up to a total amount of \$24,500,000.00) through the collection of a special crude oil surcharge; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission of the City of Texas City, Texas, hereby approves the Contribution Agreement with the Texas City Terminal Railway Company, in substantially the same form as set out on the attached as Exhibit "A" hereto, to contribute the City's portion of the costs of the Project.

SECTION 2: The Mayor is authorized to execute the Agreement.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of June, 2008.

Matthew T. Doyle, Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Pamela A. Lawrence
City Secretary

Robert Gervais
City Attorney

**CONTRIBUTION AGREEMENT
FOR THE TEXAS CITY CHANNEL 45FT DEEPENING PROJECT**

This Contribution Agreement for the Texas City Channel 45ft Deepening Project (this “Agreement”) is entered into on June ____, 2008 by and between the City of Texas City, Texas (“the City”) and the Texas City Terminal Railway Company (“Terminal”). Terminal and City are collectively referred to as the “Parties.” Any term set forth in *italic* shall have the meaning therein ascribed to such terms in the Project Cooperation Agreement (“PCA”) attached hereto.

WHEREAS, deepening and incidental widening of the Texas City Channel and Turning Basin from the current depth of 40 feet to 45 feet for a distance of approximately 6.8 miles from Bolivar Roads at the Houston Ship Channel to the Turning Basin as further defined in the PCA (hereinafter the “*Project*” and as further defined in the PCA) was authorized by Section 201 of the Water Resources Development Act of 1986, Public Law 99-662, dated 17 November 1986;

WHEREAS, the United States Department of the Army, herein after referred to as the “*Government*” and the City, as the Non-Federal Sponsor for the *Project*, entered into the attached Project Cooperation Agreement for construction of the *Project*;

WHEREAS, the Water Resources Development Act of 1986 (Public Law 99-662) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, the PCA requires the City, as the *Non-Federal Sponsor*, to contribute a portion of the total costs of the *Project*;

WHEREAS, Terminal has added a Crude Oil Surcharge to its Tariff or maritime schedule in order to provide the City with funds necessary to cover a portion of the Non-Federal Sponsor’s Costs for the *Project*; and

WHEREAS, Terminal has agreed to contribute the City’s portion of the costs of the *Project* and additional costs up to a total amount of \$24,500,000.00, through the collection of a special Crude Oil Surcharge.

SECTION I - THE CITY AS NON-FEDERAL SPONSOR

1.1. The City shall act as the Non-Federal Sponsor under the PCA. Nothing in this Agreement shall make Terminal liable to the Government or any third party under the PCA. The City recognizes that Terminal and the users of the Port of Texas City, through the crude oil surcharge, are committing substantial amounts of money to ensure that the Project is conducted, and the City agrees to ensure that its obligations under the PCA as the Non-Federal Sponsor are conducted in the most cost effective and timely manner and in the best interest of Terminal and the users of the Port of Texas City.

1.2. The City shall promptly forward any requests, notices, opportunities to review, comments, documentation, report, audit, or other information from the *Government* regarding the *Project* to Terminal. Terminal may thereafter provide notice or forward such information to the users of the Port of Texas City. The City shall also provide Terminal regular updates about the status of the *Project* and any interactions with the *Government*. The City shall request that

Terminal be copied on all notices or other communication between the *Government* and the City under the PCA.

1.3. Under the terms of the PCA, the *Government* and City are to establish a *Project Coordination Team* to oversee the *Project*. The City shall appoint Terminal and at least four other representatives of users of the Port of Texas City designated by Terminal to the *Project Coordination Team*.

1.4. The City shall promptly respond to all requests by the *Government*, including a request to confirm the City's willingness to proceed with the *Project* as required by the PCA. The City may respond to any routine request from the *Government* without the approval of Terminal, provided that the City shall notify Terminal of such routine request as soon as possible thereafter. A request from the *Government* is considered routine when it does not escalate the total Non-Federal Sponsor's Costs or materially extends the work schedule for the *Project*. In responding to routine requests, the City shall consider and act in the interest of reducing the overall work schedule of the *Project*, reducing the overall costs of the *Project* and reducing any environmental impact of the *Project*.

1.5. Any request or decision that would increase the total Non-Federal Sponsor's Costs of the *Project* or any portion thereof, individually or in the aggregate with other decisions, by more than 10%, or would, individually or in the aggregate with other decisions, extend the overall work schedule of the *Project* by more than sixty (60) days, or that is outside the scope of the *general navigation features* shall be considered a non-routine request. All non-routine requests shall be promptly presented to Terminal and Terminal shall promptly respond to such request as appropriate under the circumstances. The City shall abide Terminal's decision and communicate such decision to the *Government* as the decision of the *Non-Federal Sponsor*. Terminal shall not be obligated to pay the Non-Federal Sponsor's Costs associated with any non-routine decision made without Terminal's consent.

1.6. All notices or communication or information required to be transmitted to or from Industry shall be directed to:

Texas City Terminal Railway Company

Attn: _____

Email: _____

2425 SH 146 North

Texas City, Texas 77590

(409) 965-4461 phone

(409) 965-8479 fax

SECTION II - PAYMENT OBLIGATIONS

2.1. Subject to the terms of this Agreement, Terminal, through the collection of the Crude Oil Surcharge, shall pay the City's contribution under the PCA as the *Non-Federal Sponsor* of 25% of the *total costs of initial construction*, as set forth in the PCA, not to exceed \$17,500,000.

2.2. Subject to the terms of this Agreement, Terminal, through the collection of the Crude Oil Surcharge, shall pay the City's contribution under the PCA as the *Non-Federal Sponsor* of 10% of the *total costs of construction of the general navigation features* less the amount, if any, of lands, easements, right-of-ways, and *relocations* as set forth in the PCA, not to exceed \$7,000,000.

2.3. The total costs under Subsections 2.1 and 2.2 to be paid are hereby referred to herein as the "Non-Federal Sponsor's Costs."

2.4. In order to facilitate payment of the Non-Federal Sponsor's Costs, the City shall establish an escrow account satisfactory to Terminal and the *Government* where the Non-Federal Sponsor's Costs will be deposited and accessible to the *Government* (the "Escrow Account"). The Escrow Account may be subject to a separate escrow agreement. The *Government* shall draw from the Escrow Account such funds as approved by the City and Terminal to cover Non-Federal Sponsor's Costs and as specified in the project budget. Except as provided by the Escrow Agreement, neither the City nor Terminal shall have direct access to or the right to withdraw the funds in the Escrow Account. All interest accruing on the account, if any, shall be redeposited into the account and shall be used to reduce the total Non-Federal Sponsor's Costs. Any funds refunded under the PCA to the City as *Non-Federal Sponsor* shall also be deposited into the Escrow Account and used to reduce the total Non-Federal Sponsor's Costs.

2.5. As provided by Subsection 1.2, the City shall promptly notify Terminal of any notice or request from the *Government* for funds necessary to meet the Non-Federal Sponsor's Costs obligations under the PCA. Such notice, when possible, shall include the total amount requested by the *Government* (less any interest accrued in the Escrow Account or amounts refunded under the PCA), the date the *Government* requests payment be made, and the date by which the Non-Federal Sponsor's Costs shall be deposited in the Escrow Account, which shall be not less than 10 business days from the payment date requested by the *Government*, unless a shorter time is reasonably required under the circumstances.

2.6. In the event any entity begins construction of a terminal on Shoal Point under a lease with the City or using any permit issued to the City, the City shall make a good faith effort to negotiate with any such entity to pay a portion of the Non-Federal Sponsor's Costs. In the event a user of the Texas City Ship Channel who is not a Party to this Agreement agrees to participate in the funding of the Non-Federal Sponsor's Costs, such funds shall be deposited into the Escrow Account and used to reduce Non-Federal Sponsor's Costs under this Agreement. Furthermore, the City shall present the value of the lands, easements, and right-of-ways and for the value of the *relocations*, or work creditable against the Non-Federal Sponsor's Costs provided by such party to the *Government* and shall seek a credit for such to the total Non-Federal Sponsor's Costs.

SECTION III - TERMINATION AND CAP ON TOTAL COSTS

3.1. Unless terminated by the Parties as provided herein, this Agreement shall continue and remain in full force and effect until the earlier to occur of (i) the *Project* is completed and official notice of such completion is provided by the *Government* to the City, (ii) the PCA is terminated by the *Government*, or (iii) the PCA is terminated by the City at the

written request of Terminal. The City shall not seek to terminate the PCA unless requested by Terminal. Notwithstanding, failure by Terminal to fund the portion of the Non-Federal Sponsor's Costs required by this Agreement, shall be a basis for termination of this Agreement and the PCA by the City.

3.2. The City shall insert into the PCA, Article II.A.4, a limit on the *total cost of initial construction*, in the amount of \$17,500,000. If at any time, the *Government* estimates that *total costs of initial construction* shall exceed \$17,500,000 and such estimate is not revised within such limit within a reasonable time, Terminal and the City shall use their best efforts to consult with the *Government* and establish (i) the total estimated additional costs of the *Project*, (ii) the reasons for the additional costs, and (iii) the schedule for completion of the *Project*. If after such consultation with the *Government*, the estimated *total costs of initial construction* still exceed the projected costs set forth in this paragraph, Terminal may terminate this Agreement and request the City terminate the PCA.

SECTION IV - GENERAL PROVISIONS

4.1. All payments and performances due hereunder are payable and performable in the City of Texas City, Galveston County, Texas. Venue of any dispute or lawsuit between the Parties shall be in either Texas State Judicial District Court in Galveston County, Texas or the United States District Court for the Southern District of Texas. This Agreement shall be construed, and the rights and obligations of the parties hereunder shall be determined in accordance with the laws of the State of Texas, excluding any principle of conflict of laws that would require application of the laws of any other jurisdiction. This Agreement has been negotiated and written jointly between the Parties and shall not be construed against any party; and, any rule of contract construction or interpretation providing for an interpretation or construction against any party shall not apply.

4.2. The article, section and subsection headings used herein are for convenience of reference only and shall not be deemed to limit any provision hereof.

4.3. This Agreement and the Escrow Agreement contain the entire agreement between the Parties regarding the *Project*. This Agreement may be amended only in writing, executed by the respective duly authorized officials of the parties hereto.

4.4. A waiver by any Party of any breach or violation of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach or violation of the same.

4.5. The provisions of this Agreement, which either expressly or by their nature, survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.

4.6. The person executing this Agreement on behalf of each Party warrants and represents that such person is duly authorized and empowered to execute and deliver this Agreement on behalf of such Party. This Agreement shall not be effective unless and until it has been executed by both Parties, as evidenced below.

4.7. Nothing contained in this Agreement or otherwise shall be construed to make the Parties partners, joint venturers, or agents of any other Party, or to render any Party liable for any obligation or liability of another Party, except as provided herein. This provision shall govern and control over any other provision contained herein to the contrary or otherwise.

4.8. No Party shall, without the previous written consent of each of the other Parties, assign this Agreement or any rights hereunder. In the event of any such permitted or consented to assignment, this Agreement shall be binding upon and inure to the benefit of successors and assigns of the Party. No assignment hereof shall operate to relieve the assignor of its obligations hereunder, unless such obligations have been released by the other Parties (such release shall not be unreasonably withheld).

4.9. Nothing in this Agreement shall create, or be deemed to create, any third party beneficiary rights in any person or entity, including the *Government*. This Agreement shall not be enforceable by any person not a signatory to this Agreement. Furthermore, nothing in this Agreement shall be construed as an assignment by the City to Industry or an assumption by Industry, of the City's contractual obligations in the *PCA*.

THE CITY OF TEXAS CITY

**TEXAS CITY TERMINAL RAILWAY
COMPANY d/b/a THE PORT OF TEXAS
CITY**

By: _____
Title: _____
Date: _____

By: Bill Mathis
Title: President and Executive Director
Date: _____