

C19-2744-TDD

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
OKALOOSA COUNTY, FLORIDA
FOR
DESIGN
FOR THE
OKALOOSA COUNTY, FLORIDA COASTAL STORM RISK MANAGEMENT PROJECT

THIS AGREEMENT is entered into this 5th day of Feb, 2024, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Mobile District (hereinafter the "District Commander") and the Okaloosa County, Florida (hereinafter the "Non-Federal Sponsor"), represented by the Chairman of its Board of County Commissioners.

WITNESSETH, THAT:

WHEREAS, the Okaloosa County, Florida Coastal Storm Risk Management Integrated Feasibility Study with Environmental Assessment, dated September 2021, describes the recommended plan for construction of the Okaloosa County, Florida Coastal Storm Risk Management Project (hereinafter the Project, as defined in Article I.A of this Agreement);

WHEREAS, notwithstanding Section 105(c) of the Water Resources Development Act of 1986 (33 U.S.C. 2215(c)), which specifies the cost-sharing requirements generally applicable to design of the Project (hereinafter "Design", as defined in Article I.B. of this Agreement), Division N, Title IV of the Disaster Relief Supplemental Appropriations Act, 2023, Public Law 117-328, enacted December 29, 2022 (hereinafter "DRSAA 23"), provides funding under the Investigations heading of DRSAA 23 to undertake design of the Project at full Federal expense to the extent that such funds are available and used for such purpose; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Project" means a berm and dune along the Okaloosa County shoreline consisting of approximately 3.1 miles in the Okaloosa Island reach and approximately 3 miles in the West Destin reach, as generally described in the Okaloosa County, Florida Coastal Storm Risk Management Integrated Feasibility Study with Environmental Assessment, dated September 2021 and approved by the Chief of Engineers on October 7, 2021.

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Department of the Army
Feasibility Cost Sharing agreement
EXPIRES: indefinite

B. The term "Design" means perform detailed pre-construction engineering and design, up through preparation of plans and specifications for the initial construction contract only for the Project.

C. The term "HTRW" means hazardous, toxic, and radioactive wastes, which includes any material listed as a "hazardous substance" (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake the Design, at full Federal expense, using DRSA 23 Investigations funds.

B. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on contract solicitations prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

C. The Non-Federal Sponsor, at no cost to the Government, shall be responsible for undertaking any investigations that the Government determines are required for Design of the Project to identify the existence and extent of any HTRW.

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

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

F. If the Government and Non-Federal Sponsor enter into a Project Partnership Agreement for construction of the Project, the costs incurred pursuant to this Agreement shall not be included in the calculation of construction costs for the Project as defined by the Project Partnership Agreement.

ARTICLE III - TERMINATION OR SUSPENSION

If the Government determines at any time that DRSAA 23 Investigations funds made available for the Design are not sufficient to complete the Design, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend the Design. The Design will be resumed if additional appropriations are made available, and, if necessary, the parties execute an amendment to this Agreement that provides for cost-sharing of the remaining work.

ARTICLE IV - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the Design, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE V- DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred.

ARTICLE VI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE VII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified or registered mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Chairman

Okaloosa County Board of County Commissioners

302 N. Wilson Street, Suite 302

Crestview, Florida 32536

If to the Government:

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

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

ARTICLE VIII - 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 IX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

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

DEPARTMENT OF THE ARMY

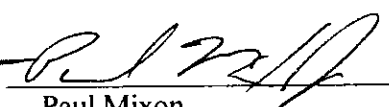
OKALOOSA COUNTY, FLORIDA

BY:



Jeremy J. Chapman, F.E.
Colonel, U.S. Army
District Commander

BY:



Paul Mixon
Chairman Board of County
Commissioners



DATE:

5 Feb 2024

DATE:

JAN 16 2024

CERTIFICATION REGARDING LOBBYING

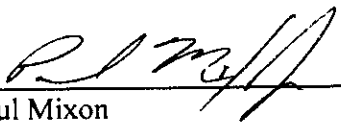
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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


Paul Mixon
Chairman
Okaloosa County Board of County Commissioners




DATE: JAN 16 2024

CERTIFICATE OF AUTHORITY

I, Lynn M. Hoshihara, do hereby certify that I am the principal legal officer for Okaloosa County, Florida, that Okaloosa County, Florida is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Okaloosa County, Florida in connection with the Okaloosa County, Florida Coastal Storm Risk Management Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of Okaloosa County, Florida acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
31ST day of January 2024.



Lynn M. Hoshihara
County Attorney
Okaloosa County, Florida