196366

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF DALLAS, TEXAS
FOR CONSTRUCTION OF THE
DALLAS FLOODWAY EXTENSION PROJECT

THIS Amendment Number 1 is entered into this 22 ND day of AUGUST, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Fort Worth District, and the City of Dallas, Texas represented by the Assistant Director, Dallas Water Utilities.

WITNESSETH, THAT:

WHEREAS, construction of the Dallas Floodway Extension Project at Dallas, Texas was authorized by Section 301 of the River and Harbor Act of 1965, Public Law 89-298, modified by Section 351 of the Water Resources Development Act of 1996, Public Law 104-303, and further modified to add ecosystem restoration and recreation as project purposes by Section 356 of the Water Resources Development Act of 1999, Public Law 106-53;

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on December 14, 2001 (hereinafter referred to as the "Agreement") for construction of the Dallas Floodway Extension Project (hereinafter the "Project", as defined in Article I.A. of the Agreement); and

WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018"), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose.

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

1. Insert after the fourth WHEREAS clause following:

"WHEREAS, notwithstanding Section 103 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2213), which specifies the cost-sharing requirements applicable to the Project, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018"), authorizes the Government to complete construction of the Project at full Federal expense to the extent that appropriations provided under the Construction heading of the BBA 2018 are available and used for such purpose;"

2. Insert as the last Article the following:

"ARTICLE XIX – COMPLETION OF CONSTRUCTION OF THE PROJECT USING FUNDING PROVIDED IN BBA 2018

Notwithstanding any other provisions of this Agreement, the Government and Non-Federal Sponsor agree to the following terms and conditions for completion of construction of the Project to the extent BBA 2018 funds are available and used for such purpose:

A. As of the effective date of Amendment Number 1 to this Agreement, the amount of available BBA 2018 funds is estimated at **$135,250,000**. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes.

B. The Non-Federal Sponsor remains responsible for providing the lands, easements, and rights-of-way, and performing all relocations, and making improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required to complete construction of the Project.

1. For lands, easements, and rights-of-way acquired from private owners after the effective date of Amendment Number 1 to this Agreement for the Project, the Government shall reimburse the Non-Federal Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in acquiring such lands, easements, and rights-of-way, except as provided in Article XIX.H. The crediting procedures in Article IV.B. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsor, the Government, in its sole discretion, may agree to acquire any lands, easements, or rights-of-way for the Project on the Non-Federal Sponsor's behalf, using BBA 2018 funds.

2. Any publicly owned lands, easements, and rights-of-way required for completing construction of the Project will be provided by the Non-Federal Sponsor at no cost to the Government and without credit or reimbursement, except as provided in Article XIX.H.

3. For relocations performed after the effective date of Amendment Number 1 to this Agreement for the Project, the Government shall reimburse the Non-Federal Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in performing such relocations, except as provided in Article XIX.H. The crediting procedures in Article IV.C. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsor, the Government, in its sole discretion, may agree to perform any relocations for the Project on the Non-Federal Sponsor's behalf, using BBA 2018 funds.

4. For improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material made after the effective date of Amendment Number 1 to this Agreement for the Project, the Government shall reimburse the Non-Federal Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in making such improvements, except as

provided in Article XIX.H. The crediting procedures in Article IV.D. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsor, the Government, in its sole discretion, may agree to make any improvements for the Project on the Non-Federal Sponsor's behalf, using BBA 2018 funds.

C. Subject to the availability of BBA 2018 funds, the Government shall reimburse the Non-Federal Sponsor for costs, documented to the satisfaction of the Government that the Non-Federal Sponsor incurs for the Project, after the effective date of Amendment Number 1 to this Agreement, for investigations for hazardous substances conducted pursuant to Article XV.A.

D. The Non-Federal Sponsor shall be responsible solely for any costs it incurs, after the effective date of Amendment Number 1 to this Agreement, for participation in the Project Coordination Team and for conducting audits for the Project, without credit or reimbursement by the Government.

E. In the event that there are insufficient BBA 2018 funds to complete construction of the Project, such completion shall be subject to cost-sharing as otherwise provided for in this Agreement.

F. Nothing in this Article affects the responsibility of the Non-Federal Sponsor for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided in Article IX.

G. Except as provided in Article XIX.C., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XV.

H. As soon as practicable, the Government shall perform an interim accounting of work that has or will be completed with other than BBA 2018 funds on a cost-shared basis and furnish the Non-Federal Sponsor with the results of such interim accounting.

1. If the Government determines that the Non-Federal Sponsor has not met its minimum required cash contribution for the cost-shared work, the Non-Federal Sponsor shall provide funds in the amount necessary to meet the required minimum cash contribution.

2. If the Government determines that the Non-Federal Sponsor owes an additional amount to meet the required minimum non-Federal share of the cost-shared work, the amount owed by the Non-Federal Sponsor may be reduced by the estimated value of publicly owned lands, easements, and rights-of-way that the Non-Federal Sponsor must provide after the date of Amendment Number 1 to this Agreement.

3. If the Government determines the estimated value of publicly owned lands, easements, and rights-of-way that the Non-Federal Sponsor must provide after the date of Amendment Number 1 to this Agreement is less than the additional amount necessary to meet the required minimum non-Federal share of the cost-shared work, the Non-Federal Sponsor shall either provide the required amount in cash or elect to waive reimbursement of the required

amount for privately owned lands, easements, and rights-of-way, relocations, and improvements to enable the disposal of dredged or excavated material to be acquired, provided, or made after the date of Amendment Number 1 to this Agreement.

4. The determinations made as a result of the interim accounting shall be verified during the final accounting. The crediting procedures in Article IV.B. shall be used to verify the value of any publicly owned lands, easements, and rights-of-way used to reduce the amount owed by the Non-Federal Sponsor for the cost-shared work.

5. BBA 2018 funds shall not be used to provide reimbursements for any contributions provided by the Non-Federal Sponsor that exceed its cost share for work that has been or will be completed with other than BBA 2018 funds."

3. All other terms and conditions of this Agreement remain unchanged.

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

DEPARTMENT OF THE ARMY

BY: _____
Kenneth N. Reed
Colonel, U.S. Army
District Commander

DATE: 8/22/2019

CITY OF DALLAS

BY: _____
City Attorney
City of Dallas

DATE: 8/22/2019

BY: _____ for
T.C. Broadnax
City Manager
City of Dallas

DATE: 08/19/2019