

IN-KIND MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
CITY OF CHARLESTON, SOUTH CAROLINA
FOR DESIGN WORK PERFORMED
PRIOR TO EXECUTION OF
A
DESIGN AGREEMENT
FOR THE
CHARLESTON PENINSULA, SOUTH CAROLINA COASTAL STORM RISK
MANAGEMENT PROJECT

THIS IN-KIND MEMORANDUM OF UNDERSTANDING (hereinafter the “In-Kind MOU”) is entered into this 24th day of October, 2024, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Charleston District (hereinafter the “District Commander”) and the City of Charleston (hereinafter the “Non-Federal Interest”), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(a)(4)), provides that a cost sharing agreement may provide credit for the value of materials or services provided before the execution of such cost sharing agreement if the Secretary and the non-Federal interest enter into an In-Kind MOU under which the non-Federal interest plans to carry out such work and only work carried out following the execution of such In-Kind MOU shall be eligible for credit;

WHEREAS, the Non-Federal Interest understands and acknowledges that any credit for eligible in-kind contributions will be afforded only toward the required non-Federal contribution of funds (i.e. cash contribution) under the Design Agreement for the project or separable element thereof; and

WHEREAS, by letter dated June 11, 2024, the Non-Federal Interest stated its intent to provide certain design work (hereinafter the “Design Work”, as defined in Paragraph 1 of this In-Kind MOU) prior to the execution of the Design Agreement for the Charleston Peninsula, South Carolina Coastal Storm Risk Management Project at Charleston, South Carolina.

NOW, THEREFORE, the parties agree as follows:

1. The Non-Federal Interest plans to perform the following Design Work which must be undertaken in accordance with the terms and conditions of this In-Kind MOU and requirements of applicable Federal laws and implementing regulations. The Design Work consists of preconstruction engineering and design work and design-related studies regarding storm surge structure alignment and form based upon opportunities for cost or impact reduction, prospects for

additional natural and nature-based features, conceptual structural design, appearance and related aesthetics, cultural/historic and aesthetic mitigation, refinement of gate number, placement and operation procedures, new developments in technology or construction methodologies, unforeseen cultural and historic resources or buried utilities, real estate acquisition obstacles, opportunities to incorporate additional climate change resilience measures, interior hydrology considerations, and other refinements; as well as supporting data collection and surveys or assessments (such as topographic, geospatial bathymetric, geotechnical (subsurface), wetland delineation, living shoreline site suitability, Phase I Environmental Site Assessment (HTRW), real estate, and other applicable surveys); together with the co-leading and coordination of public engagement, as generally described in the letter from the Non-Federal Interest.

2. The Non-Federal Interest shall keep books, records, documents, and other documentation of costs and expenses incurred for the Design Work in accordance with this In-Kind MOU. The value of the Design Work shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Interest incurred to provide the Design Work, which may include engineering and design; real estate, economic, and environmental analyses and evaluation; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Interest's employees.

3. The Non-Federal Interest understands that eligibility for credit for the Design Work is subject to:

a. A determination by the Division Commander for South Atlantic Division that the Design Work is integral to the project;

b. Review and verification by the Government that the Design Work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies; and

c. An audit by the Government to determine the reasonableness, allocability, and allowability of such costs.

4. The Non-Federal Interest understands further that:

a. No interest charges or adjustment will be applied to the costs incurred for the Design Work to reflect changes in price levels;

b. Federal program funds may not be used to meet any of its obligations under this In-Kind MOU unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor;

c. Only the costs of the Design Work that do not exceed the Government's estimate of the cost of such work if the work had been accomplished by the Government are eligible for credit;

d. No credit will be provided for the value of Design Work obtained at no cost to the Non-Federal Interest or performed prior to the effective date of this In-Kind MOU;

e. Crediting for the costs of the Design Work may be withheld, in whole or in part, as a result of the Non-Federal Interest's failure to comply with the terms of this In-Kind MOU; and

f. Credit may be afforded only if a Design Agreement is executed subsequently by the Government and the Non-Federal Interest.

5. In the exercise of their respective rights and obligations under this In-Kind MOU, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

6. Execution of this In-Kind MOU does not constitute, represent, or imply any Federal assurance or commitment regarding approval of the project or execution of any future agreement that may include provisions for affording credit for Design Work undertaken under this In-Kind MOU. In addition, execution of this In-Kind MOU in no way prevents the Government from modifying the project even if it results in the Design Work provided by the Non-Federal Interest no longer being an integral part of the project.

7. Nothing herein shall constitute, represent, or imply any commitment to budget or appropriate funds for the project in the future; and nothing herein shall represent, or give rise to, any duty, obligation, or responsibility for the United States. Any activity undertaken by the Non-Federal Interest for the Design Work is solely at the Non-Federal Interest's own risk and responsibility.

8. Notices.

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

If to the Non-Federal Interest:

Mayor, City of Charleston
Office of the Mayor
80 Broad Street
Charleston, South Carolina 29401

If to the Government:

District Commander
U.S. Army Corps of Engineers, Charleston District
69A Hagood Avenue
Charleston, South Carolina 29403

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 paragraph.


9. This In-Kind MOU may be modified or amended only by written, mutual agreement of the parties.

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

DEPARTMENT OF THE ARMY

CITY OF CHARLESTON, SOUTH CAROLINA

BY: _____


Patrick Ripton
Major, U.S. Army
Acting District Commander

BY: _____


William S. Cogswell, Jr.
Mayor

DATE: _____

24 OCT 2024

DATE: _____

10/22/24