# CITY OF BILOXI
# AGENDA ITEM
# FACT SHEET

**Item No.:** 5R

**Council Meeting Date:** November 17, 2026

**ITEM TITLE:** RESOLUTION

**INTRODUCED BY:** Mayor Andrew "FoFo" Gilich

**CONTACT PERSON:** Richard Weaver, Chief Administrative Officer

Christy LeBatard, Director of Engineering & Public Works

**SUMMARY EXPLANATION:**

Resolution authorizing entry into an agreement with the Department of the Army and amending the Municipal Budget for Fiscal Year ending September 30, 2027, to recognize grant funds in the budget for Capital Project No. 1098: Woolmarket Acres Infrastructure

**Resolution** ✓ **Ordinance** _____ **Public Hearing** _____ **Routine Agenda** _____

**Exhibits for Review**

**Contract** ✓ **Minutes** _____ **Plans/Maps** _____ **Deed** _____ **Lease** _____

**Other (Specify):** Budget Exhibit
Exhibit A: Agreement
Exhibit B: Certification Regarding Lobbying
Exhibit C: Certificate of Authority
Exhibit D: Integrated Letter Report

**Submittal Authorization:** **Council President** _____ **Mayor** ✓

**STAFF RECOMMENDATION:**

**COUNCIL ACTION:** **Motion By:** _____ **Second By:** _____

| Vote: Councilmember | Yes | No | AFR | ABST | Councilmember | Yes | No | AFR | ABST |
|---|---|---|---|---|---|---|---|---|---|
| Gray | ___ | ___ | ___ | ___ | Tisdale | ___ | ___ | ___ | ___ |
| Marshall | ___ | ___ | ___ | ___ | Glavan | ___ | ___ | ___ | ___ |
| Nail | ___ | ___ | ___ | ___ | Shoemaker | ___ | ___ | ___ | ___ |
| Creel | ___ | ___ | ___ | ___ | | | | | |

**ACTION TAKEN:**

11172026 bengpw/cl

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO AGREEMENT WITH THE DEPARTMENT OF THE ARMY, AND AMENDING THE MUNICIPAL BUDGET FOR FISCAL YEAR ENDING SEPTEMBER 30, 2027, TO RECOGNIZE GRANT FUNDS INTO THE BUDGET FOR CAPITAL PROJECT NO. 1098: WOOLMARKET ACRES INFRASTRUCTURE

WHEREAS, by Resolution No. 931-22 authorized the creation of Capital Project No. 1098: Woolmarket Acres Infrastructure (C1098) to upgrade and install new water and sewer utilities in the Woolmarket Acres Subdivision;

WHEREAS, Section 219(f)(163) of the Water Resources Development Act of 1192 (Public Law 102-580) (WRDA), as amended, authorizes the Department of the Army (Army) to design and construct Environmental Infrastructure Improvements for the City of Biloxi (City) specifically sewer utilities in the Woolmarket Acres Subdivision;

WHEREAS, WRDA authorized Federal funds in the amount of Four Million Nine Hundred Sixty Five Thousand & 00/100 Dollars ($4,965,000) with a required match of 25% or One Million Six Hundred Fifty Five Thousand & 00/100 Dollars ($1,655,000) for a total project cost of Six Million Six Hundred Twenty Thousand & 00/100 Dollars ($6,620,000);

WHEREAS, the goals of Project C1098: Woolmarket Acres Infrastructure are consistent with the purposes for which the grant is being awarded;

WHEREAS, in order to accept said grant funds, it is necessary that the City enter into the Agreement Between the Department of Army and City of Biloxi, Mississippi for Design and Construction Assistance for the Biloxi, Mississippi Environmental Infrastructure Improvements Project (Agreement), the form of which is attached hereto as Exhibit "A," with the Army;

WHEREAS, it is necessary that the City also execute the forms Certification Regarding Lobbying, attached hereto as Exhibit "B" and Certificate of Authority, attached hereto as Exhibit "C";

WHEREAS, it is necessary that the City accept the Integrated Letter Report with Integral Determination for Work Proposed to be Performed as In-Kind Contributions by the City of Biloxi, attached hereto as Exhibit "D";

WHEREAS, it is necessary and advisable that the City amend the municipal budget for fiscal year ending September 30, 2026, to recognize the sum of Four Million Nine Hundred Sixty Five Thousand & 00/100 Dollars ($4,965,000) in grant proceeds into the budget for Project C1098: Woolmarket Acres Infrastructure, revenue line item WRDA3C-4430-C1098, expense line item WRDA3C-6658-C1098;

WHEREAS, Section 21-35-25 of the Mississippi Code of 1972, Annotated, provides authorization for the governing authorities of a municipality to amend the budget of such municipality, provided there be funds in the treasury of the municipality not appropriated by the budget and there is a deficit in any one (1) or more items provided for in the budget; and

WHEREAS, it is the recommendation of Christy LeBatard, Director of Public Works and Engineering, that the City accept the grant award, enter the Agreement and amend the budget as described above.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BILOXI, MISSISSIPPI, AS FOLLOWS:

SECTION ONE: The findings, conclusions and statements of fact contained in the preamble are hereby adopted, ratified and incorporated herein.

SECTION TWO: The Mayor, on behalf of the City of Biloxi, is hereby authorized to execute the attached Agreement Between the Department of Army and City of Biloxi, Mississippi for Design and Construction Assistance for the Biloxi, Mississippi Environmental Infrastructure Improvements Project hereto as Exhibit "A," with the Department of the Army.

SECTION THREE: The Mayor, on behalf of the City of Biloxi, is hereby authorized to execute the attached Certification Regarding Lobbying, attached hereto as Exhibit "B".

SECTION FOUR: The City Attorney, on behalf of the City of Biloxi, is hereby authorized to execute the Certificate of Authority, attached hereto as Exhibit "C".

SECTION FIVE: The City of Biloxi hereby accepts and enters into the record the Integrated Letter Report with Integral Determination for Work Proposed to be Performed as In-Kind Contributions by the City of Biloxi, attached hereto as Exhibit "D".

SECTION SIX: The municipal budget of the City of Biloxi for fiscal year ending September 30, 2027, is hereby amended to recognize the sum of Four Million Nine Hundred Sixty Five Thousand & 00/100 Dollars ($4,965,000) in grant proceeds into the budget for Project C1098: Woolmarket Acres Infrastructure, revenue line item WRDA3C-4430-C1098, expense line item WRDA3C-6658-C1098.

SECTION FOUR: This resolution shall take effect and be in force from and after adoption.

# City of Biloxi

**EXHIBIT A**

**Budget Amendment**

**Resolution Number:** _____

**Date:** November 17, 2026

*FROM: (or credit)*

| Revenue or Expense | Category | Org Code | Object | Project | $ Amount |
|---|---|---|---|---|---|
| Expense | Capital Outlay | WRDA3C | 4430 | C1098 | $4,965,000.00 |

*Total From:* $4,965,000.00

*TO: (or debit)*

| Revenue or Expense | Category | Org Code | Object | Project | $ Amount |
|---|---|---|---|---|---|
| Expense | Capital Outlay | WRDA3C | 6658 | C1098 | $4,965,000.00 |

*Total To:* $4,965,000.00

*Explanation:*

To amend FY 2027's budget to recognize grant proceeds from the Department of Army Water Resources Development Act for Woolmarket Acres Infrastructure C1098.

Department Head

*DGT 11/03/26*

Accounting Department




AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF BILOXI, MISSISSIPPI
FOR
DESIGN AND CONSTRUCTION ASSISTANCE
FOR THE
BILOXI, MISSISSIPPI ENVIRONMENTAL INFRASTRUCTURE IMPROVEMENTS
PROJECT

THIS AGREEMENT is entered into this ___ day of _____, _____, 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 City of Biloxi, Mississippi (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the provision of design and construction assistance for the non-Federal project for Biloxi, Mississippi Environmental Infrastructure Improvements Project at Biloxi, Mississippi was authorized by Section 219(f)(163) of the Water Resources Development Act of 1992, Public Law 102-580, as amended (hereinafter "Section 219");

WHEREAS, the Government will provide design and construction assistance by undertaking increment(s) of work, as defined in Article I.A. of this Agreement;

WHEREAS, Section 219(b) specifies applicable cost-sharing requirements; 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 and acknowledge that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

## ARTICLE I - DEFINITIONS

A. The term "increment of work" means design and construction of features, as generally described in a Letter Report, and approved by the Division Commander for South Atlantic Division. The initial increment of work consists of design and construction of sewer infrastructure including gravity sewer main, force main, and a new lift station in the Woolmarket community as generally described in the Integrated Letter Report with Integral Determination for Work Proposed to be Performed as In-Kind Contributions by

the City of Biloxi, Environmental Infrastructure Assistance Program, Section 219 of WRDA 1992, Design and Construction Assistance for Biloxi, Mississippi Environmental Infrastructure Improvements Project, Increment 1: Woolmarket Acres Infrastructure Improvements, dated September 2026 and approved by the Division Commander for South Atlantic Division on October 16, 2026. Each additional increment of work, if any, will be described in a separate Letter Report, which will specify the amount of Federal funds available for such work. In the event of a conflict between this Agreement and a Letter Report, this Agreement will control.

B. 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.

C. The term "construction costs" means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of an increment of work and cost shared. The term includes the Government's costs of engineering, design, including preparation of post-Agreement Letter Reports and conducting environmental compliance activities, and construction; the Government's supervision and administration costs; the Non-Federal Sponsor's creditable costs for providing real property interests, relocations, and in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties, if any. The term does not include any costs for operation and maintenance; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Coordination Team to discuss significant issues and actions; audits; betterments; or the Non-Federal Sponsor's cost of negotiating this Agreement.

D. The term "real property interests" means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term "relocation" means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term "in-kind contributions" means those services undertaken or materials provided by the Non-Federal Sponsor after the date of approval of the Letter Report for the increment of work that are identified as being integral to the design or construction of that increment of work, and approved in writing, by the Division Commander for South Atlantic Division (hereinafter the "Division Commander"). To be integral, the service or material must be part of work that the Government would

otherwise have undertaken for design or construction of that increment of work. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for an increment of work; however, it does not include HTRW cleanup and response.

G. The term "betterments" means a difference in design or construction of an increment of work that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that work.

H. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall design and construct each increment of work using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. If after completion of the design portion of an increment of work, the parties mutually agree in writing not to proceed with construction of that increment of work, the parties shall conclude their activities relating to that increment of work and proceed to a final accounting in accordance with Article VI.E. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The amount of Federal funds for each increment of work is limited to the amount identified in the Letter Report for that increment of work, with the Non-Federal Sponsor responsible for all costs in excess of that amount, unless the Government, in its sole discretion, provides additional Federal funds for such work. If the Government determines that the Federal funds available for an increment of work will be exhausted prior to completion of such work, the Government shall notify the Non-Federal Sponsor and suspend or terminate such work in accordance with Article VII.

C. The Non-Federal Sponsor shall contribute for each increment of work at least 25 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction and operation and maintenance of each increment of work.

2. If providing in-kind contributions for an increment of work, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. The Non-Federal Sponsor shall begin operation and maintenance as functional portions of such work are completed. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. After considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs C.1. and C.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its minimum 25 percent cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

4. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

5. If all Federal funds available for an increment of work will be exhausted prior to completion of such work, the Government shall notify the Non-Federal Sponsor of the full amount of funds required to complete the increment of work, and the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C. within 60 days of such notification or shall complete such work as in-kind contributions in accordance with paragraph C.2. above.

D. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, 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.

E. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be

developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount available for each increment of work may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for each increment of work, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

F. When the District Commander determines that construction of an increment of work is complete, the District Commander shall so notify the Non-Federal Sponsor in writing within 30 calendar days of such determination. The Non-Federal Sponsor is responsible for operation and maintenance of such increment of work, at no cost to the Government. The Government shall furnish the Non-Federal Sponsor with a copy of the as-built drawings for the completed work.

G. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the increment of work. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

H. In addition to the ongoing, regular discussions between the parties, the Government and the Non-Federal Sponsor may establish a Coordination Team to discuss significant issues or actions. Neither the Government's nor the Non-Federal Sponsor's costs for participation on the Coordination Team shall be included in construction costs for cost-sharing purposes.

I. The Non-Federal Sponsor may request in writing that the Government perform betterments on the Non-Federal Sponsor's behalf. Each request shall be subject to review and written approval by the Division Commander. If the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the betterments in advance of the Government performing the work. The Non-Federal Sponsor shall be responsible for obtaining all permits and licenses necessary for design, construction, and operation and maintenance of such betterments. In addition, the Non-Federal Sponsor is responsible for providing the real property interests and relocations required for construction, operation, and maintenance of such work at no cost to the Government.

## ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests required for construction, operation, and

maintenance of each increment of work. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of such work, and provide the Non-Federal Sponsor with a written notice to proceed with acquisition. Prior to the Non-Federal Sponsor initiating acquisition of such real property interests or the Government initiating construction on real property interests already owned or controlled by the Non-Federal Sponsor, the Non-Federal Sponsor, in accordance with Article IV.A., shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of each increment of work. Subject to the requirements in Article IV.B., the Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto according to the Government's construction schedule for such work. The Non-Federal Sponsor shall ensure that real property interests provided for such work are retained in public ownership.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations required for construction, operation, and maintenance of each increment of work, provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations, and provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for such work.

C. In acquiring the real property interests for each increment of work, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State or Commonwealth law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) displace persons will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

## ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of each increment of work.

B. In the event it is discovered that HTRW exists in, on, or under any of the required real property interests needed for construction, operation, and maintenance of an increment of work, the Non-Federal Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered in, on, or under real property interests the Non-Federal Sponsor owns or controls or after acquisition of the real property interests, no further activities within the contaminated area of that increment of work shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response

costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

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

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of each increment of work for purposes of CERCLA liability or other applicable law.

## ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND CREDIT FOR IN-KIND CONTRIBUTIONS

A. The Government and the Non-Federal Sponsor agree that the Non-Federal Sponsor's costs that are eligible for inclusion in the construction costs for an increment of work and credited towards the Non-Federal Sponsor's share of such costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs the value of required real property interests acquired from private owners after the date of approval of the Letter Report for an increment of work except that the value of real property interests donated to the Non-Federal Sponsor are not eligible for credit. The Non-Federal Sponsor shall obtain for each required real property interest acquired from private owners, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner for an increment of work, whichever occurs later, the Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the value of the required real property interests that are creditable to the Non-Federal Sponsor's share of such construction costs.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the Non-Federal Sponsor after the date of

approval of the Letter Report for an increment of work shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the date of approval of the Letter Report for an increment of work, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the Non-Federal Sponsor's request, 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 appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the date of approval of the Letter Report for an increment of work, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event that the issues cannot be resolved, 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. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph A.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at $15,000 or less,

based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. The Government may approve exceeding the $15,000 threshold, up to an amount of $35,000, if the Non-Federal Sponsor offers the owner the option of having the Non-Federal Sponsor appraise the real property interest.

(2) if the Non-Federal Sponsor determines that the acquisition is uncomplicated, has a low fair market value, and the Non-Federal Sponsor offers the owner the option to have the property appraised, the Non-Federal Sponsor may request in writing approval to use a waiver valuation for properties with estimated values of more than $35,000 and up to $50,000. If use of a waiver valuation is approved by the Government, the Non-Federal Sponsor shall provide a report measuring the cost and time benefits, condemnation rate, settlement rate, and other relevant metrics to document the administrative savings, accuracy, and efficacy of the use of the waiver valuation.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred in acquiring required real property interests from private owners required for an increment of work after the date of approval of the Letter Report for such work. Such incidental costs include 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., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable State or Commonwealth law due to the acquisition of required real property interests.

e. Any publicly owned real property interests or real property interests owned by the Non-Federal Sponsor on the date of approval of the Letter Report and required for an increment of work will be provided by the Non-Federal Sponsor at no cost to the Government.

2. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the costs of required relocations performed by the Non-Federal Sponsor after approval of the Letter Report for an increment of work. As relocations are completed for an increment of work and no later than 90 calendar days after such completion, the Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the costs that are creditable to the Non-Federal Sponsor's share of such construction costs.

a. For a relocation other than a highway, creditable costs 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 the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, creditable costs 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 Mississippi would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in construction costs for an increment of work and credit towards the Non-Federal Sponsor's share of such costs, the costs of in-kind contributions performed by the Non-Federal Sponsor after the date of approval of the Letter Report for such work.

a. As in-kind contributions are completed for an increment of work and no later than 90 calendar days after such completion, the Non-Federal Sponsor shall provide documentation, satisfactory to the Government, for the Government to determine the costs that are creditable to the Non-Federal Sponsor's share of such construction costs. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. The following costs are not eligible for inclusion in construction costs for an increment of work or creditable against the Non-Federal Sponsor's share of such costs: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; in-kind contributions obtained at no cost to the Non-Federal Sponsor; or costs that exceed the Government's estimate of the cost for such in-kind contributions.

c. Although design performed by the Non-Federal Sponsor prior to approval of the Letter Report for an increment of work is not creditable as in-kind contributions under this Agreement, the Non-Federal Sponsor, at no cost to the Government, may voluntarily provide such design to the Government. The Government, in its sole discretion, may accept, modify, or reject such design, or any portion thereof, for use in constructing that increment of work. Prior to commencement of review by the Government of such design, the Non-Federal Sponsor shall provide a written certification and warranty to the Government that such design is free from any legal encumbrances and use restrictions, including but not limited to, any intellectual property rights and outstanding licensing requirements.

4. Compliance with Federal Labor Laws. In undertaking relocations and construction of in-kind contributions for an increment of work, the Non-Federal Sponsor shall comply 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 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit 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.

B. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit or reimbursement for any costs it incurs for real property interests, relocations, and in-kind contributions that exceed 25 percent of construction costs for an increment of work, and any such excess amount cannot be applied towards the non-Federal cost share for another increment of work; and for any costs incurred by the Non-Federal Sponsor prior to the effective date of this Agreement.

## ARTICLE VI - PROVISION OF NON-FEDERAL COST SHARE

A. As of the effective date of this Agreement, construction costs for the initial increment of work are projected to be $6,620,000, with the amount of Federal funds available for such work limited to $4,965,000. The Non-Federal Sponsor's share of construction costs for the initial increment of work is projected to be$1,655,000, which includes creditable real property interests projected to be $0, creditable relocations projected to be $0, creditable in-kind contributions projected to be $40,000, and the amount of funds required to meet its minimum 25 percent cost share projected to be $1,615,000. The Letter Report for each additional increment of work will include information on the Federal funds available for the increment of work and the Non-Federal Sponsor's share of construction costs for such work. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Non-Federal Sponsor.

B. For each increment of work, the Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs by delivering a check payable to "FAO, USAED, Mobile (K5)" to the District Commander, 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

providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds 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.

E. Upon completion or termination of each increment of work, including resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should such final accounting determine that additional funds are required from the Non-Federal Sponsor to meet its share of construction costs, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to "FAO, USAED, Mobile (K5)" to the District Commander, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds.

F. If the Government agrees to perform betterments on the Non-Federal Sponsor's behalf, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days after receiving written notice from the Government, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.E. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government. If the Government determines that funds provided by the Non-Federal Sponsor exceed the amount required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

## ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement or the Government determines that available Federal funds for an increment of work will be exhausted prior to completion of such work, the Government may suspend or terminate design or construction.

B. In the event of termination, the parties shall conclude their activities relating to design and construction and conduct a final accounting in accordance with Article VI.E. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement 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.

## ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, or operation and maintenance of any work under this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE IX - 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. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

## ARTICLE XI - 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 XII - 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 registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

Mayor
City of Biloxi, Mississippi
P.O. Box 429
Biloxi, MS 39530

If to the Government:
District Commander
U.S. Army Corps of Engineers, Mobile District
P.O. Box 2288
Mobile, AL 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 XIII - 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 XIV - 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

BY: _____
Kelcey R. Shaw
Colonel, U.S. Army
District Commander

DATE: _____

CITY OF BILOXI, MISSISSIPPI

BY: _____
A.M. Gilich, Jr.
Mayor

DATE: _____

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.

_____

A.M. Gilich, Jr.
Mayor

DATE: _____



CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer for the City of Biloxi, Mississippi, that the City of Biloxi, Mississippi 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 Biloxi, Mississippi in connection with the Biloxi, Mississippi Environmental Infrastructure Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, and that the person who executed this Agreement on behalf of the City of Biloxi, Mississippi acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20___.

_____
Peter C. Abide
City Attorney

**Exhibit C**

**Integrated Letter Report with Integral Determination for Work Proposed to be Performed as In-Kind Contributions by the City of Biloxi, Mississippi**

**Environmental Infrastructure Assistance Program**
**Section 219 of WRDA 1992**

**Design and Construction Assistance for**
**Biloxi, Mississippi**
**Environmental Infrastructure Improvements Project**

**Increment 1:**
**Woolmarket Acres Infrastructure Improvements**

**September 2026**

**AUTHORIZATION.** The increment of work is authorized by Section 219(f)(163) of the Water Resources Development Act (WRDA) of 1992, as amended:




Sec. 5158(3)(G), WRDA 2007 -

SEC. 5158. ADDITIONAL ASSISTANCE FOR CRITICAL PROJECTS

Section 219 of the Water Resources Development Act of 1992 (106 Stat. 4835; 110 Stat. 3757; 113 Stat. 334; 113 Stat. 1494; 114 Stat. 2763A–219; 119 Stat. 2255) is amended – (3) in subsection (f) – (G) by adding at the end the following: "(163) BILOXI, MISSISSIPPI.—$5,000,000 for water and wastewater related infrastructure, city of Biloxi, Mississippi" and further amended by WRDA 2024,

Section 1304(b)(2)(II), WRDA 2024 -

SEC. 1304. ENVIRONMENTAL INFRASTRUCTURE.

(b) PROJECT MODIFICATIONS – (2) MODIFICATIONS. – (II) BILOXI, MISSISSIPPI. — Section 219(f)(163) of the Water Resources Development Act of 1992 (106 Stat, 4835; 113 Stat. 334; 121 Stat. 1263) is amended by striking "$5,000,000" and inserting "$10,000,000".

**Exhibit D**

**NON-FEDERAL SPONSOR.** The City of Biloxi, Mississippi is the non-Federal Sponsor (NFS) for this authority. The NFS has funding identified locally to cost share this effort. The NFS provided a self-certification of financial capability on 22 Jun 26.

**DESCRIPTION OF THE INCREMENT OF WORK.** The NFS has requested assistance from the U.S. Army Corps of Engineers (USACE) to design and construct sewer infrastructure in the Woolmarket community in northern Biloxi (**Figure 1**). **Figure 2** provides a general overview of the scope of work.

The increment of work will include adding sewer to Subdivision 1 off Oaklawn Road that includes Pinecrest Drive, Virginia Street, Evelyn Avenue, Dixie Avenue, and Stella Avenue as well as the portion of Oaklawn Road north of Pinecrest Drive, as shown in **Figure 3**. The sewer will travel south via gravity main to a new lift station. A lift station will be required to connect the homes to the sewer system to help overcome elevation challenges and ensure proper flow of wastewater to the City's infrastructure. As shown in **Figure 3**, the lift station will be located at the lowest point in the area to allow gravity flow from the homes to the lift station. The lift station will then pump via force main down Boyette Road to the connection on Shorecrest Road.

The increment of work will also include adding sewer to Subdivision 2 off Oaklawn Road that includes Taylor Drive and Nancy Drive. The sewer would travel north via gravity main to the existing connection on Lorraine Road as shown in **Figure 4**.

Finally, the increment of work will include the option of adding sewer to Tiffany Lane. The sewer would travel north via gravity main to the existing connection on Lorraine Road as shown in **Figure 5**.

**BACKGROUND.** Woolmarket is located approximately 2.7 miles northwest of Biloxi and is part of the Gulfport-Biloxi metropolitan area. Currently, homes in the Woolmarket area rely on septic systems, which have limited capacity due to the small area available around each property. To accommodate future growth and improve sanitation, it is essential for these homes to be connected to the City's sewer system. A full drawing set has been put together for the City and provided to USACE; therefore, the most suitable delivery method will be design-build.

**ENVIRONMENTAL COMPLIANCE.** In accordance with NEPA, impacts to the environment from the proposed action and alternatives will be considered by the Mobile District. Interagency coordination will be conducted by USACE, Mobile District, and public comment solicited as a required part of the National Environmental Policy Act (NEPA) process. All required permits will be in place before construction is allowed to begin. The Mobile District will prepare appropriate NEPA documentation and fulfill all other NEPA related requirements. Coordination will be handled by the Mobile District for Endangered Species Act (ESA), National Historic Preservation Act (NHPA), Clean Water Act (CWA), and other laws, regulations, and Executive Orders, as necessary, including the use of any existing environmental categorical exclusions which may apply.

**IN-KIND CONTRIBUTIONS INTEGRAL DETERMINATION.** Subject to Major Subordinate Command (MSC) approval, the following is a description of the proposed work that the NFS is to perform as in-kind contributions. **Tables 1** and **2** provide a list of in-kind work that is acceptable or not acceptable as integral to an increment of work in accordance with ER 1165-2-208, 16 December 2015. The tables also indicate if and how the listed work applies to the

current increment of work. **Table 3** shows a cost comparison and estimated credit of the in-kind contributions.

1. Stakeholder Meeting Support – The NFS will assist in identifying key stakeholders to be affected, be it temporary impacts due to construction activity or long-term beneficiaries of the project. The NFS will provide provision of the venue and facilitation of the meeting and follow-up with stakeholder attendees with details of the work to be conducted. Support also will include the analysis and recommendation of detour and haul routes for use during construction to minimize impacts to stakeholders (as well as the public) during construction. Information gleaned from the stakeholders meeting(s) will be used to inform the design.

2. Technical Reviews – The NFS will provide technical reviews at critical design milestones (50% and 100%). Technical reviews will be necessary to identify any issues or concerns regarding the existing systems/utilities which may be impacted or must function in connection with the increment of work identified for construction. Operations and maintenance considerations are also critical to be identified during the design phase to assure project sustainability. All NFS review comments will be provided directly to the Government by the NFS and shared as appropriate by the Contracting Officer's Representative (COR) with the contractor to address concerns.

3. Request for Information (RFI) Support – The NFS will assist in providing RFI responses as presented by the AE contractor (or construction contractor) to the Government. Some responses can be answered by the Government's technical staff, but others require specific knowledge of existing systems that necessitate a response, and at times, research, by the NFS to fully respond to RFI's as presented by the contractors. All RFI responses required of the NFS will be provided directly to the Government to be shared by the COR, as appropriate, with the contractor. Note: The NFS's costs to coordinate team participation and audits are not in-kind contributions and are not included in "shared costs" for cost sharing purposes. Likewise, the Federal Government's cost to coordinate team participation and audits are not included in "shared costs" for cost sharing purposes although these costs are included in calculating any limit on Federal participation. (Footnote, Page 4, Engineer Regulation 1165-2-208, 16 December 2015)

The NFS efforts to support stakeholders meeting(s), provide milestone design reviews, and prepare responses to RFI's concerning existing systems/ local requirements are critical to success of the execution of the project. Total anticipated in-kind contributions are estimated to be $40,000.

The nature of the planned in-kind contributions is not subject to NEPA documentation requirements.

**Table 1. Itemized List of What is Accepted as Integral In-Kind Creditable Work (ER 1165-2-208, 16 December 2015)**

| The following may be accepted as integral: | |
|---|---|
| **Allowable per ER 1165-2-208** | **Applicable to EI Increment of Work** |
| a. For proposed in-kind contributions performed prior to execution of the applicable cost sharing agreement, the in-kind contributions have been | Not applicable. |

| The following may be accepted as integral: | |
|---|---|
| reviewed or inspected, as applicable, and certified by the Government that the work was accomplished in a satisfactory manner and in accordance with the applicable Federal laws, regulations and policies. | |
| b. For any in-kind contribution proposed to be performed after the execution of the PPA, the plans and specifications will be approved by the District Commander prior to initiation of the construction work. | Not applicable. |
| c. For materials provided for use in construction work managed by the Government, the materials meet the minimum Government requirements for materials, and any substitute materials have been determined to be a functional equivalent in accordance with policies governing contractor substitution of materials. | Not Applicable. |
| d. The NFS should coordinate with the District to ensure that appropriate real estate interests to support the in-kind contributions and increment of work are acquired. | The NFS will coordinate with District Real Estate personnel to ensure that the appropriate real estate interests are acquired to support the increment of work. |

**Table 2. Itemized List of What is Not Accepted as Integral In-Kind Creditable Work (ER 1165-2-208, 16 December 2015)**

| The following will ***not*** be accepted as integral | |
|---|---|
| **Not Allowable per ER 1165-2-208** | **Applicable to EI Increment of Work** |
| a. The proposed in-kind contributions are not part of the Federal increment of work. | The in-kind contributions proposed are necessary to meet the purpose of the increment of work. |
| b. The proposed in-kind contributions consist of performance of activities that are inherent Government responsibilities (e.g., management of Government contracts; performance of District Quality Review, Agency Technical Review, Independent External Peer Review, or Policy Compliance Review; determining if Value Engineering evaluations are acceptable, determining the lands, easements, rights-of-way, relocation, and disposal (LERRD) required for the increment of work or separable element of the increment of work; determining the value of LERRD for crediting purposes; or making determinations as to compliance with applicable environmental laws and regulations). | The proposed in-kind contribution does not consist of performance of activities that are inherently Government responsibilities. |

| The following will ***not*** be accepted as integral | |
|---|---|
| c. The proposed in-kind contributions are features or obligations that are a 100 percent non-Federal sponsor responsibility, such as purposes of land reclamation, local drainage, to protect against land or bank erosion; local service facilities; betterments; acquisition and performance of LERRD, except for commercial navigation projects; and performance of operations, maintenance, repair, rehabilitation, or replacement (OMRR&R). It also includes "other non-Federal contributions" (performance of non-Federal audits; performance of investigations to determine existence and extent of hazardous substances; and participation in the Design or Project Coordination Teams) which are accounted for and credited for in the DA and PPA separate from in-kind contributions. | The proposed in-kind contributions are not a 100 percent NFS responsibility. |
| d. The proposed in-kind contributions have or will create a hazard to human life or property. | The proposed in-kind contributions will not create a hazard to human life or property. |
| e. The proposed in-kind contributions have been determined to be environmentally unacceptable. | The in-kind contributions have not been determined to be environmentally unacceptable. |
| f. For proposed in-kind contributions performed prior to execution of the applicable cost sharing agreement, after review or inspection, as applicable, the Government cannot certify the proposed In-kind Work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies. | Not applicable. |
| g. For proposed in-kind contributions performed prior to execution of the applicable cost sharing agreement, the NFS has not performed the necessary OMRR&R resulting in the work no longer functioning as needed for the project. | Not applicable. |

**Table 3. Comparison of Cost and Estimated Credit**

| Activity | Non-Fed Sponsor Est. | Federal Estimate | Estimated Credit |
|---|---|---|---|
| Stakeholder Meeting Support | $10,000 | $10,000 | $10,000 |
| 262Technical Reviews | $20,000 | $20,000 | $20,000 |
| RFI Support | $10,000 | $10,000 | $10,000 |
| **Total In-Kind Estimate** | **$40,000** | **$40,000** | **$40,000** |

**COST.** The total shared construction cost to accomplish this increment of work is estimated to be $6,620,000. The project lends to design-build construction with the base work consisting of the design and construction of the sewer infrastructure for Subdivision 1 and 2. In effort to work within the project budget, options can be incorporated. One option would be design and construction of sewer infrastructure for Tiffany Lane.

Apportionment is based on a 25% minimum non-Federal share of estimated cost, rounded to the nearest one thousand dollars. Federal funding ($5,000,000) was provided by the Disaster Relief Supplemental Appropriations Act (DRSAA) of 2025 for design and construction. In the absence of the availability of additional Federal funds, the NFS may choose to increase their share of the cost (above 25%) to fund any of the work described in this report as detailed in the design and construction support agreement. Once the official Independent Government Estimate (IGE) is developed, the NFS may be required to provide additional funds to support solicitation if the base exceeds the construction contract budget.

Design-Build (allocation rounded to the nearest $1,000):

| | | |
|---|---|---|
| Federal Cash: | $4,965,000 | (75%) |
| Non-Federal Cash: | $1,615,000 | (24%) |
| Non-Federal Relocations: | $0 | (0%) |
| Non-Federal Lands/Easements: | $0 | (0%) |
| Non-Federal In-Kind Contributions: | $40,000 | (1%) |
| Total Construction Cost: | $6,620,000 | (100%) |

**REAL ESTATE.** All real estate interests required to support implementation of this increment of work are currently owned by the NFS. The project footprint lies entirely within municipal-owned property, and no additional acquisition or relocation activities are anticipated. As such, no real estate acquisition costs have been included in the project estimate, and no credit for Lands, Easements, Rights-of-Way, Relocation, and Disposal (LERRD) is expected to be claimed.

However, if land acquisition becomes necessary, the NFS has the responsibility to provide Land, Easements, Rights-Of-Way, Relocation, and Disposal Areas (LERRDs), and the value of any LERRDs will be included in the total project cost and credited against the required non-Federal share. Furthermore, the following factors would influence project cost and schedule: (1) final design requirements; (2) survey of any impacted lands outside the public right-of-way; (3) Government determination of required modifications to public facilities/utilities and issuance of an Attorney's Opinion of Compensability per ER 405-1-12; (4) appraisal and negotiation of the necessary interests; and (5) title sufficiency.

The NFS has been advised of the risks associated with acquiring property interests prior to the approval of the Letter Report and execution of the Design and Construction Agreement, including the potential ineligibility for Lands, Easements, Rights-of-Way, Relocation, and Disposal (LERRD) credit.

The Government, after consultation with the NFS, shall determine the real property interests required for construction, operation, and maintenance of each increment of work. The Government shall provide the NFS with general written descriptions, including maps as

appropriate, of the real property interests that the Government determines the NFS must provide for construction, operation, and maintenance of such work, and provide the NFS with a formal Notice to Proceed with Land Acquisition.

Prior to the NFS initiating acquisition of such real property interests or the Government initiating construction on real property interests already owned or controlled by the NFS, the NFS shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of each increment of work.

Upon completion of any land acquisitions, the NFS shall provide Authorization for Entry for Construction and an Attorney's Certificate of Authority to support completion of the real estate certification. Furthermore, the NFS shall ensure that real property interests provided for such work are retained in public ownership.

Regarding credit for real property interests, relocations, and credit for in-kind contributions, the Government and the NFS agree that the NFS's costs that are eligible for inclusion in the construction costs for an increment of work and credited towards the NFS's share of such costs shall be determined in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with the Design and Construction Agreement to determine reasonableness, allocability, and allowability of costs.

Real Property Interests - The Government shall include in construction costs and credit towards the NFS's share of such costs the value of required real property interests acquired from private owners after the date of approval of the Letter Report for an increment of work except that the value of real property interests donated to the NFS are not eligible for credit. The NFS shall obtain for each required real property interest acquired from private owners an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. No later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner for an increment of work, whichever occurs later, the NFS shall provide documentation, satisfactory to the Government, for the Government to determine the value of the required real property interests that are creditable to the Sponsor's share of such construction costs.

(1) Date of Valuation. The fair market value of real property interests acquired from private owners by the NFS after the date of approval of the Letter Report for an increment of work shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the date of approval of the Letter Report for an increment of work, the NFS shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the NFS provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest, whichever occurs later

(3) The Government shall credit the NFS the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the NFS exceeds the approved appraised amount, the Government, at the NFS's request, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the NFS, may approve in writing an amount greater than the appraised amount for crediting purposes.

**SCHEDULE.** Federal funding is DRSAA 2025 funds, which requires strict obligation, execution, and reporting. The basic execution schedule shall be:

| | | |
|---|---|---|
| 1. | Letter Report Submitted to SAD | 12 Aug 26 |
| 2. | Receive SAD Comments | 11 Sep 26 |
| 3. | Response to SAD Comments | 05 Oct 26 |
| 4. | SAD Approval of Letter Report | 12 Oct 26 |
| 5. | Design and Construction Agreement Execution | 20 Nov 26 |
| 6. | DB RFP Development Award | 29 Feb 27 |
| 7. | NEPA Completion | 30 Aug 27 |
| 8. | Real Estate Certification of LERRD | 30 Aug 27 |
| 9. | Ready to Advertise (RTA) | 30 Aug 27 |
| 10. | MATOC Design-build Task Order Award | 30 Sep 27 |
| 11. | Completion of Construction | 30 May 29 |

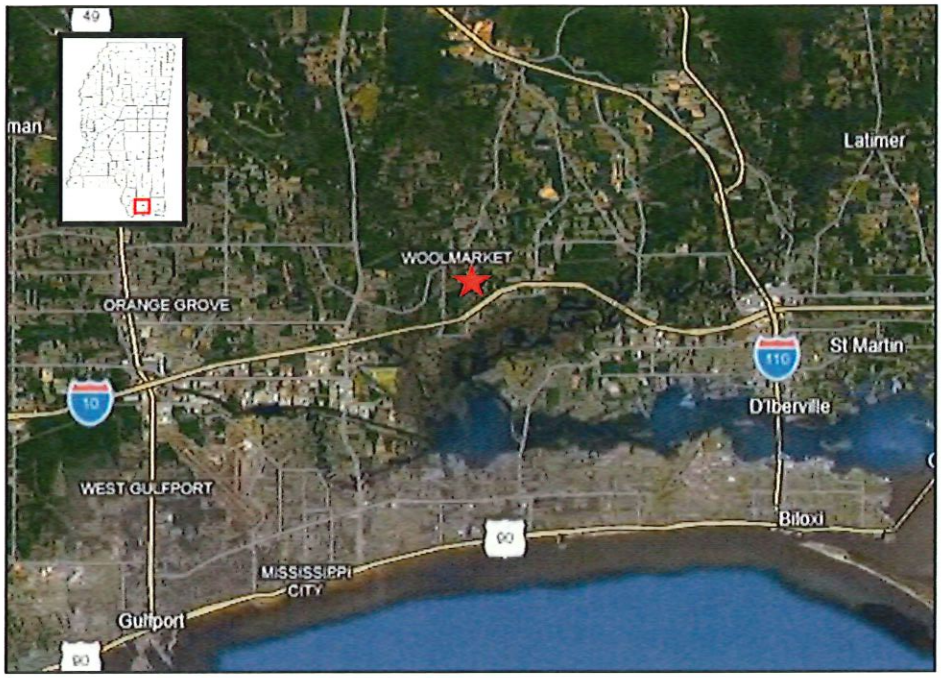


**Figure 1 Location Map**




**Figure 2. Overview of Increment of Work**

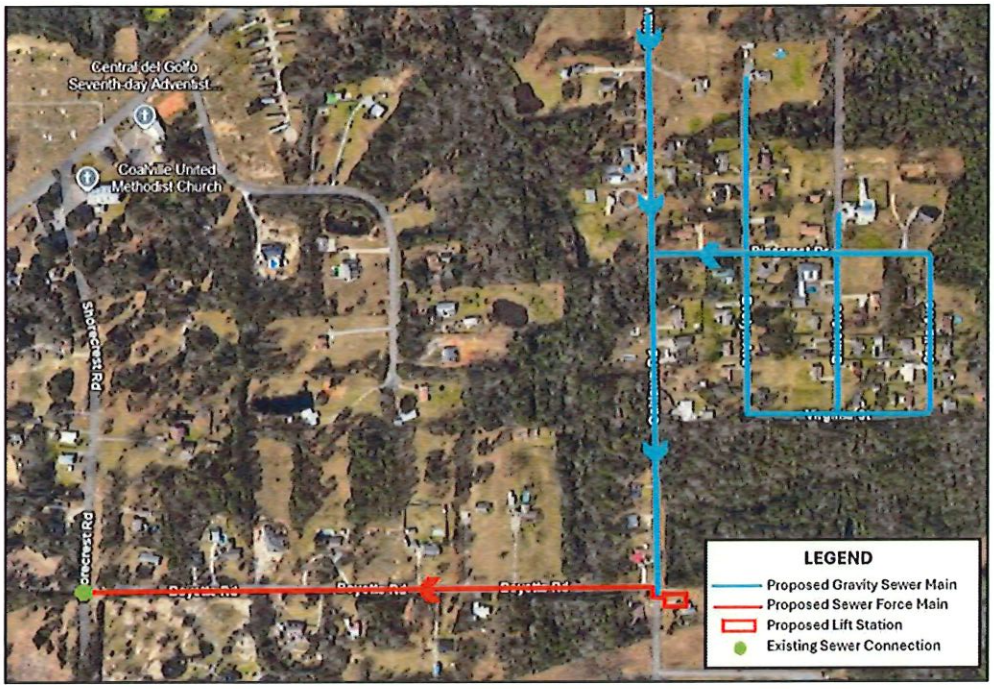


**Figure 3. Subdivision 1 Details**




**Figure 4. Subdivision 2 Details**




**Figure 5. Tiffany Lane Details**