

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
PORT OF GALVESTON (BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES)  
FOR PLACEMENT OF DREDGED MATERIAL  
INTO THE  
DREDGED MATERIAL PLACEMENT FACILITY  
PELICAN ISLAND PLACEMENT AREA, GALVESTON HARBOR AND  
CHANNEL, GALVESTON COUNTY, TEXAS

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Galveston District (hereinafter the "District Engineer"), and Port of Galveston (Board of Trustees of the Galveston Wharves (hereinafter the "Non-Federal Interest") represented by the Director and CEO, Port of Galveston (Board of Trustees of Trustees of the Galveston Wharves)

WITNESSETH, THAT:

WHEREAS, Section 217(b) of the Water Resources Development Act of 1996 (33 U.S.C. 2326a(b)) authorizes the Secretary of the Army (hereinafter the "Secretary") to permit the use of dredged material placement facilities under the Secretary's jurisdiction by Non-Federal Interests and to impose fees to recover capital, operation, and maintenance costs associated with such use;

WHEREAS, the Non-Federal Interest was issued Permit # SWG-2012-00602 by the U.S. Army Engineer District, Galveston, on March 20, 2014, and subsequently amended most recently on July 14, 2020 to conduct dredging of the Texas International Terminal berthing facility.

WHEREAS, the Non-Federal Interest requested that material dredged in accordance with Permit #SWG-2012-00602 be placed in the Government operated Pelican Island Placement Area, Galveston Harbor and Channel, Galveston County, Texas (hereinafter the "Dredged Material Placement Facility"), and the Government determined that allowing placement of approximately 400,000 cubic yards of dredged material into the Dredged Material Placement Facility will not reduce the availability of the facility for project uses; and

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

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

1. The Non-Federal Interest shall comply with all applicable State and Federal laws and regulations in the dredging and placement of the dredged material, including the requirements of the Clean Water Act, 33 USC 1341, et seq., and Permit # SWG-2012-00602 issued by the U.S. Army Engineer District, Galveston on March 20, 2014, and subsequently amended most recently on July 14, 2020, and may place up to approximately 400,000 cubic yards of dredged material into the Dredged Material Placement Facility, subject to payment by the Non-Federal Interest in accordance with paragraph 3 and all other requirements of this Agreement.

2. Prior to the Non-Federal Interest placing any dredged material into the Dredged Material Placement Facility, the Non-Federal Interest shall prepare and submit for approval by the Government a placement plan that includes, but is not limited to, identifying the independent inspectors who will be responsible for monitoring all phases of the placement of the dredged material, the inspector's responsibilities and duties, and reporting procedures.

3. The Non-Federal Interest is responsible for all costs related to the placement of dredged material under this Agreement and shall pay a placement fee, as determined in accordance with the 217(b) Determination Letter Report for Approval of Non-Federal Use of Galveston Harbor and Channel, Pelican Island Placement Area.

a. Prior to any placement into the Dredged Material Placement Facility, the Non-Federal Interest shall provide \$248,000, which is based on the estimated amount of cubic yards that will be placed, by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

b. After completion of the Non-Federal Interest's placement of dredged material into the Dredged Material Placement Facility, or if both parties mutually agree not to continue with the placement, the Government shall conduct a final accounting and furnish the Non-Federal Interest with the results of the final accounting.

(1) If the final accounting shows that the amount paid by the Non-Federal Interest is less than the amount required based on the actual cubic yards of dredged material placed into the Dredged Material Placement Facility, the Non-Federal Interest, no later than 30 calendar days after receipt of written notice, shall provide the additional required amount by delivering a check payable to "FAO, USAED, Galveston" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

(2) If the final accounting shows that the amount paid by the Non-Federal Interest exceeds the amount required based on the actual cubic yards of dredged material placed into the Dredged Material Placement Facility, the Government, subject to the

availability of funds, shall refund the excess to the Non-Federal Interest no later than 30 calendar days after the final accounting is complete.

4. The Government shall determine the actual amount of cubic yards placed in the Dredged Material Placement Facility based on a review of the Non-Federal Interest's dredging surveys and volume computations of yards dredged.
5. The Government and the Non-Federal Interest may meet periodically to discuss preparation and approval of the Non-Federal Interest's placement plan; estimated costs; compliance with the permit; and other matters as may be necessary. Any disputes that arise should be resolved at the lowest level possible.
6. In the exercise of their respective rights and obligations under this Agreement, 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.
7. Nothing in this Agreement alters, or is intended to alter, any responsibility or liability of any party pursuant to existing environmental laws and regulations.
8. The Non-Federal Interest shall hold and save the Government free from all damages arising from this placement of dredged material into the Dredged Material Placement Facility, except for damages due to the fault or negligence of the Government or its contractors.
9. Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

**Port of Galveston (Board of Trustees of Trustees of the Galveston Wharves)  
Director and CEO  
123 Rosenberg Avenue, 8th Floor  
Galveston, Texas 77550**

If to the Government:

**District Engineer  
Galveston District  
P.O. Box 1229  
2000 Fort Point Road  
Galveston, Texas 77550**

A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this paragraph.

10. 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.

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

DEPARTMENT OF THE ARMY

PORT OF GALVESTON (BOARD  
OF TRUSTEES OF THE  
GALVESTON WHARVES)

BY: \_\_\_\_\_  
Timothy Vail  
Colonel, U.S. Army  
District Engineer

BY: \_\_\_\_\_  
Rodger Rees  
Director and CEO  
Port of Galveston (Board of Trustees)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, Anthony Brown, do hereby certify that I am the principal legal officer of the Port of Galveston (Board of Trustees of the Galveston Wharves) , that the Port of Galveston (Board of Trustees of the Galveston Wharves) has the full authority and legal capability to perform the terms of this Agreement between the Department of the Army and the Port of Galveston (Board of Trustees of the Galveston Wharves) in connection with the placement of dredged material into the Dredged Material Placement Facility Pelican Island Placement Area, Galveston Harbor and Channel, Galveston County, Texas, and that the person who executing this Agreement on behalf of Port of Galveston (Board of Trustees of the Galveston Wharves) has acted within his or her statutory authority.

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

\_\_\_\_\_  
Anthony Brown  
General Counsel, Port of Galveston  
(Board of Trustees of the Galveston Wharves)