

Report to Congress for Future Water Resources Development (WRRDA 7001) Submission Package

Proposal Name: Freeport Harbor Channel Improvement Project, Brazoria County, Texas

Submission Date: 08/09/2017

Proposal ID Number: 4fe6a918-dc29-4116-b224-005413e71d2f

Purpose of Proposal: The Freeport Harbor Channel Improvement Project was authorized in Section 7002 of the Water Resources Reform and Development Act (WRRDA) 2014. Shortly after authorization, it was determined that the design vessel would have difficulty safely navigating around the Dow Thumb (see attached figure). The Galveston District and Port Freeport are in the process of conducting a General Reevaluation Report (GRR) to address this issue. The GRR is on schedule to be completed and approved by the ASA in July 2018. No additional federal authorization is required to construct the project. As discussed above, the Port has executed a WIK agreement (see attached) to begin channel improvements early and derive the benefits as soon as possible. The Port has prepared engineering drawings at our own expense and filed for permits. We are requesting the costs associated with engineering, sediment sampling, and field services be included as WIK credit.

1. Administrative Details

**Proposal Name: Freeport Harbor Channel Improvement Project,
Brazoria County, Texas**

by Agency: Port Freeport

Locations: TX

Date Submitted: 08/09/2017

Confirmation Number: 4fe6a918-dc29-4116-b224-005413e71d2f

Supporting Documents

File Name	Date Uploaded
Section 7001 request-Reach3.pdf	08/09/2017
support.pdf	08/09/2017
2015.10.22 MOU.pdf	08/09/2017
- Request for Exception to Policy on Timing of Execution In-Kind MOU - Freeport Harbor Improvement Project Texas - 8 Oct 15.pdf	08/09/2017

2. Provide the name of the primary sponsor and all non-Federal interests that have contributed or are expected to contribute toward the non-Federal share of the proposed feasibility study or modification.

Sponsor	Letter of Support
Port Freeport(Primary)	Port Freeport continues to support the Freeport Harbor Channel Improvement project and continues to be a full partner with the Federal Government during the ongoing GR R. Port Freeport has executed a Work In Kind agreement with the Corps to design and construct Reach 3 of the project. The Port intends to dredge this portion as soon as the permits are complete. The Port has the taxing authority to fully fund the non-federal share of the project.

3. State if this proposal is for a feasibility study, a modification to an authorized USACE feasibility study or a modification to an authorized USACE project. If it is a proposal for a modification, provide the authorized water resources development feasibility study or project name.

Modification to an Authorized USACE Project : Freeport Harbor Channel Improvement Project, Brazoria County, Texas

4. Clearly articulate the specific project purpose(s) of the proposed study or modification. Demonstrate that the proposal is related to USACE mission and authorities and specifically address why additional or new authorization is needed.

The Freeport Harbor Channel Improvement Project was authorized in Section 7002 of the Water Resources Reform and Development Act (WRRDA) 2014. Shortly after authorization, it was determined that the design vessel would have difficulty safely navigating around the Dow Thumb (see attached figure). The Galveston District and Port Freeport are in the process of conducting a General Reevaluation Report (GRR) to address this issue. The GRR is on schedule to be completed and approved by the ASA in July 2018. No additional federal authorization is required to construct the project. As discussed above, the Port has executed a WIK agreement (see attached) to begin channel improvements early and derive the benefits as soon as possible. The Port has prepared engineering drawings at our own expense and filed for permits. We are requesting the costs associated with engineering, sediment sampling, and field services be included as WIK credit.

5. To the extent practicable, provide an estimate of the total cost, and the Federal and non-Federal share of those costs, of the proposed study and, separately, an estimate of the cost of construction or modification.

	Federal	Non-Federal	Total
Study	\$0	\$0	\$0
Construction	\$0	\$0	\$0

Explanation (if necessary)

The costs associated with these services is not additional costs as they will be part of the Civil Works project anyway.

6. To the extent practicable, describe the anticipated monetary and nonmonetary benefits of the proposal including benefits to the protection of human life and property; improvement to transportation; the national economy; the environment; or the national security interests of the United States.

The early construction of Reach 3 will allow Port Freeport to utilize berth facilities approximately 3 years earlier than if we wait for an appropriation. This equates to an additional 5 ships per week. Anticipated revenue for the Port is anticipated to be \$20 Million over the 3 year period.

7. *Does local support exist? If 'Yes', describe the local support for the proposal.*

Yes

Local Support Description

8. *Does the primary sponsor named in (2.) above have the financial ability to provide for the required cost share?*

Yes

Map Document

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Section 7001 request-Reach3.pdf

Freeport Harbor CIP

Reach 3

Legend

 Reach 3 - 51'



Google earth

1 mi

Primary Sponsor Letter of Support

(As uploaded)

support.pdf



1100 CHERRY ST. • FREEPORT, TX 77541
(979) 233-2667 • 1 (800) 362-5743 • FAX: (979) 373-0023
WWW.PORTFREEPORT.COM

August 8, 2017

COL. Lars Zetterstrom, P.E.
U.S. Army Corps of Engineers, SWG
P.O. Box 1229
Galveston, TX 77553-1229

Dear COL. Zetterstrom:

Port Freeport continues to support the Freeport Harbor Channel Improvement Project and the completion of the General Reevaluation Report. Port Freeport sees the amount of expansion and investment made by local industry since the WRRDA 2014 authorization, and we know that industry is now counting on this project to be completed so those investments can maximize the growth of the U.S. economy.

Sincerely,

Phyllis Saathoff
Executive Director/CEO

PORT COMMISSION

PAUL KRESTA, CHAIRMAN; JOHN HOSS, VICE CHAIRMAN; SHANE PIRTLE, SECRETARY; BILL TERRY, ASST. SECRETARY;
RUDY SANTOS, COMMISSIONER; RAVI K. SINGHANIA, COMMISSIONER; PHYLLIS SAATHOFF, EXECUTIVE DIRECTOR/CEO

Additional Proposal Information

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2015.10.22 MOU.pdf

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF THE ARMY
AND PORT FREEPORT
FOR WORK PROVIDED OR PERFORMED
PRIOR TO EXECUTION OF
A
PROJECT PARTNERSHIP AGREEMENT
FOR
FREEPORT HARBOR CHANNEL IMPROVEMENT PROJECT

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the "MOU") is entered into this 22nd day of October, 2015, 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 Freeport** (hereinafter the "Non-Federal Interest"), represented by the Executive Port Director.

WITNESSETH, THAT:

WHEREAS, Section 221(a) of the Flood Control Act of 1970, as amended by Section 2003 of the Water Resources Development Act of 2007, provides that a cost sharing partnership agreement may provide credit for the value of materials or services provided before the execution of such cost sharing partnership agreement if the Secretary and the non-Federal interest enter into an agreement under which the non-Federal interest shall carry out such work and only work carried out following the execution of such agreement 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 Project Partnership Agreement for the project or separable element of the project; and

WHEREAS, by letter dated February 3, 2015, the Non-Federal Interest stated its intent to perform certain work (hereinafter the "Proposed Work", as defined in Paragraph 1 of this MOU) prior to the execution of the Project Partnership Agreement for the **Freeport Harbor Channel Improvement Project, Brazoria County, Texas.**

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

1. The Non-Federal Interest shall provide or perform the Proposed Work in accordance with the terms and conditions of this MOU. The Proposed Work shall consist of the design and construction of the Lower Stauffer portion of the Freeport Harbor Channel Improvement Project, consisting of construction of a 300-foot wide navigation channel at a depth of 46 feet Mean Lower Low Water (MLLW) to match the depth of the existing Freeport Channel as generally described in the letter from the Non-Federal Interest.

2. The Non-Federal interest shall develop all necessary engineering plans and specifications for the Proposed Work.
3. The Non-Federal Interest shall complete all necessary environmental coordination and obtain all applicable Federal, State, and local permits required for the performance of the Proposed Work.
4. The Non-Federal Interest shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction and subsequent operation and maintenance of the Proposed Work, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.
5. Nothing in this MOU creates any duty, obligation, or responsibility for the Government. Any activity undertaken by the Non-Federal Interest for the implementation of the Proposed Work is solely at the Non-Federal Interest's own risk and responsibility.
6. The Non-Federal Interest shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this MOU to the extent and in such detail as will properly reflect total costs for the Proposed Work and the Non-Federal Interest shall make such evidence available for inspection and audit by authorized representatives of the Government.
7. The Non-Federal Interest understands that any costs incurred for the clean-up of hazardous material regulated by the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"; 42 U.S.C. Sections 9601-9675), that may exist in, on, or under lands, easements, or rights-of-way required for the Proposed Work are a Non-Federal Interest responsibility and that no credit shall be afforded for such clean-up costs. In addition, the Non-Federal Interest understands that as between the Government and the Non-Federal Interest, the Non-Federal Interest shall be considered the operator of the Proposed Work for the purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Interest shall operate, maintain, repair, replace, and rehabilitate the Proposed Work in a manner that will not cause liability to arise under CERCLA.
8. The parties to this MOU shall each act in an independent capacity in the performance of their respective functions under this MOU, and neither party is to be considered the officer, agent, or employee of the other.
9. The Non-Federal Interest understands that to be eligible for credit for the costs of the Proposed Work:
 - a. The Government must make a determination that the Proposed Work is

integral to the project;

b. The Proposed Work shall be subject to a review or on-site inspection, as applicable, and certification by the Government that the work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies;

c. The costs for the Proposed Work that may be eligible for credit shall be subject to an audit by the Government to determine the reasonableness, allocability, and allowability of such costs;

d. The costs incurred for the Proposed Work are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the Proposed Work is completed and the time that credit may be afforded;

e. The Non-Federal Interest shall not use Federal program funds (either funds or grants provided by a Federal agency as well as any non-Federal matching share or contribution that was required by such Federal agency for such program or grant) for the Proposed Work unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law;

f. Only the costs of the Proposed Work that do not exceed the Government's estimate of the cost of such work if the work been accomplished by the Government may be eligible for credit;

g. Any contract awarded for the Proposed Work shall include provisions consistent with all applicable Federal laws and regulations and the Non-Federal Interest shall comply with all applicable Federal and State laws and regulations, including, but not limited to Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army";

h. The Non-Federal Interest must 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 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)); and

i. Crediting for the costs of the Proposed 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 MOU.

10. If the parties agree to enter into a Project Partnership Agreement for the **Freeport**

Harbor Channel Improvement Project, Brazoria County, Texas, then the Project Partnership Agreement will contain provisions regarding affording credit for costs of the Proposed Work, if the Secretary determines that the Proposed Work is integral to the project.

11. Execution of this MOU shall not be interpreted as a Federal assurance regarding later approval of any project; shall not commit the United States to any type of reimbursement or credit for the Proposed Work; does not alter any process to be followed by the Government in making a determination to execute a future Project Partnership Agreement; nor does it provide any assurance that any future agreement will ever be executed for the project, the Proposed Work, or any portion of the project. Further, this MOU shall not be interpreted to signify any Federal participation in or commitment to the project or the Proposed Work. Finally, this MOU shall not be construed as committing the Government to assume any responsibility placed upon the Non-Federal Interest or any other non-Federal entity or as preventing the Government from modifying the project that could result in the Proposed Work performed by the Non-Federal Interest no longer being an integral part of the design of the project.

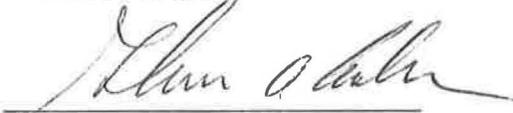
IN WITNESS WHEREOF, the parties hereto have executed this MOU, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

BY: 
Colonel Richard P. Pannell
District Engineer
Galveston District

DATE: 10/30/15

PORT FREEPORT

BY: 
Glenn A. Carlson
Executive Port Director
Port Freeport

DATE: 10/22/15

CERTIFICATE OF AUTHORITY

I, Peter G. Nemeth, do hereby certify that I am special legal counsel for **Port Freeport**, that **Port Freeport** is a legally constituted public body with full authority and legal capability to perform the terms of the MOU between the Department of the Army and Port Freeport in connection with the Proposed Work to be provided or performed prior to execution of a Project Partnership Agreement for the **Freeport Harbor Channel Improvement Project at Port Freeport, Brazoria County, Texas** and that the persons who have executed this MOU on behalf of Port Freeport have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 26th day of October, 2015.

A handwritten signature in cursive script, reading "Peter G. Nemeth", written in black ink. The signature is positioned above a horizontal line.

Peter G. Nemeth

Additional Proposal Information

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**- Request for Exception to Policy on Timing of Execution In-Kind
MOU - Freeport Harbor Improvement Project Texas - 8 Oct
15.pdf**



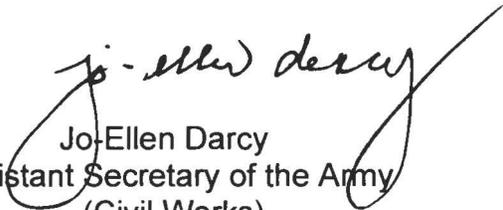
DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

OCT - 8 2015

MEMORANDUM FOR THE DEPUTY COMMANDING GENERAL FOR CIVIL AND
EMERGENCY OPERATIONS

SUBJECT: Request for Exception to Policy on Timing of Execution of In-Kind
Memorandum of Understanding (MOU) – Freeport Harbor Improvement Project, Texas

This responds to a memorandum from the Director of Civil Works dated August, 31, 2015 requesting approval for the subject exception to policy. Approval is granted to allow the execution of an In-Kind MOU with Port Freeport, the non-Federal sponsor, for the construction of the Lower Stauffer Channel prior to the public release of the draft General Reevaluation Report.


Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)