

MODIFICATION NO. 1 TO THE  
LOCAL COOPERATION AGREEMENT BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF  
BRAZORIA COUNTY, TEXAS  
FOR THE CONSTRUCTION OF THE  
FREEPORT HARBOR, TEXAS (1970 ACT) PROJECT

THIS MODIFICATION, entered into this 19 day of March, 1987, and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF BRAZORIA COUNTY, TEXAS (hereinafter referred to as the "Local Sponsor"), acting by and through its Chairman as authorized by an official resolution passed by its Board of Navigation and Canal Commissioners.

WITNESSETH THAT:

WHEREAS, by an agreement dated June 26, 1986, the Government and the Local Sponsor shall cooperate in the construction of the Freeport Harbor, Texas project; and

WHEREAS, the Congress of the United States, in Public Law 99-662, enacted into law a change in cost-sharing applicable to the project; and

WHEREAS, the Government and the Local Sponsor desire to amend the referenced agreement to reflect the change in cost-sharing;

NOW, THEREFORE, the parties agree to amend the referenced agreement as follows:

ARTICLE II.e. is amended by deleting the existing language in its entirety and inserting in lieu thereof the following:

As further specified in Article VI hereof, the Local Sponsor shall repay with interest, over a period not to exceed 30 years following completion of the project, an additional 0-10 percent of the total cost of construction of general navigation facilities assigned to commercial navigation, depending on the value, as calculated under Article IV of this Agreement, of contributed lands, easements, rights-of-way, relocations (other than utility relocations), and dredged material disposal areas including levees and spillways contributed for the general navigation features of the project, the value of which is currently estimated to be \$9,437,000. If the credit allowed for such lands, easements, rights-of-way, relocations, and dredged material disposal areas including levees and spillways is less than 10 percent of the total cost of construction of general navigation facilities assigned to commercial navigation, the Local Sponsor shall be required to pay a percentage of said total cost equal to the difference between 10 percent of the total cost and the percentage

of the total cost represented by the value of such lands, easements, rights-of way, relocations, and dredged material disposal areas including levees and spillways. In the event the Local Sponsor's credit allowed for such lands, easements, rights-of-way, relocations, and dredged material disposal areas including levees and spillways equals or exceeds 10 percent of the total cost of construction of general navigation facilities assigned to commercial navigation, the Local Sponsor shall not be required to pay any additional percentage of said total costs.


ARTICLE IV.b is amended by: 1) deleting the words "utilities or" in the first sentence; and 2) deleting paragraph 2 in its entirety and inserting in lieu thereof the following:


2. Facilities (other than utilities): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any relocation or alteration if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be credited. No credit shall be given for any costs relating to relocations or alterations of utilities.

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement as of the day and year of the latest signature date below.

THE DEPARTMENT OF THE ARMY

THE BRAZOS RIVER HARBOR  
NAVIGATION DISTRICT,  
BRAZORIA COUNTY, TEXAS

By:   
Robert K. Dawson  
Assistant Secretary of  
the Army (Civil Works)

By:   
L. H. Jones  
Chairman

Date: 19 MAR 1987

Date: \_\_\_\_\_

## RESOLUTION

At a special meeting of the Board of Navigation and Canal Commissioners of the Brazos River Harbor Navigation District held at the office of said District at 1001 Pine Street, Freeport, Texas, at 4:30 p.m., on the 13th day of March, 1987, among other business, on motion duly made and seconded, the following Resolution was passed and adopted:

WHEREAS, due and proper notice of the date, time, place and purpose of this meeting has been duly given in accordance with the provisions of the Texas Open Meetings Act, and such meeting has been conducted in accordance with said Open Meetings Act; and

WHEREAS, on 26 June 1986, the Brazos River Harbor Navigation District and the United States of America, acting through the Assistant Secretary of the Army (Civil Works), entered into an agreement entitled LOCAL COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF BRAZORIA COUNTY, TEXAS FOR THE CONSTRUCTION OF THE FREEPORT HARBOR, TEXAS (1970 ACT) PROJECT; and

WHEREAS, ARTICLE XVII b of said agreement provided that:

"If the pending water resources authorization bill, H.R. 6, 99th Congress, 2nd session, as enacted into law, contains a provision of general effect that changes or results in changes to cost-sharing principles applicable to commercial harbor projects funded in Title I, Chapter IV of Public Law 99-88, the parties hereto shall renegotiate their respective rights, duties, and responsibilities under this Agreement so as to conform to such provision."

and

EXHIBIT "A"

WHEREAS, the United States Congress thereafter enacted Public Law 99-662 (H.R. 6) entitled The Water Resources Development Act of 1986, which act did in fact contain provisions conflicting with the above referred to Local Cooperation Agreement; and

WHEREAS, the Assistant Secretary of the Army (Civil Works) has submitted to the District for execution, a document entitled MODIFICATION NO. 1 TO THE LOCAL COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF BRAZORIA COUNTY, TEXAS FOR THE CONSTRUCTION OF THE FREEPORT HARBOR, TEXAS (1970 ACT) PROJECT, for the purpose of modifying said Local Cooperation Agreement dated June 26, 1986, to conform to that portion of Public Law 99-662 that is in conflict with the provisions of said Local Cooperation Agreement; and

WHEREAS, the Board of Navigation and Canal Commissioners finds and determines that it is in the best interest of the Navigation District to execute said proposed amendment to said Local Cooperation Agreement; and

WHEREAS, this Board further finds and determines that the Freeport Harbor, Texas (1970 Act) 45-Foot Channel Improvement Project cannot be commenced until such amendment has been executed by the District and the Assistant Secretary of the Army, and that the importance of considering and acting upon the foregoing matter constitutes an emergency and necessity dispensing with the requirement for publishing notice for 72 hours prior to the time that a meeting is convened to consider such matter:

NOW, THEREFORE, BE IT RESOLVED by the Board of Navigation and Canal Commissioners of the Brazos River Harbor Navigation District, that the terms and provisions contained in the document entitled MODIFICATION NO. 1 TO THE LOCAL COOPERATION AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF BRAZORIA COUNTY, TEXAS FOR THE CONSTRUCTION OF THE FREEPORT HARBOR, TEXAS (1970 ACT) PROJECT, be, and the same are hereby approved, and the Chairman of the Board is hereby authorized to execute said MODIFICATION NO. 1 on behalf of this District and to deliver same to the Assistant Secretary of the Army (Civil Works).

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The undersigned, Secretary of the Board of Navigation and Canal Commissioners of Brazos River Harbor Navigation District of Brazoria County, Texas, hereby certifies that the above and foregoing is a true and correct copy of a resolution duly passed and adopted at a special meeting of the Board of Navigation and Canal Commissioners of said District held on the 13th day of March, 1987, and that said resolution has not been amended or rescinded.

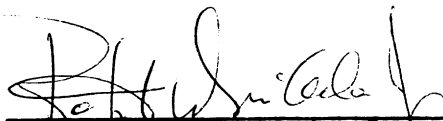
  
Secretary, Board of Navigation  
and Canal Commissioners, Brazos  
River Harbor Navigation District  
of Brazoria County, Texas

EXHIBIT B

CERTIFICATE OF AUTHORITY

I, LELAND B. KEE, do hereby certify that I am the chief legal officer of the Brazos River Harbor Navigation District, that the said Brazos River Harbor Navigation District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement attached hereto between the United States of America and the Brazos River Harbor Navigation District in connection with the Freeport Harbor, Texas (1970 Act) Project and to pay damages, if necessary, in the event of failure to perform, and that the person who has executed the Agreement on behalf of the Brazos River Harbor Navigation District has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certificate this 13th day of March, 1987.

  
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Leland B. Kee  
Legal Counsel