

**MODIFICATION NO. 3 TO THE
AGREEMENT BETWEEN
THE DEPARTMENT OF THE ARMY
AND
BRAZOS RIVER HARBOR NAVIGATION DISTRICT
OF BRAZORIA COUNTY, TEXAS FOR LOCAL COOPERATION ON THE
FREEPORT HARBOR, TEXAS (1970 ACT) PROJECT
NAVIGATION PROJECT**

THIS MODIFICATION, entered into this 19th day of July, 1991,
~~1990~~ by 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"),

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 (1970 Act) Project (hereinafter referred to as the "Project"); and

WHEREAS, Section 215 of Public Law 90-483, as amended, provides that the Secretary of the Army may enter into an agreement to credit or reimburse the costs of certain works accomplished by states or political subdivisions thereof, which later is incorporated into an authorized project, when it is determined that such credit or reimbursement is in the public interest; and

WHEREAS, the Local Sponsor proposes to perform certain items of work, hereinafter referred to as Section 215 work which are part of the Project; and

WHEREAS, performance of the Section 215 work by the Local Sponsor will advance the completion of the Project and provide savings to the Project; and

WHEREAS, the Secretary of the Army has determined that providing the Local Sponsor credit toward required local cooperation for the Project for the costs of the Section 215 work to be accomplished pursuant to this Modification is in the public interest; and

WHEREAS, the Government and the Local Sponsor desire to amend the referenced agreement;

WHEREAS, Section 215 of Public Law 90-483, as amended, limits Federal credit or reimbursement for a single project to no more than \$3,000,000 or 1 percent of total project costs, whichever is greater;

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

1. ARTICLE II - OBLIGATIONS OF THE PARTIES, is amended by:

a. Paragraph f. - adding at the end of the first and last sentences the words "which are constructed by the government".

b. Paragraphs g. and h. are redesignated j. and k.

c. New Paragraphs g. and h. are added as follows:

g. The Local Sponsor shall construct the public use features of the project as described in the Phase II GDM Estimate for the Freeport Harbor, Texas (45-Foot Project), with the exception of the jetty walkway and handrails (which are scheduled to be constructed under the federal contract for "South Jetty Rehabilitation - North Jetty Extension"), with the exception of the stone protection for the public use facilities, and with the exception of the requirements for the purchase of approximately 4.5 acres of land and construction of restroom facilities, previously deleted from the Quintana facility by mutual consent. Prior to advertising for bids for the construction for all or any portion of the Section 215 work described herein, the Local Sponsor will be required to submit four copies of the plans and specifications to the Government for review and approval and shall allow 30 calendar days for the Government to respond. The Local Sponsor shall be responsible for making any changes to the plans that may be determined by the Government to be necessary to meet the requirements of the Phase II General Design Memorandum (GDM). Should the Local Sponsor award a contract for all or any portion of the proposed Section 215 work described therein, without written approval of the Government, it shall forfeit its right to claim credit for the portion of costs of construction of Section 215 work which is attributable to any part of the Section 215 work so constructed under that contract and that does not meet the requirements of the Phase II GDM.

h. The Government shall provide a credit for the Section 215 work performed by the Local Sponsor. This credit shall be applied towards the Local Sponsor's payment required pursuant to Article II e. of this Agreement. The credit provided shall not exceed what the Contracting Officer considers a reasonable estimate of the Government's share of costs as if the Section 215 was accomplished by the Corps of Engineers as a component of Federal project construction responsibilities. Exhibit A to this modification lists the current estimated costs of the facilities to be constructed by the Local Sponsors; costs shown on Exhibit A are based on the estimate for Federal construction and are estimated to be \$905,000. The amount the Government shall credit the Local Sponsor shall be limited to 50 percent of the Local Sponsor's actual costs for work performed by the Local Sponsor but in no event shall exceed \$452,500 which is 50 percent of the Government's estimate for the costs of Federal construction of the same facilities.

d. Paragraph i. is redesignated Paragraph I. and the new Paragraph i. reads as follows:

i. The Local Sponsor shall be required to request credit for that portion of Section 215 work it deems applicable, and shall submit detailed accounting of the nature and costs for the work for which credit is requested. Credit will not be given for any costs associated with the construction of said Section 215 work which cannot be defined as within the scope of the Phase II GDM Cost Estimate determined by the Government. This Agreement is not to be construed as a commitment on the part of the United States to give credit if the Federal project is modified in such a way that this work no longer constitutes a part thereof. Any work begun prior to the effective date of this Agreement shall not be eligible for credit pursuant to this Agreement.

e. A new Paragraph m. is added which reads as follows:

m. This agreement shall expire if the Local Sponsor does not begin the proposed work within three years.

2. ARTICLE VI - METHOD OF PAYMENT, Paragraph d., is modified by adding after the word "construction" and before the comma in the fourth line, the words "and any credit afforded pursuant to ARTICLE II of this Agreement."

IN WITNESS WHEREOF, the parties hereto shall execute this Agreement, which shall then become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE LOCAL SPONSOR

BY: 

BY: 

Brink P. Miller
Colonel, Corps of Engineers
District Engineer

F. J. Richers, Chairman
Board of Navigation and Canal
Commissioners
Brazos River Harbor
Navigation District
Brazoria County, Texas

DATE: 19 July 1991

DATE: 7/11/91

EXHIBIT A
 MODIFICATION NO. 3
 TO LOCAL COOPERATION AGREEMENT FOR
 FREEPORT HARBOR (45-FOOT PROJECT)

<u>ITEM</u>	<u>UNIT</u>	<u>QUANTITY</u> (From Phase II GDM Estimate Apr 79)	<u>COST</u> 1 Oct 90 <u>Price Level</u>
<u>PUBLIC USE FACILITIES</u>			
Access Roads			
North Jetty	LF	1,660	92,500
South Jetty	LF	2,450	136,600
Parking Area			
North Jetty	SY	4,920	102,300
South Jetty	SY	4,920	102,300
Parking Area Guardposts (Wood, 8" diameter)			
North Jetty	EA	578	40,400
South Jetty	EA	578	40,400
Sanitary Facilities (Waterborne, Masonry) (Bldg. on Concrete Slab)			
North Jetty	EA	1	30,800
South Jetty	EA	1	30,800
Water Well w/Pressure System			
South Jetty	EA	1	14,300
Water Supply Mains, 2" dia.			
North Jetty	LF	300	4,900
South Jetty	LF	300	4,900
Water Service Lines, 1" dia.			
North Jetty	LF	200	1,000
South Jetty	LF	200	1,000
Water Fountains w/Spigot			
	EA	4	1,400
Refuse Containers			
	EA	20	4,000
Bench Seats			
	EA	20	4,800
Slope Protection			
Filter Blanket, 18"	TONS	600	(1)
Core Stone, 30"	TONS	1,000	(1)
Electrical Service (Underground)			
	LF	4,000	83,200
Project Signs			
	EA	2	10,600
Outside Lighting (Mercury Vapor, Pole Mounted)			
	EA	13	23,800
Landscaping			
	JOB	SUM	23,300
Jetty Walkway (Asphalt, 6" Thick Cover Rocks)			
	LF	6,100	(1)
Jetty Handrails			
	LF	5,500	(1)
TOTAL			\$754,300
Contingencies			<u>150,860</u>
TOTAL COST			\$905,160

Planning, Engineering and Design, and Construction Management are included in each item as per GDM, April 1979.

(1) Not part of 215 modification work.

CERTIFICATION OF LEGAL REVIEW

Modifications #2 and #3 to the Local Cooperation Agreement for Freeport Harbor have been fully reviewed by the Office of Counsel, USAED, Galveston.



FRANCES S. HIGGINS
District Counsel