

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 AGREEMENT, entered into this 26<sup>th</sup> day of June, 1986, 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"), acting by and through its Chairman as authorized by an official resolution passed by its Board of Navigation and Canal Commissioners, a certified copy of which is attached hereto (Exhibit A).

WITNESSETH, that

WHEREAS, the Freeport Harbor, Texas (1970 Act) Project (hereinafter referred to as the "Project"), as authorized by Section 101 of the River and Harbor Act of 1970 (Public Law 91-611; 84 Stat. 1818) substantially in accordance with the plans and recommendations of the Chief of Engineers, contained in his report dated November 23, 1970, found in House Document 289, 93rd Congress, 2nd Session; and

WHEREAS, a Phase I General Design Memorandum dated 30 June 1978 for the Project was approved by the Chief of Engineers on 16 April 1979 and a Phase II General Design Memorandum dated 20 May 1979 for the Project was approved by the Southwestern Division Engineer on 22 June 1979, and are the bases for subsequent design and construction of the Project, subject to changes and modifications deemed appropriate by the parties; and

WHEREAS, the Local Sponsor has the authority and capability to make the payments required in this Agreement and to otherwise perform pursuant to the terms of this Agreement (Exhibit B); and

WHEREAS, pursuant to Public Law 99-88 (approved August 15, 1985) which Act provides Federal funding for this Project, the Secretary of the Army is authorized to initiate construction of the Project under the terms and conditions acceptable to him as set forth below; and

WHEREAS, the parties understand that it is the intention of the Secretary that initiation of construction of the Project is contingent upon the enactment of legislation imposing a nationwide Federal port use charge, revenues from which will be applied to the Government's cost for harbor maintenance.

NOW, THEREFORE, in consideration of the foregoing and the benefits which shall accrue to the Local Sponsor and the Government by construction of the Project, the parties agree as follows:

#### ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

1. The term "general navigation features of the Project" shall mean deepening, realigning, and enlarging the entrance channel to 47 feet; deepening and enlarging the inside main channel and turning basin to 45 feet; deepening and enlarging the Brazos Harbor Channel and Turning Basin to 36 feet; constructing a new north jetty; removing the existing north jetty; rehabilitating the existing south jetty; and relocating the United States Coast Guard Station.

2. The term "total cost of construction of general navigation facilities assigned to commercial navigation" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the general navigation features of the Project. Such costs shall include, but not necessarily be limited to, actual construction costs; the cost of relocating the United States Coast Guard Station; costs of applicable engineering and design; and supervision and administration costs, but shall not include the value of the lands, easements, rights-of-way, relocations, or dredged material disposal areas to the extent such items are required for the general navigation features of the Project; non-Federal dredging of public or private channels and berthing areas; and aids to navigation.

3. The term "public use features" shall mean facilities for the use of the general public at or adjacent to the jetties, including parking areas, sanitary facilities, and the jetty walkways.

4. The term "total cost of the public use features" shall mean all costs incurred by the Local Sponsor and the Government directly related to the construction of the public use features of the Project (excluding betterments and operation and maintenance costs). Such costs shall include, but not necessarily be limited to, actual construction costs, the value of lands, easements, rights-of-way, and relocations and alterations required for the public use features of the Project, costs of applicable engineering and design, continuing planning and engineering costs incurred after October 1, 1985, and supervision and administration costs.

5. The term "Contracting Officer" shall mean the District Engineer or his duly appointed representative.

#### ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Local Cooperation Agreement between the United States of America and the Brazos River Harbor Navigation District, dated 25 October 1979, approved 31 December 1981, is hereby superseded to the extent of any provision thereof is inconsistent with the terms of this Agreement. All rights, duties and obligations of the parties with regard to the Project shall be governed by and shall be in accordance with this Agreement.

b. The Local Sponsor shall construct, at its own expense, all project facilities other than those for general navigation and public use, including dredged depths in berthing areas and local access channels serving the terminals commensurate with the depths provided in the related project areas.

c. In accordance with the provisions of Article III hereof, the Local Sponsor shall, without cost to the Government, provide the necessary interests in property and perform necessary utility and facility alterations and relocations, except the relocation of the United States Coast Guard Station.

d. As further specified in Article VI hereof, the Local Sponsor shall provide, during the period of construction, a cash contribution equal to 25 percent of the total cost of construction of the general navigation facilities assigned to commercial navigation.

9-20  
100%

e. 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 hereof, of contributed lands, easements, rights-of-way, relocations, and dredged material disposal areas including levees and spillways contributed for the general navigation features of the Project. If the credit allowed for such lands, easements, rights-of-way, relocations, and dredged material disposal areas including levees and spillways, is 10 percent or less of the total cost of construction of general navigation facilities assigned to commercial navigation, the Local Sponsor shall be required to pay an additional 10 percent of said total cost. 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 exceeds 10 percent but is less than 20 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 20 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 20 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 cost.

f. As further specified in Article VI hereof, the Local Sponsor shall provide, during the term of construction, an amount equal to not less than 50 percent of the total cost of the public use features of the Project. The amount to be provided shall include all lands, easements, rights-of-way, and utility and facility alterations and relocations required for the public use features, of the Project, as well as a cash payment equal to the difference between the value of the above items and 50 percent of the total cost of the said public use features of the Project.

g. The Government, using funds provided by the Local Sponsor and appropriated by the Congress, shall expeditiously construct the Project,

applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. Award of the contracts let by the Government and performance of the work thereunder shall be exclusively within the control of the Government. All change orders which materially affect the function or the cost of the Project, including cost overruns, shall be submitted by the Government to the Local Sponsor to provide the Local Sponsor an opportunity for review and comment.

h. The Government shall operate and maintain the general navigation features of the Project. The Local Sponsor shall operate, maintain, and rehabilitate all Project facilities other than those assigned to general navigation, including all terminal facilities and berthing areas; provided, that the Government shall maintain the jetty walkways, the cost of which shall be reimbursed by the Local Sponsor on an annual basis.

#### ARTICLE III - LANDS, FACILITIES AND RELOCATION ASSISTANCE

a. The Local Sponsor shall provide without cost to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Chief of Engineers to be necessary for construction of the Project. The Local Sponsor shall have the option to provide necessary retaining dikes, bulkheads, and embankments for all required disposal areas, or the cost of such retaining works. Prior to the award of any construction contract, the Local Sponsor shall convey to the Government all interests in real estate required for construction, operation, and maintenance of the Project, and shall furnish title evidence acceptable to the Government supporting the Local Sponsor's legal authority to convey such interests.

b. The Local Sponsor shall provide without cost to the Government depths in berthing areas and local access channels serving the terminals commensurate with the depths provided in the related project areas.

c. The Local Sponsor shall accomplish without cost to the Government all alterations and relocations of buildings (except for the United States Coast Guard Station as provided in Article II.e.), streets, storm drains, utilities, and other structures and improvements, including approximately 2,300 linear feet of Freeport Hurricane-Flood Protection levee, made necessary by construction of the Project.

d. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, approved January 2, 1971 (hereinafter referred to as the "Act") in acquiring lands, easements, and rights-of-way of reconstruction and subsequent operation and maintenance of the Project, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with the Act, including but not necessarily limited to the following:

1. Provide fair and reasonable relocation payments and assistance to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of the Act;

2. Provide relocation assistance programs offering the services described in section 205 of the Act to such displaced persons;

3. Within a reasonable period of time prior to displacement, insure that decent, safe and sanitary replacement dwellings are available to displaced persons in accordance with section 205 (c) (3) of the Act;

4. In acquiring real property, to the greatest extent practicable under the laws of the State of Texas, be guided by the land acquisition policies in section 301 and the provisions of section 302 of the Act;

5. Insure that property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Act.

e. The Local Sponsor shall establish regulations prohibiting discharge of pollutants into the waters of the improved channels by users thereof, which regulations shall be in accordance with applicable laws or regulations of Federal, State, and local authorities responsible for pollution prevention and control.

f. The Local Sponsor shall prohibit erection of any structure within 125 feet of project channels or turning basins.

#### ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of lands, easements, and rights-of-way credited to the Local Sponsor for purposes of Article II.e. and Article II.f. hereof will be the fair market value of the lands at the time they are made available to the Government for construction of the Project, together with the actual costs of acquiring the land, including but not limited to attorney and appraisal fees

and closing and title costs, as well as the actual amounts expended for any relocation assistance made in accordance with Article III, but excluding all costs borne by the Local Sponsor for the independent appraisal to determine said fair market value.

1. Fair market value shall be determined by an appraisal to be obtained by the Local Sponsor which has been prepared by an independent and qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government. If however, the appraisal obtained and used by the Local Sponsor for acquisition of the land is very recent, well supported, and capable of being approved by the Government, the Government, at its option, may also utilize this appraisal report for the purpose of determining credit allowed the Local Sponsor for providing lands, easements, and rights-of-way, and no additional appraisal would be required for the purpose of crediting the Local Sponsor.

2. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in the total cost of construction of general navigation facilities assigned to commercial navigation and credited to the Local Sponsor's share.

3. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions will be based on court awards or stipulated settlements, in which instance the stipulated settlements must have prior Government approval.

b. The costs of construction, relocation, alteration, or modification of utilities or facilities credited the Local Sponsor for purposes of Article II.e. and Article II.f. hereof shall be that portion of the actual costs incurred by the Local Sponsor as set forth below:

1. Bridges and Highways: Only that portion of the cost as would be necessary to construct substitute bridges and roads to the design standard that the State of Texas would use in constructing a new bridge or road under similar conditions of geography and traffic loads.

2. Utility Facilities: 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 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 of new materials represents an additional cost, such additional cost shall not be credited to the Local Sponsor.

#### ARTICLE V - PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during project implementation, the Local Sponsor and the Government shall appoint representatives to coordinate and consult on phasing, scheduling, plans, specifications, modifications, contract costs, and other matters relating to design and construction of the Project.

b. The representatives appointed above shall meet as necessary and shall make such recommendations as they deem warranted to the Contracting Officer or his representative.

c. The Contracting Officer or his representative shall carefully consider the recommendations of the representatives in all matters relating to the Project and shall make every effort to accommodate the concerns of the Local Sponsor, but has complete discretion to accept, reject, or modify said recommendations, except as herein otherwise provided. At the request of the Local Sponsor, the Contracting Officer shall advise the Local Sponsor within 60 days of his reasons for rejecting or modifying any recommendation made by the Local Sponsor.

d. The Project shall be contracted in segments.

1. The first construction segment, designated as Phase I, and which has previously been determined to be a beneficially usable increment of the Project, shall consist of:

A. Relocation of 3,700 feet of the North Jetty;

B. Dredging Brazos Harbor Channel and Turning Basin to depth of 36 feet in accordance with project specifications;

C. Relocation of approximately 2,300 linear feet of Freeport Hurricane - Flood Protection Levee, as required;

D. Dredging 1,200-foot upper turning basin in accordance with Project specifications;



2. The second construction segment, designated as Phase II, shall consist of all work necessary to complete the Project not accomplished in construction segment Phase I.

3. Construction segment Phase I, subject to the requirement of Article II.a., shall be initiated in FY 1986, while construction segment Phase II shall be implemented in accordance with Phase II construction schedule as approved by the Government and Local Sponsor.

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, over the term of construction, 25 percent of the total cost of construction of general navigation facilities assigned to commercial navigation and 50 percent of the total cost of the public use features as specified in Article II.f. and Article II.h. hereof. The total cost of the general navigation facilities assigned to navigation is presently estimated to be \$91,764,000 of which the Local Sponsor's share is presently estimated to be \$22,941,000. The total cost of the public use features of the project is \$2,660,000, of which The Local Sponsor's share is presently estimated to be \$1,330,000. Local Sponsor cash contributions shall be subject to the following provisions:

*75/25  
General  
Nav. fac.*

1. Six months before the start of the Local Sponsor's fiscal year, the Government shall notify the Local Sponsor of the estimated funds that will be required from the Local Sponsor of the estimated funds that will be required from the Local Sponsor to meet its share of project costs for that Government fiscal year. The Local Sponsor shall then make those funds available to the Government through deposit of cash in an escrow account acceptable to the Government. The estimate of project costs for each Government fiscal year of construction will include the amortized portion of the engineering and design and supervision and administration costs incurred by the Government prior to the date of this agreement.

2. Thirty days prior to the advertisement of each construction contract, the Government shall notify the Local Sponsor of its estimated share of contract costs, including estimated engineering and design and supervisory and administrative costs, as calculated under Article VI.a. Within 20 calendar days thereafter, the Local Sponsor shall verify to the satisfaction of the Government that sufficient funds are available to the Government in the

funding institution referred to in Article VI.a.1. to meet its share of the required costs. If the Government determines that sufficient sums are not available to it, it shall so notify the Local Sponsor and the Local Sponsor shall deposit said sums within ten calendar days and provide verification of such deposit. If the contract is expected to extend into more than one Government fiscal year, the Local Sponsor may make prior to each Government fiscal year in the estimated amount required for that year's work on the contract, including engineering and design and supervisory and administrative costs.

3. When bids are opened on any given contract and additional funds are needed from the Local Sponsor to meet its required share of estimated costs, the Government shall so notify the Local Sponsor and the Local Sponsor shall deposit the additional funds in escrow within ten calendar days after demand is made by the Government.

4. Notwithstanding any other provisions of this agreement, if the award of any contract for the construction of the general navigation features of the Project would result in the total cost of the general navigation features of the Project exceeding the presently estimated total cost of such features by ten percent (10%), the award of that contract and subsequent contracts shall be deferred until such time as both parties to the agreement agree to resume construction of the general navigation features of the Project.

b. The Government will draw on the funds deposited in the escrow account such sums as it deems necessary to cover contractual, engineering and design, supervision and administration fiscal obligations pertaining to the contract as they occur, and Government costs of approximately \$950,000 incurred prior to the date of this agreement.

c. Upon completion of the Project and resolution of all contract claims and appeals, the Government shall determine the total cost of construction of the Project and tender to the Local Sponsor a final accounting of its share of project costs. In the event the total contribution by the Local Sponsor is less than its initial required share of applicable costs at the time of the final accounting, the Local Sponsor shall deposit within 90 calendar days after receipt of written notice whatever sum is required to meet its initial required share. In the event the Local Sponsor has made excess cash contributions which result in the Local Sponsor's having provided more than

its initial required share, the Government shall credit the excess to the additional 0-10 percent of costs of the general navigation features the Local Sponsor is required to repay, if any, pursuant to Article II.e. of this Agreement.

d. The Local Sponsor shall repay the aforementioned 0-10 percent of the total cost of construction of general navigation facilities assigned to commercial navigation, reduced by any excess contribution made during the term of construction, in equal annual installments over a period of not more than 30 years from the date of project completion. Such repayment shall include interest at a rate published by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the repayment period, during the month preceding the fiscal year in which costs for the construction for the Project are incurred (or, in the case of recalculation, the fiscal year in which the recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs. The interest rate shall be recalculated by the Secretary of the Treasury every five years.

#### ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or through other forms of non-binding alternative dispute resolution mutually acceptable to the Government and the Local Sponsor.

#### ARTICLE VIII - OPERATION, MAINTENANCE, AND REHABILITATION

a. The Local Sponsor shall operate, maintain and rehabilitate terminal facilities, including berthing areas and other Project features not assigned to commercial navigation, except the jetty walkways, upon completion of construction.

b. The Government shall operate and maintain the general navigation features of the Project, including project channels and jetties, the jetty walkways, and aids to navigation. The cost incurred by the Government for

operating and maintaining the jetty walkways shall be reimbursed by the Local Sponsor on an annual basis.

c. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, repairing, and maintaining the Project. If an inspection shows that the Local Sponsor for any reason is failing to complete, operate, repair, and maintain the Project in accordance with the assurances hereunder, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, repairing, or maintaining the Project. No completion, operation, repair, or maintenance by the Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the completed Project, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of construction of the Project, and resolution of all claims arising therefrom, and shall make available at their offices at

*Audit*

reasonable times such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

a. In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations.

b. The Local Sponsor agrees to comply with section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, in connection with the construction, operation, and maintenance of the Project.

#### ARTICLE XII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

#### ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share of part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE XIV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to

the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### ARTICLE XV - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Secretary of the Army shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears or unless the Secretary determines that continuation of work on the Project is in the interest of the United States. Any delinquent payment 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 delinquency exceeds three months.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet expenditures for the then-current fiscal year, the Government shall so notify the Local Sponsor. After sixty days, either party may elect without penalty to terminate the Agreement or to suspend performance thereunder, and the parties shall proceed to wind up their activities relating to the Project and proceed to a final accounting in accordance with Article VI.c.

#### ARTICLE XVI - STATEMENT OF INTENT

As required under Title I, Chapter IV of Public Law 99-88, the Local Sponsor hereby affirms its willingness and capability to meet its cost-sharing obligations as set forth in this Agreement.

#### ARTICLE XVII - EFFECT OF SUBSEQUENT LEGISLATION

a. The parties hereto anticipate the passage of legislation during the current term of Congress regarding Federal and non-Federal cost sharing for Federal navigation projects.

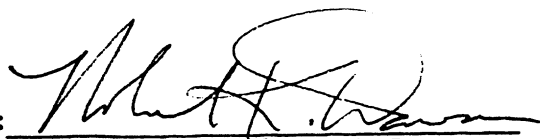
b. If the pending water resources authorization bill, H.R. 6, 99th Congress, 2nd session, as enacted into law, contains a provision of general

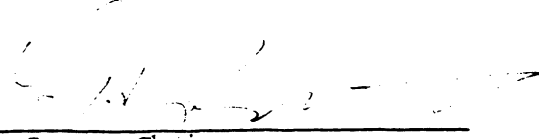
effect that changes or results in changes to cost-sharing principles applicable to commercial harbor projects funded in Title I, Chapter IV of Public Law 99-88, the parties hereto shall renegotiate their respective rights, duties, and responsibilities under this Agreement so as to conform to such provision. In any event, any renegotiated agreement must be approved by the Board of Commissioners of the Local Sponsor and the Secretary of the Army.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE DEPARTMENT OF THE ARMY

THE BRAZOS RIVER HARBOR  
NAVIGATION DISTRICT,  
BRAZORIA COUNTY, TEXAS

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

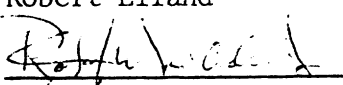
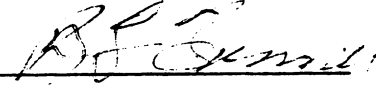
By:   
L.H. Jones, Chairman  
Board of Navigation and  
Canal Commissioners

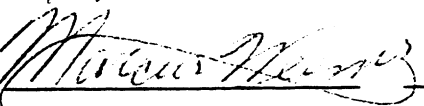
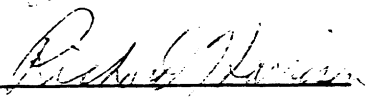
DATE: 6-24-86

DATE: 6-26-86

AS WITNESSED BY:

 \_\_\_\_\_  
Robert Eiland

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## RESOLUTION

At a regular 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, on the 26th day of June, 1986, 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 25 October 1979, at the request of the United States Army, Corps of Engineers, the Brazos River Harbor Navigation District executed a Section 221 Local Cooperation Agreement with the United States of America, which said Agreement was approved by the Secretary of the Army on 31 December 1981, and which Agreement set forth the terms and provisions for the construction of Freeport Harbor, Texas (1970 Act) Project, as authorized by Section 101 of the River and Harbor Act of 1970 (Public Law 91-611; 84 Stat. 1818); and

WHEREAS, Public Law 88-99 (FY 1985 Supplemental Appropriation Act, approved August 15, 1985) provided Federal funding for the channel improvement project and further provided that none of the appropriated funds could be expended except under terms and conditions acceptable to the Secretary of the Army, to be set forth in a binding agreement with the Navigation District as the Local Non-Federal Sponsor of the project; and providing further



that the appropriated funds would lapse on June 30, 1986 if the required agreement for the project had not been executed by that time; and

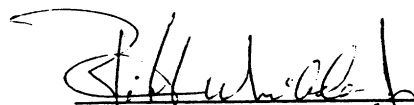
WHEREAS, the Assistant Secretary of the Army for Civil Works has required that the Navigation District as Local Non-Federal Sponsor, enter into a revised Local Cooperation Agreement, and has tendered to the Navigation District a proposed Local Cooperation Agreement which provides that, to the extent any provision of said Local Cooperation Agreement dated 25 October 1979, approved 31 December 1981, is inconsistent with the terms and provisions of the Local Cooperation Agreement as presently tendered by the Assistant Secretary of the Army, said prior agreement-dated 25 October 1979 shall be superseded; providing further that if the pending Water Resources Development Act, 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 thereto shall renegotiate their respective rights, duties, and responsibilities under said agreement so as to conform to such provision; and

WHEREAS, the Board of Navigation and Canal Commissioners of the Brazos River Harbor Navigation District has determined that it is in the best interest of the District to execute said Local Cooperation Agreement in accordance with the terms and provisions thereof as contained in said document dated June 26, 1986:

NOW, THEREFORE, BE IT RESOLVED, that the Local Cooperation Agreement by and between the United States of America, acting by and through the Assistant Secretary of the Army for Civil Works, and Brazos River Harbor Navigation District, for the construction of the Freeport Harbor, Texas (1970 Act) Project, executed by Robert K. Dawson, dated June 26, 1986, be approved, and the Chairman and Secretary of the Board be, and they are are hereby authorized to execute said Local Cooperation Agreement on behalf of the Navigation District.

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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 regular meeting of the Board of Navigation and Canal Commissioners of said District held on the 26th day of June, 1986, and that said resolution has not been amended or rescinded.



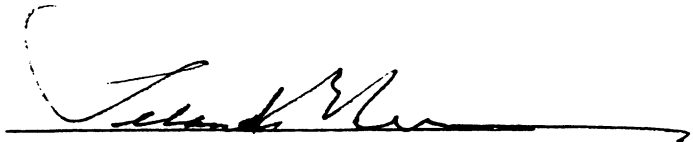
Secretary, Board of Navigation  
and Canal Commissioners, Brazos  
River Harbor Navigation District  
of Brazoria County, Texas

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 26<sup>th</sup> day of JUNE, 1986.



Leland B. Kee

Legal Counsel