

DNR Agreement No.: 435CW-97-14Amendment No.: 1

AMENDMENT
TO THE
COST SHARING AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY
AND
THE STATE OF LOUISIANA

FOR CONSTRUCTION OF THE
WEST BELLE PASS HEADLAND RESTORATION PROJECT
LAFOURCHE PARISH, LA

(FEDERAL PROJECT # FM215 /STATE PROJECT # TE-23, PTE-27)

THIS AMENDMENT is entered into this 24th day of May, 1998 by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the District Engineer, U.S. Army Engineer District, New Orleans and the STATE OF LOUISIANA, (hereinafter referred to as the "State"), acting by and through the Secretary of the Louisiana Department of Natural Resources.

WITNESSETH, THAT:

WHEREAS, construction of the West Belle Pass Headland Restoration Project in Lafourche Parish, LA, was authorized by Section 303(a) of Title III, Pub. L. 101-646, the "Coastal Wetlands Planning, Protection and Restoration Act" enacted on November 29, 1990 (hereinafter referred to as "CWPPRA"); and

WHEREAS, the West Belle Pass Headland Restoration Project (hereinafter referred to as the "Project", as defined in Article I.b. of the Agreement) was approved on the 2nd Priority Project List on October 19, 1992; and

WHEREAS, on December 27, 1996, the Government and the State entered into a Cost Sharing Agreement (hereinafter referred to as the "Agreement") for construction of the Project; and

WHEREAS, in accordance with Section 304 of the CWPPRA, the Louisiana Coastal

Wetlands Conservation Plan was approved by the Secretary of the Army, the Director of the U.S. Fish and Wildlife Service, and the Administrator of the Environmental Protection Agency on November 21, 1997, effective December 1, 1997; and

WHEREAS, Section 303(f) of the CWPPRA specifies that, upon approval of the Louisiana Coastal Wetlands Conservation Plan, the Federal share for this Project will increase from 75 percent to 85 percent. In accordance with the unanimous decision of the Louisiana Coastal Wetlands Conservation and Restoration Task Force, which decision was officially rendered on January 16, 1998, the increased Federal share shall apply and extend solely to those funds expended on or after December 1, 1997, and the Federal share of any and all funds expended prior to December 1, 1997, shall be limited to 75%.

WHEREAS, Section 303(f)(2) of the CWPPRA, provides that in the event that the Secretary of the Army, the Director of the United States Fish and Wildlife Service and the Administrator of the Environmental Protection Agency jointly determine that the State is not taking reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan, amounts made available by the Government in accordance with Section 306 of the CWPPRA, as amended, for any coastal wetlands restoration project shall revert from 85% to 75% of the cost of the project; provided however, that such reversion to the lower cost share level shall not occur until the Governor of the State of Louisiana has been provided notice of, and opportunity for hearing on, any such determination by the Secretary, the Director and the Administrator, and the State has been given ninety days from such notice or hearing to take corrective action. The decreased Federal share shall apply and extend solely to those funds expended on or after such ninety-day period has elapsed without corrective action having been taken by the State.

NOW, THEREFORE, the Government and the State agree to amend the Agreement as follows:

1. ARTICLE II. - OBLIGATIONS OF THE PARTIES

A. ARTICLE II.c. is deleted in its entirety and the following is substituted therefore:

"c. The Government shall pay 75 percent of the total first costs of the Project through a combination of cash and the provision of all lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and accomplishment or assurance of accomplishment of all relocations determined by the Government to be necessary for construction, monitoring, operation and maintenance of the Project, except for those lands, easements,

servitudes, rights-of-way, suitable borrow and dredge or excavated material disposal areas provided pursuant to subparagraph d.2. of this Article and Article III.b. of this Agreement. Provided however, that regarding funds expended by the State or the Government, on or after December 1, 1997, as a part of the total first costs of the Project, the Government shall pay 85 percent of the said total first costs of the Project through a combination of cash and the provision of all lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and accomplishment or assurance of accomplishment of all relocations determined by the Government to be necessary for construction, monitoring, operation and maintenance of the Project, except for those lands, easements, servitudes, rights-of-way, suitable borrow and dredge or excavated material disposal areas provided pursuant to subparagraph d.2. of this Article and Article III.b. of this Agreement. "

B. Article II.d. is deleted in its entirety and the following shall be substituted therefore:

"d. The State shall contribute, during the period of construction, 25 percent of the total first costs through a combination of cash payments, lands, easements, servitudes, rights-of way, and work-in-kind, as hereby specified and as further specified in Article III.b. and Article VI. of this Agreement. Provided however, that regarding funds expended by the State or the Government, on or after December 1, 1997, as a part of the total first costs of the Project, the State shall contribute, during the period of construction extending thereafter, 15 percent of the said total first costs through a combination of cash payments, lands, easements, servitudes, rights-of way, and work-in-kind, as hereby specified and as further specified in Article III.b. and Article VI. of this Agreement.

1. As further specified in Article VI hereof, during the period of construction, the State shall provide a cash contribution equal to 5 percent of the total first costs.

2. As further specified in Article III hereof, the State shall, prior to the advertisement of any construction contract, provide all lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or excavated material disposal areas to the Government in, over, under and upon any lands, waterbodies, and/or waterbottoms deemed by the Government to be necessary for the construction, of the Project, which are owned, controlled and/or claimed by the State.

3. If the value of the contributions provided under subparagraphs d.1. and d.2.

of this Article is less than the State's required share, the State shall provide, during the period of construction, additional cash contributions in the amount necessary to make the State's total contribution equal to the State's required share.

4. The State shall implement and perform Project pre-construction and construction monitoring in accordance with the Project Monitoring Plan and may perform other work-in-kind upon approval of the Government. The State shall receive a credit for the value of work-in-kind as approved by the Government subject to Government audit toward the cash contribution required under subparagraph d.3. of this Article. "

C. Article II.e. of this Agreement shall be deleted in its entirety and the following substituted therefore:

"e. It is anticipated that the State will perform all operation, maintenance, repair, replacement, rehabilitation and post-construction monitoring associated with this Project. During the life of the Project, upon receipt of requests from the State, the Government shall, subject to the availability of Government funding and subject to Government audit, reimburse the State 85 percent of the State's actual operation, maintenance, repair, replacement, rehabilitation and monitoring costs, as approved by the Government. In the event the Government performs any operation, maintenance, repair, replacement, rehabilitation, and post-construction monitoring work on the Project, the Government shall receive a credit for such work in the amount equal to the actual reasonable costs incurred which shall be applied against the Government's requirement to pay 85 percent of the operation, maintenance, repair, replacement, rehabilitation, and post-construction monitoring costs."

D. ARTICLE II. g. shall be inserted as follows:

"g. Notwithstanding any other provision of this Agreement to the contrary, in the event that, on or after December 1, 1997, the Secretary of the Army, the Director of the United States Fish and Wildlife Service and the Administrator of the Environmental Protection Agency, jointly determine, pursuant to the provisions of Section 303(f)(2) of the CWPPRA, that the State of Louisiana is not taking reasonable steps to implement and administer the Louisiana Coastal Wetlands Conservation Plan, amounts made available by the Government in accordance with Section 306 of the CWPPRA, as amended, shall revert from 85% to 75% of the costs of the project and the State's share of the costs of the project shall revert from 15% to 25% of the costs of the project; provided however, that such reversion to the

Government's lower cost share level shall not occur until the Governor of the State of Louisiana has been provided notice of, and opportunity for hearing on, any such determination by the Secretary, the Director and the Administrator, and the State has been given ninety days from such notice or hearing to take corrective action. The decreased Federal share shall apply and extend solely to those funds expended on or after such ninety-day period has elapsed without corrective action having been taken by the State."

2. ARTICLE VI - METHOD OF PAYMENT.

A. ARTICLE VI.a. is amended to read in its entirety as follows:

"a. Total project costs are currently estimated to be \$6,734,920.00 and the State's share of total project costs is currently estimated to be \$1,090,172.00 (provided however, that should the State's share of total project costs revert from 15% to 25% in accordance with Article II.g. of this Agreement, the State's share of the currently estimated total project costs shall be revised accordingly) of which not less than 5 percent of total project costs shall be in cash. The dollar amounts set forth in this Article are based upon the Government's best estimates which include projections of costs, price level changes, and anticipated inflation and any anticipated work-in-kind credits. Such cost estimates are subject to adjustments based upon cost actually incurred and, subject to the provisions of Article XX of this Agreement are not to be construed as the total financial responsibilities of the Government and the State."

B. ARTICLE VI.b. is amended to read in its entirety as follows:

"b. The total first costs are currently estimated to be \$6,153,000.00. In order to meet its share of the total first cost, the State shall provide during the period of construction, as specified in Article II.d. of this Agreement, a cash contribution of not less than 5 percent of the total first costs. The State shall provide the State's required cash contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the State by January 1st of each year of the estimated funds that will be required from the State to meet the State's share of total first costs for the upcoming fiscal year.

2. No later than 90 calendar days prior to the award of the first construction contract, the Government shall notify the State of the State's share of the total first costs required for the first fiscal year of construction, including the State's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 30 calendar days thereafter, the State shall verify to the satisfaction of the Government that the State has deposited the requisite amount in an escrow or other account acceptable to the Government, with interest accruing to the State.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the State of the State's share of total first costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the State shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

4. As construction of the Project proceeds, the Government shall, on a regular basis each year, adjust the amounts required to be provided under this subparagraph to reflect actual costs to date, including any amounts necessary to liquidate meritorious contract claims and appeals. If at any time the Government determines that additional funds will be needed from the State for construction, the Government shall so notify the State, and the State, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement."

3. ARTICLE XX - PROJECT COST LIMITS.

A. ARTICLE XX is amended to read in its entirety as follows:

"a. If at any time the total project costs exceeds \$6,734,920.00, the award of any new contracts for the Project shall be deferred until such time as the Project is re-prioritized by the CWPPRA Task Force and an amendment to this Agreement is approved by the Government and the State. In the event the Project is not re-prioritized by the CWPPRA Task Force and the State, then this Agreement shall be terminated and the Government and the State shall proceed to a final accounting in accordance with Article VI of this Agreement.

b. Notwithstanding any provision of this Agreement, if at any time during

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the performance of a Project phase the estimate for that phase of the work which exceeds 125 percent of the projected total costs for that phase of the work, no new contracts for the Project shall be awarded until such time as the Government and the State agree to resume work on that or any other phase of the Project. The current estimate for the four phases of the Project implementation are as set below:

1. Engineering and Design Phase - \$615,845.00.
2. Construction Phase (including Real Estate) - \$5,537,150.00 .
3. Monitoring Phase - \$162,925.00.
4. Operations and Maintenance Phase - \$419,000.00 .
5. Current Total Project Costs - \$6,734,920.00 .

4. ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT REMAIN UNCHANGED.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment, which shall become effective upon the date it is signed by the District Engineer, U.S. Army Engineer District, New Orleans, retroactive to December 1, 1997.

THE DEPARTMENT OF THE ARMY

BY: William L. Conner
William L. Conner
Colonel, Corps of Engineers
District Engineer

THE STATE OF LOUISIANA

BY: Jack Caldwell
Jack Caldwell, Secretary
Louisiana Department of
Natural Resources

DATE: 27 May 98

DATE May 18, 1998

WITNESS:

Katherine E. Meier

Cheryl C. Parker

Bill H. Hicks

Rhonda K. Yarbrough

Gay B. Browning

Shanda L. LeDess

APPROVED
Office of the Governor
Office of Contractual Review

James H. ...
JUN 24 1998
DIRECTOR

COST SHARING AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY
AND

THE STATE OF LOUISIANA

FOR CONSTRUCTION OF THE

WEST BELLE PASS HEADLAND RESTORATION PROJECT
LAFOURCHE PARISH, LA

THIS AGREEMENT is entered into this 27th day of Dec, 1996 by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the District Engineer, U.S. Army Engineer District, New Orleans and the STATE OF LOUISIANA, (hereinafter referred to as the "State"), acting by and through the Secretary of the Louisiana Department of Natural Resources.

WITNESSETH, THAT:

WHEREAS, construction of the West Belle Pass Headland Restoration Project in Lafourche Parish, LA, (hereinafter referred to as the "Project" and defined in Article I.b. of this Agreement), is authorized by Section 303(a) of Title III, Pub. L. 101-646, the "Coastal Wetlands Planning, Protection and Restoration Act" enacted on November 29, 1990, (hereinafter referred to as the "CWPPRA"); and

WHEREAS, the Project was authorized by the Louisiana Coastal Wetlands Conservation and Restoration Plan of the State of Louisiana in April 1993; and

WHEREAS, the Government and the State desire to enter into a Cost Sharing Agreement for construction, operation, maintenance, repair, replacement, rehabilitation, and monitoring of the Project; and

WHEREAS, Section 303(f) of the CWPPRA specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, Section 303(e) of the CWPPRA states that the Secretary of the Army "shall not fund a coastal wetlands, restoration project unless that Project is subject to such terms and conditions as necessary to ensure that wetlands restored, enhanced, or managed through that