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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

project will be administered for the long-term conservation of such lands and waters and dependent fish and wildlife populations;" and

WHEREAS, the Government and the State have the legal authority and capability to perform as hereinafter set forth and intend to cooperate in the cost-sharing and financing of the construction, operation, maintenance, repair, replacement, rehabilitation and monitoring of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the State agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For the purposes of this Agreement:

a. The definitions in Section 302 of the CWPPRA are incorporated herein by reference.

b. The term "Project" shall mean the implementation of the West Belle Pass Headland Restoration Project, located just west of Port Fouchon, Louisiana and bounded by Timbalier Bay on the west, Bayou Lafourche and Belle Pass to the east, and the Gulf of Mexico to the south. The project area is located in Lafourche Parish, LA. The Project consist of depositing hydraulically dredged material from the Bayou Lafourche navigation channel in pipeline canals and shallow bays; placing earthen closures across pipeline canals and earthen dikes across two shallow bays to contain the deposited material; placing rip rap along the west bank of Bayou Lafourche from the Belle Pass jetties to about 4,200 feet north of the Evans Canal; and constructing a rock weir with a boat bay across Evans Canal near its intersection with Bayou Lafourche, as generally described in the CWPPRA Task Force Priority Project List Report, dated November, 1992.

c. The term "total first costs" shall mean all costs incurred by the State and the Government directly related to pre-construction monitoring, construction, and construction monitoring of the Project. Such costs shall include, but not necessarily be limited to: all engineering and design costs incurred after October 19, 1992; all preconstruction engineering and design costs; engineering and design costs during construction; actual construction costs; construction management costs; supervision and administration costs; costs of contract dispute settlements or awards; the value of lands, easements, servitudes, severance fees for dredging State waterbottoms, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and the value of utility and facility relocations, as may be required for the construction, operation, and maintenance of the Project; the cost of investigations to identify the existence of hazardous substances as identified in Article XVII.a.; the cost of developing the Project Monitoring Plan, described in subparagraph o. of this Article, the cost of developing the Project Operations and Schedule Manual, as described in subparagraph p. of this Article; the cost

of cultural resource surveys, documentation and coordination; but shall not include the costs for operation, maintenance, repair, replacement, or rehabilitation; nor any increase cost for betterments. The term "total first costs" also includes the amount of work-in-kind credits, verified by Government audits, that will be given to the State for work-in-kind.

d. The term "total project cost" shall mean all cost directly related to implementation of the Project. Such cost shall include total first costs and all costs directly related to operation, maintenance, repair, replacement, and rehabilitation of the Project, including post-construction monitoring and associated supervision and administration costs.

e. The term "Contracting Officer" shall mean the U.S. Army District Engineer (or Principal Government Contracting Authority) for the New Orleans District.

f. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time the Contracting Officer certifies in writing to the State that construction of the Project is complete. The Contracting Officer shall furnish to the State copies of the Government's Written Notice of Acceptance of Completed Work furnished to contractor(s) for all contracts for the Project.

g. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

h. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads (excluding construction, modification, or relocation of railroad bridges and approaches thereto), highways, and other bridges, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

i. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

j. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer in writing to be suitable for tender to the State to operate and maintain in advance of completion of the entire Project. To be suitable for tender, the Contracting Officer must determine that the completed portion of the Project can function independently and for a useful purpose, although the balance of the Project is not complete.

k. The term "betterment" shall mean the design and construction of a Project feature accomplished on behalf of, or at the request of the State in accordance with standards which

exceed the standards which the Government would otherwise apply for accomplishing the design and construction of the Project.

l. The term "construction management costs" shall mean costs incurred by the State and the Government directly related to supervising and administering of construction contracts, to include related overhead costs, as specified in applicable Government contracting regulations.

m. The term "operation, maintenance, repair, replacement and rehabilitation" shall mean any physical activity associated with the actual operation, maintenance, repair, replacement or rehabilitation of the completed Project, or functional portion of the Project, which has been tendered to the State, as described in the Project Operations and Schedule Manual as described in subparagraph p. of this Article and Article VIII of this Agreement.

n. The term "monitoring" shall mean the pre-construction, construction, and post-construction activities undertaken pursuant to the Project Monitoring Plan.

o. The term "Project Monitoring Plan" shall mean a specific plan prepared by the State and mutually agreed to by the State and the Government to provide direction and guidance concerning all monitoring requirements, parameters and procedures for the Project, which shall include the procurement of aerial photographs of the Project area taken within one year prior to the commencement of construction of the Project.

p. The term "Project Operations and Schedule Manual" shall mean a specific plan and schedule prepared by the Government and mutually agreed to by the State and the Government to provide direction and guidance concerning all operation, maintenance, repair, replacement and rehabilitation activities for the Project or functional portion of the Project and in accordance with Article VIII of this Agreement.

q. The term "work-in-kind" shall mean engineering, design, pre-construction and/or construction monitoring, and/or construction of the Project or feature of the Project which has been approved in advance by the Government and is performed by the State.

r. The term "life of the Project" shall mean 20 years from completion of construction of the Project or functional portion of the Project unless otherwise mutually agreed in writing.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the State, shall expeditiously construct the Project applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The State shall be afforded the opportunity to review and comment on

all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. Before initial construction of the Project can proceed, the State must concur in writing with issuance of the invitation for bids for the first construction contract. The State will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the State of the required contract modifications or change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Contracting Officer will, in good faith, consider the comments of the State, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer provided such contracts, modifications and change orders are in accordance with the Project purposes.

b. After the Contracting Officer determines that the Project, or functional portion of the Project, is complete, and notifies the State in writing of such determination, the Contracting Officer shall turn the Project or functional portion of the Project over to the State, which shall accept the Project, or functional portion of the Project, and be responsible for operating, maintaining, repairing, replacing, rehabilitating and monitoring the Project or functional portion of the Project in accordance with the Project Operations and Schedule Manual, the Project Monitoring Plan and Article VIII hereof to ensure that wetlands restored, enhanced or managed through the Project will be administered for the long-term conservation of such lands and waters and dependent fish and wildlife populations.

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, 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.

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.

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 25 percent of total first costs, 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 25 percent of total first costs.

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.

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 75 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 75 percent of the operation, maintenance, repair, replacement, rehabilitation, and post-construction monitoring costs.

f. No Federal funds may be used to meet the State's share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting Federal agency.

ARTICLE III - LANDS, RELOCATIONS AND Pub. L. 91-646

a. The Government shall acquire all lands, easements, servitudes, and rights-of-way, including suitable dredged or excavated material disposal areas, determined by the Government to be necessary for construction, operation and maintenance of the Project, except as provided in subparagraph b. of this Article.

b. Prior to the advertisement of any construction contract, the State shall provide all lands, easements, servitudes, rights-of-way, dredged material disposal areas and any other interests in, over, under and upon any lands, waterbodies, and/or waterbottoms deemed by the Government

to be necessary for the construction, operations and maintenance of the Project, which are owned, controlled and/or claimed by the State and the State shall provide the Government with evidence supporting the State's legal authority to grant the Government an interest in such lands.

c. It is specifically understood that no fee title to the property or minerals affected herein are transferred with any easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal areas provided by the State pursuant to this Agreement. No public rights of ownership shall be transferred and vest in private parties as a result of the Project. It is further understood and agreed that any easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal areas shall provide for access which will not unreasonably interfere with the purposes of the Project for mineral exploration and development.

d. The Government shall accomplish or assure accomplishment of all relocations that are deemed necessary by the Government for the construction, operation and maintenance of the Project.

e. After execution of this Agreement, the Government or the State, as the case may be, shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, servitudes, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

f. Eminent Domain. The Government will coordinate its acquisition efforts with the State. Condemnation will only be initiated by the Government when necessary, as in cases where the State is not empowered to acquire a real property interest under State law or where agreement can not be reached on the purchase price. The Government will make every effort to resolve disagreements on price without condemnation. The Government will inform the State of acquisitions requiring condemnation for price or title prior to initiating condemnation proceedings.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The Local Sponsor shall not receive any credit for lands, easements, servitudes, and rights-of-way, including borrow or dredged or excavated material disposal areas, previously provided as an item of cooperation for another Federal project nor shall the value thereof be included in total project costs. The value of the lands, easements, servitudes, and rights-of-way, including suitable borrow or dredged or excavated material disposal areas, to be included in total first costs and credited towards the Government and State's share of total first costs shall be determined in accordance with the following procedures:

1. If the lands, easements, servitudes, or rights-of-way, including suitable borrow and dredged or excavated material disposal areas and any other interests in, over, under and upon any lands, waterbodies, and/or waterbottoms which are owned by the State as of the date the first construction contract for the Project is awarded, the State shall be given a credit equal to the fair market value of the interest at the time of such award or in exceptional circumstances, upon request of the State and in the sole discretion of the Government, the actual purchase price paid by the State. The fair market value shall be determined by an appraisal, to be obtained by the State, which has been prepared by a qualified appraiser who is acceptable to both the State and the Government. The appraisal shall be reviewed and approved by the State and the Government.

2. The value of lands, easements, servitudes, or rights-of-way, including suitable borrow and dredged or excavated material disposal areas, acquired by the Government shall be the actual costs of the land, including, but not limited to the actual incidental costs of acquiring the land, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, court costs, plat maps and mapping costs, as well as the actual amounts expended for any Pub. L. 91-646 relocation assistance benefits made in accordance with Article III., and all Government administrative costs in the land acquisition for the Project.

3. If the State acquires a greater real estate interest in the lands, easements, servitudes, 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 total first costs and credited towards the State's share.

4. Credit for lands, easements, servitudes and rights-of-way acquired through eminent domain proceedings occurring after the date of this Agreement will be based on court awards for the real property interests taken, or on stipulated settlements or portions of stipulated settlements that have received written Government approval. The fair market value for the purposes of filing an eminent domain proceeding in court shall be based on an appraisal prepared by a qualified appraiser who is acceptable to both the State and the Government and approved by the Government and the State. Appraisals shall be done in accordance with the Federal Rules of Compensation.

5. Credit for lands, easements, servitudes, or rights-of-way acquired by the State preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the reasonable documented incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Pub. L. 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

6. Credit will be allowed for the value of severance fees applied to dredging State waterbottoms.

b. The costs of relocations which will be included in total first costs shall be that portion of the actual costs as set forth below, and approved by the Government:

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

2. Utilities and 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 alteration or relocation 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 included in total first costs.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication the State and the Government shall prior to the advertisement of the first construction contract, appoint representatives to coordinate on all facets of Project development, including Project design, scheduling, plans, specifications, real estate requirements, award of contracts, contract modifications and change orders, contract costs, claims, and other related matters.

b. These representatives shall generally oversee the Project construction and shall be identified as the Project Coordination Team. They shall meet regularly during the period of construction and will be informed of all changes in total project costs. The Project Coordination Team shall make recommendations concerning construction as it deems are warranted to the Contracting Officer, including suggestions to avoid potential sources of dispute.

c. The Contracting Officer shall, in good faith, consider the recommendations of the Project Coordination Team on all matters relating to construction and anticipated requirements for operation, maintenance, repair, replacement and rehabilitation of the Project. The Contracting Officer, having the legal authority and responsibility for construction of the Project, has discretion to accept, reject, or modify the recommendations of such representatives.

ARTICLE VI - METHOD OF PAYMENT

a. Total project costs are currently estimated to be \$ 5,466,300.00 and the State's share of total project costs is currently estimated to be \$ 1,366,575.00 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. The total first costs are currently estimated to be \$ 5,133,400.00. 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.

c. The Government will draw on the escrow or other account provided by the State such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as total first costs incurred by the Government prior to the initiation of construction.

d. Not later than October 1 of each fiscal year during the life of the Project, the State, in consultation with the Government, shall prepare a yearly estimate for the anticipated operation, maintenance, repair, replacement, rehabilitation and monitoring costs, by activity or item, for the fiscal year that will begin 12 months thereafter. The Contracting Officer will review and verify the accuracy of said estimate. For the first year of Project operation, maintenance, repair, replacement, rehabilitation and monitoring after the period of construction, the said estimate shall include operation, maintenance, repair, replacement, rehabilitation and monitoring costs that will have been incurred during the period of construction.

e. On a quarterly basis during the life of the Project, the State shall submit to the Government statements of actual operation, maintenance, repair, replacement, rehabilitation and monitoring costs incurred by the State for the Project or functional portion, and not later than 30 days thereafter the Government, subject to availability of funds and subject to audit, shall provide to the State a cash payment equal to 75 percent of said actual 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 75 percent of the operation, maintenance, repair, replacement, rehabilitation, and post-construction monitoring costs.

f. During the period of construction and for the life of the Project, the Government shall provide quarterly financial reports on the status of total project costs and status of contributions made by the State. Upon completion of the life of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and tender to the State a final accounting of the State's share of total project costs.

1. In the event the total contribution by the State is less than the State's required share of total project costs, the State shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the State's required share of the total project costs.

2. In the event the total contribution by the State is more than the State's required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the State; however, the State shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.e. of this Agreement and paragraph a. of this Article. In the event existing funds are

not available to repay the State for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the State for excess contributions provided.

g. The State shall request prior Contracting Officer approval of any item of operation, maintenance, repair, replacement, rehabilitation or monitoring costs that exceeds the original estimate by more than \$5,000.00. The Contracting Officer shall approve or disapprove the request within 60 days, except that the Contracting Officer shall approve or disapprove the request within 5 days if the Contracting Officer determines that an emergency exists.

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 other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION

a. After the Contracting Officer has determined that construction of the Project or functional portion of the Project is complete and provided the State with written notice of such determination, the State shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, in accordance with applicable Federal and State laws as provided in Article XI and specific directions prescribed in accordance with the Project Operations and Schedule Manual and any subsequent amendments thereto.

b. The State hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the State owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the State for any reason is failing to fulfill the State's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the State. If after 30 calendar days from receipt of notice, the State continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the State owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the State of responsibility to meet the State 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.

c. The State shall implement or assure implementation of post-construction monitoring in accordance with the Project Monitoring Plan.

d. To provide for consistent and effective communication between the State and the Government during the period of Project operation, the State and the Government shall appoint representatives to coordinate on operation, maintenance, repair, replacement and rehabilitation costs, and other matters relating to operation and maintenance of the Project. The State and the Government will keep each other informed of any changes in cost estimates.

ARTICLE IX - MAINTENANCE OF RECORDS

Within 60 days of the date of this Agreement, the Government and the State shall develop procedures for keeping 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 State shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of construction, operation, maintenance, repair, replacement, rehabilitation and monitoring of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE X - AUDITS

Subject to the provisions of any applicable law, either party may conduct an audit, when appropriate, of the records for the Project to ascertain the allowability, reasonableness, and allocability of the total project costs including costs for inclusion as credit against the State's share of the total project costs.

ARTICLE XI - FEDERAL AND STATE LAWS

a. In the exercise of the State's rights and obligations hereunder, the State agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, 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".

b. The Government agrees to comply with all applicable Federal and State of Louisiana laws and/or regulations, unless State law and regulations are preempted by Federal law.

ARTICLE XII - RELATIONSHIP OF PARTIES

The Government and the State act in an independent capacity in the performance of their respective functions under this Agreement, and neither 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 or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - COVENANT AGAINST CONTINGENT FEES

The State 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 or selling agencies maintained by the State 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 State fails to make the payments required under this Agreement, the Contracting Officer shall terminate or suspend work on the Project until the State is no longer in arrears, unless the Contracting Officer determines this continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to that Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this

Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the State elects to terminate this Agreement.

ARTICLE XVI - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana.

ARTICLE XVII - HAZARDOUS SUBSTANCES

a. After execution of this Agreement the Government shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the State to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Government or the State which are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total first costs and cost shared as a construction cost.

b. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, servitudes, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the State and the Government shall provide prompt notice to each other, and neither party shall proceed with the acquisition of lands, easements, servitudes, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the State, shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project.

d. The State and the Government shall consult with each other under Article V of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph c. of this Article shall not relieve any party from any liability that may arise under CERCLA.

ARTICLE XVIII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the State:

Secretary, Department of Natural Resources
State of Louisiana
P.O. Box 94396
Baton Rouge, LA 70804-9396

If to the Government:

District Engineer
U. S. Army Corps of Engineers
ATTN.: CELMN-PM-M
P.O. Box 60267
New Orleans, LA 70160-0267

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XIX - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XX - PROJECT COST LIMITS

a. If at any time the total project costs exceeds \$ 6,067,600.00, 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 the performance of a Project phase the estimate for that phase of the work which exceeds 111 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 - \$ 606,300.00.
2. Construction Phase (including Real Estate) - \$ 4,492,200.00.
3. Monitoring Phase - \$ 139,500.00.
4. Operations and Maintenance Phase - \$ 228,300.00.
5. Current Total Project Costs - \$ 5,466,300.00.
6. 111 percent of Current Total Project Costs - \$ 6,067,600.00.

ARTICLE XXI - CULTURAL RESOURCES

a. The Government will determine the level of cultural resource surveys and/or documentation needed to properly address the requirements of the Historic Preservation Act and shall be responsible for preparation of such documentation.

b. The State will provide for coordination assistance through the State Office of Culture, Recreation and Tourism in expediting the proper reviews and certification of cultural resource reports prepared by the Government.

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

THE DEPARTMENT OF THE ARMY

THE STATE OF LOUISIANA

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

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

DATE: 27 Dec 96

DATE 12/24/96

WITNESS:

[Signature]

Karen Y. Lewis

[Signature]

Karen J. Holden

[Signature]

[Signature]

APPROVED
Office of the Governor
Office of Contractual Review

JAN 15 1997
[Signature]
Director

CERTIFICATE OF AUTHORITY

I, WARREN A. FLEET, do hereby certify that I am the principal legal officer of the Department of Natural Resources for the State of Louisiana, that the Department of Natural Resources for the State of Louisiana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of Louisiana in connection with the West Belle Pass Headland Restoration Project, in Lafourche Parish, LA, and that the persons who have executed this Agreement on behalf of the State have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 28th day of December 19 96.

Warren A. Fleet General Counsel
Title

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

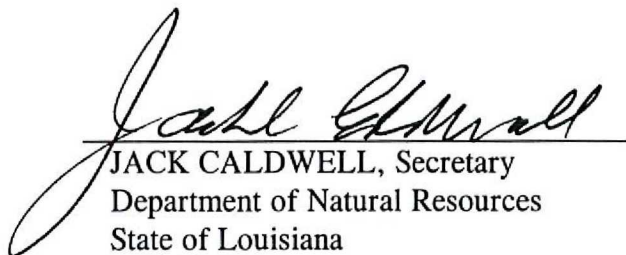
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATE: 12/24/06



JACK CALDWELL, Secretary
Department of Natural Resources
State of Louisiana

CERTIFICATION OF LEGAL REVIEW

The draft Cost Sharing Agreement for the West Belle Pass Headland Restoration Project has been fully reviewed by the Office of Chief Counsel, USAED, New Orleans.



Gwenn B. Nachman
District Counsel

WEST BELLE PASS HEADLAND RESTORATION PROJECT - (Priority List 2)

PROJECT COST ESTIMATE(S)

	Original Estimate	1/	Current Estimate	Expended Thru Nov 96
REAL ESTATE:	\$126,100		\$454,910	2/ \$107,786
ENVIRONMENTAL CLEARANCE:				
Cultural Resources	***Not Incl***		\$51,005	3/ \$51,005
HTRW	***Not Incl***		\$15,717	4/ \$15,717
Subtotal	\$0		\$66,722	\$66,722
ENGINEERING & DESIGN: 5/				
Surveys	\$40,000		\$100,823	\$45,823
Design/Plans & Specifications	\$118,400		\$199,604	\$86,449
Subtotal	\$158,400		\$300,427	\$132,272
CONSTRUCTION:				
Construction	\$2,997,500		\$3,887,157	6/ \$0
Construction S&I	\$252,700		\$150,165	\$0
Subtotal	\$3,250,200		\$4,037,322	\$0
O, M, R & R:	\$228,300		\$228,252	\$0
MONITORING:	\$131,600		\$139,474	7/ \$4,869
PROJECT MANAGEMENT:	\$210,100		\$159,191	\$109,191
LOCAL SPONSOR ACTIVITIES:	***Not Incl***	8/	\$80,000	\$0
CONTINGENCIES:	\$749,400		\$0	9/
PROJECT TOTAL	\$4,854,100		\$5,466,298	\$420,840
Over/Under Original Estimate			\$612,198	
% Over/Under Original Estimate			12.6%	

1/ Original estimate from Corps of Engineers, Nov 1993.

2/ Includes \$300,000 for oyster lease acquisition

3/ Cultural Resources not included in Priority List estimate

4/ HTRW not included in Priority List estimate.

5/ Includes design, preparation, review & approval of P&S; and advertisement & award.

6/ Construction cost estimated by Priority List only (added approx 30% contingency)

7/ Added NWRC costs (\$7,848) for aerial photography and consultant ecologist

8/ Local Sponsor activities not included in Priority List estimate.

9/ Contingency used toward cost increases.

		Rounded Numbers for CSA
Current estimated first cost: (RE+Envr+E&D+Constr+(0.25*Monitor)+PM)	\$5,133,441	\$5,133,400
Construction Phase (include RE):	\$4,492,232	\$4,492,200
Monitoring Phase:	\$139,474	\$139,500
OMRR&R Phase:	\$228,252	\$228,300
E&D Phase (include Envr & PM):	\$606,340	\$606,300
Rounded current total:	\$5,466,298	\$5,466,300
125% of Baseline Estimate:	\$6,067,625	\$6,067,600
	\$5,466,300	1.11 \$6,067,593
		use 11% contingency \$6,067,600

From: Bill J Hicks
To: BROWNING, MATHIESS
Date: 4/29/98 10:00am
Subject: Re: West Belle amdt -Reply -Forwarded

When do we want to schedule a mtg? I am out May 5-7, but I am not sure that I need to be there.