

ORD

2005-0321

**INTRODUCED BY: ALBERT D. LAQUE, PARISH PRESIDENT
(DEPARTMENT OF PUBLIC WORKS)**

ORDINANCE NO. 05-12-9

An ordinance to approve and authorize the execution of DNR Cooperative Agreement No. 2512-06-04 with the Louisiana Department of Natural Resources for the operation, maintenance, repair, replacement, and rehabilitation of the Davis Pond Freshwater Diversion Project.

WHEREAS, the St. Charles Parish Council adopted Ordinance No. 99-4-4 which approved DNR Cooperative Agreement No. 2512-99-05 for the operation of the Davis Pond Freshwater Diversion Project; and,

WHEREAS, said Ordinance was amended by Ordinance No. 01-12-13 to extend said Agreement through January 31, 2006; and,

WHEREAS, it is the desire of the Parish and the Department of Natural Resources to enter into a new Agreement for the period of February 1, 2006 through January 31, 2011.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That DNR Cooperative Agreement No. 2512-06-04 between the Louisiana Department of Natural Resources and St. Charles Parish Government is hereby approved.

SECTION II. That the Parish President is hereby authorized to execute said Cooperative Agreement on behalf of St. Charles Parish Government.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: MARINO, FAUCHEUX, HILAIRE, FABRE, RAMCHANDRAN, WALLS,
BLACK, DUHE, MINNICH
NAYS: NONE
ABSENT: NONE

And the ordinance was declared adopted this 5th day of December, 2005, to become effective five (5) days after publication in the Official Journal.

DNR Davis Pond Diversion Project Main

REFERENCE

Ord. 99-4-4; Ord. 01-12-13

CHAIRMAN: _____

SECRETARY: _____

DLVD/PARISH PRESIDENT: _____

APPROVED: _____

DISAPPROVED: _____

PARISH PRESIDENT: _____

RETD/SECRETARY: _____

AT: _____

RECD BY: _____

AMENDED
AMENDED

By: Ord. 08-11-6;
Ord. 10-9-1

DNR COOPERATIVE AGREEMENT NO. 2512-06-04
COOPERATIVE AGREEMENT FORMAT NO. 11
OCR COOPERATIVE AGREEMENT NO.

COOPERATIVE AGREEMENT

BETWEEN

LOUISIANA DEPARTMENT OF NATURAL RESOURCES
(Hereinafter referred to as "Department")

AND

ST. CHARLES PARISH GOVERNMENT
P O Box 302
Hahnville, Louisiana 70057
(Hereinafter referred to as "Contracting Party")

WHEREAS, Article VII, Section 14(c) of the Louisiana Constitution provides that "for a public purpose the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation or individual"; and,

WHEREAS, the Department and the Contracting Party hereby enter into a cooperative agreement for the purpose to provide for the identification of specific actions and responsibilities to be performed by DNR and St. Charles Parish Government in operating, maintaining and monitoring the Freshwater Diversion Structure, Pump and Levee System.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. PROJECT IDENTITY:

This cooperative agreement shall be identified as "Operation, Maintenance, Repair, Replacement and Rehabilitation of the Davis Pond Freshwater Diversion Project" and by the Cooperative Agreement Number assigned as listed above. All invoices and other correspondence submitted to the Department in connection with this agreement shall be identified by this number.

2. CONTRACT TERM:

The term for the fulfillment of services to be performed pursuant to this agreement shall be from February 1, 2006 through January 31, 2011.

3. SCOPE OF CONTRACT SERVICES:

Contracting Party agrees to provide services and/or products in accordance with the specifications set forth in Appendix A of this cooperative agreement which is hereby attached and made a part of this agreement.

4. DEPARTMENT FURNISHED ITEMS:

The Department shall provide the following to assist the Contracting Party in the performance of its duties:

- a) Appropriate personnel for consultation as required; and
- b) Access to relevant material required in the performance of the work.

5. NOTICE TO PROCEED:

The Contracting Party shall proceed with the work upon receipt of a copy of the contract, executed by the parties and bearing the approval of the Division of Administration. The Contracting Party is advised that implementation of the contract's requirements shall be dependent on the availability of funds.

6. COMPENSATION:

The Department shall pay to the Contracting Party a total sum not to exceed One Million, Two Hundred Twenty-Nine Thousand, Three Hundred Twenty-Two and 00/100 Dollars (\$1,229,322.00) for services rendered under this agreement. Travel and other allowable costs shall constitute part of the maximum payable under the terms of this agreement.

No authority exists for payments which exceed the approved maximum contract amount except through written amendment prior to expiration date of the contract.

In addition, it is understood and agreed by the Contracting Party that the U.S. Army Corps of Engineers cost share agreement no. 25086-93-01, is used by the Department to partially fund this contract.

7. FISCAL YEAR FUNDING:

The continuation of this contract is contingent on the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means as provided by law to prevent the total appropriation

for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

8. REPORTS AND PAYMENT:

a. Reporting Requirements:

The following reports shall be received by the Department Project Manager prior to issuance of incremental and final payments:

- (1) A progress report shall be submitted by the Contracting Party with each invoice for payment including, as a minimum, the required information on Form DNR-PR (Appendix B).
- (2) A final summary report shall be submitted by the Contracting Party on Form DNR-PR (Appendix B) with the final invoice for payment.

b. Payment:

Payment to the Contracting Party for services rendered shall be made according to the following:

A maximum of ninety percent (90%) of the total contract amount shall be available for progress payments to the Contracting Party prior to completion of contract. Invoices for progress payments, with supporting documentation, detailing the fees charged and allowable costs to be reimbursed as set forth in Appendix A shall be based upon actual costs incurred and shall be submitted monthly with progress reports.

A final payment for the remaining ten percent (10%) of the total contract amount shall be made upon completion of the project and approval of the final report by the Department. **The final invoice shall be submitted within thirty (30) days following expiration of the contract.**

Travel and other allowable expenses shall be reimbursed in accordance with the Division of Administration State General Travel Regulations, within the limits established for State Employees, as defined in Division of Administration Policy and Procedure Memorandum No. 49. All out of state travel will be subject to prior written approval of the Secretary of the Department.

DNR COOPERATIVE AGREEMENT NO. 2512-06-04

Payments shall be made by the Department within approximately thirty days after receipt of an original and two copies of a proper invoice rendered according to the payment schedule and reports as prescribed in Item a. above and which has been first approved for payment by the Department Project Manager.

9. BUY AMERICAN ACT REQUIREMENTS:

The Contracting Party agrees, in the case of any equipment and/or product authorized to be purchased under this contract, to comply with 41 U.S.C. 10a-10c.

10. ALLOWABLE COSTS:

Allowability of costs under this contract shall be determined in accordance with applicable state and federal laws.

11. DELIVERABLES:

The Contracting Party shall deliver to the Department deliverables as specified in Appendix A as products of the services rendered by the Contracting Party under the terms of this agreement.

12. INSURANCE:

The Contracting Party shall procure and maintain, for the duration of this contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contracting Party, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). "Claims made" form is unacceptable. The "occurrence form" shall not have a "sunset clause".
2. Insurance Services Office form number CA 0001 (Ed.1/78) covering Automobile Liability and endorsement CA 0025 or CA 0001 12 90. The policy shall provide coverage for owned, hired, and non-owned coverage.

DNR COOPERATIVE AGREEMENT NO. 2512-06-04

3. Workers' Compensation insurance as required by the Labor Code of the State of Louisiana, including Employers Liability insurance.

B. Minimum Limits of Insurance:

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
2. Automobile Liability: \$1,000,000 combined single limit per accident, for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage. Exception: Employers liability limit is to be \$1,000,000 when work is to be over water and involves maritime exposure.
4. Aircraft or Watercraft Liability (when applicable to project) - \$2,000,000 for watercraft and \$5,000,000 for aircraft.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Department. At the option of the Department, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Department, its officers, officials, employees, and volunteers; or the Contracting Party shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The Department, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "additional insureds" as respects liability arising out of activities performed by or on behalf of the Contracting Party; products and completed operations of the Contracting Party, premises owned, occupied or used by the Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to the Department, its

DNR COOPERATIVE AGREEMENT NO. 2512-06-04

officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is insured" automatically provides liability coverage in favor of the State of Louisiana.

- b. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Department, its officers, officials, employees, Boards and Commissions or volunteers.
- c. The Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Department, its officers, officials, employees and volunteers for losses arising from work performed by the Contracting Party for the Department.

3. All Coverages

Each insurance policy required by this article shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Department.

E. Acceptability of Insurers

Insurance is to be placed with insurers authorized in Louisiana, with a Best's rating of no less than A-V. This requirement will be waived for workers' compensation coverage only.

F. Verification of Coverage

The Contracting Party shall furnish the Department with certificates of insurance effecting coverage required by this article, and shall include the DNR Cooperative Agreement number on the certificates. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the Department before work commences. The Department reserves the right to require complete, certified copies of all required policies, at any time.

G. Subcontractors

The Contracting Party shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

13. OWNERSHIP OF DOCUMENTS:

Upon completion or termination of this agreement, all data collected by the Contracting Party and all documents, notes, equipment purchased, drawings, tracings and files collected or prepared in connection with this work, except the Contracting Party's personnel and administrative files, shall become and be the property of the Department, and Department shall not be restricted in any way whatever in its use of such material. In addition, at any time during the agreement period, the Department shall have the right to require the Contracting Party to furnish copies of any or all data and all documents, notes and files collected or prepared by the Contracting Party specifically in connection with this agreement within five (5) days of receipt of written notice issued by the Department.

The Contracting Party shall notify the DNR Project Manager immediately upon receipt of equipment purchased under this agreement, and a DNR property tag(s) shall be issued to the Contracting Party and affixed to the equipment. The Contracting Party shall procure equipment in accordance with state procurement regulations. The Contracting Party shall return equipment to the DNR Project Manager within sixty (60) days after completion or termination of this agreement.

The Department encourages the use of data collected under DNR contracts for the purpose of dissemination of information through presentations of technical/scientific papers in symposiums/seminars/workshops, publication in journals, newspapers articles and news etc. However, to better control the release of information, the use of the collected data/project information for dissemination purposes is subjected to the following stipulations:

- A. Written permission must be sought from the Office of Coastal Restoration and Management, Project Support Manager prior to use of collected data/project information, for any of the publication purposes mentioned above.
- B. To obtain such permission a draft paper/presentation must be submitted to the Project Support Manager for review and approval prior to its release.
- C. In all such papers/presentations, DNR (and others if appropriate) must be acknowledged as the source of funding for the data collection/project.

18. TAX RESPONSIBILITY:

The Contracting Party hereby agrees that the responsibility for payment of taxes from the funds received under this agreement shall be the Contracting Party's obligation and shall be identified under Tax Identification Number 72-6001208.

19. COST RECORDS:

The State, through the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors, and the Federal Government, through the U.S Army Corps of Engineers, the Comptroller General of the United States, or any of their duly authorized representatives shall be entitled to audit the books, documents, papers and records of the Contracting Party and any subcontractors which are reasonably related to this agreement.

Recipient shall comply with audit requirements of the U.S. Office of Management and Budget Circular A-133, as applicable to "Subrecipients". A copy of the audit report(s) shall be submitted to the Undersecretary of the Department within thirty (30) days after completion of audit.

20. TERMINATION OF CONTRACT FOR CAUSE:

If, in the determination of the Department, the Contracting Party fails to fulfill in timely and proper manner its obligations under this agreement or violates any of the covenants, agreements, or stipulations of this agreement, the Department shall thereupon have the right to terminate this agreement by giving written notice sent certified mail (return receipt requested) to the Contracting Party of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination.

In that event, and at the option of the Department, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contracting Party under this agreement shall become the property of the Department, and the Contracting Party shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. The Department shall be relieved of liability for costs for any undelivered work as of the effective date of termination and shall be entitled to repayment for any progress payments made on undelivered work.

Notwithstanding the above, the Contracting Party shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any breach of the Contract by the Contracting Party, and the Department may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due the Department from the Contracting Party is determined.

21. TERMINATION FOR THE CONVENIENCE OF THE DEPARTMENT:

The Department may terminate this agreement at anytime by giving written notice sent certified mail (return receipt requested) to the Contracting Party of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, and at the option of the Department, all finished or unfinished documents and other materials as described in the preceding section shall become its property. If the agreement is terminated by the Department, as provided herein, the Contracting Party shall promptly submit a statement showing in detail the actual services performed to date of termination. The Contracting Party shall then be paid the proportion of the total agreement amount which bears the same ratio as the services completed bears to the total scope of services called for in this agreement, less payments of compensation previously made.

22. REMEDIES

Any claim or controversy arising out of this agreement shall be resolved pursuant to the laws of the State of Louisiana.

23. DISADVANTAGED/WOMEN BUSINESS ENTERPRISE REQUIREMENTS

The Contracting Party agrees to ensure that disadvantaged/women business enterprises have the maximum opportunity to participate in the performance of this contract and any subcontracts for supplies, equipment, construction, or services that may be let. In this regard, the Contracting Party shall take all necessary and reasonable steps to ensure that disadvantaged/women business enterprises have the maximum opportunity to compete for and perform services relating to this contract. ***(See Appendix C)***

The following affirmative steps for utilizing MBE/WBEs are required:

1. Solicitations for products or services shall be sent to firms/individuals listed as MBE's and WBE's.
2. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
3. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
4. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBD) and the U. S. Small Business Administration to identify MBE/WBEs.

5. Require that each party to a subcontract takes the affirmative steps outlined here.

The Contracting Party shall submit to the Department Project Manager a quarterly procurement summary detailing purchases from MBE/WBE vendors. This report shall be made using the Procurement Summary form attached hereto as Appendix D, and submitted within 15 days following the end of each calendar quarter for the duration of the contract.

24. COST OF PRINTING/ACKNOWLEDGEMENT OF FUNDING REQUIREMENTS:

The Contracting Party shall obtain written approval from the DNR Project Manager prior to finalization and distribution of all printed materials and graphic design work. Additionally, the Contracting Party shall notify the Department of location, date, and time, and obtain approval, of any workshops, meetings, press conferences, etc. related to this project at least five (5) working days prior to the scheduled event.

All finished materials produced under this agreement shall carry the state cost-of-printing statement. All finished materials shall carry the required funding source statement and shall clearly indicate that the Louisiana Department of Natural Resources and the U.S. Army Corps of Engineers are funding the project. No other funding statements shall be included in any materials produced under this agreement without prior written approval from the DNR Project Manager. The Department reserves the right to determine the final format, acknowledgements, etc. for all print and nonprint (videos, etc.) materials produced under this agreement.

The Contracting Party shall use no logos other than the Department of Natural Resources logo without prior written approval of the Department. All press releases, notices, correspondence, etc. pertaining to this project shall include a statement that funding is provided by the Department of Natural Resources and the U.S. Army Corps of Engineers.

25. CIVIL RIGHTS COMPLIANCE:

The Contracting Party agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1972, and the Contracting Party agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

The Contracting Party shall not discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, disabilities or sexual orientation.

Any act of discrimination committed by the Contracting Party, or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this contract.

26. CODE OF ETHICS FOR STATE EMPLOYEES:

The Contracting Party acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this contract. The Contracting Party agrees to immediately notify the Department if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

27. CERTIFICATION REGARDING LOBBYING:

The Contracting Party 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 Contracting Party, 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, 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 Contracting Party shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" (Appendix D), in accordance with its instructions.
3. The Contracting Party shall require that the language of this certification be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. This certification is a prerequisite for 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.

28. CERTIFICATION OF DEBARMENT/SUSPENSION STATUS

The Contracting Party certifies with its execution of this agreement that it is not suspended, debarred or ineligible from entering into contracts with any Department or other Agency of the Federal Government, or in receipt of notice of proposed debarment or suspension.

The Contracting Party shall provide immediate notice to the Department in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this agreement.

The Contracting Party agrees to secure from its subcontractors certification that such subcontractors are not suspended, debarred or declared ineligible from entering into contracts with any Department or Agency of the Federal Government, or in receipt of a notice of proposed debarment or suspension.

Upon receipt of notice of suspension, debarment, or declaration that the Contracting Party is ineligible to enter into contracts with and Department or Agency of the Federal Government, either prior to or after execution of this agreement, the Department reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this contract pursuant to the terms of the article in this agreement entitled TERMINATION OF CONTRACT FOR CAUSE, or take such other action it deems appropriate under this contract.

29. AMENDMENTS:

The Contracting Party may, with prior approval of the DNR Project Manager, revise the budget included in Appendix A, provided total budget revisions do not exceed ten percent (10%) per budget category and do not exceed the total contract amount. A copy of each budget revision will be retained in the Department contract file and a copy forwarded to the Division of Administration's Office of Contractual Review. No other amendment shall be effective unless it is in writing, signed by duly authorized representatives of both parties, and approved by the Division of Administration's Office of Contractual Review.

DNR COOPERATIVE AGREEMENT NO. 2512-06-04

DEPARTMENT AND CONTRACTING PARTY REPRESENT THAT THIS AGREEMENT SUPERSEDES ALL PROPOSALS, ORAL AND WRITTEN, ALL PREVIOUS CONTRACTS, AGREEMENTS, NEGOTIATIONS AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.

This agreement entered into this 21st day of October, 2005 at Baton Rouge, Louisiana.

WITNESSES:

Karen G. Lewis

Shirley J. Tucker

SCOTT A. ANGELLE, SECRETARY
DEPARTMENT OF NATURAL RESOURCES



Albert D. Logan

St. Charles Parish Government