

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF ARKANSAS
FOR CONSTRUCTION OF THE
GRAND PRAIRIE REGION ELEMENT
GRAND PRAIRIE REGION AND BAYOU METO BASIN, ARKANSAS PROJECT

Amendment Number 1 is entered into this 31 day of January, 2025 by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Memphis District and the State of Arkansas (hereinafter the "Non-Federal Sponsor"), represented by the Secretary of the Arkansas Department of Agriculture (formerly represented by the Executive Director of the Arkansas Soil and Water Conservation Commission) and the President of the White River Regional Irrigation Water Distribution District.

WITNESSETH, THAT:

WHEREAS, construction of the Grand Prairie Region and Bayou Meto Basin, Arkansas Project was authorized by Section 204 of the Flood Control Act of 1950, Public Law 81-516, deauthorized by Section 1001(b) of the Water Resources Development Act of 1986, Public Law 99-662, and reauthorized by Section 363(a) of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, on August 4, 2000, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement, (hereinafter the "Agreement") for construction of the Grand Prairie Region Element, a separable element of the Grand Prairie Region and Bayou Meto Basin project (hereinafter the "Project", as defined in Article I.A. of the Agreement);

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b) authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the Non-Federal share of the cost of the Project for the value of in-kind contributions made by the Non-Federal Sponsor determined by the Government to be integral to the Project;

WHEREAS, the Non-Federal Sponsor may provide or perform work for the Project after the effective date of Amendment Number 1 to the Agreement that the Government determines to be integral to the Project (hereinafter the "in-kind contributions", as defined in Article I.M. of the Agreement, as amended) and the value of such contributions is eligible for credit toward the non-

Federal share of the costs of the Project in accordance with the provisions of the Agreement, as amended; and

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to add provisions to allow the Government to afford credit toward the non-Federal share of the cost of the Project for the value of in-kind contributions.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

1. The opening paragraph is amended by striking "Executive Director of the Arkansas Soil and Water Conservation Commission" and replacing it with "Secretary of the Arkansas Department of Agriculture".

2. Insert after the eleventh WHEREAS clause the following:

"WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b(a)(4)), authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the Project for the value of in-kind contributions made by the Non-Federal Sponsor determined by the Government to be integral to the Project;

WHEREAS, the Non-Federal Sponsor may provide or perform work for the Project after the effective date of Amendment Number 1 to the Agreement that the Government determines to be integral to the Project (hereinafter the "in-kind contributions", as defined in Article I.M. of the Agreement, as amended) and the value of such contributions is eligible for credit toward the non-Federal share of the costs of the Project in accordance with the provisions of the Agreement, as amended; and"

3. ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS is amended as follows:

a. The second sentence of the definition of "total project costs" in Article I.B. is amended by inserting the phrase "the value of in-kind contributions for which the Government affords credit in accordance with Article IV.E. of this Agreement;" after "in accordance with Article IV of this Agreement;" and before "and the costs of audit".

b. The definition of "financial obligations for construction" in Article I.C. is amended by inserting the phrase "and the costs for in-kind contributions, as determined by the Government," after "of the Government," and before "other than an".

c. The definition of "non-Federal proportionate share" in Article I.D. is amended by inserting the phrase "sum of the costs included in total project costs for in-kind contributions, as determined by the Government, and the" after "ratio of the" and before "Non-Federal Sponsor's total".

d. Article I is further amended by adding the following paragraph M. at the end thereof:

“M. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander for Mississippi Valley Division (hereinafter the “Division Commander”). To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under lands, easements, and rights-of-way required for the Project; however, it does not include hazardous substance cleanup and response.”

4. ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR is amended as follows:

a. Article II.A. is amended by inserting the phrase “except for in-kind contributions” after “approaches thereto” and before “applying those procedures”.

b. The last sentence of Article II.A.1. is amended by inserting the phrase “except for in-kind contributions” after “by Government personnel)” and before “, shall be exclusively within the control of the Government.”

c. Article II.D.2. is amended by inserting the phrase “, and the value of in-kind contributions for which the Government affords credit,” after “and Articles V, X, and XV.A. of this Agreement”.

d. Article II.D.3. is amended by inserting the phrase “, and the value of in-kind contributions for which the Government affords credit,” after “and Articles V, X, and XV.A.”.

e. Article II.D.3. is further amended by inserting the following after the first sentence:

“Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs for in-kind contributions that exceed the amount of costs for in-kind contributions included in total project costs for which credit is afforded as determined in accordance with Article IV.E. of this Agreement.”

f. Article II.D. is further amended by adding the following paragraphs 4. and 5. at the end thereof:

“4. In providing in-kind contributions, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work, and shall comply with all applicable Federal, State, and local laws, regulations, and policies, including the laws and regulations specified in Article XI. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for the in-kind contributions, the Non-Federal Sponsor shall furnish a copy thereof to the Government. As functional portions of the Project are completed, the Non-Federal Sponsor shall begin operation and

maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the construction portion of such work.

5. The Non-Federal Sponsor shall not commence activities required to provide in-kind contributions until the designs, detailed plans and specifications, and arrangements for such work have been approved by the Government. Changes proposed by the Non-Federal Sponsor to approved designs and plans and specifications also must be approved by the Government in advance of the related construction. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the in-kind contributions, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the in-kind contributions shall be exclusively within the control of the Non-Federal Sponsor, except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations. The Non-Federal Sponsor shall include appropriate provisions in its contracts for design and construction of the in-kind contributions, as necessary, to ensure compliance with such laws, regulations, ordinances, and policies."

5. ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS is amended as follows:

a. The title of Article IV is amended to read as follows:

"ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND IN-KIND CONTRIBUTIONS"

b. The first sentence of Article IV.A. is amended by inserting the phrase ", for the value of in-kind contributions determined by the Government to be required for the Project pursuant to Article IV.E. of this Agreement" after "pursuant to Article III of this Agreement" and before "and for the value of relocations."

c. Add as the last sentence in Article IV.A. the following: "With respect to lands, easements, and rights-of-way acquired for work performed by the Non-Federal Sponsor prior to the effective date of Amendment Number 1 to the Agreement, the value of such lands, easements, and rights-of-way are not eligible for credit unless a determination has been made by

the Government pursuant to Article III.A. that they are required for the construction, operation, and maintenance of the Project.”

d. The first sentence of Article IV.B.1. is amended by inserting the following at the end: “, except for any lands, easements, and rights-of-way required for in-kind contributions, for which the date of initiation of construction shall be used to determine the fair market value.”

e. Following Article IV.D., insert paragraphs E., E.1., E.2., E.3., and E.4. and paragraph F., as follows:

“E. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor’s share of such costs, the value of in-kind contributions that are integral to the Project in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of the costs.

1. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for in-kind contributions.

2. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor’s employees.

3. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of Amendment Number 1 to the Agreement; or for costs that exceed the Government’s estimate of the cost for such in-kind contributions if they had been provided by the Government.

4. All work submitted for in-kind contributions shall be subject to a review or on-site inspection, as applicable, and certification by the Government that the work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies.

F. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in

whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws."

6. ARTICLE VI - METHOD OF PAYMENT is amended as follows:

a. Article VI.A. is amended by deleting "and" after "non-Federal proportionate share" and before "of the funds the Government", and by inserting the phrase ", and the amount of credit to be afforded for in-kind contributions in accordance with Article IV.E. of this Agreement" at the end thereof.

b. Article VI.A. is amended by striking the third and fourth sentences and inserting the following:

"As of the effective date of Amendment Number 1, total project costs are estimated to be \$551,000,000, with the Government's share projected to be \$358,150,000 and the Non-Federal Sponsor's share projected to be \$192,850,000. The estimated Non-Federal Sponsor's share includes the creditable value of lands, easements, and rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV. of this Agreement and is projected to be \$46,570,000; the creditable value of in-kind contributions is projected to be \$25,931,000; the creditable value of the Non-Federal Sponsor's contributions under Article V., Article X., and Article XV.A. of this Agreement is projected to be \$0; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. of this Agreement is projected to be \$120,349,000; the non-Federal proportionate share is projected to be 29 percent; and the Non-Federal Sponsor's contribution of funds required by Article XVIII.C. of this Agreement is projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor."

c. The first sentence of Article VI.B.1. is amended by inserting the phrase "less any projected costs to be afforded for in-kind contributions in accordance with Article IV.E. of this Agreement that has not been previously afforded" after "through the first fiscal year of construction".

d. The first sentence of Article VI.B.2. is amended by inserting the phrase "less any projected costs to be afforded for in-kind contributions in accordance with Article IV.E. of this Agreement that has not been previously afforded" after "obligations for construction for that fiscal year".

7. ARTICLE IX - INDEMNIFICATION title is amended by striking "ARTICLE IX - INDEMNIFICATION" and inserting "ARTICLE IX - HOLD AND SAVE".

8. Article XVI is amended by striking "Executive Director", "Arkansas Natural Resources Commission", "101 East Capitol, Suite 350", and "72201" and replacing them with "Secretary", "Arkansas Department of Agriculture", "1 Natural Resources Drive", and "77205", respectively is amended by striking "Executive Director" and "Soil and Water Conservation Commission" and replacing them with "Secretary" and "Department of Agriculture", respectively.

9. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed Amendment Number 1, which shall become effective upon the date it is signed by the District Commander for Memphis District.

THE DEPARTMENT OF THE ARMY

BY: 

BRIAN D. SAWSER
Colonel, U.S. Army
District Commander

DATE: 31 Jan 25

THE STATE OF ARKANSAS

BY: 

WES WARD
Secretary
Arkansas Department of Agriculture

DATE: January 17, 2025

BY: 

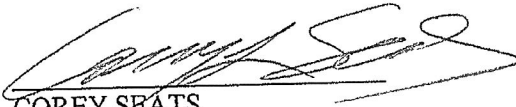
DAN HOOKS
President
White River Regional Irrigation
Water Distribution District

DATE: Jan 31, 2025

CERTIFICATE OF AUTHORITY

I, Corey Seats, do hereby certify that I am the principal legal officer for the Arkansas Department of Agriculture, that the Arkansas Department of Agriculture is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment Number 1 between the Department of the Army and the Arkansas Department of Agriculture in connection with the Grand Prairie Region And Bayou Metro Basing, Arkansas Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Amendment on behalf of the Arkansas Department of Agriculture acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
17th day of January 2025.



COREY SEATS
General Counsel
Arkansas Depart of Agriculture

CERTIFICATION REGARDING LOBBYING

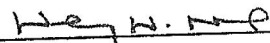
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 31 U.S.C. 1352. 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.




Wes Ward
Secretary of Agriculture
Arkansas Department of Agriculture

DATE: January 17, 2025

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, Inoussa Zaki, do hereby certify that I am the Chief Financial Officer of the Arkansas Department of Agriculture (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Grand Prairie Region Element and the Bayou Meto Basin Arkansas Element of the Grand Prairie Region and Bayou Meto Basin Arkansas Project; and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the Grand Prairie Region Element and Bayou Meto Basin Element of the Grand Prairie Region and Bayou Meto Basin, Arkansas Project.

IN WITNESS WHEREOF, I have made and executed this certification.

BY:  _____
TITLE: Chief Financial Officer
DATE: February 15, 2023

Grand Prairie Region, Arkansas Project
 PCA Amendment No 1
 Funds Allocation Table
 11-03-2023

| Fiscal Year | TPC | LERRDs | CONSTRUCTION (FED + NFS) | % (YTD Construction/Total Construction | NFS Cash | NFS Construction WIK | Federal Construction | NFS Total |
|---------------------------|----------------------|---------------------|--------------------------|--|----------------------|----------------------|----------------------|----------------------|
| Prior to 2023 | \$227,487,231 | \$1,977,811 | \$225,509,420 | 45 | \$69,075,799 | \$0 | \$156,433,621 | \$71,053,610 |
| 2023 | \$16,000,000 | \$0 | \$16,000,000 | 48 | \$4,000,000 | \$0 | \$12,000,000 | \$4,000,000 |
| 2024 | \$25,000,000 | \$0 | \$25,000,000 | 53 | \$0 | \$5,000,000 | \$20,000,000 | \$5,000,000 |
| 2025 | \$32,083,000 | \$5,583,000 | \$26,500,000 | 58 | \$0 | \$5,000,000 | \$21,500,000 | \$10,583,000 |
| 26 - 40 | \$250,429,769 | \$39,009,189 | \$211,420,580 | 100 | \$47,273,201 | \$15,931,000 | \$148,216,379 | \$102,213,390 |
| FULLY FUNDED TOTAL | \$551,000,000 | \$46,570,000 | \$504,430,000 | 100 | \$120,349,000 | \$25,931,000 | \$358,150,000 | \$192,850,000 |

Prior to 2023 = sum of costs from 1992 through 2022.

TPC = Total Project Cost

LERRDs = Value of Lands, Easements, Rights-of-way, Relocations, and suitable borrow and dredged or excavated material Disposal areas

Percentage Construction = Year to date construction cost / Total estimated construction cost

NFS Cash = Non-Federal Sponsor Cash and Cash Equivalent Contributions**

** PCT/On-Farm Features: Article V,(E.) of the PCA states, "The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement." Article VI, A.2.(b) of the MOA states "Pursuant to the PCA, the DA shall collect the non-Federal share of all costs for the on farm-features allocated by the DA to design management, construction management, and supervision/administration costs and provide such funds to NRCS, along with the Federal share of the funds required to design and construct the on-farm features and to perform design management, construction management, and supervision and administration for the on-farm features."