

State of Louisiana



KATHLEEN BABINEAUX BLANCO
GOVERNOR

DE *SEP*
DPM *JP*
PM _____
SCOTT A. ANGELLE
SECRETARY

DEPARTMENT OF NATURAL RESOURCES OFFICE OF MANAGEMENT AND FINANCE

June 8, 2005

Lt. Col. Steven E. Jeselink
US Army Corps of Engineers, NOD
P.O. Box 60267
New Orleans, LA 70160-0267

RE: DNR Cooperative Agreement No. 2045-05-07
OCR Cooperative Agreement No. 435-500598
"Buffalo Cove Water Management Project"

Dear Mr. Jeselink:

Enclosed for your records is a fully executed copy of the contract for the above referenced project reflecting the approval of the Division of Administration's Office of Contractual Review. This serves as your official notice to proceed under terms of the contract.

Should you have any questions, please contact Suzanne Terrell at (225) 342-4539.

Sincerely,

Suzanne Terrell
for
Karen Y. Lewis
Contracts and Grants Administrator

KYL/st

Enclosure

c: Robert Benoit
Lamar Hale
Marjorie McClinton, Fiscal
Phyllis Darensbourg, Public Information

**PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF LOUISIANA
FOR CONSTRUCTION OF THE
ATCHAFALAYA BASIN FLOODWAY SYSTEM, LOUISIANA
BUFFALO COVE MANAGEMENT UNIT PROJECT**

THIS AGREEMENT is entered into this 10th day of May, 2005,
by and between the Department of the Army (hereinafter the "Government"), represented by
the U.S. Army Engineer, New Orleans District, and the State of Louisiana (hereinafter the
"Non-Federal Sponsor"), represented by the Secretary of the Louisiana Department of
Natural Resources.

WITNESSETH, THAT:

WHEREAS, construction of the Atchafalaya Basin Floodway System, Louisiana
project in the Lower Atchafalaya Basin Floodway at Iberville, Pointe Coupee, St. Landry,
St. Martin, Iberia and St. Mary Parishes, Louisiana was authorized by Title I, Chapter IV,
Supplemental Appropriations Act of 1985, Public Law 99-88, and reauthorized by
Section 601 of the Water Resources Development Act of 1986, Public Law 99-662,
(hereinafter the "Authorized Project");

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a
Project Cooperation Agreement for construction, operation, maintenance, repair,
replacement and rehabilitation of the Buffalo Cove Management Unit, an element of the
water management feature of the Authorized Project (hereinafter the "Project", as defined in
Article I.A. of this Agreement);

WHEREAS, Sections 906 (e) and (f) of the Water Resources Development Act of
1986, Public Law 99-662, as amended, specify the cost-sharing requirements applicable to
the Project.

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as
amended, and Section 103 of the Water Resources Development Act of 1986, Public Law
99-662, as amended, provide that the Secretary of the Army shall not commence
construction of any water resources project, or separable element thereof, until each
non-Federal sponsor has entered into a written agreement to furnish its required cooperation
for the project or separable element;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of
costs for the Authorized Project and sets forth procedures for adjusting such maximum
amount; and

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

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

ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the construction, monitoring, operation, maintenance, repair, replacement and rehabilitation of Elements 1, 3, 6, 7, 8, 9, 12, 14, 15 and 16 of the Buffalo Cove Management Unit, and the construction, monitoring, operation, maintenance, repair, replacement and rehabilitation of the Buffalo Cove Water Management Unit, Bayou Eugene Prototype Model Test Modification ("Bayou Eugene"), in order to benefit and enhance fish and wildlife through the implementation of measures including, but not limited to, the construction of cuts, gaps, channels, and sediment traps, the removal of spoil banks, the construction of earthen, rock and other equivalent closures, and the clearing, snagging and removal of debris, as generally described in the Atchafalaya Basin Floodway System, Louisiana, Feasibility Study and Environmental Impact Statement dated January 1982 and approved by the Chief of Engineers on February 28, 1983, as further generally described in the February 1993 Documentation Letter Report (revised September 2001), Buffalo Cove Water Management Unit, Bayou Eugene Prototype Model Test Modification, Atchafalaya Basin Floodway System, Louisiana Project, approved by Director of Engineering, Mississippi River Commission on March 25, 1993 and in the Engineering Documentation Report (EDR), Buffalo Cove Pilot Management Unit, dated June 10, 2004 and approved by the Director of Programs, Mississippi Valley Division on July 15, 2004; as amended by ASA(CW) memorandum dated

B. The term "total first costs" shall mean all costs incurred by the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; construction costs, including the cost of constructing the second lift on the closures for Elements 3 and 8; supervision and administration costs; costs of participation by the Government in the Project Coordination Team in accordance with Article V of this Agreement; costs of construction monitoring as defined in paragraph L. of this Article; costs of contract dispute settlements or awards; the value of lands, easements, servitudes, rights-

of-way, relocations, and suitable borrow and dredged or excavated material disposal areas acquired by the Government in accordance with Article II.A.1. of this Agreement; and costs of audit incurred by the Government in accordance with Article X of this Agreement. The term does not include the value of lands, easements, servitudes, and rights-of-way provided by the non-Federal Sponsor pursuant to Articles II.D. or II.H.1. of this Agreement, nor any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement; nor construction costs associated with alteration or modification of the Project incurred during Phase 3 construction monitoring as defined in Article II. C. of this Agreement, except for the costs associated with constructing the second lift on the closures for Elements 3 and 8.

C. The term "period of operation, maintenance, repair, replacement and rehabilitation" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article II.C. of this Agreement, of the initiation of Phase 3 construction monitoring and shall run concurrent with the remaining phase of the period of construction, and shall extend until the date that this Agreement is terminated in accordance with Articles XIV., XV.C. or XV.E. of this Agreement or until the date that the Project is de-authorized by the enactment of the Congress of the United States, whichever event occurs first.

D. The term "total costs of operation, maintenance, repair, replacement and rehabilitation" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to the operation, maintenance, repair, replacement and rehabilitation (OMRR&R) of the Project, incurred during the period of OMRR&R and construction costs associated with alteration or modification of the Project incurred after the commencement of Phase 3 construction monitoring, except for the cost of constructing the second lift on the closures for Elements 3 and 8. Subject to the provisions of this Agreement, the term shall include any physical activity that is associated with the OMRR&R of the Project as described in the OMRR&R Manual, including the interim OMRR&R Manual, and in the OMRR&R Biological and Physicochemical Monitoring Plan (hereinafter the OMRR&R Monitoring Plan), including, but not limited to, engineering and design and construction of the modification or alteration of any element of the Project; as set forth in Article XV.E. of this Agreement, the costs of clean-up and response for hazardous substances discovered during the period of OMRR&R, on lands, easements, servitudes, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas acquired by the Government for the Project in accordance with Articles II.A.1. and II.G.3. of this Agreement; actual construction costs when such costs are deemed to be associated with the modification or alteration of an element of the Project; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Articles V. and VIII.C. of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, servitudes, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas acquired by the Government in accordance with Article II.G.3. of this Agreement or for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement.

E. The term "financial obligation for construction" shall mean a financial obligation of the Government other than an obligation pertaining to the provision by the Non-Federal Sponsor, pursuant to Article II.D. of this Agreement, of lands, easements, servitudes, and rights-of-way, in over, under and upon lands, waterbodies and/or waterbottoms that are owned, claimed or controlled by the State of Louisiana and/or by any non-Federal governmental entity existing or authorized under the laws of the State of Louisiana, that results or would result in a cost that is or would be included in total first costs.

F. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.H.2. of this Agreement to total financial obligations for operation, maintenance, repair, replacement and rehabilitation, as projected by the Government.

G. The term "period of construction" shall mean the time from the date the Government issues the solicitation for the first construction contract for the Project, issues the first task order for the Project, or commences work using the Government's own forces, whichever occurs first, to the date the U.S. Army Engineer, New Orleans (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing in accordance with Article II.C. of this Agreement of the Government's determination that construction of the Project is complete.

H. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

I. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

J. 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.

K. The term "betterment" shall mean a change in the design, construction, modification, alteration, or OMR&R of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.;

L. The term "construction monitoring" shall mean the monitoring of the Project elements described in paragraph A of this Article in accordance with the "Monitoring Plan, Buffalo Cove Management Unit, An Assessment of Biological and Physicochemical Response to Water Management Activities" dated March 18, 2004 (Construction Monitoring Plan). Construction monitoring is comprised of three phases as described in the Construction Monitoring Plan, and shall end five years after the date that the Government

issues the Government's Written Notice of Acceptance of Completed Work for the final contract (or upon the date that the Government's own forces complete work, whichever occurs last) for the last of the 10 new Project elements, as described in the EDR.

M. The term "OMRR&R Monitoring" shall mean the monitoring of the Project elements described in paragraph A. of this Article, in accordance with the OMRR&R Monitoring Plan, which will be developed during construction monitoring. The period of OMRR&R Monitoring shall commence at the end of the period of construction, as defined in paragraph G. of this Article. This term shall include, but shall not be limited to, the assessment of the continued effectiveness of the Project elements described in paragraph A. of this Article and the analysis and assessment of any adjustments or modifications needed to achieve the goals and purposes of the Project.

ARTICLE II -OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds provided by the Congress of the United States (hereinafter, the "Congress"), and subject to the provision by the Non-Federal Sponsor of lands, easements, servitudes, and rights-of-way in accordance with Paragraph D. of this Article, shall expeditiously construct the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. In accordance with Article III of this Agreement, the Government shall provide all lands, easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines must be acquired for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project, excluding those lands, easements, servitudes, and rights-of-way that the Government determines, in accordance with the requirements of paragraph D. of this Article and Article III of this Agreement, that the Non-Federal Sponsor must provide for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this

Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.B. of this Agreement.

C. Upon the date that the District Engineer issues the Government's Written Notice of Acceptance of Completed Work (or when work is completed by the Government's own forces whichever occurs last) for the construction of the final element of the Project, excluding construction of the second lift on closures for Elements 3 and 8, as described in Article I.A. of this Agreement, Phase 3 construction monitoring, as defined in the Construction Monitoring Plan, shall commence. The District Engineer shall notify the Non-Federal Sponsor in writing that Phase 3 construction monitoring has commenced and furnish the Non-Federal Sponsor with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project that have not been provided previously. Upon such notification, the Government shall operate, maintain, repair, replace, and rehabilitate the Project in accordance with an interim OMRR&R Manual. Construction costs associated with alteration, modification, or OMRR&R of the Project incurred during Phase 3 construction monitoring shall be included in the total costs of operation, maintenance, repair, replacement and rehabilitation of the Project, except for the cost of constructing the second lift on the closures for Elements 3 and 8. At the end of Phase 3 construction monitoring and completion of construction of the second lift on closures for Elements 3 and 8, the District Engineer shall so notify the sponsor that all construction has been completed and furnish the Non-Federal Sponsor with copies of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project that have not been provided previously, the OMRR&R Manual (hereinafter the "OMRR&R Manual") and the OMRR&R Monitoring Plan.

D. In accordance with Article III. of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, servitudes, and rights-of-way in, over, under and upon lands, waterbodies and waterbottoms which are owned, controlled and/or claimed by the State of Louisiana and/or by any non-Federal governmental entity existing or authorized under the laws of the State of Louisiana, that the Government determines the Non-Federal Sponsor must provide for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project; provided however, that the final designation of the necessary lands, easements, servitudes, and rights-of-way in, over, under and upon any lands, waterbodies, and waterbottoms, shall be exclusively within control of the District Engineer.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, servitudes, and rights-of-way in, on, under or upon lands, waterbodies and waterbottoms which are owned, controlled and/or claimed by the State of Louisiana and/or by any non-Federal governmental entity existing under the laws of the State of Louisiana on behalf of the Non-Federal Sponsor. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall

pay all such costs in accordance with Article VI.B. of this Agreement. Notwithstanding the provision of lands, easements, servitudes, and rights-of-way by the Government in, over, under and upon lands, waterbodies and waterbottoms which are owned, controlled and/or claimed by the State of Louisiana and/or by any non-Federal governmental entity existing under the laws of the State of Louisiana, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response upon said lands in accordance with Articles XV.C. and XV.E. of this Agreement.

F. At the end of the period of construction, the Government shall perform a final accounting in accordance with Article VI.C. of this Agreement to determine the contributions provided by the Non-Federal Sponsor during the period of construction, in accordance with paragraphs B., and E. of this Article and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B. and E. of this Article.

G. The Government, subject to receiving funds appropriated by the Congress and using those funds and funds provided by the Non-Federal Sponsor, shall operate, maintain, repair, replace and rehabilitate (OMRR&R) the Project applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. During the period of OMRR&R, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts for the OMRR&R of the Project, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications for the OMRR&R of the Project, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all OMRR&R work of the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of OMRR&R, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the OMRR&R of the Project.

3. In accordance with Article III of this Agreement, if the Government determines, during the period of OMRR&R, that additional lands, easements, servitudes, and rights of way are necessary to accomplish the operation, maintenance, repair, replacement or rehabilitation of one or more of the Project elements or the alteration or modification of one or more Project elements described in Article I.A. of this Agreement,

the Government shall provide all lands, easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines must be acquired for the construction, operation, maintenance, repair, replacement and rehabilitation of such alteration or modification of the Project and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, maintenance, repair, replacement and rehabilitation of such alteration or modification of the Project, excluding those lands, easements, servitudes, and rights-of-way that the Government determines, in accordance with the requirements of paragraph H.1. of this Article and Article III of this Agreement, that the Non-Federal Sponsor must provide for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project.

H. The Non-Federal Sponsor shall contribute a minimum of 25 percent of the total costs of OMRR&R in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, if the Government determines, during the period of OMRR&R, that additional lands, easements, servitudes, and rights of way are necessary to accomplish the operation, maintenance, repair, replacement or rehabilitation of one or more of the Project elements or the alteration or modification of one or more Project elements described in Article I.A. of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, servitudes, and rights-of-way in, over, under and upon lands, waterbodies and waterbottoms which are owned, controlled and/or claimed by the State of Louisiana and/or by any non-Federal governmental entity existing or authorized under the laws of the State of Louisiana that the Government determines the Non-Federal Sponsor must provide for the construction of such alterations or modifications and for the operation, maintenance, repair, replacement and rehabilitation of the Project; provided however, that the final designation of the necessary lands, easements, servitudes, and rights-of-way in, over, under and upon any lands, waterbodies, and waterbottoms, shall be exclusively within control of the District Engineer.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions provided for the OMRR&R of the Project under Paragraph H.1. of this Article and Articles V and X of this Agreement, that are incurred during the period of OMRR&R, will be less than 25 percent of total costs of OMRR&R, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.G. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution to the total costs of OMRR&R equal to 25 percent of the total costs of OMRR&R.

I. Upon the deauthorization of the Project or upon the termination of this Agreement during the period of OMRR&R in accordance with the provisions of Articles XIV., XV.C., or XV.E. of this Agreement, the Government shall perform a final accounting in accordance with Article VI.H. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with Paragraphs B., E. and H.1. of this Article and Articles V and X of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under Paragraphs B., E. and H.1.B. of this Article.

J. The Non-Federal Sponsor shall not use Federal funds to meet the Non-Federal Sponsor's share of total costs of OMRR&R under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

K. The Non-Federal Sponsor shall prevent future encroachments on Project lands, easements, servitudes and rights-of-way provided by the Non-Federal Sponsor, which might interfere with the proper functioning of the Project, as determined by the Government in consultation with the Non-Federal Sponsor.

ARTICLE III -LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government shall determine the lands, easements, servitudes, and rights-of-way required for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal, and shall acquire all of the said lands, easements, servitudes, and rights-of-way, except as provided in Articles II.D. and II.H.1. of this Agreement. The value of lands, easements, and rights-of-way that the Government determines, during the period of construction, to be required for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project, shall be deemed to be an item of total first cost, regardless of whether the acquisition is finalized and completed prior to the end of Construction Monitoring.

1. For lands, easements, servitudes and rights-of-way to be provided in accordance with Articles II.D. and II.H.1. of the Agreement, the Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under those provisions and this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with provision of such lands, easements, servitudes, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsor shall provide all lands, easements, servitudes, and rights-of-way set forth in such descriptions in accordance with Article II.D. of this Agreement. Regarding any additional lands, easements, servitudes and rights-of-way provided by the Non-Federal Sponsor during the period of OMRR&R pursuant to Article II.H.1. of this Agreement, the Non-Federal Sponsor shall provide all such lands, easements, servitudes, and rights-of-way set forth in such descriptions prior to the completion of the item of work or modification or alteration conducted during the period of OMRR&R. Furthermore, during the periods of construction, operation, maintenance, repair, replacement and rehabilitation, prior to issuance of the solicitation for each construction contract, or to issuance of a task order or to the scheduled date for beginning performance of work on an element of the Project with the Government's own forces, whichever occurs first, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, servitudes and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract or task order or for the work performed by Government personnel. For so long as the

Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, servitudes, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor in accordance with Articles II.D. and/or II.H.1. are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government shall determine and shall accomplish or assure accomplishment of all the improvements required on lands, easements, servitudes and rights-of-way, including those provided by the Non-Federal Sponsor in accordance with Articles II.D. and II.H.1 of this Agreement, to enable the proper disposal of dredged or excavated material associated with the construction, operation, maintenance, repair, replacement and rehabilitation of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

C. The Government shall determine and shall accomplish or assure accomplishment of all the relocations necessary for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article II.H.1. of this Agreement. Upon receipt of such documents the Government, in accordance with Article IV.B. of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total costs of OMRR&R, and afford credit for such value toward the Non-Federal Sponsor's share of total costs of OMRR&R.

E. The Government and the Non-Federal Sponsor shall each comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring and/or providing lands, easements, servitudes, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV -CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. In accordance with the cost sharing requirements of this Agreement, no credit will be afforded to the Non-Federal Sponsor for providing the lands, easements, servitudes, rights-of-way, relocations and disposal areas necessary for the construction,

operation, maintenance, repair, replacement and rehabilitation of the Project in accordance with Article II.D. of this Agreement during the period of construction.

B. The Non-Federal Sponsor shall receive credit toward its share of total costs of OMRR&R for the value of the lands, easements, servitudes, and rights-of-way, that the Non-Federal Sponsor must provide during the period of OMRR&R pursuant to Article II.H.1. of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, servitudes, and rights-of-way that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, servitudes, and rights-of-way to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

C. For the sole purpose of affording credit in accordance with Paragraph B. of this Article and Article II.H.1 of this Agreement, the value of lands, easements, servitudes, and rights-of-way shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, servitudes, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, servitudes, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. of this Article, the fair market value of lands, easements, servitudes, or rights-of-way shall be determined in accordance with paragraph C.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph C.2.b. of this Article.

a. Within six months of providing the Government with an authorization for entry for each real property interest provided pursuant to Article II.H.1. of this Agreement, the Non-Federal Sponsor shall provide an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall

be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, servitudes, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, servitudes, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property

interests taken, to the extent the Government determined such interests are required for the construction, operation, maintenance, repair, replacement and rehabilitation of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, servitudes, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, 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 Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

ARTICLE V -PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. During the period of OMRR&R, the Project Coordination Team shall meet at such intervals as the Government and Non-Federal Sponsor determine to be necessary. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction, operation, maintenance, repair, replacement and rehabilitation and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. The Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications during the period of OMRR&R; contract costs during the period of OMRR&R; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations; the Government's cost projections; final inspection of the entire Project, preparation of the proposed OMRR&R Manual, and the OMRR&R Monitoring Plan; anticipated and actual requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan, OMRR&R Manual, and

operation management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction, operation, maintenance, repair, replacement and rehabilitation of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. During the period of construction, the Non-Federal Sponsor shall pay for its own costs of Project Coordination Team participation and such costs shall not be included in the total first costs of the Project. After the end of the period of construction, as defined in Article I.C. and as further described in Article II.C. of this Agreement, the costs of participation in the Project Coordination Team that are incurred shall be included in total costs of OMRR&R and cost-shared in accordance with the provisions of this Agreement.

ARTICLE VI -METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by Non-Federal Sponsor for betterments and for lands, easements, servitudes, and rights-of-way, provided by the Government on behalf of the Non-Federal Sponsor in accordance with Articles II.B. and II. E. of this Agreement. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all Non-Federal Sponsor's cash contributions provided in accordance with Articles II.B., and II.E. of this Agreement.

B. In advance of the Government incurring any financial obligation associated with additional work under Articles II.B. or II.E. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, B2 (New Orleans)" to the District Engineer or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow account or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

C. Upon the end of the period of construction or termination of this Agreement prior to the end of the period of construction in accordance with Articles XIV., XV.C. or XV.E. of this Agreement, or upon the completion of the acquisition of all lands, easements, servitudes, and rights-of-way deemed by the Government, during the period

of construction, to be required for construction, operation, maintenance, repair, replacement and rehabilitation of the Project, whichever event occurs last, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting of total first costs and of the Non-Federal Sponsor's cash contribution during the period of construction provided pursuant to Articles II.B. and II.E. of this Agreement and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting at the end of the period of construction shall determine the Non-Federal Sponsor's cash contribution provided during the period of construction pursuant to Articles II.B. and II.E. of this Agreement.

1. In the event the final accounting at the end of the period of construction shows that the total contribution provided by the Non-Federal Sponsor is less than its required costs provided in accordance with Articles II.B. and II.E. of this Agreement, the Non-Federal Sponsor 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 Non-Federal Sponsor's required costs provided during the period of construction in accordance with Articles II.B. and II.E. of this Agreement.

2. In the event the final accounting at the end of the period of construction shows that the total contribution provided by the Non-Federal Sponsor exceeds its required costs provided during the period of construction in accordance with Articles II.B. and II.E. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

D. The Government shall maintain current records of contributions provided by the parties to the total costs of OMRR&R, current projections of total costs of OMRR&R, costs due to betterments provided during the period of OMRR&R. By January 1st of each year following the commencement of the period of OMRR&R and at least quarterly thereafter, the Government shall provide the State with a report setting forth all contributions provided to date and the current projections of total costs of OMRR&R; of total costs due to betterments during the period of OMRR&R; of the maximum amount of total first costs determined in accordance with Article XIX of this Agreement; of the components of total costs of OMRR&R; of each party's share of and total costs of OMRR&R; of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.E, and II.H. of this Agreement; of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year.

E. Not later than October 1 of the final year of the period of construction and each fiscal year during the period of OMRR&R the Government, in consultation with the Non-Federal Sponsor, 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.

F. On a quarterly basis during the period of OMRR&R, the Government shall submit to the Non-Federal Sponsor statements of actual operation, maintenance, repair, replacement, and rehabilitation costs incurred by the Government for the Project.

G. During the period of OMRR&R, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of the fiscal year, of the funds that the Government determines to be required from the Non-Federal Sponsor to meet the Non-Federal proportionate share of projected financial obligations for the operation, maintenance, repair, replacement and rehabilitation for that fiscal year, less a credit for any Non-Federal Sponsor costs incurred by the Non-Federal Sponsor during the period of OMRR&R that are related to such OMRR&R activities in accordance with Articles II.H.1., V., and X. of this Agreement, subject to Government audit. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the funding mechanisms specified in Article VI.B. of this Agreement.

1. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the non-Federal proportionate share of financial obligations for the operation, maintenance, repair, replacement, and rehabilitation as they are incurred during the period of OMRR&R.

2. If at any time during the period of OMRR&R, the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for the operation, maintenance, repair, replacement and rehabilitation for the current fiscal year, the Government shall notify the non-Federal Sponsor in writing of the additional funds required, together with an explanation of why additional funds are required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the funding mechanisms specified in Article VI.B. of this Agreement.

3. If at any time during the period of OMRR&R, the Government determines that the total contribution provided by the non-Federal Sponsor exceeds its required share to cover the non-Federal proportionate share of projected financial obligations for the operation, maintenance, repair, replacement and rehabilitation for the current fiscal year, the Government shall afford credit for the excess against the Non-Federal Sponsor's contribution for the next operations, maintenance, replacement, repair and rehabilitation event, or subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after such determination is made. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

H. During the period of OMRR&R, the Government shall provide quarterly financial reports on the status of total costs of operation, maintenance, repair, replacement and rehabilitation and the status of contributions made by the Non-Federal Sponsor and the Government to such costs. Upon de-authorization of the Project or termination of this Agreement during the period of OMRR&R, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of operation, maintenance, repair, replacement and rehabilitation, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total costs of operation, maintenance, repair, replacement and rehabilitation, plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make whatever sum is required to meet the Non-Federal Sponsor's required share of total costs of operation, maintenance, repair, replacement and rehabilitation plus costs due to any betterments provided in accordance with Article II.B. of this Agreement available to the Government through any of the funding mechanisms specified in Article VI.B of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total costs of operation, maintenance, repair, replacement and rehabilitation, plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII -DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification of the initiation of Phase 3 construction monitoring in accordance with Article II.C. of this Agreement, and for so long as the Project remains authorized, the Government shall operate, maintain, repair, replace, and rehabilitate the entire Project in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and the OMRR&R Monitoring Plan, and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter upon property provided by the Non-Federal Sponsor pursuant to Articles II.D. or II.H.1 of this Agreement, for access to the Project for the purpose of inspection, monitoring, and for the purpose of operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor provided pursuant to Articles II.D. or II.H.1. for access to the Project for the purpose of fulfilling the Non-Federal Sponsor's Project obligations. No work performed by the Government on lands provided by the Non-Federal Sponsor to the Project shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX -INDEMNIFICATION

Subject to the provisions of Article XX of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages due to the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X -MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at

32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years from the date that the Government provides the final accounting referenced in Article VI.H. of this Agreement or three years after the resolution of all relevant claims arising from the Project and from the results of the Government's final accounting referenced in Article VI.H., whichever event occurs last. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total costs of OMRR&R, as defined in Article I.D. of this Agreement and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total first costs or total costs of OMRR&R, as defined in Articles I.B. and I.D. and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI -FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c).

ARTICLE XII -RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII -OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV -TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.B., II.D., II.E., VI., or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that 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.

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 Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.C. (in the event of termination during the period of construction) or VI.H. (in the event of termination during the period of OMRR&R) of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent

payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

E. The Government reserves the right to terminate the Project, pending evaluation by the Chief of Engineers of the operational success of the Project.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. The Government shall be responsible for all investigations and costs to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, servitudes, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and neither the Government nor the Non-Federal Sponsor shall proceed with the acquisition or provision of the real property interests until both parties agree that the Government or the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response for those lands which are provided to the Project by the Non-Federal Sponsor pursuant to Article II.D. of this Agreement, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total first costs. For all lands other than those provided to the Project by the Non-Federal Sponsor pursuant to Article II.D. of this Agreement, the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination shall be considered a part of total first costs and cost shared in accordance with the provisions of this Agreement. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean-

up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure 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 third party from any liability that may arise under CERCLA.

E. To the maximum extent practicable, the Government shall operate, maintain, repair, replace and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA. The Non-Federal Sponsor will ensure, to the maximum extent practicable, that any activities by the Non-Federal Sponsor or others on lands, easements, servitudes, or rights-of-way that the Non-Federal Sponsor provided, pursuant to Articles II.D and/or II.H.1 of the Agreement, shall be conducted in a manner that will not cause liability to arise under CERCLA. If, during the period of OMRR&R, hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, servitudes, or rights-of-way that the Government acquired, pursuant to Articles II.A.1. or II.G.3. of this Agreement, for the construction, operation, maintenance, repair, replacement or rehabilitation of the Project, the costs of clean-up and response on the said lands, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, shall be considered a part of the total costs of operation, maintenance, repair, replacement and rehabilitation, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. If, however, during the period of OMRR&R, hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, servitudes, or rights-of-way that the Non-Federal Sponsor provided, pursuant to Article II.D. and/or II.H.1. of this Agreement, for the construction, operation, maintenance, repair, replacement or rehabilitation of the Project, the costs of clean-up and response on the said lands, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, shall not be considered a part of the total costs of operation, maintenance, repair, replacement and rehabilitation. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean-up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project. No work performed by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to insure faithful performance pursuant to this Agreement.

ARTICLE XVI -NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Department of Natural Resources
State of Louisiana
617 North Third Street, 12th Floor
P. O. Box 44487
Baton Rouge, LA 70804-4487
Attn: Secretary

and

Department of Natural Resources
State of Louisiana
617 North Third Street, 1st Floor
P. O. Box 94396
Baton Rouge, LA 70804
Attention: Executive Director, Atchafalaya Basin Program

If to the Government:

District Engineer
U. S. Army Engineer District
New Orleans District
7400 Leake Avenue
New Orleans, Louisiana 70118

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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII -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 XVIII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the Project, shall perform any identification, survey, or evaluation of historic properties. The costs of identification, survey and evaluation of historic properties shall be borne entirely by the Government when such activities are conducted during the period of construction. Any costs of identification, survey, and evaluation of historic properties conducted during the period of OMRR&R shall be included in the total costs of OMRR&R and shall be shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the Project, shall perform any archeological data recovery activities associated with historic preservation. As specified in Section 7(a) of Public Law 86-523 as renumbered and amended by Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of archeological data recovery activities associated with historic preservation shall be borne entirely by the Government, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for archeological data recovery activities that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit (and the Secretary of the Interior has concurred in the waiver) in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. Section 469c-2(3)). Any costs of archeological data recovery activities that exceed the one percent limit shall be borne by the Government when such costs are incurred during the period of construction, except however, that any such costs incurred after the commencement of the period of OMRR&R that are associated with the OMRR&R, modification or alteration of the Project, shall be shared as set forth below. When the costs of archeological data recovery activities are incurred during the period of OMRR&R in association with the OMRR&R, modification or alteration of the Project and exceed the one percent limit, such costs shall not be included in the total costs of OMRR&R but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost-sharing requirements for the underlying management unit purpose, as follows: 25 percent borne by the Non-Federal Sponsor and 75 percent borne by the Government.

ARTICLE XIX -SECTION 902 PROJECT COST LIMITS

A. The Non-Federal Sponsor understands that Section 902 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2280) establishes the maximum amount of total project costs for the Authorized Project, of which the Project

is a separable element. On the effective date of this Agreement, the maximum amount of total project costs for the Authorized Project, which is the sum of total first costs for the Project and the cumulative total project costs for all other separable elements of the Authorized Project, is estimated to be \$341,000,000, as calculated in accordance with Appendix G of Engineer Regulation 1105-2-100, using October 1, 2003 price levels, and including allowances for projected future inflation. The Government shall adjust such maximum amount of total project costs for the Authorized Project, in accordance with said Section 902, when necessary.

B. Notwithstanding any other provision of this Agreement, the Government shall not incur a new financial obligation or expenditure for the Project, or include in total first costs for the Project any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure or contribution would cause the sum of total first costs for the Project, and the cumulative total project costs for all other separable elements of the Authorized Project, to exceed such maximum total project costs for the Authorized Project, unless otherwise authorized by law.

ARTICLE XX - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana, where creating such an obligation would be inconsistent with Article III, Section 16 of the State of Louisiana Constitution of 1974.

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each, and will use all reasonable and lawful means to secure the appropriations for that sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

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

DEPARTMENT OF THE ARMY

BY: 

PETER J. ROWAN
Colonel, Corps of Engineers
District Engineer

DATE: 16 MAY 05

STATE OF LOUISIANA

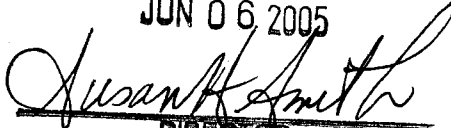
BY: 

Scott A. Angelle
Secretary, Louisiana Department of
Natural Resources

DATE: 5/16/05

APPROVED
Office of the Governor
Office of Contractual Review

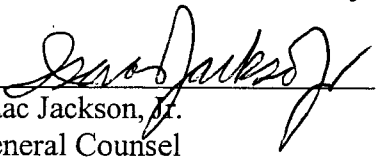
JUN 06 2005


DIRECTOR

CERTIFICATE OF AUTHORITY

I, Isaac Jackson, Jr., do hereby certify that I am the principal legal officer of the Louisiana Department of Natural Resources, that the State of Louisiana, herein represented by the Secretary and/or Deputy Secretary of the Louisiana Department of Natural Resources, 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 Atchafalaya Basin Floodway System, Louisiana, Buffalo Cove Management Unit Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person(s) executing this Agreement on behalf of the State of Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
16th day of May 2005.



Isaac Jackson, Jr.
General Counsel
Louisiana Department of Natural Resources

CERTIFICATION REGARDING LOBBYING

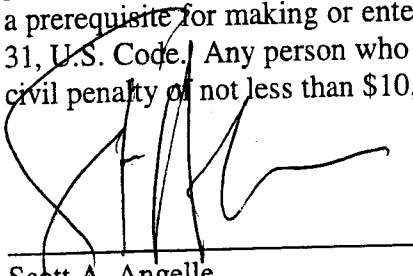
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Scott A. Angelle
Secretary, Louisiana Department of Natural Resources

DATE: _____

5/16/05