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MEMORANDUM FOR Resource Management Office

ATTN: Elaine B. James, CEMVN-RM-B

SUBJECT: Comite River Diversion Project, LA Non-Federal
Sponsor Cost Share Account

1. Request that your office establish an advance account for the Louisiana Department of Transportation and Development (Non-Federal Sponsor) for the subject project.
2. The Louisiana Department of Transportation and Development has requested that the funds be set up in a non-interest bearing account.
3. Enclosed is a copy of the Project Cooperation Agreement (PCA). A Cost Share Control Record should be completed shortly.
4. The Project Manager is Gary S. Brouse at extension 2707.



LARRY POINDEXTER
Senior Project Manager

Encl

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT (1)
AND
CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE (2)
AND
AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT (3)
FOR THE
COMITE RIVER DIVERSION PROJECT,
AMITE RIVER AND TRIBUTARIES, LOUISIANA

THIS AGREEMENT is entered into this 1st day of Oct, 2001, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer for the New Orleans District, the Louisiana Department of Transportation and Development (hereinafter "LA DOTD") represented by the Secretary of LA DOTD, the City of Baton Rouge and the Parish of East Baton Rouge (hereinafter "CITY-PARISH") represented by its Mayor-President, and the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District (hereinafter "ARBC") represented by its President, (LA DOTD, the City-Parish and ARBC being collectively referred to hereinafter as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Comite River Diversion Project, Amite River and Tributaries, Louisiana at a location between the Comite River and the Mississippi River, north of the City of Baker, Louisiana, and south of the City of Zachary, Louisiana was authorized by section 101(11) of the Water Resources Development Act of 1992, Public Law 102-580, dated October 31, 1992 (WRDA 1992), as amended and reauthorized by Section 301(b)(5) of the Water Resources Development Act of 1996, Public Law 104-303 (WRDA 1996) dated October 12, 1996, and as amended by Section 371 of the Water Resources Development Act of 1999, Public Law 106-53 (WRDA 1999) dated August 17, 1999, with technical corrections to Section 371 of WRDA 1999 in Section 6 of Public Law 106-109 dated November 24, 1999; and

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Cooperation Agreement for construction, operation, maintenance, repair, replacement and rehabilitation, and floodplain management of the Comite River Diversion Project, Amite River and Tributaries, Louisiana (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and Section 371 of WRDA 1999 specifies the cost-sharing requirements applicable to the Project; and

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; and

WHEREAS, the Non-Federal Sponsors do not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended; and

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Comite River Diversion Project, Amite River and Tributaries, Louisiana and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government and each of the Non-Federal Sponsors have the full authority and capability to perform as hereinafter set forth. LA DOTD intends to cooperate in cost-sharing and financing of the construction in accordance with the terms of this agreement. The CITY-PARISH intends to operate, maintain, repair, replace and rehabilitate the Project in accordance with the terms of this Agreement and ARBC intends to assume responsibility for any liabilities resulting from transfer of water from one watershed to another and to participate in, comply with and implement all applicable Federal floodplain management and flood insurance programs in accordance with Section 402 of the Water Resources Development Act of 1986 and in accordance with the terms of this Agreement.

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

ARTICLE I -DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the provision of flood protection for the residents in the lower part of the Comite River basin. The diversion Project will reduce stages on the Comite River from the diversion point to the confluence with the Amite River, and on the Amite River from the confluence with the Comite River near Denham Springs to Port Vincent, and on the Hurricane Creek, Robert Canal, and White, Cypress and Baton Rouge Bayous. The Project provides for the construction of a 12-mile long diversion channel between the Comite and the Mississippi Rivers north of the City of Baker, LA., and south of the City of Zachary, LA. Included in the Project are a diversion structure, a control structure at Lilly Bayou, four drop structures to handle intercepted drainage, three low augmentation

devices to supplement flow in the bayous down stream of the diversion channel, Brooks Lake closure, improvements to Bayou Baton Rouge, White Bayou and Cypress Bayou, and the provision of Project mitigation areas, as generally described in the Amite River and Tributaries, Louisiana, Comite River Basin Feasibility Study, dated September 1990, as approved by the Chief of Engineers dated August 27, 1991, and the Design Memorandum No. 1 dated July 1995, and as amended by the Post Authorization Change Report for the Comite River Diversion Plan, dated March 1996, revised August 1996, and as approved by the Director of Civil Works dated October 3, 1997.

B. The term "total project costs" shall mean all costs incurred by the LA DOTD and 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; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing highways and the alteration, lowering, raising or replacement of existing railroad lines, insofar and only insofar as such railroad lines must be replaced with a railroad bridge and approaches to said railroad bridge; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas 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. The term does not include 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.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the LA DOTD's total cash contribution required in accordance with Articles II.D.1. and II.D.3. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsors in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the New Orleans District

(hereinafter the "District Engineer") notifies the Non-Federal Sponsors in writing of the Government's determination that construction of the Project is complete.

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

G. 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 (excluding existing highways and existing railroad lines, insofar and only insofar as such railroad lines must be replaced with a railroad bridge and approaches to said railroad bridge) 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.

H. 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.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the CITY-PARISH to operate, maintain, repair, replace and rehabilitate (in accordance with Article VIII of this Agreement) in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsors in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction 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.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the LA DOTD, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of highways and the alteration, lowering, raising or replacement of existing railroad lines, insofar and only insofar as such railroad lines must be replaced with a railroad bridge and approaches to said railroad bridges), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the LA DOTD the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the LA DOTD has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the LA DOTD the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the LA DOTD 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 LA DOTD 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 LA DOTD, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

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

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$176,291,000, the Government and the LA DOTD agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the LA DOTD agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three (3) years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the LA DOTD, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The LA DOTD 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 LA DOTD 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 LA DOTD shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the CITY-PARISH with an

Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the CITY-PARISH shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The LA DOTD shall contribute a minimum of 25 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The LA DOTD shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the LA DOTD shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the LA DOTD must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

3. If the Government projects that the value of the LA DOTD's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project costs, the LA DOTD shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the LA DOTD's total contribution equal to 25 percent of total project costs.

4. If the Government determines that the value of the LA DOTD's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the LA DOTD for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the LA DOTD.

E. The LA DOTD may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the LA DOTD. 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 LA DOTD 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 LA DOTD shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable

borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the LA DOTD shall be responsible, as between the Government and the LA DOTD, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the LA DOTD in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the LA DOTD has met its obligations under paragraphs B., D., and E. of this Article.

G. The LA DOTD shall not use Federal funds to meet the LA DOTD's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. The ARBC agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. Not less than once each year the ARBC shall inform affected interests of the extent of protection afforded by the Project.

J. The ARBC shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

K. The ARBC shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a Non-Federal interest to have prepared within one year after the date of signing this Agreement, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by ARBC to preserve the level of flood protection provided by this Project. As required by Section 402, as amended, the ARBC shall implement such plan not later than one year after completion of construction of the Project. The ARBC shall provide an information copy of the plan to the Government upon its preparation.

L. The ARBC shall assume responsibility for any liabilities resulting from transfer of water from one watershed to another.

M. The CITY-PARISH shall prescribe and enforce, within its jurisdictional boundaries, regulations to prevent obstruction of or encroachment within the limits of the Project area that would reduce the level of protection it affords or that would hinder operation or maintenance of the Project.

N. As required by Section 6 of Public Law 106-109, any reduction in the non-Federal proportionate share that results from the modifications authorized by Section 371 (a) of WRDA 1999 shall be credited toward the share of total project costs to be paid by ARBC. Any credit under this provision shall be provided to ARBC by LA DOTD.

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

A. The Government, after consultation with the LA DOTD, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the LA DOTD with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the LA DOTD must provide, in detail sufficient to enable the LA DOTD to fulfill its obligations under this paragraph, and shall provide the LA DOTD with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the LA DOTD shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the LA DOTD shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the LA DOTD must provide for that contract. For so long as the Project remains authorized, the LA DOTD shall ensure that lands, easements, 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 LA DOTD are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the LA DOTD, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance 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. The Government in a timely manner shall provide the LA DOTD with general written descriptions of such improvements in detail sufficient to enable the LA DOTD to fulfill its obligations under this paragraph, and shall provide the LA DOTD with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the LA DOTD shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the LA DOTD shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the LA DOTD, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the LA DOTD with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the LA DOTD to fulfill its obligations under this paragraph, and shall provide the LA DOTD with a written notice to proceed with such relocations. Prior to the end of the period of construction, the LA DOTD shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the LA DOTD shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The LA DOTD 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 paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the LA DOTD's share of total project costs.

E. The LA DOTD shall 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 lands, easements, 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. The LA DOTD shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the LA DOTD must provide pursuant to Article III of this Agreement, and for the value of the relocations that the LA DOTD must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the LA DOTD shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The LA DOTD also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas 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.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, 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, or rights-of-way owned by the LA DOTD on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the LA DOTD provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the LA DOTD 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 B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The LA DOTD shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the LA DOTD 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 LA DOTD's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the LA DOTD's appraisal, the LA DOTD may obtain a second appraisal, and the fair market value shall be the amount set forth in the LA DOTD's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the LA DOTD's second appraisal, or the LA DOTD 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 LA DOTD. In the event the LA DOTD does not approve the Government's appraisal, the Government, after consultation with the LA DOTD, shall consider the Government's and the LA DOTD'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 LA DOTD for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the LA DOTD, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the LA DOTD, may approve in writing an amount greater than the amount determined pursuant to paragraph B.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 LA DOTD, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the LA DOTD 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 LA DOTD 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 LA DOTD 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 LA DOTD agree as to an appropriate amount, then the LA DOTD 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 LA DOTD cannot agree as to an appropriate amount, then the LA DOTD 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, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.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, and maintenance 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, or rights-of-way acquired by the LA DOTD 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.

C. After consultation with the LA DOTD, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

3. Crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c). Crediting may be withheld, in whole or in part, as a result of the LA DOTD's failure to comply with its obligations under these laws.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, 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 costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V -PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Secretary of LA DOTD, the Mayor-President of the CITY-PARISH and the President of the Board of Commissioners of the ARBC 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. The Government's Project Manager and a counterpart named by the LA DOTD shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the LA DOTD's counterpart shall keep the Project Coordination Team informed of the progress of construction 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. Until the end of the period of construction, 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; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated 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 developed by the Government after consultation with the LA DOTD, the CITY-PARISH and the ARBC.

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 of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation by the Government and LA DOTD in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement. The CITY-PARISH and the ARBC shall each be responsible for their respective costs of participation in the Project Coordination Team.

ARTICLE VI -METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the Government and the LA DOTD and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the LA DOTD with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the LA DOTD's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the LA DOTD for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$153,000,000, and the LA DOTD's cash contribution required under Article II.D. of this Agreement is projected to be \$7,607,000. Such amounts are estimates subject to adjustment by the Government and are

not to be construed as the total financial responsibilities of the Government and the LA DOTD.

B. The LA DOTD shall provide the cash contribution required under Articles II.D.1. and II.D.3. of this Agreement in accordance with the provisions of this paragraph

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the LA DOTD in writing of such scheduled date and the funds the Government determines to be required from the LA DOTD to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the LA DOTD shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, B2," to the District Engineer or verifying to the satisfaction of the Government that the LA DOTD has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the LA DOTD, 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.

2. For the second and subsequent fiscal years of construction, the Government shall notify the LA DOTD in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the LA DOTD to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the LA DOTD shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the LA DOTD such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the LA DOTD to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the LA DOTD in writing of the additional funds required, and provide an explanation of why additional funds are required, and the LA DOTD, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.1. of this Agreement

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the LA DOTD shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the LA DOTD such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the LA DOTD must provide additional funds to meet the LA DOTD's cash contribution, the Government shall notify the LA DOTD in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days thereafter, the LA DOTD shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the LA DOTD with the results of the final accounting. The final accounting shall determine total project costs, 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 LA DOTD'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 LA DOTD is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the LA DOTD 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 LA DOTD's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, B2." to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the LA DOTD exceeds its required share of total project costs 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 LA DOTD no later than 90 calendar days after the final accounting is complete; however, the LA DOTD shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the LA DOTD, 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 Government shall pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The remaining 50 percent of any such costs for the services provided by the third party shall be paid by the Non-Federal Sponsors. The respective responsibilities of LA DOTD, the CITY-PARISH and the ARBC for the payment of such third party costs shall be determined, as between themselves, based upon the nature of the purported breach and the obligation or issue in dispute. However, as between the Government and the Non-Federal Sponsors, the obligation of the Non-Federal Sponsors to pay 50 percent of the cost of the third party services shall be a solidary obligation, such that LA DOTD, the CITY-PARISH and ARBC shall each be obligated to pay the entirety of the Non-Federal share of the cost of said third party services. The Government, at its sole discretion, may demand the whole performance of said obligation and responsibility at any time from any or all of the entities designated herein as one of the Non-Federal Sponsors, without regard to the nature of the purported breach of this Agreement or to the issue or obligation that is in dispute. 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 in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the CITY-PARISH shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, 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 any subsequent amendments thereto. The CITY-PARISH shall not be responsible for the OMRR&R of any state highway bridge or railroad bridge created by this project.

B. The CITY-PARISH hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the CITY-PARISH owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the CITY-PARISH 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 CITY-PARISH. If, after 30 calendar days from receipt of notice, the CITY-PARISH continues to fail to perform, the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the CITY-PARISH owns or controls for access to the Project for the purpose of completing, operating, maintaining,

repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the CITY-PARISH of responsibility to meet the CITY-PARISH'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

The LA DOTD shall hold and save the Government free from all damages arising from the construction of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors. The CITY-PARISH shall hold and save the Government free from all damages arising from 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. The ARBC shall hold and save the Government free from all damages arising from the performance of ARBC's obligations pursuant to Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), 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 LA DOTD 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 LA DOTD shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the LA DOTD 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 LA DOTD is responsible for complying with the Single Audit Act of 1984, 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 LA DOTD and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the LA DOTD and independent auditors any information necessary to enable an audit of the LA DOTD's activities under this Agreement. The costs of any LA DOTD 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 project costs 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 LA DOTD is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB 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 project costs 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 LA DOTD, the CITY-PARISH and ARBC 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, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army." The LA DOTD is also required to comply with all applicable federal labor standards requirements including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c).

ARTICLE XII -RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the LA DOTD, CITY-PARISH and the ARBC each act in an independent capacity, and none are to be considered the officers, agents, or employees of the others.

B. In the exercise of their rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, 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 LA DOTD fails to fulfill its obligations under Article 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 LA DOTD 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 LA DOTD 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.D. 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.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the LA DOTD shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the LA DOTD determines to be necessary 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, 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. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the LA DOTD with prior specific written direction, in which case the LA DOTD shall perform such

investigations in accordance with such written direction. All actual costs incurred by the LA DOTD for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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 LA DOTD and the Government shall provide prompt written notice to each other, and the LA DOTD shall not proceed with the acquisition of the real property interests until both parties agree that the LA DOTD should proceed.

C. The Government and the LA DOTD 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 for the convenience of the Government, 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 LA DOTD determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the LA DOTD shall be responsible, as between the Government and the LA DOTD, for 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. Such costs shall not be considered a part of total project costs. In the event the LA DOTD fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the LA DOTD'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 LA DOTD 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. As between the Government and the CITY-PARISH, the CITY-PARISH shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the CITY-PARISH shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

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 LA DOTD:

Secretary
Louisiana Department of Transportation and Development
P.O. Box 94245
Baton Rouge, Louisiana 70804-9245

If to the CITY-PARISH:

Mayor-President
City of Baton Rouge and Parish of East Baton Rouge
P.O. Box 1471
Baton Rouge, Louisiana 70821

If to the ARBC:

President of the Board of Commissioners
Amite River Basin Drainage and Water Conservation District
3535 S. Sherwood Forest Blvd., Suite 135
Baton Rouge, Louisiana 70816-2255

:

If to the Government:

U.S. Army Engineer District
New Orleans
Attn: CEMVN-DD-P
P.O. Box 60267
New Orleans, Louisiana 70160-0267]

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties 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 costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, 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 mitigation and data recovery 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 in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the LA DOTD and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the LA DOTD, and 75 percent borne by the Government.

ARTICLE XIX -SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsors have reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understand that Section 902 establishes the maximum amount of total project costs for the Comite River Diversion Project, Amite River and Tributaries, Louisiana. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the LA DOTD, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$176,291,000, as calculated in accordance with ER 1105-2-100 using October 1, 2000 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

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 3, Section 16(A) of the 1974 Constitution of the State of Louisiana.

B. The LA DOTD intends to satisfy its obligations under this Agreement. The LA DOTD shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the LA DOTD's obligations under this Agreement for each year (biennium), and will use all reasonable and lawful means to secure the appropriations for that year (biennium) sufficient to make the payments necessary to fulfill its obligations hereunder. The LA DOTD 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 LA DOTD 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 LA DOTD 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: _____



Thomas F. Julich
Colonel, Corps of Engineers
District Engineer

DATE: _____

10 Oct 01

THE LOUISIANA DEPARTMENT
OF TRANSPORTATION AND
DEVELOPMENT

BY: _____



Kam K. Movassaghi
Secretary
Louisiana Department of
Transportation and Development

DATE: _____


9/27/01

RECOMMENDED FOR
APPROVAL

BY: _____


Edmond J. Preau
Assistant Secretary for Public Works
and Intermodal Transportation

BOARD OF COMMISSIONERS
AMITE RIVER BASIN DRAINAGE
AND WATER CONSERVATION DISTRICT

BY: 
Rod E. Emmer
President

DATE: 9/27/01

THE CITY OF BATON ROUGE
AND
PARISH OF EAST BATON ROUGE


Bobby Simpson
Mayor-President

DATE: 9/26/2001

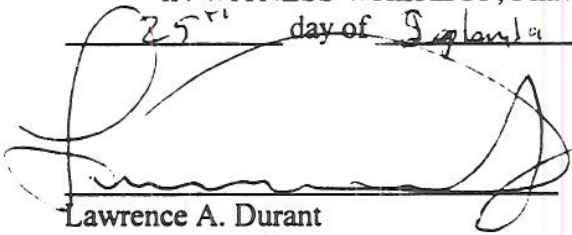

J. M. Smith
Notary Public

CERTIFICATE OF AUTHORITY

I, Lawrence A. Durant, do hereby certify that I am the principal legal officer of the Louisiana Department of Transportation and Development, that the Louisiana Department of Transportation and Development 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 Louisiana Department of Transportation and Development in connection with the Comite River Diversion Project, Amite River and Tributaries, Louisiana, 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 persons who have executed this Agreement on behalf of the Louisiana Department of Transportation and Development have acted within their statutory authority.

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

25th day of September 2001.



Lawrence A. Durant
General Counsel

Louisiana Department of Transportation and Development

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, and 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.


Kam K. Movassaghi, Secretary
Louisiana Department of Transportation and Development

DATE: Sept. 27, 2001

CERTIFICATE OF AUTHORITY

I, Michael E. Bender, do hereby certify that I am the principal legal officer of the City of Baton Rouge and Parish of East Baton Rouge, that the City of Baton Rouge and Parish of East Baton Rouge 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 City of Baton Rouge and Parish of East Baton Rouge in connection with the Comite River Diversion Project, Amite River and Tributaries, Louisiana, 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 persons who have executed this Agreement on behalf of the City of Baton Rouge and Parish of East Baton Rouge have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
25 day of September 2006.

Michael E. Bender
General Counsel

City of Baton Rouge and Parish of East Baton Rouge

CERTIFICATION REGARDING LOBBYING

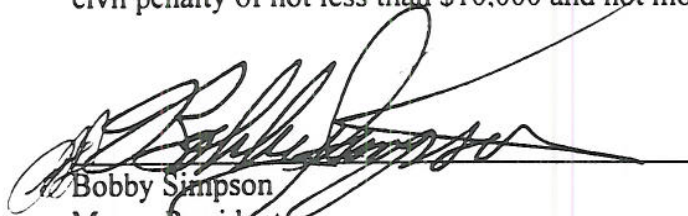
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.


Bobby Simpson
Mayor-President
City of Baton Rouge and Parish of East Baton Rouge


DATE: 9/26/2001


Approved by:
City of Baton Rouge

CERTIFICATE OF AUTHORITY

I, Jay Harris, do hereby certify that I am the principal legal officer of the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District, that the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District 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 Board of Commissioners of the Amite River Basin Drainage and Water Conservation District in connection with the Comite River Diversion Project, Amite River and Tributaries, Louisiana, 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 persons who have executed this Agreement on behalf of the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
27th day of September 2001.



General Counsel
Board of Commissioners
Amite River Basin Drainage and Water Conservation District

CERTIFICATION REGARDING LOBBYING

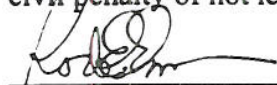
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



Rod E. Emmer

President

Board of Commissioners

Amite River Basin Drainage and Water Conservation District

DATE: 9/27/01

AUG 22 2001

829

RESOLUTION

41234

Brian Meyer
COUNCIL ADMINISTRATOR

AUTHORIZING THE MAYOR-PRESIDENT TO EXECUTE A PROJECT COOPERATION AGREEMENT ("PCA") WITH THE DEPARTMENT OF THE ARMY (CIVIL WORKS), THE LOUISIANA DEPARTMENT OF TRANSPORTATION & DEVELOPMENT AND THE AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT IN CONNECTION WITH THE COMITE RIVER DIVERSION PROJECT, AMITE RIVER AND TRIBUTARIES, LOUISIANA.

BE IT RESOLVED by the Metropolitan Council of the Parish of East Baton Rouge and City of Baton Rouge that

Section 1. The Mayor-President is hereby authorized to execute a Project Cooperation Agreement ("PCA") with the Department of the Army (Civil Works), the Louisiana Department of Transportation & Development and the Amite River Basin Drainage and Water Conservation District in connection with the Comite River Diversion Project, Amite River and Tributaries, Louisiana.

Section 2. Said agreement shall be approved by the Office of the Parish Attorney.