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PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND

THE PARISH OF EAST BATON ROUGE

FOR THE

COMITE RIVER AT HOOPER ROAD RESTORATION

THIS AGREEMENT is entered into this ~~24th~~ day of May, 200~~0~~<sup>05</sup>, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government") represented by the District Engineer of the New Orleans District and the Parish of East Baton Rouge (hereinafter the "Non-Federal Sponsor"), represented by the Mayor/President, Parish of East Baton Rouge.

WITNESSETH, THAT:

WHEREAS, this Project is authorized by Section 206 of the Water Resources Development Act of 1996, Public Law 104-303;

WHEREAS, Section 206 authorizes the Secretary of the Army to carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project will improve the quality of the environment, is in the public interest, and is cost-effective;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for implementation of the COMITE RIVER AT HOOPER ROAD RESTORATION (hereinafter the "Project", as defined in Article I.J. of this Agreement);

WHEREAS, Section 206(b) of the Water Resources Development Act of 1996, Public Law 104-303, specifies the cost-sharing requirements applicable to this Project;

WHEREAS, Section 206(c) of the Water Resources Development Act of 1996, Public Law 104-303, provides that the Secretary of the Army shall not commence construction of any project, or separable element thereof, under the Section 206 authority, until each Non-Federal Sponsor has entered into a binding agreement to pay the non-Federal share of the costs of construction required by Section 206(b) and to pay 100 percent of any operation, maintenance, and replacement and rehabilitation costs with respect to the project in accordance with regulations prescribed by the Secretary;

WHEREAS, the Non-Federal Sponsor desires to perform certain work (hereinafter the "work-in-kind", as defined in Article I. P. of this Agreement) which is a part of the Project;

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 implementation 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 "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.

B. The term "ecosystem restoration features" shall mean restoring 57.5 acres of an abandoned excavated area along the Comite River at Hooper Road, as generally described in the Ecosystem Restoration Report (ERR) referred to in Paragraph J. of this Article.

C. The term "financial obligation for implementation" shall mean a financial obligation of the Government or a financial obligation of the Non-Federal Sponsor for work-in-kind, 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 "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

E. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain 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 Sponsor 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.

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

G. The term "implementation" shall mean all actions required to carry out the Project.

H. 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 D. of this Agreement to total financial obligations for implementation as projected by the Government.

I. The term "period of implementation" shall mean the time from the effective date of this Agreement to the date that the District Engineer notifies the Non-Federal Sponsor in writing of the Government's determination that implementation of the Project is complete.

J. The term "Project" shall mean restoring 57.5 acres of an abandoned excavated area along the Comite River at Hooper Road, according to the ERR and Environmental Assessment, entitled "Comite River at Hooper Road, East Baton Rouge Parish, Louisiana", dated September 2000, and approved by the Commander, Mississippi Valley Division, on March 21, 2001. This restoration would include the creation of two lakes, an island in the larger lake, two culverts for water control, construction of a ridge, correction of the soil pH, remediation of soil fertility, planting of ground cover, planting of bottomland hardwood and freshwater swamp seedlings, removal of exotic plants, and the construction of recreation features such as trails and parking. Approximately 60,000 cubic yards of earth would be redistributed to create the lakes and forested wetland complex. The soil would be remediated by the addition of approximately 100 tons of dolomitic lime and approximately 1,100 tons compost derived from exceptional quality biosolids. A ground cover and one-year old bottomland hardwoods seedlings would be planted. The Project includes the work-in-kind described in Article I P. of this Agreement.

K. The term "recreation features" shall mean a improved trails, a bathroom facility, a parking lot, gate, and information booth all as generally described in the ERR.

L. 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. 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.

M. The term "total project ecosystem recreation costs" shall mean that portion of the total project costs that the Government assigns to the ecosystem restoration features.

N. The term "total project recreation costs" shall mean that portion of the total project costs that the Government assigns to the recreation features.

O. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to implementation of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to, feasibility phase planning costs; all engineering and design costs, including those incurred in the feasibility phase; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV A. of this Agreement; the costs incurred by the Government for clean up and response in accordance with Article XV C. of this Agreement; costs of historic preservation activities in accordance with Article XVIII. of this Agreement; actual implementation costs; the credit amount for the work-in-kind for ecosystem restoration performed by the Non-Federal Sponsor in accordance with Article II D.2. and for the work-in-kind for recreation performed by the Non-Federal Sponsor in accordance with Article II E.2 of this Agreement; 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.

P. The term "work-in-kind" shall mean designing and constructing of an information booth, parking lot, restrooms, gates, and tree planting by the Non-Federal Sponsor as described in the ERR. The work-in-kind includes implementation of the authorized improvements as well as planning, engineering, design, supervision and administration, and other activities associated with implementation, but does not include the implementation of betterments or the provision of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas associated with the work-in-kind.

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

A. The Government, subject to the availability of funds and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously implement the Project, applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor 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 contract for implementation until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor 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 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 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 implementation, 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.

have not been provided previously. Upon such notification, the Non-Federal Sponsor 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 Non-Federal Sponsor shall contribute 35 percent of total project ecosystem restoration costs in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the implementation, operation, and maintenance of the ecosystem restoration features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the implementation, operation, and maintenance of the ecosystem restoration features.

2. The Government may afford credit for the work-in-kind performed on the ecosystem restoration features. The affording of such credit shall be subject to a technical review by the Government to verify that the credited work was accomplished in a satisfactory manner and in accordance with the limitations contained in this Agreement. To afford any such credit, the Government, as further specified in Article VI B. of this Agreement, shall apply the actual amount of credit toward the cash contribution required by paragraph D.3. of this Article. The actual amount of credit shall not exceed the Non-Federal Sponsor's actual costs attributable to the work-in-kind. The actual amount of credit shall be subject to an audit in accordance with Article X C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government has determined that the work-in-kind, performed on the ecosystem restoration features, is compatible with the ecosystem restoration features of the Project and has approved a credit in the estimated amount of \$133,220 for implementation of such ecosystem restoration feature work by the Non-Federal Sponsor. In no event shall the Non-Federal Sponsor perform work-in-kind, on the ecosystem restoration features, that would result in either the credit afforded under this paragraph exceeding 100 percent of the Non-Federal Sponsor's share of total project ecosystem restoration costs or the credit afforded under this paragraph, plus the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas, for the ecosystem restoration features of the project, for which the Government affords credit in accordance with Article IV of this Agreement, exceeding 35 percent of total project ecosystem restoration costs.

3. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph D.1. and D.2 of this Article, together with that portion of the Non-Federal Sponsor's costs and expenses associated with Articles V, X, XV A, and XVIII of this Agreement which the Government assigns to the ecosystem restoration features, will be less than 35 percent of total project ecosystem restoration costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total ecosystem restoration feature contribution equal to 35 percent of total project ecosystem restoration costs.

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.1. and D.2. of this Article, together with that portion of the Non-Federal Sponsor's costs and expenses associated with Articles V, X, XV A, and XVIII of this Agreement which the Government assigns to the ecosystem restoration features, has exceeded 35 percent of total project ecosystem restoration costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 35 percent of total project ecosystem restoration costs. After such a determination, the Government, in its sole discretion, may provide any remaining lands, easements, rights-of-way, and suitable borrow and dredged excavated material disposal areas and perform any remaining relocations on behalf of the Non-Federal Sponsor required for the ecosystem restoration features. 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 under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV C. of this Agreement.

E. The Non-Federal Sponsor shall contribute 50 percent of total project recreation costs in accordance with the provisions of this paragraph.

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

# 2 2. The Government may afford credit for the work-in-kind performed on the recreation features. The affording of such credit shall be subject to a technical review by the Government to verify that the credited work was accomplished in a satisfactory manner and in accordance with the limitations contained in this Agreement. To afford any such credit, the Government, as further specified in Article VI B. of this Agreement, shall apply the actual amount of credit toward the cash contribution required by paragraph E.3. of this Article. The actual amount of credit shall not exceed the Non-Federal Sponsor's actual costs attributable to the work-in-kind. The actual amount of credit shall not exceed the Non-Federal Sponsor's actual costs attributable to the work-in-kind. The actual amount of credit shall be subject to an audit in accordance with Article X C. of this Agreement to determine reasonableness, allocability, and allowability of costs. The Government has determined that the work-in-kind, performed on the recreational features, is compatible with the recreation features of the Project and has approved a credit in the estimated amount of \$44,400 for implementation of such recreational feature work by the Non-Federal Sponsor. In no event shall the Non-Federal Sponsor perform work-in-kind, on the recreational features, that would result in either the credit afforded under this paragraph exceeding 100 percent of the Non-Federal Sponsor's share of total project recreation costs or the credit afforded under this paragraph, plus the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas, for the recreational features of the project, for which the Government affords credit in accordance with Article IV of this Agreement, exceeding 50 percent of total project recreation costs.

3. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph E.1. and E.2 of this Article, together with that portion of the Non-Federal Sponsor's costs and expenses associated with Articles V, X, XV A, and XVIII of this Agreement which the Government assigns to the recreation features, will be less than 50 percent of total project recreation costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total recreation feature contribution equal to 50 percent of total project recreation costs.

4. If the Government determines that the value of the Non-Federal's contributions provided under paragraphs E.1. and E.2. of this Article, together with that portion of the Non-Federal Sponsor's costs and expenses associated with Articles V, X, XV A, and XVIII of this Agreement which the Government assigns to recreation features, has exceeded 50 percent of total project recreation costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 50 percent of total project recreation costs. After such a determination, the Government, in its sole discretion, may provide any remaining recreation feature lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining recreation feature relocations on behalf of the Non-Federal Sponsor. 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 under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV C. of this Agreement.

F. The Non-Federal Sponsor 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 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 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 under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV C. of this Agreement.

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

H. The Non-Federal Sponsor shall not use Federal funds to meet its 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.

I. In addition to any other limitations contained in this Agreement, the affording and the amount of credit is subject to the following additional limitations.

1. No credit shall be given or reimbursement made unless and until the District Engineer has certified that the work-in-kind subject to credit pursuant to this Agreement has been performed in accordance with this Agreement.

2. The amount of credit for which the Non-Federal Sponsor may be eligible pursuant to this Agreement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the work-in-kind is completed and the time that the credit is afforded.

3. The Non-Federal Sponsor shall obtain all applicable Federal, State and local permits required for the performance of the work-in-kind and for operation, maintenance, repair, rehabilitation and replacement of the work-in-kind.

4. Any contract awarded by the Non-Federal Sponsor for work-in-kind under this Agreement shall include provisions consistent with all applicable Federal laws and regulations.

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

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the implementation, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government shall indicate which of the required lands, easements, and rights-of-way are required for the ecosystem restoration features and which are required for the recreation features. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of implementation, the Non-Federal Sponsor 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 Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. The Non-Federal Sponsor 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 Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.



B. The Government, after consultation with the Non-Federal Sponsor, 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 implementation, operation, and maintenance of the Project. The Government shall delineate which of the required improvements are associated with the ecosystem restoration features and which are associated with the recreation features. 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 Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of implementation, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsor 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 Non-Federal Sponsor, shall determine the relocations necessary for the implementation, 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 shall indicate which of the necessary relocations are necessary for the ecosystem recreation features and which are necessary for the recreation features. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of implementation, the Non-Federal Sponsor 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 Non-Federal Sponsor 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 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 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, assign that value to either total project ecosystem restoration costs or total project recreation costs, and afford credit for such value toward the Non-Federal Sponsor's share of total project ecosystem restoration costs or total project recreation costs.

E. The Non-Federal Sponsor 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 implementation, 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 LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward its share of total project ecosystem restoration costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement for ecosystem restoration features, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement for ecosystem restoration features. The Non-Federal Sponsor shall receive credit toward its share of total project recreation costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide pursuant to Article III of this Agreement for recreation features, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III of this Agreement for recreation features. However, the Non-Federal Sponsor 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 Non-Federal Sponsor 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 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. However, for lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement that are required for the construction of the work-in-kind, fair market value shall be the value of such real property interests as of the date the Non-Federal Sponsor awards the first construction contract for the work-in-kind, or, if the Non-Federal Sponsor performs the implementation with its own labor, the date that the Non-Federal Sponsor begins implementation of the work-in-kind. The fair market value of lands, easements, 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 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 Non-Federal Sponsor shall obtain, for each real property interest, 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 B.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 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 Non-Federal Sponsor, 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 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, 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 implementation, 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 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.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, 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. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Louisiana would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. 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.

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 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 implementation. 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 implementation 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 implementation, 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; work-in-kind performed by the Non-Federal Sponsor; 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.

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

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs, total project ecosystem restoration costs, total project recreation costs, and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, total project ecosystem restoration costs, total project recreation costs, total costs due to betterments, of each parties share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II B., II D., II E., and II F. of this Agreement, and of the non-Federal proportionate share. On the effective date of this Agreement, total project costs are projected to be \$974,400, total project ecosystem restoration costs are projected to be \$881,992, total project recreation costs are projected to be \$92,408, the Non-Federal Sponsor's contribution required under Article II D. of this Agreement is projected to be \$308,697 of which \$63,476 is projected to be a cash contribution, and the Non-Federal Sponsor's contribution required under Article II E. of this Agreement is projected to be \$46,204 of which \$1,804 is projected to be a cash contribution. 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 Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Articles II D.3. and II E.3. of this Agreement in accordance with the following provisions: Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government, after consideration of any credit afforded pursuant to Article II D.2. and II E.2 of this Agreement, determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Articles II D.3. and II E.3. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, New Orleans District" to the District Engineer or by Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government, after consideration of any credit afforded pursuant to Article II D.2. and II E.2 of this Agreement, deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for implementation incurred prior to commencement of the period of implementation; and (b) the non-Federal proportionate share of financial obligations for implementation as they are incurred during the period of implementation. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet the Non-Federal Sponsor's cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds or by Electronic Funds Transfer in accordance with procedures established by the Government.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II B. or II F., of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, New Orleans District" to the District Engineer or by Electronic Funds Transfer in accordance with procedures established by the Government. The Government shall draw from the funds provided by the Non-Federal Sponsor 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 Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 60 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds or by Electronic Funds Transfer in accordance with procedures established by the Government.

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 Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, total project ecosystem restoration costs, total project recreation costs, each party's contribution provided thereto, and each party's required share of total project costs, total ecosystem restoration costs and total recreation costs. 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 project costs 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 a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsor's required share of total project costs plus costs due to any betterments provided in accordance with Article II 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 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 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 in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor 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.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor 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 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 the 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 the Non-Federal Sponsor 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 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

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the implementation, 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 after the period of implementation and resolution of all relevant claims arising therefrom. 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 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 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 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 Non-Federal Sponsor 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 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, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

#### 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 Article II B., II D., II E., II F., VI, or XVIII 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 appropriations are not available in amounts sufficient to meet the Government's share of 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 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 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 Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor 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 implementation, operation, and maintenance of the Project, except for any such lands that the Government determines to be subject to the navigation servitude. 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 Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsor or the Government 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, the Non-Federal Sponsor must provide for the implementation, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate implementation of the Project, or, if already in implementation, 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 implementation, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with implementation 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, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination on lands, easements or rights of way that the Government determines, pursuant to Article III of this Agreement, to be required for the implementation, operation, and maintenance of the Project, except for any such lands, easements, or rights-of-way owned by the United States and administered by the Government. Such costs shall not be considered a part of total project costs. 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. The Government shall be responsible, as between the Government and the Non-Federal Sponsor, 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 on lands, easements, or rights of way owned by the United States and administered by the Government.

All costs incurred by the Government shall be included in total project costs and cost shared in accordance with the terms of this Agreement.

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 cleanup 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 Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor 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 Non-Federal Sponsor:

Parish of East Baton Rouge  
222 St. Louis Street  
P.O. Box 1471  
Baton Rouge, LA 70821

If to the Government:

U.S. Army Corps of Engineers  
New Orleans District  
P.O. Box 60267  
ATTN: CEMVN-OC  
New Orleans, LA 70160-0267

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

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at 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 attributable to the ecosystem restoration features shall be included in total project ecosystem restoration costs and cost shared in accordance with the provisions of this Agreement.

B. The costs of identification, survey and evaluation of historic properties attributable to the recreation features shall be included in total project recreation costs and cost shared in accordance with the provision of this Agreement.

C. Pursuant to 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 the Government is authorized to expend for the Project.

D. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph C. 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)).

1. Any costs of mitigation and data recovery that attributable to the ecosystem restoration and recreation features that exceed the one percent limit shall be included in total project costs and shall be cost shared in accordance with the provisions of this Agreement.

## ARTICLE XIX - LIMITATION ON GOVERNMENT EXPENDITURES

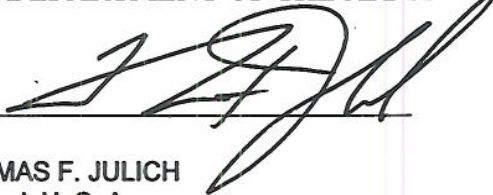
Notwithstanding any other provisions of this Agreement, the Government's financial obligations are limited to \$5,000,000. The Non-Federal Sponsor shall be responsible for all total project costs that exceed this amount.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

PARISH OF EAST BATON ROUGE

BY: \_\_\_\_\_



THOMAS F. JULICH  
Colonel, U. S. Army  
District Engineer

BY: \_\_\_\_\_



BOBBY SIMPSON  
Mayor/President  
Parish of East Baton Rouge

DATE: \_\_\_\_\_

5/24/01

DATE: \_\_\_\_\_

5/22/2001

CERTIFICATE OF AUTHORITY

I, Larry Book, do hereby certify that I am the principal legal officer of the Parish of East Baton Rouge, that the 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 Parish of East Baton Rouge in connection with the Comite River at Hooper Road Restoration, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the Parish of East Baton Rouge have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
22 day of May 2008.

  
Larry Book  
Special Assistant Parish Attorney