

PROJECT COOPERATION AGREEMENT
AMONG
THE DEPARTMENT OF THE ARMY
AND
THE UNITED STATES FISH AND WILDLIFE SERVICE
AND
THE TOWN OF COLFAX, LOUISIANA
FOR CONSTRUCTION OF THE
ALOHA-RIGOLETTE AREA, LOUISIANA FLOOD CONTROL PROJECT

THIS AGREEMENT is entered into this 19th day of September, 1994, by and among the DEPARTMENT OF THE ARMY (hereinafter the "Government"), acting by and through the Acting Assistant Secretary of the Army (Civil Works), and the UNITED STATES FISH AND WILDLIFE SERVICE, (hereinafter the "Service"), acting by and through the Regional Director, and the TOWN OF COLFAX, LOUISIANA (hereinafter the "Local Sponsor"), acting by and through its Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the Aloha-Rigolette Area, Louisiana Flood Control Project in Grant Parish, Louisiana was authorized by Section 101 of the Water Resources Development Act of 1990, Public Law 101-640;

WHEREAS, the Government, the Service and the Local Sponsor desire to enter into a Project Cooperation Agreement for construction of the Aloha-Rigolette Area, Louisiana Flood Control Project (hereinafter the "Project" and 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, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project;

WHEREAS, the Local Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662;

WHEREAS, the Project authorization (Section 101 of the Water Resources Development Act of 1990, Public Law 101-640) and the Economy in Government Act, 31 USC 1535 and 10 USC 3036(d)(2), provides the legal authority for the Government to enter into this Project Cooperation Agreement with the Service;

WHEREAS, the Fish and Wildlife Act of 1956, 16 USC 742f, provides the legal authority for the Service to enter into this Project Cooperation Agreement with the Government and Local Sponsor;

WHEREAS, the Government, the Service and the Local Sponsor have the legal authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government, the Service and the Local Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean a flood control structure at the mouth of Bayou Darrow to reopen Bayou Darrow to the Red River consisting of 3 - 10 feet by 10 feet box culverts with floodgates, 8.2 miles of clearing and snagging on Bayou Darrow (approximately from the mouth of Bayou Darrow to the junction of Bayou Darrow and Sams Bayou, thence up Sams Bayou to the existing closure); a closure and low-flow structure on Bayou Rigolette just downstream of Mile 20; realignment of Sams Bayou; the Mitigation Features on Service Lands; and the fisheries mitigation measures, which will be the cooperative responsibility of the Louisiana Department of Wildlife and Fisheries (LDWF), the Government and the Local Sponsor, and which consist of a flowage easement on 308 acres below Iatt Lake to facilitate the seasonal drawdown of Iatt Lake to control the aquatic weed problem; as generally described in the Red River Below Denison Dam, Aloha-Rigolette Area, Louisiana, Design Memorandum No. 1, dated April 1991, and the Red River Below Denison Dam, Aloha-Rigolette Area, Louisiana, Design Memorandum No. 1, Supplement No. 1 - Mitigation, dated June 1992, (hereinafter the "Supplement"), and endorsements thereto, approved by the Chief of Engineers on April 22, 1994.

b. The term "total project costs" shall mean all costs incurred by the Local Sponsor, the Service and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to: all continuing planning and engineering costs incurred after October 1, 1985; all advanced engineering and design costs; all preconstruction engineering and design costs; engineering and design costs during construction; actual construction costs, including the costs of relocating existing railroad bridges and approaches thereto; supervision and administration costs; costs of contract dispute settlements or awards; the value of lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, except those lands, easements and rights-of-way to be provided by the Service for the Mitigation Features on Service Lands, as may be required for the construction, operation, and maintenance of the Project; and the cost of investigations to identify the existence of hazardous substances as identified in Article XVIII.a and b.; but shall not include any costs for operation, maintenance, repair, replacement, or rehabilitation or increased costs for betterments.

c. The term "Government Representative" shall mean the U.S. ARMY ENGINEER for the Vicksburg District, or his or her designee.

d. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time the Government Representative certifies in writing to the Local Sponsor that construction of the Project is complete. The Government Representative shall furnish to the Local Sponsor copies of the Government's Written Notice of Acceptance of Completed Work furnished to contractor(s) for all contracts for the Project.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

f. 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 railroad bridges and approaches thereto) 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, modification, lowering or raising in place, or replacement and attendant removal of the affected facility or part thereof.

g. 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.

h. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Government Representative in writing to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of the entire Project. To be suitable for tender, the Government Representative must determine that the completed portion of the Project can function independently and for a useful purpose, although the balance of the Project is not complete.

i. The term "betterment" shall mean the design and construction of a Project feature accomplished on behalf of, or at the request of, the Local Sponsor in accordance with standards which exceed the standards which the Government would otherwise apply for accomplishing the design and construction of the Project.

j. The term "Special Use Permit" shall mean a permit, not usually available to the general public, granting a refuge service, facility, privilege, or product of soil. The grant of a special use permit must be compatible and consistent with refuge objectives, policies, and applicable laws, and it may be made subject to special conditions or requirements imposed upon the permittee.

k. The term "Mitigation Features on Service Lands" shall mean waterfowl mitigation measures on lands, easements and rights-of-way which the Service has a real property interest, consisting of containment dikes, terraces, two water wells, two 1,750 GPM pumps, 2300 feet long ring levee and ditch, and necessary construction access points to inundate 400 acres located within the Grand Cote National Wildlife Refuge (NWR) for 75 days per year; and terrestrial mitigation measures on lands, easements and rights-of-way owned by the Service, which consist of reforestation of 182 acres as riparian habitat with appropriate herbivory guards and 360 acres as bottomland hardwood habitat located adjacent to the Lake Ophelia National Wildlife Refuge as generally described in the Supplement.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT, THE LOCAL SPONSOR, AND THE SERVICE

a. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Local Sponsor, shall expeditiously construct the Project (including relocation of existing railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. Before initial construction of the Project can proceed, the Local Sponsor must concur in writing with issuance of the invitation for bids for the first construction contract. To the extent possible, the Local Sponsor thereafter also will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the Local Sponsor of the required contract modifications or change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Government will, in good faith, consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, 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. The Service shall be afforded the opportunity to review and comment on all contracts for relocations and for construction of the Mitigation Features on Service Lands including relevant plans and specifications, prior to the issuance of invitations for bids. Before initial relocations for and construction of the Mitigation Features on Service Lands can proceed, the Service must concur in writing with issuance of the invitation for bids for the construction contract. To the extent possible, the Service thereafter also will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the Service of the required contract modifications or

change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Government will, in good faith, consider the comments of the Service, but award of contracts, modifications or change orders, and performance of all relocations for and construction of the Mitigation Features on Service Lands (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. As further specified in Article III.b., the Service, in accordance with provisions of the National Wildlife Refuge System Administration Act of 1966, shall grant to the Government a Special Use Permit prior to the Government performing construction and relocations for the Mitigation Features on Service Lands as described in the Supplement. The Special Use Permit shall contain reasonable special conditions, which are intended to support the purpose of the work, while ensuring compatibility with the refuge. No provision of this Agreement shall merge into any Special Use Permit and each and every obligation of the parties to this Agreement shall remain in full force and effect unless altered by mutual agreement or by Article XVI of this Agreement.

c. After the Government determines that the Project or a functional portion of the Project, other than the Mitigation Features on Service Lands, is complete, and notifies the Local Sponsor in writing of such determination, the Government shall turn the Project, or functional portion of the Project, over to the Local Sponsor, which shall accept the Project, or functional portion of the Project, and be solely responsible for operating, maintaining, repairing, replacing, and rehabilitating the Project, or functional portion of the Project, in accordance with Article VIII hereof.

d. After the Government determines that the Mitigation Features on Service Lands or a functional portion of the Mitigation Features on Service Lands is complete, and notifies the Service in writing of such determination, the Government shall turn the Mitigation Features on Service Lands or functional portion thereof over to the Service, which shall accept the Mitigation Features on Service Lands or functional portion thereof, and be solely responsible for operating, maintaining, repairing, replacing, and rehabilitating in accordance with Article VIII hereof the Mitigation Features on Service Lands or functional portion thereof, with funds to be provided by the Local Sponsor in accordance with Article VI.f. hereof.

e. The Local Sponsor shall contribute through a combination of cash payments and the provision of Project lands, easements, rights-of-way and relocations, as herein specified and further specified in Article VI, a minimum of 25 percent, but not to exceed 50 percent, of total project costs.

1. During the period of construction, the Local Sponsor shall provide a cash contribution equal to 5 percent of total project costs.

2. As further specified in Article III hereof, the Local Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, except those lands, easements, and rights-of-way provided by the Service for the Mitigation Features on Service Lands, and perform or assure the performance of all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Project, except those relocations required for the Mitigation Features on Service Lands.

3. As further specified in Article III.f. hereof, the Local Sponsor shall pay the Government to perform all the relocations determined by the Government to be necessary for construction, operation and maintenance of the Mitigation Features on Service Lands. The Local Sponsor shall deliver a check payable to "FAO USAED, Vicksburg" to the Government Representative for all costs of any such relocation in advance of the Government incurring any fiscal obligation for such relocations.

4. If the value of the contributions provided under paragraphs e.1., e.2., and e.3. of this Article is less than 25 percent of total project costs, the Local Sponsor shall provide, during the period of construction, additional cash contributions in the amount necessary to make the Local Sponsor's total contribution equal to 25 percent of total project costs.

5. If the value of the contributions provided under paragraphs e.1., e.2., e.3., and e.4. of this Article exceed 50 percent of the total project costs, the Government shall, subject to the availability of funds, reimburse the Local Sponsor for that portion of the fair market value of lands, easements, rights-of-way, and dredged or excavated material disposal areas, and relocations, which exceed 45 percent of the total project costs. Alternately, and at the sole discretion of the Government, the Government may at no cost to the Local Sponsor provide any remaining lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas required for the construction operation, and maintenance of the Project in excess of 45 percent of the total project costs.

f. The Local Sponsor may request the Government to acquire lands, easements, or rights-of-way, or perform relocations on behalf of the Local Sponsor. Such services as the Government may elect to provide, shall be performed in accordance with terms and conditions of separate agreements and all estimated cost of such work shall be paid for by the Local Sponsor in advance of the government incurring any financial obligation therefore, in accordance with Article VI of this Agreement.

g. The Local Sponsor may request the Government to accomplish betterments. The Local Sponsor will be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid for by the Local Sponsor in advance of the Government incurring any financial obligation therefore, in accordance with Article VI of this Agreement.

h. As further specified by Article VI.f., upon request by the Service, the Local Sponsor shall provide the Service with funds necessary for the cost for operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands or functional portion thereof.

i. No Federal funds may be used to meet the Local Sponsor's obligations share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

j. The Local Sponsor agrees to participate in and comply with applicable Federal flood plain management and flood insurance programs.

k. Not less than once each year the Local Sponsor shall inform affected interests of the limitations of the protection afforded by the Project.

l. The Local Sponsor 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.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

a. The Government, in coordination with the Local Sponsor and the Service, shall provide to the Local Sponsor and the Service, a written description of the anticipated lands, easements, and rights-of-way required for construction, operation and maintenance of the Project.

1. The Local Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Local Sponsor, to be necessary for the construction, operation and maintenance of the Project, except those for those lands, easements, and rights-of-way provided by the Service for the Mitigation Features on Service Lands, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way for the Project may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

2. The Service shall furnish to the Government a mutually acceptable Special Use Permit covering all lands, easements, and rights-of-way on which the Service has a real property interest, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Service, to be necessary for the construction, operation and maintenance of the Mitigation Features on Service Lands or functional portion of the Mitigation Features on Service Lands, including a right to conduct any investigations for hazardous substances in accordance with ARTICLE XVIII. b. of this Agreement. Furthermore, the Service shall furnish to the Government adequate title evidence to determine the legal sufficiency of the Service's interest in such lands to accomplish the Mitigation Features of on Service Lands and assurances that these mitigation lands will be available over the life of the Project. The necessary lands, easements, and rights-of-way for the Mitigation Features on Service Lands may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Project, except for the areas required for the Mitigation Features on Service Lands.

c. The Local Sponsor shall pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Mitigation Features on Service Lands. The Local Sponsor shall deliver a check payable to "FAO USAED, Vicksburg" to the Government Representative for such costs in advance of the Government incurring any fiscal obligation associated with such costs.

d. The Government shall provide, in coordination with the Local Sponsor and the Service, a written description of the anticipated relocation requirements for the Project. Thereafter, the Local Sponsor shall accomplish or arrange for accomplishment of all relocations determined by the Government in that description, or in any subsequent description coordinated with the Local Sponsor, to be necessary for the construction, operation, and maintenance of the Project, except for the relocations determined by the Government to be necessary for the construction, operation, and maintenance of the Mitigation Features on Service Lands. The necessary relocations may be provided incrementally for each construction contract. All relocations determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

e. Upon notification from the Government, the Local Sponsor shall pay to the Government in advance the cost for accomplishment of all relocations determined by the Government to be necessary for construction, operation and maintenance of the Mitigation Features on Service Lands. The Local Sponsor shall deliver a check payable to "FAO USAED, Vicksburg" to the Government Representative for such costs in advance of the Government incurring any fiscal obligation associated with such costs.

f. The Local Sponsor and the Service 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 CFR Part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance, of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND RELOCATIONS

a. The Local Sponsor shall not receive any credit for lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, previously provided as an item of cooperation for another Federal project nor shall the value thereof be included in total project costs. The Local Sponsor shall not receive any credit for lands, easements and rights-of-way to be provided by the Service as described in Article III.a.2. The value of the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, to be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest at the time of such award or in exceptional circumstances, upon request of the Local Sponsor and in the sole discretion of the Assistant Secretary of the Army for Civil Works, the actual purchase price paid by the Local Sponsor. The fair market value, if used, shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Local Sponsor and the Government.

2. If the lands, easements, or rights-of-way are acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the

approved appraised fair market value, the Local Sponsor may be entitled to a credit for the actual purchase price paid provided that the purchase price is approved by the Government in writing.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than the Government determines are necessary for construction, operation, and maintenance of the Project, then only the value of such portions of those acquisitions as have been determined by the Government to be necessary for the construction, operation, and maintenance of the Project shall be included in total project costs and credited towards the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way acquired through eminent domain proceedings occurring after the date of this Agreement will be based on court awards for the real property interests taken, or on stipulated settlements or portions of stipulated settlements that have received written Government approval. The fair market value for the purposes of filing an eminent domain proceeding in court shall be based on an appraisal prepared and approved as specified in Article IV.a.1. of this Agreement.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the reasonable documented incidental costs of acquiring the interest, e.g., 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 the obligations under this Agreement.

b. The value of relocations, except for the relocations determined by the Government to be necessary for construction, operation, and maintenance of the Mitigation Features on Service Lands, which will be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be determined by the Government as set forth below:

1. Highways and Highway Bridges: Only that portion of the cost as would be necessary to construct substitute bridges and highways to the design standard that the State of Louisiana would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities, Structures and Improvements (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the increased cost of betterments. New materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total project costs, nor credited toward the Local Sponsor's share.

3. The value of relocations determined by the Government to be necessary for construction, operation, and maintenance of the Mitigation Features on Service Lands to be included in total project costs and credited toward the Local Sponsor's share of total project costs shall be the actual relocation costs incurred by the Government.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication the Local Sponsor, the Service and the Government shall prior to the advertisement of the first construction contract, appoint representatives to coordinate on all facets of Project development, including Project design, scheduling, plans, specifications, real estate requirements, award of contracts, contract modifications and change orders, contract costs, claims, and other related matters.

b. These representatives shall generally oversee the Project construction and shall be identified as the Project Coordination Team. They shall meet regularly during the period of construction and will be informed of all changes in total project costs. The Project Coordination Team shall make recommendations concerning construction as it deems are warranted to the Government Representative, including suggestions to avoid potential sources of dispute.

c. The Government Representative shall, in good faith, consider the recommendations of the Project Coordination Team on all matters relating to construction and anticipated requirements for operation, maintenance, repair, replacement and rehabilitation of the Project. The Government, having the legal authority and responsibility for construction of the Project, has discretion to accept, reject, or modify the recommendations of such representatives.

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the cash payments required under Article II.e.1 and II.e.4. of this Agreement. Total project costs are currently estimated to be \$9,437,000.00 and the Local Sponsor's share of total project costs is currently estimated to be \$2,359,000.00. In order to meet the Local Sponsor's share, the Local Sponsor must provide a cash contribution currently estimated to be \$1,878,000.00. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide the Local Sponsor's required cash contribution during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by July 1st of each year of the estimated funds that will be required from the Local Sponsor to meet the Local Sponsor's share of total project costs for the upcoming fiscal year.

2. No later than 60 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of the total project costs required for the first fiscal year of construction, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction. No later than 30 calendar days thereafter, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the requisite amount in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

4. As construction of the Project proceeds, the Government shall, on a regular basis each year, adjust the amounts required to be provided under this paragraph to reflect actual costs to date. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

5. The Government will draw on the escrow provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as Project costs incurred by the Government prior to the initiation of construction.

c. In advance of the Government incurring any financial obligation associated with additional work under Article II.f. or II.g. of this Agreement, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Local Sponsor. The Government shall draw from the funds provided by the Local 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 Local Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Local Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Local Sponsor shall provide the Government with a check for the full amount of the additional required funds.

d. During the period of construction, the Government shall provide quarterly financial reports on the status of total project cost, the cost of additional work under Articles II.f. and II.g. of this Agreement and status of contributions made by the Local Sponsor. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and the cost of any additional work under Article II.f. and II.g. of this Agreement and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs and the cost of any additional work under Article II.f. and II.g. of this Agreement.

1. In the event the total contribution by the Local Sponsor is less than the Local Sponsor's required share of total project costs and the cost of any additional work under Article II.f. and II.g. of this Agreement, the Local 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 Local Sponsor's required share of the total project costs and the cost of any additional work under Article II.f. and II.g. of this Agreement.

2. In the event the total contribution by the Local Sponsor is more than the Local Sponsor's required share of total project costs and the cost of any additional work under Article II.f. and II.g. of this Agreement, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.e.1. of this Agreement. In the event existing funds are not available to repay the Local Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Local Sponsor for excess contributions provided.

e. The Local Sponsor shall provide to the Service, for operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands the cash payments required under Article II.i. of this Agreement. Average annual operation, maintenance, repair, replacement, and rehabilitation costs, at October 1992 price levels, for the Mitigation Features on Service Lands are currently estimated to be \$8,221.00. The dollar amounts set forth in this paragraph are based upon the Government's best estimates but do not reflect future price level changes or anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total annual financial responsibilities of the Local Sponsor for the Mitigation Features on Service Lands.

f. The Local Sponsor shall provide the Local Sponsor's required cash contribution to the Service for the operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands in accordance with the following provisions:

1. For purposes of budget planning, the Service shall notify the Local Sponsor by July 1st of each year of the estimated funds that will be required from the Local Sponsor to perform the operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands for the upcoming fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Service in an escrow or other account acceptable to the Service, with interest accruing to the Local Sponsor.

2. As operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands proceeds, the Service shall, on a regular basis each year, adjust the amounts required to be provided under this paragraph to reflect actual costs to date and anticipated future operation, maintenance, repair, replacement, and rehabilitation costs. If at any time Service determines that additional funds will be needed from the Local Sponsor, the Service shall so notify the Local Sponsor, and the Local Sponsor, no later than 60 calendar days from receipt of such notice, shall make the necessary funds available to the Service through the funding mechanism specified in Article VI.f.1. of this Agreement.

g. The Service will draw on the escrow provided by the Local Sponsor such sums as the Service deems necessary to cover contractual and in-house fiscal obligations attributable to the operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands as they are incurred.

h. The Service shall provide annual financial reports on the status of contributions made by the Local Sponsor and the expenditures made by the Service.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

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

a. After the Government Representative has determined that construction of the Project or functional portion of the Project, other than the Mitigation Features on Service Lands or functional portion thereof, is complete and provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, at no cost to the Government, in accordance with applicable Federal and State laws as provided in Article XII and specific directions prescribed by the Government in an OMRR&R Manual and any subsequent amendments thereto.

b. After the Government Representative has determined that construction of the Mitigation Features on Service Lands, or functional portion thereof, is complete and provided the Service with written notice of such determination, the Service shall operate, maintain, repair, replace, and rehabilitate the completed Mitigation Features on Service Lands or functional portion thereof, with funds provided by the Local Sponsor, at no cost to the Government, in accordance with applicable Federal and State laws as provided in Article XII and specific directions prescribed by the Government in an OMRR&R Manual and any subsequent amendments thereto.

c. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Local 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 Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If after 30 calendar days from receipt of notice, the Local Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Local 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 Local Sponsor of responsibility to meet the Local Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

d. The Service hereby gives the Government and the Local Sponsor the right to enter at reasonable times and in a reasonable manner [upon a 24-hour notice of inspection required] upon land which the Service owns or controls for access to the Mitigation Features on Service Lands for the purpose of inspection, and, if necessary, for the purpose of completing, operating, repairing, maintaining, replacing, or rehabilitating the Mitigation Features on Service Lands. If an inspection shows that the Service is failing to fulfill the

Service obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor and the Service. If the Service persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Service owns or controls for access to the Mitigation Features on Service Lands for the purpose of completing, operating, repairing, maintaining, replacing, or rehabilitating the Mitigation Features on Service Lands. If the Service is unable to operate, maintain, repair, replace and rehabilitate the Mitigation Features on Service Lands due to failure of the Local Sponsor to provide funds for operation, maintenance, repair, replacement, and rehabilitation of the Mitigation Features on Service Lands under this Agreement, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, the Government shall, subject to Article XVI.a. of this agreement, and subject to the availability of funds, pay to the Service the costs of operation, maintenance, repair, replacement and rehabilitation of the Mitigation Features on Service lands for the then current fiscal year. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor or the Service of responsibility to meet their obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save both the Government and the Service free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or the Service or the Government's or the Service's contractors.

ARTICLE X - MAINTENANCE OF RECORDS

a. Within 60 days of the date of this Agreement, the Government, the Service and the Local Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government, the Service and the Local Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

b. The Service hereby gives the Government and the Local Sponsor right of access to and the right to examination during regular business hours [upon a 24-hour notice of inspection required] of all books, records, papers, material and other information or data which the Service may have concerning the OMRR&R work accomplished under the terms of this agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit, when appropriate, of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of the Local Sponsor's costs for inclusion as credit against the Local Sponsor's share of total project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

In the exercise of the Local Sponsor's rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 88-352, 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".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The Government, the Service and the Local Sponsor act in an independent capacity in the performance of their respective functions under this and neither is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of, or delegate to, the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend work under this Agreement until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) 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 or non-Federal interests in connection with the Project. 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.

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 Local Sponsor. After 60 calendar days the Government or Local Sponsor may elect without penalty to terminate this Agreement pursuant to that Article, or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that the Government or Local Sponsor elects to terminate this Agreement pursuant to this Article or Article XVIII.d. of this Agreement, all parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that the Government or Local Sponsor elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Local Sponsor elects to terminate this Agreement.

ARTICLE XVII - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana.

ARTICLE XVIII - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Government Representative, the Local Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on non-

federal lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor which are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

b. After execution of this Agreement, the Government shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for construction, operation, and maintenance of the Mitigation Features on Service Lands. All actual costs incurred by the Government which are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

c. In the event it is discovered through an investigation for hazardous substances or other means that any non-federal lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

d. The Government, and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any non-federal lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination on non-federal lands necessary for the Project. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

e. In the event it is discovered that any lands provided by the Service for construction of the Mitigation Features on Service Lands contain any hazardous substances regulated under CERCLA, the Government, the Service and the Local Sponsor shall determine whether to initiate construction of the Mitigation Features on Service Lands, or if already in construction, to continue with construction of the Mitigation Features on Service Lands, or to terminate construction of the Mitigation Features on Service Lands for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands provided by the Service necessary for the Mitigation Features on Service Lands. Should the Government, the Service and the Local Sponsor determine to proceed or continue with construction of the Mitigation Features on Service Lands after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as among the Government, the Service and the Local Sponsor, for any and all necessary clean up and response costs, 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 as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

f. The Local Sponsor, the Service and the Government shall consult with each other under Article V of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to Article XVIII.d and e. of this Agreement shall not relieve any fourth party from any liability that may arise under CERCLA.

g. As among the Government, the Service and the Local Sponsor, the Local Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Local Sponsor shall operate, maintain, repair, replace and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIX - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

The Honorable Connie Youngblood
Mayor, Town of Colfax
Colfax City Hall
Colfax, LA 71417

If to the Government:

District Engineer
U.S. Army Engineer District, Vicksburg
2101 North Frontage Road
Vicksburg, MS 39180-5191

If to the Service:

Regional Director
U.S. Fish and Wildlife Service
75 Spring Street, S.W.
Atlanta, GA 30303

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 either at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XX - 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.

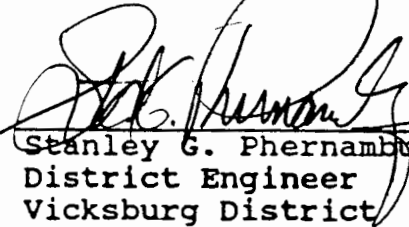
ARTICLE XXI - SECTION 902 PROJECT COST LIMITS

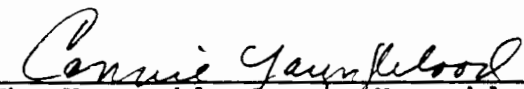
The Local Sponsor has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes the maximum total project cost. For purposes of this Agreement, the Section 902 cost limit is \$10,950,000 as calculated on October 1, 1993. This amount is calculated using procedures set forth in Appendix P of ER 1105-2-100. It shall be adjusted to allow for appropriate increases for inflation and changes in total project costs as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

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

THE DEPARTMENT OF THE ARMY

THE TOWN OF COLFAX, LOUISIANA


BY: 
Stanley G. Phernambucq
District Engineer
Vicksburg District

BY: 
The Honorable Connie Youngblood
Mayor, Town of Colfax

DATE: 9/19/94

DATE: 9/19/94

THE U.S. FISH AND WILDLIFE SERVICE

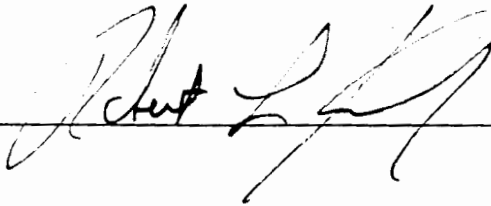
BY: 
John R. Eadie
Acting Regional Director
Atlanta, Georgia

DATE: 9/14/94

CERTIFICATE OF AUTHORITY

I, Robert L. Kennedy do hereby certify that I am the principal legal officer of the Town of Colfax, Louisiana, that the Town of Colfax, Louisiana 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 Town of Colfax, Louisiana in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the Town of Colfax, Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 19th day of September 1994.



Town Attorney Title



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-AR


1.2 AUG 1994

MEMORANDUM FOR Commander, Lower Mississippi Valley Division
(ATTN: CELMV-DP)

SUBJECT: Project Cooperation Agreement (PCA) for the Aloha-Rigolette Area, Louisiana
Flood Control Project, LA

The subject PCA has been approved by the Office of the Assistant Secretary of the Army (Civil Works) for execution subject to the revision of ARTICLE III.a.2. as indicated on the enclosure. The district should prepare four final PCA originals and have them signed by the sponsor. Execution authority is delegated to the District Commander. Please provide a copy of the executed PCA to this office, ATTN: CECW-AR.

Encl


DAVID B. SANFORD, JR.
Acting Chief, Policy Review and
Analysis Division
Directorate of Civil Works

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.

ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

a. The Government, in coordination with the Local Sponsor and the Service, shall provide to the Local Sponsor and the Service, a written description of the anticipated lands, easements, and rights-of-way required for construction, operation and maintenance of the Project.

1. The Local Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Local Sponsor, to be necessary for the construction, operation and maintenance of the Project, except those for those lands, easements, and rights-of-way provided by the Service for the Mitigation Features on Service Lands, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way for the Project may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

2. The Service shall furnish to the Government a mutually acceptable Special Use Permit covering all lands, easements, and rights-of-way on which the Service has a real property interest, including suitable borrow and dredged or excavated material disposal areas, as may be determined by the Government in that description, or in any subsequent description coordinated with the Service, to be necessary for the construction, operation and maintenance of the Mitigation Features on Service Lands or functional portion of the Mitigation Features on Service Lands, including a right to conduct any investigations for hazardous substances in accordance with ARTICLE XVIII. b. of this Agreement. Furthermore, the Service shall furnish to the Government adequate title evidence to determine the legal sufficiency of the Service's interest in such lands to accomplish the Mitigation Features of on Service Lands and assurances that these mitigation lands will be available over the life of the Project. The necessary lands, easements, and rights-of-way for the Mitigation Features on Service Lands may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the Project, except for the areas required for the Mitigation Features on Service Lands.