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MEMORANDUM OF AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND THE  
DESOTO COUNTY, MISSISSIPPI, BOARD OF SUPERVISORS  
FOR ACCEPTANCE AND RETURN OF NON-FEDERAL FUNDS  
FOR FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES  
YAZOO BASIN/COLDWATER RIVER  
ARKABUTLA LAKE  
DESOTO COUNTY, MISSISSIPPI  
CONSTRUCTION OF BETTERMENTS TO MISSISSIPPI STATE HIGHWAY 301  
FROM EUDORA TO ARKABUTLA LAKE RESERVATION BOUNDARY

This MEMORANDUM OF AGREEMENT (hereinafter referred to as the "MOA"), entered into this 14<sup>th</sup> day of March, 1998, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the DISTRICT ENGINEER OF THE U. S. ARMY CORPS OF ENGINEERS, VICKSBURG DISTRICT and the DESOTO COUNTY BOARD OF SUPERVISORS (hereinafter referred to as the "Contributor"), represented by the PRESIDENT OF THE DESOTO COUNTY, MISSISSIPPI, BOARD OF SUPERVISORS.

WITNESSETH THAT:

WHEREAS, during and after a flood event in 1991, damage occurred to a portion of Mississippi Highway 301, from Eudora, Mississippi, to the Arkabutla Lake Reservation Boundary, due to its use by heavy equipment assisting emergency flood control work at Arkabutla Lake; and

WHEREAS, the Congress of the United States (hereinafter "Congress") authorized the FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES YAZOO BASIN/COLDWATER RIVER, ARKABUTLA LAKE DESOTO COUNTY, MISSISSIPPI REPAIR OF MISSISSIPPI STATE HIGHWAY 301 FROM EUDORA TO ARKABUTLA LAKE RESERVATION BOUNDARY (hereinafter referred to as the "Project") in the Energy and Water Development Appropriations Act of 1996, Public Law 104-46; and

WHEREAS, 33 U.S.C. 701r-1(b) provides that, whenever in connection with the construction of any authorized flood control project for the development of water resources, the Chief of Engineers or his designee determines it to be in the public interest to utilize public roads as a means of providing access to such projects during construction, the Corps of Engineers (hereinafter "the Corps") may improve or reconstruct such roads; and

WHEREAS, on 4 September 1996, the Assistant Secretary of the Army (Civil Works) gave approval to initiate the Project pursuant to 33 U.S.C. 701r-1(b); and

WHEREAS, on 9 October 1996, the Acting Director of Civil Works, directed the Commander, Lower Mississippi Valley Division, to initiate the Project pursuant to 33 U.S.C. 701r-1(b) at a cost not to exceed \$100,000, which Congress imposed as a limit in Senate Report 104-120, which accompanied the Energy and Water Appropriations Act of 1996; and

WHEREAS, on 9 October 1996, the Acting Director of Civil Works authorized the transfer of an additional \$1,500,000 from the Flood Control, Mississippi River and Tributaries, Channel Improvement, Revetments project for AR, IL, LA, MS, MO, & TN (CWIS:077046) to the-Project, subject to approval by the Appropriations Committees of both the Senate and House of Representatives of Congress; and

WHEREAS, the Corps obtained such approval on November 20, 1996, bringing the total funds available for the Project to \$1,600,000; and

WHEREAS, the Contributor has expressed a desire to fund-betterments to the Project, as described in paragraph 4 of this MOA; and

WHEREAS, 33 U.S.C. 701r-1(c) provides that for water resources to be constructed in the future, when the taking by the Federal Government of an existing public road necessitates replacement, the Chief of Engineers or his designee is authorized to construct such substitute roads similar to those replaced, and provides further, that where a State or political subdivision requests that the substitute road be constructed to a higher standard and also pays, prior to construction, the additional costs involved due to such higher standard, the Chief of Engineers or his designee is authorized to construct such road to such higher standard; and

WHEREAS, the Contributor considers it to be in its own interest to expedite the CONSTRUCTION of the improvements to the Project by voluntarily contributing funds (hereinafter referred to as "Betterment funds") to be used by the Government for that purpose; and

NOW, THEREFORE, the Government and Contributor agree as follows:

1. Subject to any necessary appropriation, the Contributor shall contribute to the Government, within thirty (30) days after execution of this MOA, the sum of \$100,000. Based upon bids received, the amount required to complete the betterments to the Project may change. If additional funds are required from the Contributor, notification will be made by the District Commander or his representative. The Contributor shall contribute the additional funds to the Government within twenty (20) days of notification.
2. The contributions specified in paragraph 1 above shall be made by check(s) in the appropriate amount, payable to "FAO USACE VICKSBURG DISTRICT", and delivered to the

Commander of the U.S. Army Corps of Engineers VICKSBURG DISTRICT AT 4155 CLAY STREET, VICKSBURG, MISSISSIPPI, or designee.

3. In the event that the Contributor contributes more or less than the amount listed in paragraph 1 above, or makes its contributions earlier or later than the dates listed in paragraph 1 above, this MOA shall apply to whatever funds are contributed by the Contributor to the Government pursuant to this MOA; however, the Government shall not obligate any contributed funds before they are received and available.

4. The Government shall use all Betterment funds for construction of the betterments to the Project, except with regard to excess Betterment funds which are addressed in paragraph 7 of this MOA. , The term "betterments to the Project" shall mean drainage improvements to the Project requested by the Contributor and acceptable to the Government, including the placement of 290 feet of concrete curb and gutter, removal of three existing corrugated metal pipes and replacement with reinforced concrete pipe, placement of concrete headwalls at twenty-nine existing culverts, and any additional betterments agreed to by the Government and the Contributor. Nothing in this MOA shall commit the Government to use any funds other than Betterment funds to construct the betterments to the Project.

5. The Government shall provide the Contributor with quarterly accountings of its expenditures of Betterment funds for construction. The first such accounting shall be provided within 30 days after the final day of the first complete Government fiscal year quarter following receipt of the Betterment funds, and subsequent accountings shall be provided within 30 days after the final day of each succeeding quarter until the Betterment funds are completely expended or the Government concludes construction on the Project and the betterments to the Project.

6. With respect to Betterment funds which the Government expends on construction of the betterments to the Project (hereinafter referred to as "expended Betterment funds"), the Government shall credit the Contributor for the expended Betterment funds so as to reduce the cash contribution which would otherwise be required of the Contributor pursuant to this MOA.

7. With respect to Betterment funds that are in excess of the amount necessary for the Government to complete construction of the betterments to the Project (hereinafter referred to as "excess Betterment funds"), the Government shall at the discretion of the Contributor and subject to the availability of Federal funds, return any or all of the excess Betterment funds to the Contributor when the Government determines such funds are no longer needed, subject to the approval of the Secretary of the Army.

8. Upon acceptance of the constructed Project and the betterments to the Project, the Government will turn the completed Project and betterments to the Project over to the Contributor. The Contributor hereby releases the Government from all responsibility for improvement, reconstruction, and maintenance of the Project and the betterments to the Project after it is turned over to the Contributor.

9. Nothing herein shall constitute, or be deemed to constitute, an obligation of future

appropriations by the United States.

10. Nothing herein shall constitute, or be deemed to constitute, an assurance or promise of the Government to take any action whatsoever with respect to the Project or the betterments to the Project, including but not limited to the following actions: constructing the Project or the betterments to the Project; including the Project or the betterments to the Project in the Government's budget; or completing the construction of the Project or the betterments to the Project.

11. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, 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.

12. The Contributor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance, repair, replacement, and rehabilitation of the Project or the betterments to the Project, except for damages due to the fault or negligence of the Government.

13. Federal and State Laws. In the exercise of their respective rights and obligations under this MOA, the Contributor 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 , entitled "Nondiscrimination in Federally Assisted Programs", 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".

14. Relationship of Parties. In the exercise of their respective rights and obligations under this MOA, the Government and the Contributor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

15. Officials Not to Benefit. No member of or delegate to the Congress, nor any public official, shall be admitted to any share or part of this MOA, or to any benefit that may arise therefrom.

16. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA 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 Contributor:

DESOTO COUNTY, MISSISSIPPI  
BOARD OF SUPERVISORS

2535 HIGHWAY 51 SOUTH  
HERNANDO, MISSISSIPPI 38632

If to the Government:

VICKSBURG DISTRICT  
4155 CLAY STREET  
VICKSBURG, MISSISSIPPI 39180

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 paragraph a.


c. Any notice, request, demand, or other communication made pursuant to paragraph a shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven days after it is mailed.

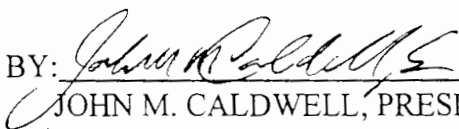
16. Confidentiality. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

THE DEPARTMENT OF THE ARMY

DESOTO COUNTY, MISSISSIPPI  
BOARD OF SUPERVISORS

BY:   
GARY W. WRIGHT, COLONEL  
CORPS OF ENGINEERS  
DISTRICT ENGINEER

BY:   
JOHN M. CALDWELL, PRESIDENT  
DESOTO COUNTY, MISSISSIPPI  
BOARD OF SUPERVISORS

#### CERTIFICATION REGARDING LOBBYING

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

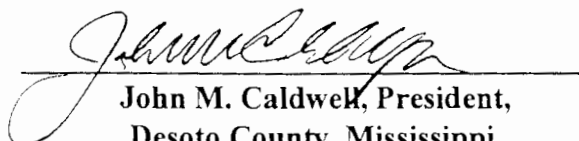
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
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**John M. Caldwell, President,  
Desoto County, Mississippi,  
Board of Supervisors**

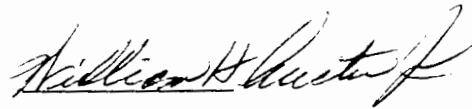
DATE: 3-11-98

### CERTIFICATE OF AUTHORITY

I, , do hereby certify that I am the principle legal officer of Desoto County, Mississippi, Board of Supervisors, that Desoto County 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 Desoto County in connection with the EUDORA TO ARKABUTLA LAKE, MISSISSIPPI, HIGHWAY CONSTRUCTION BETTERMENTS PROJECT MEMORANDUM OF AGREEMENT and to pay damages in

accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Desoto County have acted within their statutory authority.

**IN WITNESS WHEREOF**, I have made and executed this certification this 11<sup>th</sup> day of March 1998



William Austin  
Attorney, Desoto County Board of Supervisors  
Desoto County