

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
RED RIVER WATERWAY COMMISSION
OF THE STATE OF LOUISIANA
FOR THE PROJECT FOR MITIGATION OF
FISH AND WILDLIFE LOSSES,
RED RIVER WATERWAY, LOUISIANA
(12,000 Acres in the Vicinity of
Bayou Bodcau Wildlife Management Area)

THIS AGREEMENT is entered into this 17th day of JUNE, 1996, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer, and the RED RIVER WATERWAY COMMISSION OF THE STATE OF LOUISIANA (hereinafter the "State"), represented by its Chairman.

WITNESSETH, THAT:

WHEREAS, Public Law 90-483 authorized the construction of the Red River Waterway, Louisiana, Texas, Arkansas, and Oklahoma project; and,

WHEREAS, on February 26, 1969, the State executed Assurances to the United States for Local Cooperation in regard to the construction of the Red River Waterway, Louisiana, Texas, Arkansas, and Oklahoma project, and said assurances were accepted by the United States on April 15, 1969; and,

WHEREAS, on May 23, 1973, the State amended the above-mentioned Assurances to include the applicable provisions of Public Laws 91-611 and 91-646, and said amendment was accepted by the United States on November 14, 1973; and,

WHEREAS, Public Law 96-285 established the Tensas National Wildlife Refuge which provides for mitigation of fish and wildlife losses for that part of the Red River Waterway, Louisiana Project below river mile 104; and,

WHEREAS, the Report of the Chief of Engineers, dated December 28, 1984, presents a plan for mitigation of fish and wildlife losses for that part of the Red River Waterway, Louisiana Project above river mile 104, and provides that the Government shall bear 94 percent of the acquisition and development cost and 94 percent of the management costs and that furthermore, the non-Federal interest shall bear 6 percent of the acquisition and development cost and 6 percent of the management costs of lands purchased in accordance with this plan; and,

WHEREAS, Section 601(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, authorized the project for mitigation of fish and wildlife losses above river

mile 104 (hereinafter referred to as the Authorized Project) for the Red River Waterway, Louisiana Project, in accordance with the report of the Chief of Engineers, dated December 28, 1984, and provided further that the land the Secretary of the Army may purchase for such Project may include all or such portion of any land referred to in the report or all or such portion of any land adjacent to the Loggy Bayou Wildlife Management Area in Bossier Parish, Louisiana, which the Secretary determines is appropriate; and,

WHEREAS, Section 102(p) of the Water Resources Development Act of 1990, Public Law 101-640, modified the Authorized Project to authorize the Secretary of the Army to acquire an additional 12,000 acres adjacent to or close to the Bayou Bodcau Wildlife Management Area (hereinafter the "Project", as defined in Article I.A. of this Agreement); and,

WHEREAS, the Energy and Water Development Appropriation Act, 1992, Public Law 102-104, enacted on August 17, 1991, directed the Secretary of the Army to initiate planning and acquisition of mitigation lands in the Bayou Bodcau area for the mitigation of fish and wildlife losses all as authorized by laws; and,

WHEREAS, the Energy and Water Development Appropriation Act, 1994, Public Law 103-126, enacted on October 28, 1993, directed the Secretary of the Army to provide annual reimbursement to the Project's local sponsor for the Federal share of management costs for the Bayou Bodcau Mitigation Area as authorized by Public Law 101-640, the Water Resources Development Act of 1990; and,

WHEREAS, the Government and the State desire to enter into a Project Cooperation Agreement for the Project; and,

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

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

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the acquisition and development, for fish and wildlife mitigation purposes, of up to 12,000 acres of low woodland, upland woodland, open land, and water adjacent to and on each side of Cypress, Bodcau, and Red Chute Bayous extending from below the dams of Cypress and Bayou Bodcau Reservoirs southerly to an area of higher elevation approximately three miles northeast of Bossier City, Louisiana. The lands are located in Bossier Parish, Louisiana, in Townships 19 and 20 North, Ranges 11, 12, and 13 West, generally as described in the Red River Waterway, Mississippi River to Shreveport, Louisiana, Red River Mitigation Lands, Bayou Bodcau Area, Bossier Parish, Louisiana, Real Estate Design Memorandum No. 47, dated February 1993 and approved August 3, 1994. Although the lands described for acquisition and development in Real Estate Design Memorandum No. 47 total 10,538 acres, should additional lands desirable for the project outside the currently defined Project boundaries, but generally within the authorized Project area, not to exceed a total of 12,000 acres, be identified in the future, then such additional lands may be added to the Project upon approval of a supplement to Real Estate Design Memorandum No. 47 and without the need to supplement or otherwise modify this Agreement.

B. The term "total Project costs" shall mean all costs incurred by the State and the Government in accordance with the terms of this Agreement directly related to acquisition and development of the Project. The term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; the costs of investigations to identify the existence and extent of hazardous substances and the clean-up and response costs therefor in accordance with Article XIV of this Agreement; costs of historic preservation activities in accordance with Article XVII of this Agreement; actual acquisition and development costs; costs for establishment of Project boundaries; costs for providing limited access required for management; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article IV of this Agreement; costs of contract dispute settlements or awards; and the costs of utility and facility alterations or relocations, but shall not include any costs for betterments or for management.

C. The term "financial obligation for acquisition and development" shall mean a financial obligation of the Government that results in a cost that is or would be included in the total project cost.

D. The term "State's proportionate share" shall mean the ratio of the State's total cash contribution required in accordance with Articles II.D. and II.F of this Agreement to total financial obligations for acquisition and development or annual management costs, as applicable.

E. The term "Government's proportionate share" shall mean the ratio of the Government's cash contribution required in accordance with Articles II.E. and II.G of this Agreement to total financial obligations for acquisition and development or annual management costs, as applicable.

F. The terms "develop" and "development" shall mean the establishment of access roads or improvements thereto, fencing, food plots, equipment, and other facilities necessary for management, on the lands acquired for the Project.

G. The terms "manage" and "management" shall mean the necessary operation, maintenance, repair, replacement, and rehabilitation of the Project or functional portion of the Project and other wildlife management activities for fish and wildlife mitigation purposes on the lands acquired for the Project, such as timber stand management, wood duck boxes, maintenance of open areas by discing, and food plantings or burning, in accordance with the Management Plan as defined in Article I.N. of this Agreement.

H. The term "management costs" shall mean the costs of preparing the Management Plan and all costs of managing the Project or functional portion of the Project after leasing Project lands to the State for management.

I. The term "period of acquisition and development" shall mean the time from the effective date of this Agreement to the date the District Engineer for the Vicksburg District (hereinafter the "District Engineer") notifies the State in writing of the Government's determination that acquisition and development for the Project is complete.

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

K. 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, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

L. 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.

M. The term "functional portion of the Project" shall mean an acquired and developed portion of the Project, for which the District Engineer has determined in writing that the lands are suitable for leasing to the State for management in advance of completion of acquisition and development for the entire Project. For the lands of an acquired and developed portion of the Project to be suitable for leasing, the District Engineer must determine that the acquired and developed portion of the Project can function independently and for a useful purpose, although the balance of acquisition and development for the Project is not complete.

N. The term "Management Plan" shall mean a program for the management of the Project or functional portions of the Project that is generally in accordance with the recommendations contained in Appendix A to the U.S. Fish and Wildlife Service Planning Aid Letter, Appendix B, to the Red River Waterway, Louisiana, Texas, Arkansas, and Oklahoma, Mississippi River to Shreveport, Louisiana, Final Report and Final Environmental Impact Statement for Acquisition of Wildlife Mitigation Lands, dated September 1983. The State shall prepare the Management Plan.

O. The term "lease" shall mean the Government action of providing authority to the State to manage lands acquired for the Project, or a functional portion thereof, in accordance with the terms of the Management Plan.

P. The term "betterment" shall mean a change in the acquisition and development 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 acquisition and development of that element.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE STATE

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the State, shall expeditiously proceed with acquisition and development for the Project applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the State the opportunity to review and comment on the priority and desirability of lands selected for acquisition and development, prior to initiation of

negotiations with property owners. The Government shall not initiate negotiations with the owner of the first parcel selected for acquisition and development until the State has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the State the opportunity to review and comment on all changes to lands selected for acquisition and development, prior to initiation of negotiations with property owners. In any instance where providing the State with notification of a change to lands selected for acquisition and development is not possible prior to initiating negotiations, the Government shall provide such notification in writing at the earliest date possible. The Government shall consider in good faith the comments of the State pertaining to the acquisition and development of lands and the specific lands to be acquired and developed, but final determination on these matters 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 acquisition and development, the District Engineer shall furnish the State with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project development measures.

3. The State shall prepare the Management Plan and shall submit the Management Plan to the Government for approval prior to the Government completing acquisition and development of the Project or a functional portion thereof. Any subsequent revisions of the Management Plan proposed by the State shall also be submitted to the Government for approval.

B. The State may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the State 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 State shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article V.E. of this Agreement.

C. When the District Engineer determines that lands for the Project, or a functional portion of the Project, have been acquired and developed, the District Engineer shall so notify the State in writing and furnish the State a lease for the lands acquired for the Project, or functional portion of the Project, and the State shall accept the lease and be solely responsible over the term of the lease for management of the Project, or functional portion of the Project, in accordance with the Management Plan approved by the Government and in accordance with

Article VII of this Agreement. The District Engineer shall also furnish the State with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project development measures or those development measures associated with the functional portion of the Project that have not been provided previously. The State may use any net revenues from the Project, or functional portion thereof, for the management of the Project. The term of the lease shall be 100 years, unless the Government and the State mutually agree in writing to extend the term.

D. The State shall furnish, during the period of acquisition and development, a cash contribution equal to 6 percent of total project costs in accordance with Article V.B. of this Agreement, except as otherwise specified in Article XIV.E. of this Agreement.

E. Subject to receiving funds appropriated by the Congress, the Government shall furnish, during the period of acquisition and development, a share of the total Project costs equal to 94 percent of total Project costs.

F. After the Government has leased the lands acquired for the Project or a functional portion of the Project to the State, the State shall, over the term of the lease, perform management of the Project or functional portion of the Project for fish and wildlife mitigation purposes and shall provide 6 percent of management costs.

G. After the Government has leased the lands acquired for the Project or a functional portion of the Project to the State, and subject to receiving funds appropriated by the Congress, the Government shall, over the term of the lease, reimburse the State a cash amount equal to 94 percent of annual management costs that are reasonable, allowable, and allocable in accordance with Article V.D. of this Agreement.

H. The Government shall perform a final accounting in accordance with Article V.G. of this Agreement to determine the contributions provided by the State in accordance with paragraphs B. and D. of this Article and Articles IV, IX, and XIV.A. of this Agreement and to determine whether the State has met its obligations under paragraphs B. and D. of this Article.

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

J. No provision of this Agreement shall merge into any lease issued for management of the Project lands, 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 XIII of this Agreement.

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

Subject to the availability of funds, the Government shall acquire all lands, easements, and rights-of-way required for the Project and shall accomplish all necessary relocations required for the Project. The Government 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 for the Project, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the State 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 acquisition and development. The Government's Project Manager and a counterpart named by the State shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the State's counterpart shall keep the Project Coordination Team informed of the progress of acquisition and development and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. The Project Coordination Team shall generally oversee the Project during the period of acquisition and development consistent with the overall project management plan for the Red River Waterway developed by the Government after consultation with the State. Matters that the Project Coordination Team generally oversees include issues related to scheduling; project acquisition and development documents; the Government's and State's cost projections; preparation of the Management Plan; anticipated requirements and needed capabilities for management of the Project; and other issues related to acquisition, development, and management of the Project.

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 acquisition and development 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 V - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By August 1 of each year and at least quarterly thereafter, the Government shall provide the State with a report setting forth all contributions provided to date and the current projections of total project costs and costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the State's total cash contributions required in accordance with Articles II.B. and II.D. of this Agreement, and of the funds the Government projects to be required from the State for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$7,920,000, and the State's cash contribution required under Article II.D. of this Agreement is projected to be \$475,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the State.

B. The State shall provide the cash contribution required under Article II.D. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days from the effective date of this Agreement, the Government shall notify the State in writing of the funds required from the State to meet its proportionate share of the Government's projected financial obligations through the first fiscal year of acquisition and development, including its proportionate share of the Government's financial obligations incurred prior to the commencement of the period of acquisition and development. Not later than 30 calendar days after receipt of the Government's notification, the State shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Vicksburg" to the District Engineer.

2. For the second and subsequent fiscal years of acquisition and development, the Government shall notify the State in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds required from the State to meet its proportionate share of the Government's projected financial obligations for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the State shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article V.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover: (a) the State's proportionate share of the Government's financial obligations incurred prior to the commencement of the period of acquisition and development; and (b) the State's proportionate share of the Government's contractual and in-house financial obligations as they are incurred during the period of acquisition and development.

4. If at any time during the period of acquisition and development the Government determines that additional funds will be needed from the State to cover the State's proportionate share of the Government's projected financial obligations for the current fiscal year, the Government shall notify the State in writing of the additional funds required, and the State, no later than 45 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article V.B.1. of this Agreement.

C. The State shall maintain current records of contributions provided by the parties and current projections of management costs. By August 1 of each year, the State shall provide the Government with a report setting forth the current projections of management costs, of the components of management costs, of each party's share of management costs, of the Government's cash reimbursement required in accordance with Article II.G. of this Agreement, and of the funds the State projects to be required from the Government at the end of the upcoming fiscal year. On the effective date of this Agreement, annual management costs are projected to be \$234,000, and the Government's annual cash reimbursement required under Article II.G. of this Agreement is projected to be approximately \$220,000. Such amounts are estimates subject to adjustment and are not to be construed as the total annual financial responsibilities of the State and the Government.

D. The Government, subject to receiving funds appropriated by the Congress, shall reimburse the State as required under Article II.G. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for leasing the lands acquired for the Project or a functional portion of the Project to the State, the State shall notify the Government in writing of the projected funds required from the Government to reimburse its proportionate share of the State's projected financial obligations through the first fiscal year of management, including its proportionate share of the State's financial obligations previously incurred in the development of the Management Plan. Not less than 30 calendar days after receipt of the State's projection, the Government shall notify the State in writing of the funds available for the Government to reimburse its proportionate share of the State's projected financial obligations at the end of the first fiscal year of management, including its proportionate share of the State's financial obligations previously incurred in the development of the Management Plan. With the exception of development of the Management Plan, the State shall not receive reimbursement for costs subject to reimbursement unless the Government provided the State with a written funds availability notice prior to the time the State incurred such costs. Within 30 calendar days after the end of the first fiscal year of management, the State shall submit a request for the Government's share of the costs incurred, to include duplicate invoices with supporting documentation showing complete work performance and costs thereof by line item as identified in the Management Plan. Within 30 calendar days of receipt of acceptable invoices from the State and upon approval of the invoices by the Government, the Government shall provide the State the full amount of the Government's share by delivering a check payable to "Red River Waterway Commission" in accordance with Article XV of this Agreement.

2. For the second and subsequent fiscal years of management, the State shall notify the Government in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds projected to be required from the Government at the end of the fiscal year to reimburse its proportionate share of the State's projected financial obligations for that fiscal year. The Government shall notify the State in writing, no later than 30 calendar days after receipt of the State's projection, of the funds available for the Government to reimburse its proportionate share of the State's projected financial obligations for that fiscal year. No later than 30 calendar days after the end of the fiscal year, the State shall submit a request for the Government's share of the costs incurred, to include the same supporting documentation described in Article V.D.1. No later than 30 calendar days after receipt of acceptable invoices from the State and upon approval by the Government of the State's invoices, the Government shall make the full amount of its share of funds for the fiscal year just ended available to the State through the funding mechanism specified in Article V.D.1. of this Agreement.

E. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. of this Agreement, the State 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, Vicksburg" to the District Engineer. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover the Government's contractual and in-house financial obligations as they are incurred. In the event the Government determines that the State must provide additional funds to meet its cash contribution, the Government shall notify the State in writing of the additional funds required. Within 45 calendar days thereafter, the State shall provide the Government with a check for the full amount of the additional required funds.

F. For purposes of budget planning and to permit the State sufficient time to prepare to perform management, the Government shall notify the State no later than 90 calendar days prior to the date the Government intends to lease lands acquired for the Project to the State for management.

G. Upon completion of the Project or termination of this Agreement, and resolution of all relevant claims and appeals, and upon completion of the Management Plan, the Government shall conduct a final accounting and furnish the State with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the State'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 State 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 State 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 State'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 State 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 State 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 State, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VI - 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 VII - MANAGEMENT

A. After the Government has leased the lands acquired for the completed Project, or functional portion of the Project, to the State, the State shall, over the term of the lease, manage the completed Project, or functional portion of the Project, in accordance with the Management Plan, or revisions thereof, as approved by the Government.

B. The State hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property leased to the State for the purpose of inspection, and, if necessary, for the purpose of managing the Project. If an inspection shows that the State, 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 State. If after 30 calendar days from receipt of notice, the State continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands leased to the State for the purpose of managing the Project. No managing by the Government shall operate to relieve the State of responsibility to meet the State'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 VIII - INDEMNIFICATION

The State shall hold and save the Government free from all damages arising from the acquisition, development, and management of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the State 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 State 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 acquisition and development of the Project and resolution of all relevant claims arising therefrom. For costs and expenses of management incurred pursuant to this Agreement, the Government and the State shall maintain such books, records, documents, and other evidence in accordance with these procedures and over the term of the lease for management of the Project. To the extent permitted under applicable Federal laws and regulations, the Government and the State 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 State 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-128 and Department of Defense Directive 7600.10. Upon request of the State and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the State and independent auditors any information necessary to enable an audit of the State'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-128, and such costs as are allocated to the Project shall be included in total project costs or management costs, as applicable, 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 State 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, or management costs, as applicable, and cost shared in accordance with the provisions of this Agreement.

ARTICLE X - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the State and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XI - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the State 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 XII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the State fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State 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 State elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XIV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article V.G. of this Agreement. Termination of this Agreement by either party will also terminate the lease. Should the Government elect to suspend future performance under this Agreement pursuant to paragraph A of this Article, the premises will be subject to closure and temporary suspension of operation, and the lease will be subject to revocation. Should suspension of future work be elected pursuant to paragraph B of this Article, the lease may be suspended, with temporary closure of premises and suspension of operation of previously furnished functional areas, or the State may elect to continue management of those areas in accordance with the lease at risk of nonreimbursement of the Government's share of management costs.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the State 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 XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Government shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the State 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 necessary for Project acquisition, development, and management. All actual costs incurred by 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.

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 necessary for Project acquisition, development, and management, the State and the Government shall provide prompt notice to each other, and the Government shall not proceed with the acquisition of the real property interests until both parties agree that the Government should proceed.

C. The Government and the State shall determine whether to initiate acquisition and development of the Project, or, if already begun, 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 necessary for Project acquisition, development, and management. Should the Government and the State determine to initiate or continue with acquisition and development after considering any liability that may arise under CERCLA, the Government shall be responsible, as between the Government and the State, for providing funds associated with the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be included in the total Project costs and cost shared in accordance with Article II of this Agreement.

D. The State and the Government shall consult with each other in accordance with Article IV of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. After the Government has leased the lands acquired for the Project or any functional portion thereof to the State, the Government, subject to the availability of appropriations, and the State shall share in all necessary clean up and response costs over the term of the lease in accordance with the cost sharing provisions of Article II of this Agreement, except that the State shall bear 100 percent of the costs of any clean up or response action resulting from failure to exercise due care in conducting the State's own activities or in regulating the conduct of third parties on Project lands.

ARTICLE XV - 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 State:

Red River Waterway Commission
P.O. Box 776
Natchitoches, Louisiana 71458-0776

If to the Government:

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

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 XVI - 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 XVII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in

accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the State and the Government in accordance with the provisions of this Agreement.

ARTICLE XVIII - COOPERATION

In the event of any litigation in State or Federal court involving any third party affected by this Agreement, both parties agree to use their best efforts to cooperate with each other in preparation for and trial of any such claim or cause of action, and agree to make available to each other all documents and witnesses which may be relevant to the preparation for or trial of such actions, consistent with Federal laws and regulations concerning the release of documents and the availability of providing expert witnesses.

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

THE DEPARTMENT OF THE ARMY

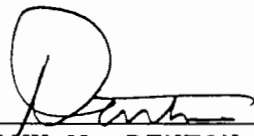
THE STATE OF LOUISIANA

BY:



GARY W. WRIGHT
Colonel, Corps of Engineers

BY:



FRANK M. DENTON
Chairman, Red River
Waterway Commission

DATE:

17 Jun 96

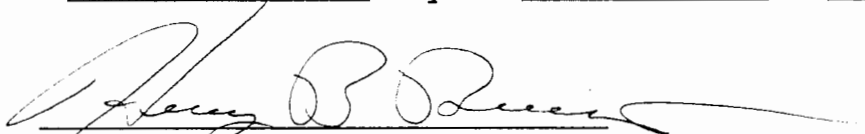
DATE:

17 Jun 96

CERTIFICATE OF AUTHORITY

I, HENRY B. BRUSER, do hereby certify that I am the principal legal officer of the Red River Waterway Commission, that the Red River Waterway Commission 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 Red River Waterway Commission in connection with the Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who has executed this Agreement on behalf of the Red River Waterway Commission has acted within his/her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 17th day of JUNE 1996.



HENRY B. BRUSER
Legal Officer
Red River Waterway Commission

CERTIFICATION REGARDING LOBBYING

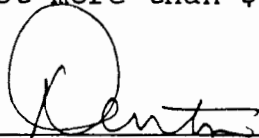
The undersigned certifies, to the best of his or her knowledge and belief that:

(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 sub-awards 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.



FRANK M. DENTON
Chairman, Red River
Waterway Commission

DATE: 17 Jun 96