

LOCAL 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
(Up to 5,000 Acres in Bossier Parish, Louisiana)

THIS AGREEMENT is entered into this 16th day of June, 1993, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the RED RIVER WATERWAY COMMISSION OF THE STATE OF LOUISIANA (hereinafter referred to as the "State"), acting by and through its Chairman.

WITNESSETH, THAT:

WHEREAS, Public Law 90-483 authorized the construction of the Red River Waterway, Louisiana, Texas, Arkansas, and Oklahoma; 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, 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 4(h) of Water Resources Development Act of 1988, Public Law 100-676, modified the Authorized Project to authorize the Secretary of the Army to obtain, on a priority basis, up to 300 acres in the area of Stumpy Lake as part of such Project and provided that the modification shall not increase the total authorization for land acquisition for such Project; and,

WHEREAS, the Energy and Water Development Appropriation Act, 1990, Public Law 101-101, enacted on September 29, 1989, appropriated \$2,465,000 and directed the Secretary of the Army to acquire up to 5,000 acres of land in Bossier Parish, Louisiana, in the vicinity of Stumpy Lake, Swan Lake, and the Loggy Bayou Wildlife Management Area as an element of the Authorized Project (hereinafter referred to as 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 continue land acquisition in the vicinity of Stumpy Lake/Swan Lake/Loggy Bayou Wildlife Management Area to ensure acquisition of manageable units and develop such lands to maximize benefits for mitigation of fish and wildlife losses; and,

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

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 local cooperation for the project; and,

WHEREAS, the Report of the Chief of Engineers, dated December 28, 1984, 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 for the Authorized Project; and,

WHEREAS, the Report of the Chief of Engineers, dated December 28, 1984, provides that the Government's share of the cost of managing the Authorized Project shall be capitalized, and that such capitalized amount shall be applied against the non-Federal share of the acquisition and development cost for the Authorized Project, and should such capitalized amount exceed such share, that portion remaining should be applied against the

non-Federal share for other features of the Red River Waterway, Louisiana project; and,

WHEREAS, in accordance with the decision of February 9, 1991, by the Acting Assistant Secretary of the Army (Civil Works), the Government's share of the average annual management costs for the Project shall be capitalized using the interest rate specified in Section 106 of the Water Resources Development Act of 1986, Public Law 99-662; and,

WHEREAS, the State has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost sharing and financing in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For the purpose of this Agreement:

a. The term "Project" shall mean the acquisition and development, for fish and wildlife mitigation purposes, of up to 5,000 acres of multi-grade bottom-land hardwoods, pine-hardwoods, and mixed habitat (pastures, open lands, cropped lands, and fallow fields) in Bossier Parish, Louisiana, in Townships 15 and 16 North, Ranges 10 and 11 West, generally south of Lake Bistineau, west of the Loggy Bayou Wildlife Management Area, north of U.S. Highway 71, and east of Red Chute Bayou, generally as described in the Red River Waterway, Mississippi River to Shreveport, Louisiana, Red River Mitigation Lands, Bossier Parish, Louisiana, Real Estate Design Memorandum No. 46, dated July, 1990 and approved February 27, 1991.

b. The term "total Project costs" shall mean all costs incurred by the Government directly related to acquisition and development of the Project. Such cost shall include, but not necessarily be limited to, continuing planning and engineering cost incurred after October 1, 1985; costs of applicable engineering and design; actual acquisition and development costs; costs for establishment of Project boundaries; costs for providing limited access required for management; supervision and administration costs; cost 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 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.

d. The terms "management" and "manage" 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 Phase 1 Management Plan as defined in Article I.1 of this Agreement.

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

f. The term "period of acquisition and development" shall mean the time from the initiation of acquisition for the Project to the time the Contracting Officer certifies in writing to the State that acquisition and development for the Project is complete. The Contracting Officer shall furnish to the State copies of the Government's Written Notice of Acceptance of Completed Work furnished to contractor(s) for all contracts for the Project.

g. The term "Contracting Officer" shall mean the U.S. Army Engineer for the Vicksburg District.

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

i. The term "relocations" shall mean preparation of plans and specifications for, and accomplishment of, all alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing railroads, highways, bridges, railroad bridges and approaches thereto, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the management of the Project.

j. The term "fiscal year" shall mean one fiscal year of the Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

k. The term "functional portion of the Project" shall mean an acquired and developed portion of the Project, for which the Contracting Officer has determined in writing that the lands are suitable for licensing 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 licensing, the Contracting Officer 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.

l. The term "Phase 1 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.

m. The term "license" 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 Phase I Management Plan.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds appropriated by the Congress of the United States, shall expeditiously proceed with acquisition and development for the Project (including relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The State will be given the opportunity to review, comment and approve the priority and desirability of lands selected for acquisition and development, prior to initiation of negotiations with property owners. The Contracting Officer will notify the State, when practicable, of all changes to lands selected for acquisition and development, prior to initiation of negotiations with property owners. In those cases where such notification of the State is not practicable, such notification will be at the earliest date possible. The Government will consider the comments of the State pertaining to the acquisition and development of lands and the specific lands to be acquired and developed, but final determinations on these matters will be exclusively within the control of the Government.

b. The State shall prepare the Phase 1 Management Plan and shall submit the Phase 1 Management Plan to the Government for approval prior to the Government completing acquisition and development of the Project or a functional portion thereof.

c. When the Government determines that lands for the Project, or a functional portion of the Project, have been acquired and developed, the Government shall provide to the State a license for the lands acquired for the Project, or functional

portion of the Project, and the State shall accept the license and be solely responsible over the term of the license for management of the Project, or functional portion of the Project, in accordance with the Phase 1 Management Plan approved by the Government and in accordance with Article VIII of this Agreement. The State can use any net revenues from the Project, or functional portion thereof, for the management of the Project. The term of the license shall be 100 years, unless the Government and the State shall mutually agree in writing to extend the term.

d. The Government shall determine a credit amount (hereinafter referred to as the "credit amount") equal to 94 percent of the present worth of the estimated average annual management costs over the 100-year period of economic analysis. The Government shall compute present worth based on a rate of interest to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the 100-year period of economic analysis, during the month preceding the fiscal year in which costs for acquisition of the Project are first incurred, plus a premium of one-eighth of one percentage point for transaction costs.

e. Subject to the availability of funds, the Government shall bear, during the period of acquisition and development, a share of the total Project costs equal to the sum of 94 percent of total Project costs plus the credit amount, but not to exceed 100 percent of total Project costs.

f. The State shall bear, during the period of acquisition and development, a share of the total Project costs equal to 6 percent of total Project costs minus the credit amount. Should the credit amount be less than 6 percent of total Project costs, the State shall make a cash contribution in the amount of the remainder of the 6 percent share in accordance with Article VI.c of this Agreement. Should the credit amount exceed 6 percent of total Project costs, the Government, in accordance with Article VI.e of this Agreement, subject to the availability of funds, shall apply the remaining balance of the credit amount, over and above 6 percent of total Project costs, against the State's contributions for the Red River Waterway, Louisiana, project and/or the Red River Waterway, Louisiana project recreation features that are provided to the Government after the effective date of this Agreement. In no event shall the State be entitled to a cash payment from the Government during the period of acquisition and development for the remaining balance of the credit amount.

g. After the Government has licensed the lands acquired for the Project or a functional portion of the Project to the State, the State shall, over the term of the license, perform

management of the Project or functional portion of the Project for fish and wildlife mitigation purposes and bear 100 percent of the management costs.

h. Except as provided in this Agreement, no Federal funds may be used to meet the State's 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.

i. No provision of this Agreement shall merge into any license 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 XVI of this Agreement.

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

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 inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. For purposes of Article VI.e.3.a of this Agreement, the value of the lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, shall be determined in accordance with the following procedures:

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

2. If the lands, easements, or rights-of-way are acquired by the State after the date that acquisition for the Project is initiated, the value 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 State pays an amount in excess of the approved appraised fair market value, the Government may, in the sole discretion of the Assistant Secretary of the Army for Civil Works, approve the actual purchase price paid as the basis for value.

3. If the State acquires more lands, easements, or rights-of-way than the Government determines are necessary for construction, operation, and maintenance of the applicable features of the Red River Waterway, Louisiana project, including recreation features, then credit shall be applied only for 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 those features.

4. The value 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. The value for lands, easements, or rights-of-way acquired by the State 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 State's obligations for lands, easements, and rights-of-way for the applicable features, including recreation features, of the Red River Waterway, Louisiana, project.

b. For purposes of Article VI.e.3.a of this Agreement, the value of relocations 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 the value of the relocation.

ARTICLE V - ACQUISITION AND DEVELOPMENT PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the State and the Government during the period of acquisition and development of the Project, the State and the Government shall appoint representatives to coordinate on scheduling, Project acquisition and development documents, and other matters relating to acquisition and development of the Project. The State will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of acquisition and development of the Project and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to acquisition and development of the Project, but the Contracting Officer, having ultimate responsibility for acquisition and development of the Project, has complete discretion to accept, reject, or modify the recommendations.

ARTICLE VI - METHOD OF PAYMENT AND CREDIT

a. As required under Article II of this Agreement, the State shall provide cash payments during the period of construction, or the Government shall apply the remaining balance of the credit amount, as the case may be. Total Project costs are currently estimated to be \$4,087,000, of which 6 percent is \$245,000. Estimated average annual management costs are currently estimated to be \$98,800. The present worth of the estimated average annual management costs over the 100-year period of economic analysis is currently estimated to be \$1,234,000. The credit amount is currently estimated to be \$1,160,000. Based on current estimates, no cash contribution from the State is anticipated. The remaining balance of the credit amount is currently estimated to be \$915,000. The dollar amounts set forth in this paragraph are based upon the

Government's best estimates of the total Project costs, which will reflect projections of costs, price level changes, and anticipated inflation. The dollar amounts set forth in this paragraph are subject to adjustment based on actual costs incurred and are not to be construed as the final responsibilities of the State and the Government.

b. For the purpose of budget planning, the Government shall notify the State, by August 1 of each year during the period of acquisition and development, of the Government's estimates for the following:

1. Total Project costs and 6 percent of total Project costs;
2. The average annual management costs over the 100-year period of economic analysis;
3. The present worth of the average annual management costs over the 100-year period of economic analysis;
4. The credit amount;
5. The total cash contribution by the State or the total remaining balance of the credit amount, as the case may be;
6. Scheduled total Project costs for the upcoming fiscal year; and
7. The cash contribution by the State, if any, for the upcoming fiscal year.

c. Should a cash contribution be required of the State as specified in Article II.f of this Agreement, the State shall provide the cash contribution during the period of acquisition and development in accordance with the following provisions:

1. No later than 60 calendar days prior to the initiation of acquisition for the Project, the Government shall notify the State of the State's cash contribution for the first fiscal year of acquisition and development for the Project, including the cash contribution for costs attributable to the Project incurred prior to the initiation of acquisition for the Project. No later than 30 calendar days thereafter, the State shall provide the Government the full required amount by delivering a check payable to "FAO, USAED, Vicksburg" to the Contracting Officer representing the Government.
2. For the second and subsequent fiscal years of Project acquisition and development, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the State of the State's cash contribution for that

fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the State shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.c.1 of this Agreement. As acquisition and development for the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs.

3. If, at any time during the period of acquisition and development, the Government determines that additional funds will be needed from the State, the Government shall so notify the State, and the State, no later than 45 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.c.1 of this Agreement.

d. The Government will draw on the funds provided by the State 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 costs incurred by the Government prior to the initiation of Project acquisition and development.

e. At any time after the effective date of this Agreement, should the Government's current estimate for the credit amount exceed 6 percent of total Project costs, the Government shall promptly notify the State of any estimated remaining balance of the credit amount, and the State shall notify the Government of the specific State contribution or contributions to which the State wishes the estimated remaining balance of the credit amount applied. Thereafter, the Government shall, subject to the availability of funds, apply the estimated remaining balance of the credit amount in accordance with this paragraph. The estimated remaining balance of the credit amount shall be applied only to State contribution requirements for the Red River Waterway, Louisiana project and/or Red River Waterway, Louisiana project recreation features remaining to be accomplished after execution of this Agreement and for which appropriations have been made. The Government shall not make a final cash payment or reimbursement to the State to liquidate any remaining balance of the credit amount until all authorized Red River Waterway, Louisiana project features, including recreation features, are completed.

1. If the State desires credit against costs associated with Government-constructed Red River Waterway, Louisiana project recreation features, the Government, subject to the availability of funds, shall reduce the State's cash contribution covering the State's 50 percent share of construction costs of the recreation features, including related planning, engineering and design, and construction management, by an amount not to exceed the remaining balance of the credit

amount. The costs of recreation features shall be determined and approved in accordance with the agreement or agreements between the Government and the State applicable to the recreation features.

2. If the State desires credit against costs associated with State-constructed Red River Waterway, Louisiana project recreation features, the Government shall, subject to the availability of funds and upon 30 days notice from the State, provide, in addition to its 50 percent share, all or a portion of the State's 50 percent share of costs for eligible Red River Waterway, Louisiana project recreation features, including related planning, engineering and design, and construction management, up to the amount of the remaining balance of the credit amount, at the time of award of the selected recreation contract or contracts. The costs of recreation features shall be determined and approved in accordance with the agreement or agreements between the Government and the State applicable to the recreation features.

3. If the State desires credit against the values of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas required to be contributed by the State for the Red River Waterway, Louisiana project or Red River Waterway, Louisiana project recreation features, the Government shall, subject to the availability of funds, apply the remaining balance of the credit amount in one or both of the following ways:

a. By making payments for the Government-approved values of such contributions by the State. Such values are to be determined in accordance with Article IV of this Agreement.

b. In the sole discretion of the Government, by providing required lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, the value of which shall be the cost to the Government.

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 license lands acquired for the Project to the State for management.

g. Upon completion of acquisition and development for the Project and resolution of all relevant claims and appeals and upon completion of the Phase I Management Plan, the Government shall prepare and tender to the State a final accounting, which shall include final estimates for the average annual management costs over the 100-year period of economic analysis; for the present worth of the average annual management costs over the 100-year period of economic analysis; for the credit amount; for

total Project costs and for 6 percent of total Project costs; and for the total cash contribution by the State or the total remaining balance of the credit amount, as the case may be.

1. In the event the State has contributed an amount that exceeds the State's cash contribution, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return said excess to the State.

2. In the event the Government has applied an amount that exceeds the remaining balance of the credit amount, the State shall, no later than 90 calendar days after the final accounting is complete, pay to the Government a sum equal to the excess.

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 - MANAGEMENT

a. After the Government has licensed the lands acquired for the completed Project, or functional portion of the Project, to the State, the State shall, over the term of the license, manage the completed Project, or functional portion of the Project, in accordance with the Phase 1 Management Plan approved by the Government.

b. If the State fails to meet the State's obligations under this Agreement, the Government retains the right to enter, at reasonable times and in a reasonable manner, upon land licensed to the State for access to the Project 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 fulfill the State's obligations under this Agreement, without receiving prior written approval from the Government, the Government will send a written notice to the State. If the State 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 licensed to the State for access to the Project 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 assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

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

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the State shall keep 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 and the State shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of acquisition and development 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.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit, when appropriate, of the State's records for the Project to ascertain the allowability, reasonableness, and allocability of the State's costs for inclusion as credit against the State's share of total Project costs. The allowability of claimed costs will be determined in accordance with the provisions of Project authorizing and appropriation legislation, this Agreement, Office of Management and Budget Circular A-87, and applicable Government regulations and guidance.

ARTICLE XII - FEDERAL AND STATE LAWS

In acting under the State's rights and obligations hereunder, the State agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and Department of Defense Directive 5500.II issued pursuant thereto, and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XIII - RELATIONSHIP OF THE PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party 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, 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 XV - COVENANT AGAINST CONTINGENT FEES

The State 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 State 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 its 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 State fails to perform as required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the State 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 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 State. After 60 calendar days either party 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 either party elects to terminate this Agreement pursuant to this Article, both 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 either party

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 State elects to terminate this Agreement.

ARTICLE XVII - 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 prepaid), 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 such time as it is personally delivered, or 7 calendar days after it is mailed, as the case may be.

ARTICLE XVIII - 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 XIX - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Government shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the State 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 Project acquisition, development, and management. All actual costs incurred by the Government which are properly allowable and

allocable to performance of any such environmental investigations shall be included with the total Project costs and cost shared in accordance with Article II of this Agreement.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or borrow or dredged or excavated material disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the State and the Government shall provide prompt notice to each other, and the Government shall not proceed with the acquisition and development of lands, easements, rights-of-way, or borrow or dredged or excavated material disposal areas until mutually agreed.

c. The Government and the State shall determine whether to initiate acquisition and development for the Project, or if already begun, to continue, or to terminate acquisition and development for the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the State determine to proceed 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 any and all necessary cleanup and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination, and such costs as are the responsibility of the Government shall be included in 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 under the Acquisition and Development Phasing and Management Article of this Agreement to assure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph c of this Article shall not relieve any third party from any liability that may arise under CERCLA.

e. After the Government has licensed 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 license 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. Should clean up and response costs be cost shared, the Government shall prepare a new final accounting, and the cost shares of the Government and the

State shall be adjusted, in accordance with Article VI.g of this Agreement.


ARTICLE XX - COOPERATION

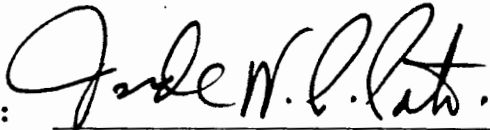
In the event of any litigation in State or Federal court involving any third party affected by this Agreement, both parties agree to use their best efforts to cooperate with each other in preparation for and trial of any such claim or cause of action, and agree to make available to each other all documents and witnesses which may be relevant to the preparation for or trial of such actions consistent with Army 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 Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

THE STATE OF LOUISIANA

BY: 
G. Edward Dickey
Acting Assistant Secretary of
the Army (Civil Works)

BY: 
Jude W.P. Patin
Brigadier General
USA Retired
Chairman, Red River
Waterway Commission


DATE: 16 JUN 1993

DATE: 28 MAR 1993

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, if necessary, in the event of 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 Red River Waterway Commission have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this Certification this 28th day of May, 1953.


Legal Officer
Red River Waterway Commission

CERTIFICATION REGARDING LOBBYING

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

a. 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.

b. 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, loans, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. 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.

BY: 

DATE: 28 MAY 1993