

DRAFT
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY,
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,
PEARL RIVER BASIN DEVELOPMENT DISTRICT,
AND
MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES, AND PARKS
FOR CONSTRUCTION OF THE
PEARL RIVER IN THE VICINITY OF WALKIAH BLUFF, MISSISSIPPI AND
LOUISIANA, PROJECT

THIS AGREEMENT is entered into this 4th day of MARCH, 1998, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Acting Assistant Secretary of the Army (Civil Works) and the Mississippi Department of Environmental Quality, represented by the Executive Director of the Mississippi Department of Environmental Quality, the Pearl River Basin Development District, represented by the Executive Vice President of the Pearl River Basin Development District, and the Mississippi Department of Wildlife, Fisheries and Parks, represented by the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks (hereinafter jointly referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, the Pearl River in the Vicinity of Walkiah Bluff, Mississippi and Louisiana Project at Pearl River County, Mississippi and St. Tammany Parish, Louisiana extending from near Wilson Slough on the Pearl River to the confluence of Holmes Bayou and the West Pearl River was approved for construction pursuant to the authority contained in Section 307(d) of the Water Resources Development Act of 1990, Public Law 101-640;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Cooperation Agreement for construction of the Pearl River in the Vicinity of Walkiah Bluff, Mississippi and Louisiana Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, the Non-Federal Sponsors agree to the project cost sharing requirements specified in Section 307(c) of the Water Resources Development Act of 1990, Public Law 101-640;

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 Non-Federal Sponsors have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean construction of an earth-filled trapezoidal weir on an old bendway of the Pearl River above the inlet of Wilson Slough, closures at Brier Patch Bayou, Moore's Bayou, Icebox Bayou, and one unnamed distributary on lands within the Bogue Chitto National Wildlife Refuge, and excavation of a pilot channel in the Pearl River beginning downstream of the trapezoidal weir and ending at the outlet of Moore's Bayou, as generally described in the Detailed Project Report, Pearl River in the Vicinity of Walkiah Bluff, Mississippi and Louisiana, dated December 1996, approved by the Director of Civil Works on February 6, 1997, and supplemented in May 1997.

B. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. and XV.B. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. and XVIII.C. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement, except those lands, easements and rights-of-way within the Bogue Chitto National Wildlife Refuge; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair,

replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsors' total cash contribution required in accordance with Article II.D.2 of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsors in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Vicksburg District (hereinafter the "District Engineer") notifies the Non-Federal Sponsors in writing of the Government's determination that construction of the Project is complete.

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

G. 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.

H. 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.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsors to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsors in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

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 Non-Federal Sponsors, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures and standards usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsors have confirmed in writing their willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsors with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsors the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsors, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsors with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$5,278,216.00, the Government and the Non-Federal Sponsors agree to defer award of that contract and all subsequent contracts for

construction of the Project until such time as the Government and the Non-Federal Sponsors agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsors, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsors 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 Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsors shall contribute 25 percent of total project costs in accordance with the provisions of this paragraph.

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

2. If the Government projects that the value of the Non-Federal Sponsors' contributions under paragraph D.1. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project costs, the Non-Federal Sponsors shall provide an additional cash contribution, in accordance with Article VI.C. of this Agreement, in the amount necessary to make the Non-Federal Sponsors' total contribution equal to 25 percent of total project costs.

3. If the Government determines that the value of the Non-Federal Sponsors' contributions provided under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 25 percent of total project costs, the Government shall reimburse the Non-Federal Sponsors for any such value in excess of 25 percent of total project costs, subject, however, to the availability of funds and to the limitation on credit for lands, easements, rights-of-way, and relocations, which may not exceed 25 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsors.

E. The Non-Federal Sponsors may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsors. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement.

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

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

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

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the Non-Federal Sponsors shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsors must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsors shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsors are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsors to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the Non-Federal Sponsors shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsors shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with such relocations. Prior to the end of the period of construction, the Non-Federal Sponsors shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the Non-Federal Sponsors shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the Non-Federal Sponsors' share of total project costs.

E. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsors shall receive credit toward their share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsors must provide pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsors must perform or for which they must ensure performance pursuant to Article III of this Agreement. However, the Non-Federal Sponsors shall not receive credit for the

value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The Non-Federal Sponsors also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsors shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, or the Non-Federal Sponsors choose not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsors. In the event the

Non-Federal Sponsors do not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsors, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure: For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsors shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsors shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with subparagraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsors within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

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

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standards that the States of Mississippi and Louisiana, as appropriate, would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsors 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 construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsors' counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

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

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

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsors' total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, and of the non-Federal proportionate share. On the effective date of this Agreement, total project costs are projected to be \$5,278,216 and the Non-Federal Sponsors' cash contribution required under Article II.D. of this Agreement is projected to be \$1,292,554. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Non-Federal Sponsors shall provide the cash contribution required under Article II.D.2. of this Agreement in accordance with the following provisions: Not less than 45 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsors to meet their projected cash contribution under Article II.D.1. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsors shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, VICKSBURG DISTRICT" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsors such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction. In the event the Government determines that the Non-Federal Sponsors must provide additional funds to meet the Non-Federal Sponsors' cash contribution, the Government shall notify the Non-Federal Sponsors in writing of the additional funds required. Within 60 calendar days thereafter, the Non-Federal Sponsors shall provide the Government with a check for the full amount of the additional required funds.

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

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors 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 Non-Federal Sponsors' cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsors is less than their required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsors shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Non-Federal Sponsors' required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsors exceeds their required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsors no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsors, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties 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 all parties. The Non-Federal Sponsors and the Government shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsors for any reason is failing to perform their obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsors. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsors continue to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsors own or control for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsors of responsibility to meet the Non-Federal Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - SAVE AND HOLD HARMLESS

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsors shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsors 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 construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsors shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsors are responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsors are required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors 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 XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and no party is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights any other party may have to seek relief or redress against such contractor either pursuant to any cause of action that any other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If 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 Non-Federal Sponsors in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsors elects to terminate this Agreement.

C. In the event that either the Non-Federal Sponsors or the Government elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months. Notwithstanding the foregoing, any interest rate charged to the Non-Federal Sponsors shall not exceed the rate set forth in Miss. Code Ann. Section 31-7-305.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsors shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsors determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsors with prior specific written direction, in which case the Non-Federal Sponsors shall perform such investigations in accordance with such written direction. All actual costs incurred by the Non-Federal Sponsors for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. After execution of this Agreement, the Government shall perform, or cause to be performed, any investigations for hazardous substances that the Government determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project within the Bogue Chitto National Wildlife Refuge. All actual costs incurred by the Government for any such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement,

subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

C. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the Non-Federal Sponsors and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsors should proceed.

D. The Government and the Non-Federal Sponsors shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the Non-Federal Sponsors shall be responsible, as between the Government and the Non-Federal Sponsors, for any and all necessary clean-up and response costs on lands, easements, servitudes, and rights-of-way they provide, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsors fail to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

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

F. As between the Government and the Non-Federal Sponsors, the Non-Federal Sponsors shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsors shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause

liability to arise under CERCLA. After the project is complete, the Non-Federal Sponsors shall be considered the operator as between the Non-Federal Sponsors and the Government.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Mississippi Department of Environmental Quality:

Executive Director
Mississippi Department of Environmental Quality
P.O. Box 20305
Jackson, Mississippi 39289-1305

If to the Pearl River Basin Development District:

Executive Vice President
Pearl River Basin Development District
P.O. Box 5332
Jackson, Mississippi 39296-5332

If to the Mississippi Department of Wildlife, Fisheries and Parks:

Executive Director
Mississippi Department of Wildlife, Fisheries and Parks
P.O. Box 451
Jackson, Mississippi 39205-0451

If to the Government:

District Engineer
U.S. Army Engineer District, Vicksburg
4155 Clay Street
Vicksburg, Mississippi 39180-3435

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

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

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties 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 be included in total project costs.

ARTICLE XIX- OBLIGATIONS OF FUTURE APPROPRIATIONS

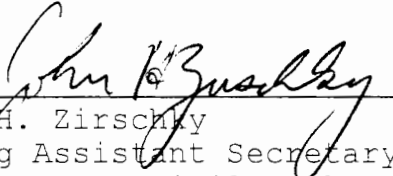
A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the LEGISLATURE of the State of Mississippi. The Government acknowledges that the Non-Federal Sponsors must obtain an appropriation prior to payment of any damages.

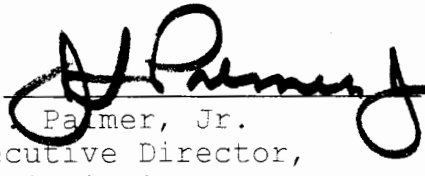
B. The Non-Federal Sponsors intend to satisfy their obligations hereunder. The Non-Federal Sponsors reasonably believe that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the State Legislature does not provide funds in sufficient amounts to discharge these obligations, the Non-Federal Sponsors shall use their best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsors are unable to satisfy their obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interest related to this Agreement.

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

THE DEPARTMENT OF THE ARMY


THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

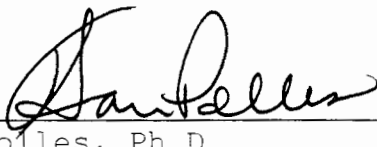
BY: 
John H. Zirschky
Acting Assistant Secretary
of the Army (Civil Works)

BY: 
J.I. Palmer, Jr.
Executive Director,
Mississippi Department of
Environmental Quality

DATE: 3-4-98

DATE: 3-4-98

BY: 
Mike Davis
Executive Vice President
Pearl River Basin
Development District

BY: 
Sam Polles, Ph.D.
Executive Director
Mississippi Department of
Wildlife, Fisheries and
Parks

DATE: 3-4-98

DATE: 3-4-98

CERTIFICATE OF AUTHORITY

I, Doug Mann, do hereby certify that I am the principal legal officer of the Mississippi Department of Wildlife, Fisheries and Parks, that the Mississippi Department of Wildlife, Fisheries and Parks is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, it has agreed to perform between the Department of the Army, the Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Department of Environmental Quality, and Pearl River Basin Development District in connection with the Pearl River in the Vicinity of Walkiah Bluff, Mississippi and Louisiana, 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 persons who have executed this Agreement on behalf of the Mississippi Department of Wildlife, Fisheries and Parks have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 4th day of MARCH 1998.



Doug Mann
Special Assistant Attorney General
Mississippi Department of
Wildlife, Fisheries and Parks

CERTIFICATION REGARDING LOBBYING

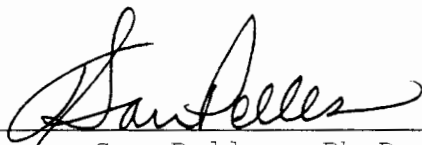
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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



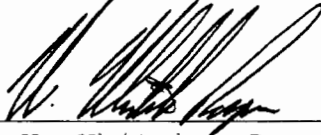
Sam Polles, Ph.D.
Executive Director
Mississippi Department of
Wildlife, Fisheries and Parks

DATE: 3-4-98

CERTIFICATE OF AUTHORITY

I, W. Whitaker Rayner, do hereby certify that I am the principal legal officer of the Pearl River Basin Development District, that the Pearl River Basin Development District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, it has agreed to perform between the Department of the Army, the Pearl River Basin Development District, Mississippi Department of Environmental Quality, and Mississippi Department of Wildlife, Fisheries and Parks in connection with the Pearl River in the Vicinity of Walkiah Bluff, Mississippi and Louisiana 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 persons who have executed this Agreement on behalf of the Pearl River Basin Development District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification
this 4th day of March 1998.



W. Whitaker Rayner
Counsel
Pearl River Basin Development District

CERTIFICATION REGARDING LOBBYING

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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



Mike Davis

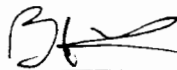
Executive Vice President
Pearl River Basin Development District

DATE: 3-4-98

CERTIFICATE OF AUTHORITY

I, Betty Ruth Fox, do hereby certify that I am the principal legal officer of the Mississippi Department of Environmental Quality, that the Mississippi Department of Environmental Quality is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement, it has agreed to perform between the Department of the Army, the Mississippi Department of Environmental Quality, Pearl River Basin Development District, and Mississippi Department of Wildlife, Fisheries and Parks in connection with the Pearl River in the Vicinity of Walkiah Bluff, Mississippi and Louisiana 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 persons who have executed this Agreement on behalf of the Mississippi Department of Environmental Quality have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 4th day of MARCH 1998.



Betty Ruth Fox
Senior Attorney
Mississippi Department of
Environmental Quality

CERTIFICATION REGARDING LOBBYING


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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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



J. I. Palmer, Jr.
Executive Director,
Mississippi Department of
Environmental Quality

DATE: 3-4-98

**AGREEMENT BETWEEN THE MISSISSIPPI DEPARTMENT OF
ENVIRONMENTAL QUALITY,
THE PEARL RIVER BASIN DEVELOPMENT DISTRICT, AND
THE MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS**

This Agreement is entered into this 4th day of MARCH, 1998, between the Mississippi Department of Environmental Quality (hereinafter "MDEQ") represented by the Executive Director of the MDEQ, the Pearl River Basin Development District (hereinafter "PRBDD") represented by the Executive Vice President of the PRBDD, and the Mississippi Department of Wildlife, Fisheries and Parks (hereinafter "MDWFP") represented by the Executive Director of the MDWFP.

WITNESSETH, THAT:

WHEREAS, the Department of the Army (hereinafter the "Government"), the MDEQ, the PRBDD, and the MDWFP simultaneously herewith have entered into a Project Cooperation Agreement (hereinafter "PCA") dated the 4th day of MARCH 1998, for construction of the Pearl River in the vicinity of Walkiah Bluff, Mississippi and Louisiana Project (hereinafter the "Project") as defined in Article I.A. of the PCA, a copy of which is attached hereto and incorporated herein by reference.

WHEREAS, Governor Fordice has designated the MDEQ as the Non-Federal Sponsor for the Project and further provided that obligations beyond the statutory authority of MDEQ would be performed by other appropriate agencies.

WHEREAS, the PRBDD has the authority and is willing to assume responsibility for the acquisition of lands, easements, rights-of-way, relocations, suitable borrow and dredged or excavated material disposal areas necessary for the project and for performance of the necessary operation and maintenance of the Project.

WHEREAS, Miss. Code Ann. Section 57-61-32(2) provides that the MDWFP is the recipient of the grant issued by the MDECD for the State's share of the costs of the Project and shall disburse the funds for the Project.

WHEREAS, MDEQ, PRBDD, and MDWFP have agreed to the terms of the PCA and thereby have assumed separate and shared responsibilities and authorities required by this

Project, hereinafter MDEQ shall be the principal Non-Federal Sponsor and the three (3) State Agencies collectively shall be referred to as the “Non-Federal Sponsors” unless otherwise specifically defined in the PCA or this Agreement.

NOW, THEREFORE, the MDEQ, PRBDD and MDWFP agree as follows:

I. OBLIGATIONS OF THE MDEQ, PRBDD AND THE MDWFP

A. Bond revenue funds in the amount of four million dollars have been set-aside by law through the Mississippi Legislature and Office of the Governor of the State of Mississippi, for the purpose of providing the State’s share of project construction. The Mississippi Commission on Wildlife, Fisheries and Parks has certified to the MDECD the State’s share of the Project costs including operation and maintenance to be \$4,000,000 in bond revenue funds. MDECD will award a grant to MDWFP for the State’s share of the Project costs. MDWFP will be responsible for disbursing the grant funds. It is understood and agreed that the aforementioned four million dollars is the total amount of bond revenue funds available to the State for all costs incurred in participating in the Project.

B. In accordance with article II.D.2 of the PCA the Government has agreed to notify the Non-Federal Sponsors in writing, not less than 45 calendar days prior to the scheduled date for issuance of solicitation for the first construction contract, of the funds required to meet the Non-Federal Sponsors’ projected cash contribution. Not later than such scheduled date, the MDWFP shall provide the Government with the full amount of the required funds by delivering a check payable to “FAO, USAED, VICKSBURG DISTRICT” to the District Engineer. In the event the Government determines that the MDWFP must provide additional funds to meet the Non-Federal Sponsors’ cash contribution, the MDEQ shall notify the MDWFP in writing of the additional funds required. Within 60 calendar days thereafter, the MDWFP shall provide the Government with a check for the full amount of the additional required funds.

C. In accordance with Article II.B. or II.E. of the PCA, the MDWFP 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, DISTRICT” to the District Engineer. In the event the Government determines that the MDWFP must provide additional funds to meet the Non-Federal Sponsors’ cash contribution, the Government has agreed to notify

the MDWFP in writing of the additional funds required. Within 45 calendar days thereafter, the MDWFP shall provide the Government with a check for the full amount of the additional required funds.

D. The MDWFP shall make disbursements from the bond proceeds to the PRBDD, as set forth herein, so that the PRBDD can meet its obligations regarding the Project, including, but not limited to, acquisition of lands, easements, rights-of-way, relocations, suitable borrow and dredged or excavated material disposal areas necessary for the project and for performance of the necessary operation and maintenance of the Project.

1. Immediately upon completion of initial construction of the project and after payment by MDWFP to the Government of all sums owed by the Non-Federal Sponsors for the Non-Federal Sponsors' share of initial construction as set forth above, the MDWFP shall forward all remaining funds from the \$4 million in bond proceeds to the PRBDD for establishment of a trust account (the "Trust Account") to be used solely for repayment for PRBDD's costs relating to acquisition of lands, easements, rights of way, relocations, suitable borrow and dredged or excavated material disposal areas necessary for the project and for future construction costs including, but not limited to, costs related to the operation, maintenance, repair, replacement and rehabilitation of the Project in accordance with Article VIII of the PCA.

2. Prior to withdrawal of any sum from the Trust Account, the PRBDD shall provide advance notice to the MDEQ and MDWFP of the PRBDD's intention to withdraw such funds. Subsequent to any such withdrawal, the PRBDD shall provide the MDEQ and MDWFP an accounting of all funds in the Trust Account.

3. Fifty years after the date of completion of initial construction of the project, the PRBDD shall provide a final accounting of any funds remaining in the Trust Account and shall return said funds to the MDWFP to meet any remaining obligations.

E. The PRBDD shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of the PCA.

F. In accordance with Article III of the PCA, the PRBDD shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas

that the Government determines the Non-Federal Sponsors must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project. The acquisitions by PRBDD shall be considered a part of the Non-Federal Sponsors' contribution of total Project costs.

II. LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

As between the three Non-Federal Sponsors, the responsibilities for Lands, Relocations, Disposal Areas, and Public Law 910646 Compliance will be executed by PRBDD in accordance with Article III of the PCA.

III. OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

In accordance with Article VIII of the PCA the Non-Federal Sponsors agree to operate, maintain, repair, replace and rehabilitate the entire Project or the functional portion of the Project at no cost to the Government for the authorized life of the Project. PRBDD shall execute OMRR&R responsibilities for a minimum of fifty (50) years or until the Mississippi Legislature further delineates or clarifies these responsibilities.

IV. DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties 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 the parties. The parties shall share on a pro rata basis 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 this Agreement.

V. MAINTENANCE OF RECORDS AND AUDIT

Pursuant to 32 C.F.R. Section 33.26, the PRBDD and the MDWFP are responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by

Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10.

VI. FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the MDEQ, the PRBDD, and the MDWFP agree to comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights 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."

VII. HAZARDOUS SUBSTANCES

As between the Non-Federal Sponsors, MDEQ and PRBDD shall share the responsibilities for any issues related to hazardous substances regulated under the Compliance Response Compensation and Liability Act (CERCLA). To the maximum extent practicable, the PRBDD shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

VIII. 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 MDEQ:

Executive Director
Mississippi Department of Environmental Quality
P. O. Box 20305
Jackson, Mississippi 39289-1305

If to the PRBDD:

Executive Vice President
Pearl River Basin Development District
P. O. Box 5332
Jackson, Mississippi 39296-5332

If to the MDWFP:

Executive Director
Mississippi Department of Wildlife, Fisheries and Parks
P. O. Box 451
Jackson, Mississippi 39205-0451

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

IX. 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.

X. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties with respect to the subject matter herein and supercedes and replaces any and all prior negotiations, understandings, and agreements whether written or oral between the parties relating thereto.

XI. MODIFICATION OR AMENDMENT

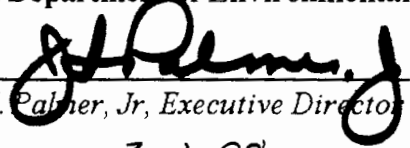
Modifications, changes or amendments to this Agreement may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this Agreement must be in writing and signed by all parties hereto.

XII. SEVERABILITY

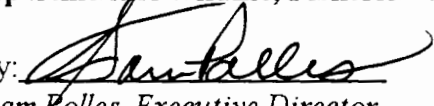
If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the Agreement shall be valid and enforceable to the fullest extent permitted by law. However, to the extent there is any conflict between this agreement and the PCA, the PCA shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date the PCA is signed by the Department of Army.

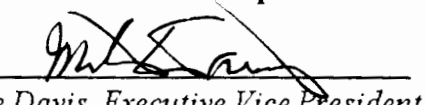
Mississippi Department of Environmental Quality

By: 
J. I. Palmer, Jr, Executive Director
Date: 3-4-98

Mississippi Department of Wildlife, Fisheries and Parks

By: 
Sam Polles, Executive Director
Date: 3-4-98

Pearl River Basin Development District

By: 
Mike Davis, Executive Vice President
Date: 3-4-98