

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**STATE OF LOUISIANA,**  
**THROUGH THE COASTAL PROTECTION AND RESTORATION AUTHORITY**  
**BOARD**  
**AND**  
**ST. CHARLES PARISH**  
**REGARDING**  
**THE OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND**  
**REHABILITATION OF THE DAVIS POND FRESHWATER DIVERSION PROJECT**  
**(BA-01)**

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”), is entered into and effective on February 1, 2016 by and between the State of Louisiana through the Coastal Protection and Restoration Authority Board, (hereinafter referred to as the “STATE”) acting by and through the Chairman of the Board, Kyle R. “Chip” Kline, and the St. Charles Parish (hereinafter referred to as the “PARISH”) represented by its duly authorized President, Lawrence H. Cochran, Jr.

**WHEREAS**, Article VIII, Section 14 of the Louisiana Constitution provides, in part, that “(f) or a public purpose, the state and its political subdivisions . . . may engage in cooperative endeavors with each other;” and

**WHEREAS**, pursuant to La. R.S. 49:214.5.2(A)(1), the Coastal Protection and Restoration Authority Board (the “Board”) represents the State of Louisiana’s position relative to the protection, conservation, enhancement, and restoration of the coastal area of the state through oversight of integrated coastal protection projects and programs and at La. R.S. 49:214.5.2(A)(7) the Board has the power and authority to enter into any contract with any political subdivision of the state for the study, planning, engineering, design, construction, operation, maintenance, repair, rehabilitation, or replacement of any integrated coastal protection project and to this end, may contract for the acceptance of any grant of money upon the terms and conditions, including any requirement of matching the grants in whole or part, which may be necessary; and

**WHEREAS**, pursuant to La. R.S. 49:214.6.1, the Coastal Protection and Restoration Authority (“CPRA”) is the implementation and enforcement arm of the Board and is directed by the policy set by the Board, and pursuant to La. R.S. 49:214.6.2 and La. R.S. 49:214.6.3, CPRA shall administer the programs of the Board and shall implement projects relative to the protection, conservation, enhancement, and restoration of the coastal area of the State of Louisiana through oversight of integrated coastal projects and programs consistent with the legislative intent as expressed in La. R.S. 49:214.1, and, where appropriate, CPRA shall administer and implement the obligations undertaken by the Board pursuant to this Agreement; and

**WHEREAS**, the PARISH has the authority of a local political subdivision to enter into agreements with governmental bodies, such as the STATE, for the public welfare, health, safety and good order of its jurisdiction by virtue of the specific authority granted in its Ordinance annexed hereto and Article VII, Section 14 of the Louisiana Constitution; and

**WHEREAS**, the Parties desire to enter into this cooperative agreement for the purpose of performing the operations, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the Davis Pond Freshwater Diversion Project in the vicinity of Luling, Louisiana (“Project”); and

**WHEREAS**, this Agreement will be mutually beneficial to the parties in the furtherance of their respective statutory purposes, duties, and authorities, and each party expects to receive a public benefit at least equal to the costs of the responsibilities undertaken pursuant hereto; and

**WHEREAS**, the STATE and PARISH, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the parties through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the parties, and to facilitate the successful implementation of the Project as described herein; and

**NOW, THEREFORE**, in consideration of the parties’ mutual undertakings herein and the purposes, duties, and authorities granted under La. R.S. 49:214.1 *et seq.*, the constitution and general laws of the STATE of Louisiana, the parties hereto do hereby agree as follows:

**ARTICLE I**  
**PURPOSE AND IDENTIFICATION**

**A. Purpose.**

The Purpose of this Agreement is to set forth the terms, conditions, and responsibilities to be performed by the PARISH and the STATE in the continuing operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of the Davis Pond Freshwater Diversion Project. An Operation Manual and a Water Control Plan have been prepared by the United States Army Corps of Engineers (USACE), which shall serve as the primary OMRR&R guidance for the Project.

**B. Identification.**

For the purpose of administration, identification and record keeping, State Project Number BA-01 is assigned to this Project. This number will be used to identify all project costs.

**ARTICLE II**  
**PROJECT DESCRIPTION**

The Davis Pond Freshwater Diversion Project became operational in 2001. It is designed to introduce freshwater, nutrients, and generally fine sediments into the marshes of the Barataria Basin in St. Charles, Jefferson, Lafourche and Plaquemines Parishes. The Project is located at Mile 118.4 Above Head of Passes on the right descending bank of the Mississippi River. The Project consists of four 14 foot x 14 foot box culverts with corresponding inflow and outflow channels, guide levees, a 570 cubic foot per second pumping station and a ponding area of approximately 9,311 acres, bounded along the north shore of Lake Cataouatche by a gabion shoreline protection approximately 9,425 feet long. The inflow channel has a length of approximately 535 feet and a bottom width of approximately 85 feet. The outflow channel has a

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length of approximately 11,043 feet, a bottom width of approximately 120 feet, and a water depth of approximately 20 feet at maximum flow.

The STATE and the U.S. Army Corps of Engineers (USACE) have entered into the Davis Pond Project Cooperative Agreement (DPPCA) for the Davis Pond Freshwater Diversion Feature, and are providing financial and technical support for operating the Davis Pond Project. While the STATE is the local, non-federal sponsor responsible for OMRR&R for the Project pursuant to the DPPCA with USACE, the STATE is contracting with the PARISH, through this Agreement, to perform the Project OMRR&R in accordance with the terms and conditions set forth herein. The proper operation, maintenance, and monitoring associated with the Project is essential in achieving the long-term benefits envisioned and prescribed in the Davis Pond General Design Memorandum (GDM) No. 1, prepared by the USACE.

The scope of the work for the project is provided in Article IV, and shall include:

1. OMRR&R of the Davis Pond Freshwater Diversion Structure;
2. OMRR&R of the Davis Pond Drainage Pump Station; and
3. OMRR&R of the East and West Guide Levees which bound the Davis Pond Freshwater Diversion Project outflow channel and ponding area.

### **ARTICLE III** **PROJECT FUNDING**

This Project includes a total maximum cost of **\$3,602,738.00** for the term of this Agreement, but shall be cost-shared between the parties and administered as follows:

- A. The STATE, through CPRA, shall provide to the PARISH, a maximum of **\$3,602,738.00** from its Trust fund. The funding will be provided on a Time and Materials basis to the PARISH as a reimbursement based upon submittal and approval of invoices and deliverables as set forth more fully in Articles III, IV, and V herein, and in accordance with all other terms and conditions of this Agreement. The Project budget estimate is provided in **Attachment A**, which is attached hereto and incorporated herein. This is intended to be an estimate; actual quantities shall be billed as incurred not to exceed the maximum Project cost as specified herein.
- B. If at any time during the performance of work for a particular funding category, the actual or anticipated cost of that category exceeds 100% cost of that particular funding category as set forth in this Paragraph and in Attachment A, all work in that particular category shall cease. The Parties may agree to increase the cost of completing that particular category by transferring funds from one category to the other but only if such increase does not cause any funding to exceed the maximum Project cost. Such agreement regarding transferring funds from one category to another shall be made by letter agreement confirmed by the mutual written approval of the Parties. Work on that particular category shall thereafter resume.
- C. All funding expended for this Project shall be used for the purposes stated herein, in accordance with constitutional and statutory restrictions on the use of State funds for public purposes, and shall be used in strict accord with all applicable state statutes, laws, rules and regulations. The use of Project funding shall at all times be consistent with sound engineering principles and practices as may be directed and defined by the CPRA

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Engineering Division. All funding shall be subject to Article XVI, entitled, "Fiscal Funding Clause."

- D. The PARISH acknowledges that any State funds not used in accordance with the terms and conditions of this Agreement and state and federal law shall be reimbursed to the STATE and/or the State Treasury, and that any cost and expense in excess of the total maximum Project cost, as agreed to by the STATE and set forth herein, shall be the sole responsibility of the PARISH.

#### **ARTICLE IV** **SCOPE AND PROJECT RESPONSIBILITY**

##### **A. Project Tasks**

The STATE, through CPRA, or its agent will perform the following:

1. Develop the Intergovernmental Agreement for reimbursement to the PARISH (\$3,602,738.00 total maximum Project cost).
2. Provide funding on a reimbursable basis for OMRR&R of the Project.
3. Provide appropriate personnel for consultation as required.
4. Provide access to relevant materials required in the performance of the work.
5. Provide any progress schedules/work directives as may be necessary to facilitate the Project.

The PARISH, or its agent, will perform the following:

1. Maintenance and operation of the Project in accordance with the instructions stipulated by the OMRR&R Manual, the Water Control Plan, the Annual Project Operations Plan, and the CPRA Structure Operations Coordinator (Project Manager).
2. Provide all necessary supplies, personnel and equipment to ensure that the outflow channel and guide levees are regularly maintained to as-built specifications. Major repairs, replacement and rehabilitation of the outflow channel and guide levees may be performed provided funding is allocated and work is mutually agreed upon by the STATE and the PARISH.
3. Perform maintenance continually and on an as-needed basis throughout the term of this Agreement, in accordance with all manufacturer-recommended maintenance schedules, and as may be dictated by the growing seasons, or as may be directed by any progress/work schedules set by CPRA. This shall include but not be limited to:
  - Grass cutting;
  - Weed and aquatic weed control;
  - Painting of equipment and metal elements;
  - Lubrication and routine mechanical upkeep of all moving parts on the structure and emergency gate closure panels;
  - Maintenance and operation of the drainage pumping station;
  - Keeping all equipment in regularly maintained and in working order;
  - Storage, transportation, and utilization of portable generating equipment maintained in an emergency-ready mode.
  - Keeping all signs at the Freshwater Diversion Structure, the Drainage Pump Station, and the East and West Guide Levees in readable condition and replacing any signage destroyed, defaced, or removed by vandals.
4. In accordance with the Water Control Plan, the PARISH shall check the diversion structure gauges twice daily, operate the structure as may be directed by CPRA, and provide no less than a one (1) hour response time in the case of an emergency closure.

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5. Oversight of contracted work to perform maintenance tasks listed above.
6. Receive, approve, and pay invoices from consultants/contractors/vendors on a timely basis and in accordance with all applicable state, federal, and local laws.
7. Submit invoices, certified, to CPRA for reimbursement.
8. Deliverables - The PARISH shall provide to the STATE, through CPRA, the following:
  - a. Copies of all detailed monthly invoices;
  - b. Monthly Monitoring reports (attached hereto and incorporated herein as **Attachment B**) which documents monthly and total costs for the Project, along with the following:
    - i. Operational and Maintenance Summary Report (the format of this report shall be mutually agreed upon by the STATE and the PARISH), and any other documents, photographs, plans, drawings, maps, schematics, reports or any other materials relating to the Project;
    - ii. Monthly On-site Project equipment inventory, usage, and maintenance report (the format of this report shall be mutually agreed upon by the STATE and the PARISH);
    - iii. Monthly contracted services summary;
    - iv. PARISH owned equipment usage summary;
    - v. Purchase Request Approval Form for all Equipment Acquisitions and Equipment Contractual Services over \$5,000.00 (the format of this report shall be mutually agreed upon by the STATE and the PARISH).
9. The PARISH shall adhere to all applicable State funding guidelines, as well as to all terms and conditions of this Agreement.

**B. Public Bid**

When an OMRR&R work item/task is of a scope and magnitude that is beyond the capabilities of the PARISH, the work may be procured in accordance with state law. In such a case, the PARISH shall advertise and receive bids for such work in accordance with the Public Bid Laws of the State of Louisiana, and generally as follows:

1. Written authorization must be obtained from the STATE, through CPRA prior to advertising the Project or any phase thereof for bids. The PARISH shall submit a copy of the complete package of bid documents with its written request for authority to advertise.
2. The PARISH will solicit bids for the services, labor and materials needed to construct the Project in accordance with the Public Bid Laws of the State, including, but not limited to La. R.S.38:2211, et. seq. and as applicable to political subdivisions of the State.
3. The PARISH shall solicit bids utilizing the Louisiana Uniform Public Work Bid Form applicable to most state agencies and all political subdivisions as mandated by La. R.S. 38:2211, et seq., and as promulgated by the Louisiana Division of Administration and located in Title 34 of the Louisiana Administrative Code.
4. After receipt of bids and before award of the contract, the PARISH shall submit to the STATE, through CPRA, copies of the three (3) lowest bidder's proposals and proof of advertising. The PARISH'S submittal shall include: proof of publication of advertisement for bids; bid tabulation form certified by the engineer and the

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contracting agency; bid proposals and bid bonds of the three (3) lowest bidders and proposed notice of Award of Contract.

5. After receiving comments from the CPRA, the PARISH may then award and execute the construction contract and will submit to the CPRA copies of the notice of Award of Contract, executed Contract and Performance/Payment bond(s).
6. The Contract and bonds shall be recorded in Clerk of Court office(s) for the parish or parishes where the work is to be performed. Proof of recordation of the Contract and bonds shall be submitted to the STATE, through CPRA, along with a copy of the Notice to Proceed. Once those items have been submitted to the CPRA, the PARISH shall adopt a Resolution Certifying Compliance with the Public Bid Law and the requirements of La. R.S. 38:2211, et. seq. and send a certified copy of the resolution to the CPRA.

During the construction period, the PARISH or its agent will document Project construction with monthly status reports that summarize the progress of construction, identify any potential or actual problems associated with compliance with the construction contract, and describe any field changes or change orders. The BOARD, through CPRA shall receive copies of these reports by the 10<sup>th</sup> calendar day of each month and be invited to construction meetings. The PARISH will immediately notify CPRA of any construction delays or specific environmental concerns.

The PARISH or its agent will arrange for and conduct final inspection of the completed works or improvement. Such inspection shall be made in conjunction with CPRA, if requested to do so. The PARISH will provide CPRA with a certified engineer's approval of the final project inspection upon project completion, as well as a Construction Completion Report, including as-built drawings, within two months of final inspection, if requested.

The work for this Project shall be performed in accordance with Attachment A and all Engineering Design Documents, Plans, and Specifications shall be prepared according to sound engineering principles and practices as directed and defined by the STATE, through the CPRA Engineering Division. These documents shall be prepared by or under the direct supervision of a professional engineer licensed in the discipline of civil engineering and registered in the State of Louisiana in accordance with Louisiana Revised Statutes Titles 37 and 46, regarding Professional and Occupational Standards, as governed by the Louisiana Professional Engineering and Land Surveying Board.

## **ARTICLE V** **DELIVERABLES**

The PARISH shall provide to the STATE, a copy of an Ordinance passed by its Board authorizing its execution of this Agreement.

The STATE shall submit to the PARISH a copy of any final documents produced in connection with the performance of the work outlined herein, including but not limited to, surveys, test results, land rights documents, design documents, plans, and specifications generated for the Project and cost shared by the PARISH in accordance with this Agreement. However, in the event that the PARISH needs to publicly bid any portion of the work for this Project, the PARISH shall keep confidential and shall not disclose any Project documents to any other entity prior to advertising such work for public bid.

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The PARISH shall also submit to the STATE all other deliverables as are specified in Article IV, Section 8.

## **ARTICLE VI** **PAYMENT**

All costs incurred by the PARISH on or after February 1, 2016, which are directly related to implementation of the work described herein, will be eligible for reimbursement in accordance with established guidelines.

The PARISH will be reimbursed 100%, subject to the terms and conditions set forth herein and in accordance with Article XII of the DPPCA, for all personnel and material needed to fully maintain and operate the Project as described in Article IV.

The PARISH shall pay all consultant/contractor/vendor invoices and the STATE through CPRA, shall reimburse the PARISH for its payments to the consultant/contractor/vendor as follows:

- A. Prior to reimbursement, the PARISH shall render detailed monthly invoices for payment of work performed, including a summary of the type of work, total value of the work performed, and the costs incurred.
- B. Invoices shall be certified by the PARISH's consultant/contractor and another properly designated official representing the PARISH as being correct and in compliance with the plans and specifications.
- C. All invoices shall be subject to verification, adjustment and/or settlement as a result of any audit referenced in Articles VI or XVII of this Agreement. Project costs in excess of those described in Article III shall be borne 100% by the PARISH.
- D. Subject to any other terms of this Agreement, in no case shall the sum total of payments made by the BOARD to the PARISH exceed \$3,602,738.00 for the initial term of this AGREEMENT.

The costs of all necessary personnel needed to properly maintain and operate the project shall be paid based on actual rates, which will be adjusted annually. The adjusted annual rates shall be submitted in accordance with Article XIII. The estimated personnel rates are included in the attached rate schedule provided in the Project Budget Estimate (Attachment A). This is a budget estimate; actual rates and quantities shall be billed as incurred, not to exceed the total maximum Project cost of \$3,602,738.00, as set forth in Article III.

The PARISH shall implement and adhere to accounting procedures to assure that reimbursable costs are allowable, reasonable, allocable, and in compliance with USACE standards for in-kind project expense credit.

Reimbursement will be limited to satisfactory verification that these OMRR&R costs are allowable, reasonable, and allocable. Methods of verification are as stipulated in Articles VIII and XII of the DPPCA (**Attachment C**). All payments shall be subject to verification, adjustment and/or settlement as a result of any audit referenced herein.

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The participation by the STATE in the Project shall in no way be construed to make the STATE a party to any contract between the PARISH and its contractor(s).

**ARTICLE VII**  
**RECORD KEEPING, REPORTING AND AUDITS**

The contract monitor for this Agreement is the Project Manager designated for the Project by the STATE. The Project Manager for this Project shall be Mr. David Chambers, P.E., P.L.S, or his designee. The STATE shall provide the PARISH notice of any changes to the designated Project Manager within seven (7) days of any such change.

The Project Manager shall maintain a file relative to the necessary acquisition of services, labor and materials needed to complete the Project. Likewise, the PARISH shall maintain a procurement file relative to the necessary acquisition of services, labor, and materials needed to complete the Project that will be subject to review by the STATE at any time and upon request.

The PARISH shall maintain all documents, papers, field books, accounting records, appropriate financial records and other evidence pertaining to costs incurred for the Project and shall make such materials available for inspection at all reasonable times during the contract period and for a five (5) year period from the date of reimbursement under the Project for inspection by the STATE, the Inspector General, and/or the Legislative Auditor; however, prior to disposal of any project data for the Project, the PARISH shall obtain prior written approval from the STATE, through CPRA.

Each party acknowledges and agrees that the Legislative Auditor of the State of Louisiana, the auditors of the Office of the Governor, Division of Administration, and the Office of the Inspector General shall have the authority to audit all records and accounts of the STATE and the PARISH which relate to this Agreement, and those of any subcontractors which relate to this Agreement. Any audit shall be performed in accordance with R.S. 24:513 *et seq.*

The STATE and the PARISH, and any subcontractors paid under this Agreement shall maintain all books and records pertaining to this Agreement for a period of five (5) years after the date of final payment under the prime contract and any subcontract entered into under this Agreement.

The purpose of submission of documentation by STATE to the PARISH, or by the PARISH to the STATE as required by this Agreement is to verify that such documentation is being produced, to provide evidence of the progress of the Project, and to verify that the expenditure of Project funds occurs in accordance with the terms of this Agreement. The STATE assumes no responsibility to provide extensive document review for any documents received by PARISH or to determine the completeness or accuracy of any such documentation. The PARISH shall also be responsible for, and assure, compliance with all applicable state and federal statutes, laws, rules, and regulations in carrying out any of its obligations under this Agreement.

**ARTICLE VIII**  
**TERMINATION FOR CAUSE**

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The STATE may terminate this Agreement for cause based upon the failure of PARISH to comply with the terms and/or conditions of the Agreement; provided that the STATE shall give the PARISH written notice specifying the PARISH'S failure. If within thirty (30) days after receipt of such notice, the PARISH shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the STATE may, at its option, place the PARISH in default and the Agreement may terminate on the date specified in such notice.

The PARISH may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the STATE to comply with the terms and conditions of this Agreement; provided that the PARISH shall give the STATE written notice specifying the STATE'S failure and providing a reasonable opportunity for the STATE to cure the defect.

In the event that either party elects to terminate this Agreement pursuant to this Article, the Parties agree to participate in a final cost accounting as of the date of termination and in accordance with the terms and conditions herein. The obligations under this Article shall survive termination or expiration of this Agreement for any reason.

**ARTICLE IX**  
**TERMINATION FOR CONVENIENCE**

The STATE may terminate this Agreement at any time by giving thirty (30) days written notice to the PARISH. The PARISH may likewise terminate this Agreement at any time by giving thirty (30) days written notice to the STATE. The PARISH shall be entitled to reimbursement for the costs of deliverables in progress, to the extent work has been performed satisfactorily as of the date of termination and any costs or expenses the PARISH incurs which are directly associated with the termination, modification, or change of any underlying engineering and/or consultant contracts for the Project.

In the event that either party elects to terminate this Agreement pursuant to this Article, the Parties agree to participate in a final cost accounting as of the date of termination and in accordance with the terms and conditions herein. The obligations under this Article shall survive termination or expiration of this Agreement for any reason.

**ARTICLE X**  
**NON-DISCRIMINATION CLAUSE**

The Parties agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1972, and the requirements of the Americans with Disabilities Act of 1990, the Davis-Bacon Act (40 USC 276a et seq.), and the Federal Funding Accountability and Transparency (FFATA) (<https://www.frs.gov>).

The Parties agree not discriminate in employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by either Party, or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this Agreement.

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**ARTICLE XI**  
**COMPLIANCE WITH FEDERAL LAW**

The Parties agree to comply with any applicable Federal labor laws covering non-Federal construction, which may include but are not limited to, the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c) and to the extent if applicable 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act) (formerly 40 U.S.C. 276a *et seq.*). The Parties further agree, in the case of any equipment and/or product authorized to be purchased under this Agreement, to comply with the Buy American Act 41 U.S.C. 8301-8305 (formerly 41 U.S.C. 10a-10c), if and as applicable.

**ARTICLE XII**  
**HOLD HARMLESS AND INDEMNITY**

The PARISH shall be fully liable for the actions of its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control, and shall fully indemnify and hold the STATE and its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control, harmless from suits, actions, damages, and costs of every name and description relating to personal injury and/or damage to real or personal tangible property, caused by the negligence, failure to act or legal fault of the PARISH, its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control, without limitation, except that the PARISH shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act or legal fault of the STATE, and its successors, officers, directors, assigns, agents, representatives, employees, partners, subcontractors, and other persons under its control.

No Party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties herein.

The obligations under this Section shall survive termination or expiration of this Agreement for any reason.

**ARTICLE XIII**  
**AMENDMENTS**

Notwithstanding any other provision herein, the Parties agree that any change to this Agreement shall require a written amendment, mutually agreed upon and signed by both Parties. The terms and conditions contained in this Agreement may not be amended, modified, superseded, terminated, or otherwise altered except by mutual written consent of all parties hereto and, if applicable, approved by the Division of Administration, Office of State Procurement.

**ARTICLE XIV**  
**OWNERSHIP**

All records, reports, documents and other material delivered or transmitted to the PARISH by the STATE shall remain the property of the STATE and shall be returned by the PARISH to the STATE at the PARISH'S expense at termination or expiration of this Agreement. All records, reports, documents, or other material related to this Agreement and/or obtained or

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prepared by the PARISH in connection with performance of the services contracted for herein shall be the property of the PARISH, and shall be retained in accordance with the terms of this Agreement.

**ARTICLE XV**  
**ASSIGNMENT**

The PARISH shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment, subrogation or novation), without prior written consent of the STATE, provided however, that claims for money due or to become due to the PARISH from the STATE may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the STATE.

**ARTICLE XVI**  
**FISCAL FUNDING CLAUSE**

The continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Louisiana Legislature. If the Louisiana Legislature fails to appropriate sufficient monies to provide for the continuation of the Agreement, or if the allocation is rescinded or reduced by the State or the Federal government in case of an emergency, or the appropriation is reduced by veto of the Governor or by any other means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Agreement, the Agreement shall terminate on the date of the beginning of the first fiscal year for which funds are rescinded, reduced, or not appropriated.

**ARTICLE XVII**  
**CERTIFICATION OF DEBARMENT / SUSPENSION STATUS**

All Parties certify with their execution of this Agreement that it is not suspended, debarred or ineligible from entering into contracts or agreements with any department or agency of the Federal Government, or in receipt of notice of proposed debarment or suspension. PARISH further certifies with its execution of this Agreement that it is not suspended, debarred or ineligible from entering into contracts or agreements with any department or agency of the State of Louisiana, or in receipt of notice of proposed debarment or suspension.

All Parties agree to secure from any consultant(s), contractor(s) and/or subcontractor(s) for the Project certification that such consultant(s), contractor(s) and/or subcontractor(s) are not suspended, debarred or declared ineligible from entering into contracts with any department or agency of the Federal Government, or in receipt of a notice of proposed debarment or suspension. The Parties further agree to secure from any consultant(s), contractor(s) and/or subcontractor(s) for the Project certification that such consultant(s), contractor(s) and/or subcontractor(s) are not suspended, debarred or declared ineligible from entering into contracts with any department or agency of the State of Louisiana, or in receipt of a notice of proposed debarment or suspension.

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All Parties agree to provide immediate notice to the other party in the event of it or its consultant(s), contractor(s) and/or any subcontractor(s) associated with the Project being suspended, debarred or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this Agreement. The PARISH further agrees to provide immediate notice to the STATE in the event of it or its consultant(s), contractor(s) and/or any subcontractor(s) being suspended, debarred or declared ineligible by any department or agency of the State of Louisiana, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of this Agreement.

Upon notice of suspension, debarment, or declaration that either party and/or its consultant(s), contractor(s) and/or any subcontractor(s) is/are ineligible to enter into contracts with any department or agency of the Federal Government, either prior to or after execution of this Agreement, each party reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this Agreement pursuant to the terms of Article VIII in this Agreement, or take such other action it deems appropriate under this Agreement. Upon notice of suspension, debarment, or declaration that the PARISH and/or its consultant(s), contractor(s), and/or any subcontractor(s) is/are ineligible to enter into contracts with any department or agency of the State of Louisiana, either prior to or after execution of this Agreement, the STATE further reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this Agreement pursuant to the terms of Article VIII in this Agreement, or to take such other action it deems appropriate under this Agreement.

**ARTICLE XVIII**  
**NO THIRD PARTY BENEFICIARY**

Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement as indicated herein or by operation of law.

**ARTICLE XIX**  
**RELATIONSHIP OF PARTIES**

- A. In the exercise of their respective rights and obligations under this Agreement, the PARISH and the STATE each act in an independent capacity, and no party is to be considered the officer, agent, or employee of the other, unless otherwise provided by law.
- B. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.
- C. The participation by STATE in the Project shall in no way be construed to make the STATE a party to any contract between the PARISH, its consultant(s), contractor(s) and/or subcontractor(s) or between the STATE and any third party. The participation by the PARISH in the Project shall in no way be construed to make PARISH a party to any contract between the STATE and/or either's consultant(s), contractor(s) and/or subcontractor(s), or any third party.

*St. Charles Parish*  
*Operation, Maintenance, Repair, Replacement and Rehabilitation of the Davis Pond Freshwater*  
*Diversion Project*  
*State Project No. BA-01*

**ARTICLE XX**  
**DISPUTES**

Before any party to this Agreement may bring suit in any court concerning any issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The exclusive venue for any suit arising out of this Agreement shall be in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, Louisiana.

**ARTICLE XXI**  
**DESIGNATION OF POINTS OF CONTACT**

The parties designate the following persons to be their official contacts in relation to this Agreement. Any party may change its contact person upon written notice to the other party. 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 delivered personally or sent by registered or certified mail as follows:

If to ST. CHARLES PARISH:

Lawrence H. Cochran, Jr.  
St. Charles Parish President  
Post Office Box 302  
Hahnville, LA 70057  
Phone: (985) 783-5000  
Fax: 337-369-7424

If to the CPRA BOARD:

Kyle R. "Chip" Kline  
Chairman  
Capitol Annex - State of Louisiana  
P.O. Box 44027  
Baton Rouge, LA 70804-4027  
225-342-7669

If to CPRA:

Kyle Graham  
Executive Director  
Coastal Protection and Restoration Authority  
Post Office Box 44027  
Baton Rouge, LA 70804-4027  
225-342-4683

**ARTICLE XXII**  
**EFFECTIVE DATE / DURATION**

This Agreement shall be effective for a period of five (5) years, commencing on **February 1, 2016** and terminating on **January 31, 2021**, unless otherwise terminated or

*St. Charles Parish  
Operation, Maintenance, Repair, Replacement and Rehabilitation of the Davis Pond Freshwater  
Diversion Project  
State Project No. BA-01*

amended by written mutual agreement of all parties or in accordance with the terms herein.

This Agreement may be executed in multiple originals.

**THUS DONE, PASSED, AND SIGNED** on the dates indicated below before the below-named notary and competent witnesses.

**ST CHARLES PARISH**

**COASTAL PROTECTION AND RESTORATION AUTHORITY BOARD**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Lawrence H. Cochran, Jr., President

Kyle R. "Chip" Kline, Jr., Chairman

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

72-6001208

(Parish's Federal Identification Number)

**WITNESSES:**

**WITNESSES:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**STATE OF LOUISIANA  
PARISH OF ST. CHARLES**

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for said Parish and State aforesaid, on this \_\_\_\_\_ day of \_\_\_\_\_ 2016, personally came and appeared Lawrence H. Cochran, Jr., to me known, who declared that he is the President of St. Charles Parish, that he executed the foregoing instrument on behalf of said entity and that the instrument was signed pursuant to the authority granted to him by said entity and that he acknowledged the instrument to be the free act and deed of said entity.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Louisiana Notary Public / Bar Number

My commission expires: \_\_\_\_\_

(SEAL)

**STATE OF LOUISIANA**  
**PARISH OF EAST BATON ROUGE**

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for said Parish and State aforesaid, on this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally came and appeared Kyle R. “Chip” Kline, to me known, who declared that he is the Chairman of the Coastal Protection and Restoration Authority Board, that he executed the foregoing instrument on behalf of said State Agency and that the instrument was signed pursuant to the authority granted to him by said State Agency and that he acknowledged the instrument to be the free act and deed of said State Agency.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Louisiana Notary Public / Bar Number

My commission expires: \_\_\_\_\_

(SEAL)



**Davis Pond Freshwater Diversion OMRR&R Budget Estimate**  
**Feb. 1, 2016 - Jan. 31, 2021**

BUDGET CATEGORY	YEAR				
	2017	2018	2019	2020	2021
ADMINISTRATIVE	\$ 5,175	\$ 5,175	\$ 5,175	\$ 5,175	\$ 5,175
CONTINGENCY	\$ 23,489	\$ 33,688	\$ 58,524	\$ 11,715	\$ 17,940
EQUIPMENT	\$ 234,893	\$ 336,876	\$ 585,236	\$ 117,152	\$ 179,397
OPERATIONS & MAINTENANCE PERSONNEL	\$ 282,081	\$ 296,167	\$ 310,969	\$ 326,525	\$ 342,861
SUPPLIES & MATERIALS	\$ 83,870	\$ 83,870	\$ 83,870	\$ 83,870	\$ 83,870
<b>Annual Total</b>	<b>\$ 629,508</b>	<b>\$ 755,776</b>	<b>\$ 1,043,774</b>	<b>\$ 544,437</b>	<b>\$ 629,243</b>
AGREEMENT TOTAL	<u>\$3,602,738</u>				

**Estimated Personnel Cost Rate Schedule  
for the Operations and Maintenance Personnel Budget Category**

EMPLOYEE TITLE	Estimated Hours Per Year	Hourly Rate				
		2017	2018	2019	2020	2021
ACCOUNT CLERK II	100	\$29.84	\$31.33	\$32.90	\$34.54	\$36.27
ACCOUNTANT	24	\$25.08	\$26.33	\$27.65	\$29.03	\$30.48
AREA FOREMAN	120	\$36.21	\$38.02	\$39.92	\$41.92	\$44.01
ASSISTANT DIRECTOR	12	\$71.81	\$75.40	\$79.17	\$83.13	\$87.28
ASSISTANT SUPERINTENDENT	45	\$49.28	\$51.74	\$54.33	\$57.04	\$59.90
AUTOMATION CONTROL ELECTRICIAN	10	\$37.96	\$39.86	\$41.85	\$43.95	\$46.14
DP DIVERSION FACILITY OPERATOR	1,700	\$51.68	\$54.26	\$56.98	\$59.83	\$62.82
DP DIVERSION FACILITY OPERATOR (OT)	40	\$55.32	\$58.09	\$60.99	\$64.04	\$67.25
DIRECTOR	8	\$76.34	\$80.15	\$84.16	\$88.37	\$92.78
ELECTRICIAN	70	\$26.27	\$27.58	\$28.96	\$30.41	\$31.93
ELECTRICIAN HELPER	50	\$19.27	\$20.23	\$21.24	\$22.30	\$23.42
ENVIRONMENTAL COMPLIANCE OFFICER	12	\$36.12	\$37.93	\$39.83	\$41.82	\$43.91
EQUIPMENT OPERATOR I	1,780	\$24.57	\$25.80	\$27.09	\$28.44	\$29.87
EQUIPMENT OPERATOR I (OT)	40	\$26.58	\$27.90	\$29.30	\$30.76	\$32.30
EQUIPMENT OPERATOR II	20	\$26.99	\$28.33	\$29.75	\$31.23	\$32.80
EQUIPMENT OPERATOR III	20	\$28.89	\$30.33	\$31.85	\$33.44	\$35.11
EQUIPMENT OPERATOR IV	20	\$39.80	\$41.78	\$43.87	\$46.06	\$48.37
GENERAL SUPERINTENDENT	0	\$66.34	\$69.66	\$73.14	\$76.80	\$80.64
GIS SPECIALIST	20	\$70.04	\$73.54	\$77.22	\$81.08	\$85.13
GRANTS OFFICER	20	\$70.11	\$73.61	\$77.29	\$81.16	\$85.21
LABORER	200	\$17.50	\$18.38	\$19.30	\$20.26	\$21.28
MECHANIC	125	\$31.69	\$33.27	\$34.93	\$36.68	\$38.51
PUMP MECHANIC	1,780	\$38.81	\$40.75	\$42.78	\$44.92	\$47.17
PUMP MECHANIC 2	40	\$35.07	\$36.82	\$38.66	\$40.59	\$42.62
PUMP MECHANIC HELPER	1,820	\$22.73	\$23.86	\$25.05	\$26.31	\$27.62
PUMP MECHANIC HELPER (OT)	40	\$24.84	\$26.09	\$27.39	\$28.76	\$30.20
PUMP MECHANIC OT	40	\$35.72	\$37.51	\$39.39	\$41.35	\$43.42
RISK MANAGER	10	\$60.30	\$63.32	\$66.49	\$69.81	\$73.30
SENIOR AUTOMATION TECHNICIAN	40	\$52.71	\$55.35	\$58.12	\$61.02	\$64.07
SHOP FOREMAN	12	\$45.32	\$47.58	\$49.96	\$52.46	\$55.08
SHOP MECHANIC'S HELPER	12	\$38.02	\$39.92	\$41.92	\$44.01	\$46.21
SUPERINTENDENT	0	\$52.24	\$54.85	\$57.59	\$60.47	\$63.50
TRAFFIC SIGN TECHNICIAN	0	\$30.58	\$32.10	\$33.71	\$35.39	\$37.16
WELDER	50	\$36.26	\$38.07	\$39.97	\$41.97	\$44.07

PERSONNEL COST BY YEAR	
2017	\$282,081
2018	\$296,167
2019	\$310,969
2020	\$326,525
2021	\$342,861
<b>BUDGET TOTAL</b>	<b>\$1,558,604</b>

**Annual Cost Estimate Breakdown by Budget Category (including Detailed Breakdown of Equipment Budget Category Estimate)**

CATEGORY		2017	2018	2019	2020	2021	TOTAL
<b>ADMINISTRATIVE</b>		\$ 5,175	\$ 5,175	\$ 5,175	\$ 5,175	\$ 5,175	<b>\$25,875</b>
Telephones, copies, mail, fax, office supplies, & communication.							
<b>CONTINGENCY</b>		\$ 23,489	\$ 33,688	\$ 58,524	\$ 11,715	\$ 17,940	<b>\$145,356</b>
Contingency is calculated to be 10% of the Equipment Category. Contingency can be used in any budget year.							
<b>EQUIPMENT</b>		\$ 234,893	\$ 336,876	\$ 585,236	\$ 117,152	\$ 179,397	
<b>CONTRACTUAL SERVICES</b>		\$ 77,118	\$ 171,888	\$ 548,793	\$ 79,352	\$ 118,982	
ANNUAL TRACTOR TUNEUP		\$ 2,410	\$ 2,531	\$ 2,657	\$ 2,790	\$ 2,929	
COMPLETE ENGINE REBUILD		\$ -	\$ -	\$ 75,000	\$ -	\$ -	
GAS MONITOR SYSTEM INSPECTION/REPLACEMENT		\$ 19,000	\$ -	\$ -	\$ -	\$ -	
GEAR BOX REPAIR (LEVEL ONE)		\$ -	\$ 35,000	\$ 35,000	\$ 35,000	\$ -	
GEAR BOX REPAIR (MINOR)		\$ -	\$ 5,500	\$ 5,500	\$ 5,500	\$ -	
GENERATOR TUNE UP		\$ 2,400	\$ 2,640	\$ 2,904	\$ 3,194	\$ 3,514	
HYDRAULIC CYLINDER REPLACEMENT		\$ -	\$ -	\$ 187,550	\$ -	\$ -	
HYDRAULIC HOSE REPLACEMENT		\$ 3,000	\$ -	\$ -	\$ -	\$ 3,000	
OVERHEAD CRANE INSPECTIONS/REPAIR		\$ 2,500	\$ 2,625	\$ 2,756	\$ 2,894	\$ 3,039	
POWER UNIT EXHAUST SYSTEM REPLACEMENT		\$ 15,000	\$ -	\$ -	\$ -	\$ -	
POWER UNIT TUNEUP		\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	\$ 6,500	
PUMP REBUILD		\$ -	\$ -	\$ 100,000	\$ -	\$ 100,000	
PUMPSTATION BUILDING & WASHKE SLAB JOINT REPAIR		\$ 9,508	\$ -	\$ -	\$ -	\$ -	
RECONDITION ENGINE HEADS		\$ -	\$ 11,000	\$ 11,000	\$ 11,000	\$ -	
RENTALS (Scaffolding for cylinder replacement)		\$ -	\$ -	\$ 10,000	\$ -	\$ -	
SAND BLASTING BULKHEADS & IRON BEAMS		\$ -	\$ -	\$ -	\$ 6,714	\$ -	
STAFF GAUGE REPAIRS		\$ -	\$ -	\$ -	\$ 5,760	\$ -	
NEW FENCE INSTALLATION PROJECT		\$ -	\$ 106,092	\$ 109,926	\$ -	\$ -	
FENCING & GATE REPLACEMENT ALONG HWY 90 (NORTH & SOUTH)		\$ 16,800	\$ -	\$ -	\$ -	\$ -	
<b>EQUIPMENT ACQUISITION</b>		\$ 157,775	\$ 164,988	\$ 36,443	\$ 37,800	\$ 60,415	
15FT CUTTER (Replacing LZDD724)		\$ -	\$ 17,875	\$ -	\$ -	\$ -	
20' STORAGE CONTAINER X2		\$ 7,500	\$ -	\$ 7,500	\$ -	\$ -	
20FT CUTTER (Replacing LZDD724)		\$ -	\$ -	\$ 21,478	\$ -	\$ -	
4X4 TRACTOR REPLACEMENT X2 (Replacing M120DTC's)		\$ 89,250	\$ 93,713	\$ -	\$ -	\$ -	
BOBCAT REPLACEMENT (Replacing T300H)		\$ -	\$ 57,750	\$ -	\$ -	\$ -	
CANVAS STOP LOG COVER		\$ 7,300	\$ -	\$ -	\$ -	\$ -	
DIESEL TRUCK (Replacing Dodge Ram 2500)		\$ 41,000	\$ -	\$ -	\$ -	\$ -	
GENERATOR (Replacing GENERAC 25KVA)		\$ -	\$ -	\$ -	\$ -	\$ 61,215	
GENERATOR ENCLOSURE		\$ -	\$ 5,000	\$ -	\$ -	\$ -	
JOHN DEER GATOR REPLACEMENT (Replacing GatorD)		\$ 15,500	\$ -	\$ -	\$ -	\$ -	
PROBE FOR HYDRAULIC CYLINDER		\$ -	\$ -	\$ 7,865	\$ -	\$ -	
SHEET PILE REPLACEMENT (2000sq ft per deficiency report)		\$ -	\$ -	\$ -	\$ 37,800	\$ -	
SPRAY UNIT TRAILER SET		\$ 2,750	\$ -	\$ -	\$ -	\$ -	
UTILITY TRAILER 6.5'X12' (Replacing 3413-GE-L)		\$ -	\$ 2,750	\$ -	\$ -	\$ -	
SALVAGE VALUE CREDIT (for the Sale of Equipment)		\$ (5,525)	\$ (12,100)	\$ (400)	\$ -	\$ (800)	
<b>OPERATIONS &amp; MAINT</b>		\$ 282,081	\$ 296,167	\$ 310,969	\$ 326,525	\$ 342,861	<b>\$1,558,604</b>
PERSONNEL COSTS							
<b>SUPPLIES &amp; MATERIALS</b>		\$ 83,870	\$ 83,870	\$ 83,870	\$ 83,870	\$ 83,870	<b>\$419,350</b>
Grass, weed, & litter control, fuel, materials for minor repairs & maintenance							
<b>Grand Total</b>		<b>\$ 629,508</b>	<b>\$ 755,776</b>	<b>\$ 1,043,774</b>	<b>\$ 544,437</b>	<b>\$ 629,243</b>	<b>\$3,602,738</b>

\$996,133

\$1,453,554

\$457,421

## Detailed Breakdown of Supplies & Materials Budget Category Estimate

<u>SUPPLIES &amp; MATERIALS</u>				
DESCRIPTION	GENERAL PROJECT	PUMP STATION	STRUCTURE	Total
EQUIPMENT HOURS	\$ 75,000.00			
MILEAGE	\$ 45,000.00			
FUEL (Diesel & Off-road diesel)	\$ 51,200.00			
EQUIPMENT PARTS FOR MINOR REPAIRS	\$ 25,000.00			
HAND TOOLS	\$ 12,500.00			
SHOP SUPPLIES	\$ 25,000.00			
SMALL OUTDOOR EQUIPMENT REPLACEMENT	\$ 30,000.00			
MISC TRUCK PARTS/REPAIRS	\$ 5,000.00			
CHEMICALS	\$ 20,000.00			
ENVIRONMENTALLY FRIENDLY DISPOSAL OF HAZARDOUS MATERIALS	\$ 10,000.00			
OIL DISPOSAL	\$ 5,000.00			
WEED CONTROL		\$ 33,000.00		
PEST CONTROL		\$ 18,000.00		
COMMUNICATION/TELEMETRY REPAIRS		\$ 10,000.00		
LIMESTONE for Roadway Repair		\$ 9,000.00		
SIGN REPLACEMENT		\$ 150.00		
HYDRAULIC OIL			\$ 22,000.00	
WEED SPRAYING			\$ 21,500.00	
CONTROL DOOR REPLACEMENT (Stainless Steel)			\$ 2,000.00	
<b>Totals</b>	<b>\$ 303,700.00</b>	<b>\$ 70,150.00</b>	<b>\$ 45,500.00</b>	<b>\$ 419,350</b>

*Budget for this  
category is  
allocated evenly  
across all 5 years.*

**ATTACHMENT B**

**MONITORING REPORT**

Date: XXXXXXXX

Contracting Party: St. Charles Parish

CPRP Project No. BA-01

Project Title: “OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND REHABILITATION (OMRR&R) OF THE DAVIS POND FRESHWATER DIVERSION PROJECT”

Invoice No 0X-XXXX

Invoice Amount: \$XX,XXX.XX

Total Contract Amount: \$X,XXX,XXX.XX

Contract Balance: \$X,XXX,XXX.XX

Total Task Amount: \$XX,XXX.XX

Task Balance: \$XX,XXX.XX

Total invoiced to date: \$XX,XXX.XX

• **WORK COMPLETED TO DATE (ACCORDING TO TYPE CONTRACT):**

- A. Percentage of work completed - XX% of Total Tasks Performed
- B. Hourly –

(For detailed hourly breakdown see attached timesheets)

- C. Scope of Services Outlined by Tasks

- D. Actual Costs Incurred - \$XX,XXX.XX
- E. Fee Schedule – 201X Fee Schedule

II **FOR EACH PROJECT A NARRATIVE OF IMPLEMENTATION PROGRESS INCLUDING:**

- A. **Tasks and/or milestones accomplished (give dates)**

B. Tasks and/or milestones not accomplished with explanation or assessment of:

1. Nature of problems encountered:

(Form DNR-PR)

2. Remedial action taken or planned:

3. Whether minimum criteria for measure can still be met:

4. Likely impact upon achievement:

III DELIVERABLES

IV OTHER DISCUSSIONS OF SPECIAL NOTE

Contracting Party \_\_\_\_\_ (Printed Name) \_\_\_\_\_ Date \_\_\_\_\_

Approval \_\_\_\_\_ (Printed Name) \_\_\_\_\_ Date \_\_\_\_\_  
CPRA Project Manager

Approval \_\_\_\_\_ (Printed Name) \_\_\_\_\_ Date \_\_\_\_\_  
CPRA Contract Monitor or Designee

ATTACHMENT C

PROJECT COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

THE STATE OF LOUISIANA

FOR THE CONSTRUCTION OF THE

DAVIS POND FRESHWATER DIVERSION FEATURE

OF THE

MISSISSIPPI DELTA REGION PROJECT

THIS AGREEMENT is entered into this 17<sup>th</sup> day of April, 1993, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Acting Assistant Secretary of the Army (Civil Works), and the State of Louisiana, acting by and through the Secretary, Louisiana Department of Natural Resources (hereinafter referred to as the "Local Sponsor").

WITNESSETH, THAT:

WHEREAS, the Mississippi River and Tributaries Project was authorized by the Flood Control Act of 1928, Pub. L. 70-391, and modified by the Flood Control Act of 1965, Pub. L. 89-298 to include the Mississippi Delta Region Project as recommended by the Chief of Engineers in House Document No. 308, 88th Congress, 2nd Session; and

WHEREAS, a Post Authorization Change Report, approved in June 1987, modified the Mississippi Delta Region Project to include the Davis Pond Freshwater Diversion Feature (hereinafter referred to as the "Project", as defined in Article I.a. of this Agreement); and

WHEREAS, the Government and the Local Sponsor desire to enter into a Project Cooperation Agreement for construction of the Project; and

WHEREAS, Section 906 of the Water Resources Development Act of 1986, Pub. L. 99-662, specifies the cost-sharing requirements applicable to the Project, that is, that the Government is to bear 100 percent of the first costs, and that the costs of operation, maintenance, repair, replacement and rehabilitation are to be cost shared on a 75% Federal and 25% non-Federal basis; and

WHEREAS, notwithstanding the provisions of Section 906 of the Water Resources Development Act of 1986, Pub. L. 99-662, the Local Sponsor, in order to obtain the benefits of the Project at the earliest possible date, agrees to voluntarily contribute 25% of the first costs without expectation of repayment, along with the mandatory 25% of the costs of operation, maintenance, repair, replacement and rehabilitation; and

WHEREAS, the Government is authorized to accept contributions of funds provided by non-Federal project sponsors and to expend those funds in connection with Federal appropriations on authorized project work, pursuant to 33 U.S.C. 701h; and

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

WHEREAS, the Government and the Local Sponsor have the legal authority and capability to perform as hereinafter set forth and are willing to participate 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 Local Sponsor agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean that work generally described in the Davis Pond Freshwater Diversion Structure Post Authorization Change Report, approved June 1987, and the Design Memorandum No. 1, Davis Pond Freshwater Diversion Structure, approved September, 1992. The Project is located at mile 118.4 Above Head of Passes on the right descending bank of the Mississippi River and consists of four 14' x 14' box culverts with corresponding inflow and outflow channels, guide levees, a 570 cubic foot per second pumping station and a ponding area of approximately 9,311 acres, bounded along the North shore of Lake Cataouatche by a rock weir approximately 9,425 feet long. The inflow channel has a length of approximately 535 feet and a bottom width of approximately 85 feet. The outflow channel has a length of approximately 11,043 feet, a bottom width of approximately 120 feet, and a water depth of approximately 20 feet at maximum flow.

b. The term "total first costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs; costs of the construction phase estuary monitoring program; supervision and administration costs (including any supervision and administration costs associated with the construction phase estuary monitoring program); costs of contract dispute settlements or awards; and the value of lands, easements, servitudes, rights-of-way, utility and facility alterations or relocations, and suitable



borrow and dredged or excavated material disposal areas determined by the Government to be necessary for the Project, but shall not include any costs for betterments or for operation, maintenance, repair, replacement and rehabilitation of the Project.

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

d. The term "Contracting Officer" shall mean the U.S. Army District Engineer or the Principal Contracting Authority Responsible for Contracting for the New Orleans District.

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

f. The term "relocations" shall mean the preparation of plans and specifications for and the accomplishment of all alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads (excluding construction, modification, or relocation of railroad bridges and approaches thereto), highways, and other bridges, buildings, 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 construction, operation, and maintenance of the Project.

g. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

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

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

## ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Local Sponsor, shall expeditiously construct the Project (including construction, modification or relocation of railroad bridges and approaches

thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bids. Before the initial construction of the Project can proceed, the Local Sponsor must concur in writing with issuance of the invitation for bids for the first construction contract. To the extent possible, the Local Sponsor thereafter also will be afforded the opportunity to review and comment on all modifications and change orders prior to issuance to the contractor of a Notice to Proceed. In those cases where providing notice to the Local Sponsor of the required contract modifications or change orders is not possible prior to issuance of Notice to Proceed, such notification will be provided after the fact at the earliest date possible. The Contracting Officer will, in good faith, consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer, provided such contract modifications and change orders are in accordance with the Project purposes.

b. The Government shall perform or assure performance of all relocations determined by the Government to be necessary for the construction, operation and maintenance of the Project.

c. The Government shall accomplish or assure accomplishment of the hydrologic modeling portion of the construction phase estuary monitoring program.

d. Notwithstanding any other provisions of this Agreement, if the award of any contract for construction of the Project would result in the Local Sponsor's share of total first costs exceeding \$17,500,000, the award of that contract and subsequent contracts shall be deferred until such time as all parties to this Agreement agree to resume construction of the Project.

e. The Government shall acquire all lands, easements, servitudes, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, determined by the Government to be necessary for construction, operation, and maintenance of the Project, except as provided in paragraph h.1. of this Article.

f. After the Government determines that the Project or a functional portion of the Project is complete, and notifies the Local Sponsor in writing of such determination, the Government shall turn the Project or functional portion of the Project over to the Local Sponsor, which shall accept the Project or functional portion of the Project and be solely responsible for operating, maintaining, repairing, replacing, and rehabilitating the Project or functional portion of the Project in accordance with Article VIII of this Agreement.

g. The Government shall, subject to audit and the availability of funds, reimburse the Local Sponsor for 75 percent of the Local Sponsor's actual operation, maintenance, repair, replacement and rehabilitation costs for the Project, as approved by the Government. The Government shall receive a credit for 25 percent of the operation, maintenance, repair, replacement, and rehabilitation costs incurred by the Government, which shall be applied against

the Government's requirement to pay 75 percent of the operation, maintenance, repair, replacement, and rehabilitation costs incurred by the Local Sponsor.

h. As further specified below, the Local Sponsor shall contribute 25 percent of total first costs through cash payments, Project lands, easements, servitudes, rights-of-way, including suitable borrow and dredged or excavated material disposal areas, relocations, and the performance of work-in-kind.

1. The Local Sponsor shall provide to the Government all lands, easements, servitudes, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, that are owned, controlled, and/or claimed by the Local Sponsor and that are determined by the Government to be necessary for the construction, operation, and maintenance of the Project.

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

3. The Local Sponsor shall accomplish or assure accomplishment of the construction phase estuary monitoring program, with the exception of the hydrologic modeling portion. The Local Sponsor shall receive a credit for the value of this work-in-kind, as approved by the Government subject to Government audit, toward the cash contribution required under paragraph h.2. of this Article.

i. The Local Sponsor shall assure adequate public access on an equal basis to the Project area.

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

### ARTICLE III - LANDS, FACILITIES, AND PUB. L. 91-646

a. The Government shall acquire all lands, easements, servitudes, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, determined by the Government to be necessary for construction, operation, and maintenance of the Project, except as provided in paragraph b. of this Article.

b. The Local Sponsor shall provide to the Government all lands, easements, servitudes, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, that are owned, controlled and/or claimed by the Local Sponsor and that are determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights of entry to such lands. The necessary lands, easements, servitudes, and rights-of-way for

the Project may be provided incrementally for each construction contract. All lands, easements, servitudes and rights-of-ways determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

c. It is specifically understood that no fee title to property or minerals affected herein is transferred with any easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal areas provided by the Local Sponsor pursuant to this Agreement. No public rights of ownership shall be transferred and vest in private parties as a result of the Project. It is further understood and agreed that any easements, servitudes, rights-of-way, and suitable borrow and dredged or excavated material disposal areas shall provide for access for mineral exploration and development which will not unreasonably interfere with the purposes of the Project.

d. The Government shall perform or assure performance of all relocations determined by the Government to be necessary for the construction, operation, and maintenance of the Project.

e. The Government shall provide all retaining dikes, waste weirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any suitable dredged or excavated material disposal areas required for construction, operation and maintenance of the Project.

f. The Government or the Local Sponsor, as the case may be, shall comply with applicable provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocations Assistance Act of 1987 (Pub. L. 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, servitudes, and rights-of-way, and performing relocations for construction, operation, and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of the lands, easements, servitudes, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, to be included in total first costs and credited toward the Government's share of total first costs shall be the actual costs to the Government, including actual incidental costs such as 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 Pub. L. 91-646 Relocation Assistance benefits provided in accordance with the obligations under this Agreement.

b. The Local Sponsor shall not receive any credit for lands, easements, servitudes and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, previously provided as an item of cooperation for another Federal project nor shall the value

thereof be included in total first costs. The value of the lands, easements, servitudes, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, to be included in total first costs and credited towards the Local Sponsor's share of total first costs shall be determined in accordance with the following procedures:

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

2. If the lands, easements, servitudes, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.b.1. of this Agreement. If the Local Sponsor pays an amount in excess of the approved appraised fair market value, the Local Sponsor may be entitled to a credit for the actual purchase price paid provided that the purchase price is approved by the Government in writing.

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

4. Credit for lands, easements, servitudes 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 b.1. of this Agreement.

5. Credit for lands, easements, servitudes or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date of this Agreement, or at any time after this Agreement is signed, will also include the reasonable documented incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Pub. L. 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

c. The value of relocations that will be included in total first costs and credited toward the Government's share of total first costs shall be the actual costs incurred by the Government for the relocations.

## **ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT**

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

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

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

## **ARTICLE VI - METHOD OF PAYMENT**

a. The Local Sponsor shall provide, during the period of construction, the cash payments required under Article II of this Agreement. Total first costs are currently estimated to be \$70,000,000 and the Local Sponsor's share of total first costs is currently estimated to be \$17,500,000. The dollar amounts set forth in this Article are based upon the Government's best estimates which reflect projections of costs, price level changes, anticipated inflation, and any anticipated work-in-kind credit. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide the required cash contribution in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor 15 months before the start of each fiscal year of the estimated funds that will be required from the Local Sponsor to meet the Local Sponsor's share of the total first costs for the next Government fiscal year. The funds required from the Local Sponsor for the first Government fiscal year of construction will include the Local Sponsor's cash share of all costs attributable to the Project incurred by the Government prior to the first fiscal year of construction.

2. No later than 90 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of total first costs for the first fiscal year of construction, including the Local Sponsor's cash share of costs attributable to the Project incurred prior to the initiation of construction. No later than 45 calendar days thereafter, the Local Sponsor shall verify to the satisfaction of the Government that the Local Sponsor has deposited the requisite amount in an escrow account acceptable to the Government, with interest accruing to the Local Sponsor.

3. For the second and subsequent fiscal years of Project construction, the Government shall, no later than 90 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of total first costs for that fiscal year. No later than 45 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement.

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

c. The Government will draw on the funds provided by the Local Sponsor 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 construction.

d. Upon completion of Project construction and resolution of all relevant contract claims and appeals, the Government shall compute the total first costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total first costs.

1. In the event the total contribution by the Local Sponsor is less than the Local Sponsor's required share of total first costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Local Sponsor's required share of total first costs.

2. If the value of the Local Sponsor's total contribution under Article II.h. of this Agreement exceeds 25 percent of total first costs, the Government shall, subject to the availability of funds, return the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete.

e. Not later than October 1 of each fiscal year after Project construction is complete, the Local Sponsor, in consultation with the Government, shall prepare a mutually acceptable yearly estimate for the anticipated operation, maintenance, repair, replacement and rehabilitation costs for the Project, by activity or item, for the fiscal year that will begin 24 months thereafter. For the first year of Project operation, maintenance, repair, replacement and rehabilitation after

the period of construction, the said estimate shall include operation, maintenance, repair, replacement and rehabilitation costs that will have been incurred during the period of construction.

f. On a quarterly basis during the life of the Project, the Local Sponsor shall submit to the Government statements of actual operation, maintenance, repair, replacement and rehabilitation costs incurred by the Local Sponsor for the Project or functional portion, and not later than 30 days thereafter the Government, subject to audit and availability of funds, shall provide to the Local Sponsor a cash payment equal to 75 percent of said actual costs as approved by the Government. The Government shall receive a credit for 25 percent of the operation, maintenance, repair, replacement, and rehabilitation costs incurred by the Government, which shall be applied against the Government's requirement to pay 75 percent of the operation, maintenance, repair, replacement, and rehabilitation costs incurred by the Local Sponsor.

## ARTICLE VII - DISPUTES

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

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

a. After the Contracting Officer has determined that construction of the Project or functional portion of the Project is complete and provided the Local Sponsor with written notice of such determination, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, in accordance with applicable Federal and State laws, as provided in Article XIII, and specific directions identified and prescribed by the Government and the Local Sponsor in the Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual, Water Control Plan, and Monitoring Supplement and any subsequent amendments thereto. Operation of the Project shall include implementing a comprehensive system for monitoring the effects of operation of the Project on fish and wildlife, commercial fishing and trapping, marsh vegetative species, and salinity intrusion; and to ensure the safety of humans.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the Local Sponsor owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing replacing or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill the Local Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter,



at reasonable time and in a reasonable manner, upon lands that the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet the Local Sponsor'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.

c. The Local Sponsor shall request prior Contracting Officer approval of any item of operation, maintenance, repair, replacement or rehabilitation costs that exceeds the original estimate by more than \$5,000.00. The Contracting Officer shall approve or disapprove the request within 60 days, except that the Contracting Officer shall approve or disapprove the request within 5 days if the Contracting Officer determines that an emergency exists.

#### ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project for Project purposes, except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor which are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total first costs and cost shared as a construction cost in accordance with this Agreement.

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

c. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed

or continue with construction after considering any liability that may arise under CERCLA, the Local Sponsor shall be responsible, as between the Government and the Local Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total first costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Local Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVII of this Agreement

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

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

#### ARTICLE XI - MAINTENANCE OF RECORDS

Within 60 days of the date of this Agreement, the Government and the Local Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total first costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years, 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 XII - AUDITS

Subject to the provisions of any applicable law, either party may conduct an audit, when appropriate, of the records for the Project to ascertain the allowability, reasonableness, and allocability of costs for inclusion in and credit toward total first costs or for inclusion in and credit toward operation, maintenance, repair, replacement, or rehabilitation costs.

#### ARTICLE XIII- FEDERAL AND STATE LAWS

a. In the exercise of the Local Sponsor's rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, and Department of

Defense Directive 5500. II issued pursuant thereto and published in Part 300 of Title 32, case of Federal Regulations, 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".

b. The Government agrees to comply with all applicable Federal and State of Louisiana laws and/or regulations, unless State laws and regulations are preempted by Federal law.

#### **ARTICLE XIV- RELATIONSHIP OF PARTIES**

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

#### **ARTICLE XV - OFFICIALS NOT TO BENEFIT**

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

#### **ARTICLE XVI - COVENANT AGAINST CONTINGENT FEES**

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

#### **ARTICLE XVII- TERMINATION OR SUSPENSION**

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this 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 Local Sponsor elects to terminate this Agreement.

#### ARTICLE XVIII - 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 Louisiana. The Government acknowledges that the Local Sponsor must obtain an appropriation prior to payment of any damages.

b. The Local Sponsor intends to satisfy its obligations hereunder. The Local Sponsor shall inform the Government of the total amount of appropriations that are available to cover Local Sponsor obligations under this Agreement for operation, maintenance, repair, replacement, and rehabilitation at the time the Local Sponsor signs this Agreement and for each year thereafter. The Local Sponsor shall include in its budget request for each State fiscal year funds sufficient to cover these obligations, and will use all reasonable and lawful means to secure sufficient appropriations to make the payments necessary to fulfill these obligations. The Local Sponsor reasonably believes 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 Local Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement for operation, maintenance, repair, replacement, and rehabilitation from any sources of funds available for this purpose, other than those provided by the State Legislature. Further, if State funds become unavailable for the Local Sponsor's performance of these obligations, the Government reserves the right to withhold future funding to the Local Sponsor and to take any other measures necessary to protect the Government's interest related to this Agreement.

#### ARTICLE XIX - NOTICES

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

If to the Local Sponsor:

Secretary, Department of Natural Resources  
P. O. Box 94396  
Baton Rouge, La. 70804-9396

If to the Government:

District Engineer  
Attn: CELMN-PP  
U. S. Army Corps of Engineers  
P. O. Box 60267  
New Orleans, La. 70160-0267

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 seven calendar days after it is mailed, as the case may be.

#### ARTICLE XX- CONFIDENTIALITY

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

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 LOUISIANA DEPARTMENT  
OF NATURAL RESOURCES

BY: Robert P. Petersen  
for G. Edward Dickey  
Acting Assistant Secretary  
of the Army, (Civil Works)

BY: John F. Ales  
John F. Ales, Secretary  
Louisiana Department of  
Natural Resources

DATE: APR 17 1993

DATE: APR 17 1993

WITNESS:

[Signature]

[Signature]

Chad A. Keger

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CERTIFICATE OF AUTHORITY

I, Warren A. Fleet, do hereby certify that I am the General Counsel for the Department of Natural Resources for the State of Louisiana, that the Department of Natural Resources for the State of Louisiana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of Louisiana in connection with the Davis Pond Freshwater Diversion Feature of the Mississippi Delta Region, Louisiana Project, and to pay damages, if necessary, in the event of the Department's failure to perform, in accordance with Section 221 of Public Law 91-611, subject to the limitations contained in the Agreement, and that the persons who have executed this Agreement on behalf of the State of Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16th day of April, 1993.

Warren A. Fleet

Warren A. Fleet  
General Counsel  
Department of Natural Resources  
Baton Rouge, Louisiana

Notary Public  
State of Louisiana  
My Commission Expires

[Signature]

Notary  
Number of  
[ ]

1993

## CERTIFICATION REGARDING LOBBYING

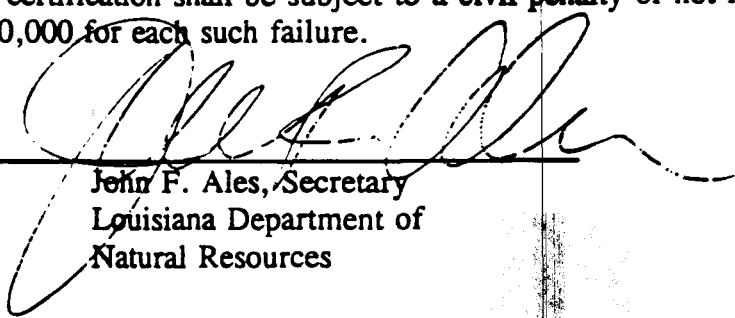
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.



John F. Ales, Secretary  
Louisiana Department of  
Natural Resources

DATE: APR 17 1993