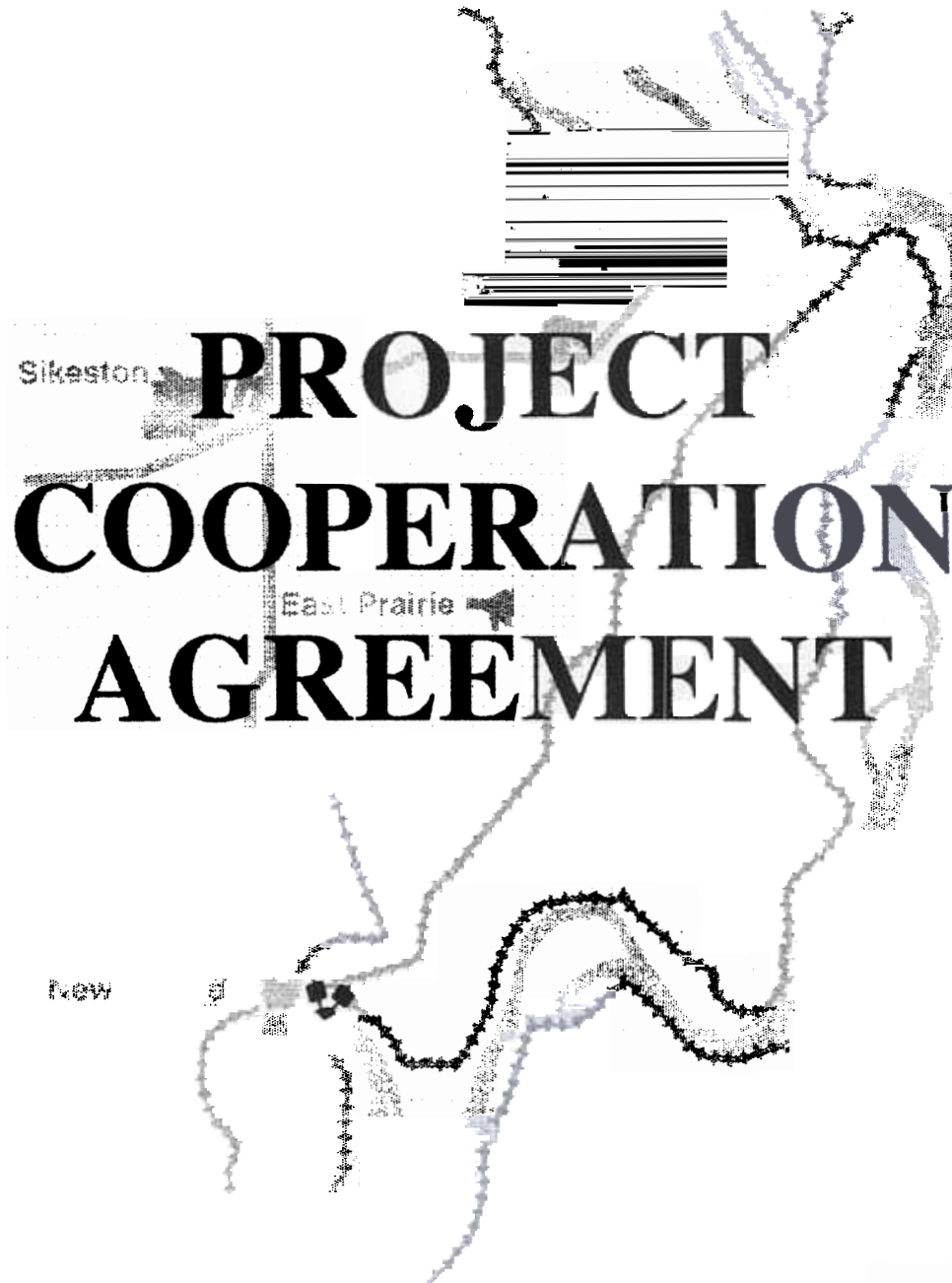


ST. JOHNS BAYOU AND NEW MADRID FLOODWAY, MISSOURI FIRST PHASE



**St. John Levee and Drainage
District of Missouri**
Established 1912

August 18, 1997



**PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
ST. JOHN LEVEE AND DRAINAGE DISTRICT
FOR CONSTRUCTION OF THE
ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT,
FIRST PHASE**

THIS AGREEMENT is entered into this 18th day of August, 1997, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the District Engineer, U.S. Army Engineer District, Memphis (hereinafter the "District Engineer", and ST. JOHN LEVEE AND DRAINAGE DISTRICT (hereinafter the "Non-Federal Sponsor"), represented by the PRESIDENT, ST. JOHN LEVEE AND DRAINAGE DISTRICT.

WITNESSETH, THAT:

WHEREAS, construction of the ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT, MISSOURI (hereinafter the Authorized Project) was authorized by Section 401(a) of the WATER RESOURCES DEVELOPMENT ACT OF 1986 dated 17 November 1986 (Public Law 99-662);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement for construction of a portion of the Authorized Project described as the ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT, FIRST PHASE (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, construction of the New Madrid Floodway Pumping Station and St. Johns Bayou Pumping Station features of the Project cannot be initiated until construction is underway on the Mississippi River and Tributaries Project - Mississippi River Levees Feature, New Madrid, Missouri, Levee Closure and Culvert Project (hereinafter the "MRL Features");

WHEREAS, construction of the Project or Project features cannot be initiated until the Government has satisfied the requirements of applicable environmental laws;

WHEREAS, construction costs and the value of associated lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas required for the New Madrid Floodway Pumping Station feature of the Project will be limited to those incremental costs and values of that feature, as determined by the Government, in excess of the Government's

estimate of those costs and values required for the MRL Features by themselves as generally shown in Table B-1 of the project Limited Reevaluation Report;

WHEREAS, Section 331 of the Water Resources Development Act of 1996, Public Law 104-303, authorizes the use of Federal funds made available under the United States Department of Agriculture (USDA) Rural Enterprise Zone Program to be applied toward the non-Federal share of total project costs;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

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

WHEREAS, the Non-Federal Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Authorized Project and sets forth procedures for adjusting such maximum amount; and

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

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

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean: the improvement of a total of 27.7 miles of channel along St. Johns Bayou, Birds Point New Madrid Levee Ditch, and St. James Ditch; the construction of a 1500 CFS pumping station at the outlet of East Bayou Ditch in the New Madrid Floodway Basin, except that the gravity outlet

portion of this feature shall be considered a feature of the Mississippi River Levees Project; the construction of a 1000 CFS pumping station at the outlet of St. Johns Bayou in the St. Johns Bayou Basin; the construction of one electric substation and transmission lines necessary to deliver power to the pumping stations; the acquisition and maintenance of a 2400 Acre ponding area for waterfowl in the sump area behind the New Madrid Floodway pumping station; the acquisition and maintenance of a 2500 Acre ponding area for waterfowl in the sump area behind the St. Johns Bayou pumping station; the acquisition and maintenance of restrictive easements along improved channels for disposal of excavated material during construction and maintenance operations, and for use as fish and wildlife habitat; and the acquisition of land in the Ten Mile Pond area for mitigation of project fish and wildlife impacts, as generally described in the LIMITED REEVALUATION REPORT, dated March 1997 and approved by the Chief of Engineers on August 7, 1997, and in the PHASE II GENERAL DESIGN MEMORANDUM, dated August 1986 and approved by the Chief of Engineers on 15 December 1986, subject to comments that were resolved in April 1987.

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

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or

excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Articles II.D.1. and II.D.3. of this Agreement to total financial obligations for construction, as projected by the Government.

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

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

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

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

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

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

K. The term "satisfying the requirements of applicable environmental laws" shall mean compliance with all applicable public laws, and regulations, of the Government relating to the protection of the environment. These shall include, but not be limited to, the environmental requirements necessary to achieve compliance with the National Environmental Policy Act, Clean Water Act, Endangered Species Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and the Clean Air Act.

L. The term "costs of the MRL Features" shall mean those costs assigned by the Government to the MRL Features and shall include all costs associated with the construction, operation and maintenance of the MRL Features including any lands, easements, rights-of-way, relocations, borrow areas and dredged or excavated material disposal areas required for such features.

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

A. The Government, subject to satisfying the requirements of applicable environmental laws, and subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

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

contract or by Government personnel), shall be exclusively within the control of the Government. The Government shall not obligate any funds for construction of any Project feature until environmental compliance has been satisfied for that feature.

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

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$46,500,000, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsor may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

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

D. The Non-Federal Sponsor shall contribute a minimum of 25 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.

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

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

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

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

costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

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

G. The Non-Federal Sponsor shall not use Federal funds, other than those funds made available by the USDA under the Rural Enterprise Zone Program, to meet the Non-Federal Sponsor's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs, and comply with the requirements of Section 402 of the Water Resources Development Act of 1986, as amended.

I. No funds shall be obligated for construction of the New Madrid Floodway Pumping Station and St. Johns Bayou Pumping Station features of the Project until construction is initiated on the MRL Features.

J. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

K. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

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

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

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

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

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

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

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

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

rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project, nor will credit be received for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that are or would have been required for construction, operation, and maintenance of the MRL Features. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds, other than those funds made available by the USDA under the Rural Enterprise Zone program, unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

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

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

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

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

not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

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

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

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

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the

purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

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

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

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

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

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

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated

with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

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

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

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

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

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By August 15 of each year and at least quarterly thereafter, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the maximum amount of total project costs determined in accordance with Article XIX of this Agreement, of the components of total project costs, of each party's share of total project costs, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$46,088,000, and the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$5,345,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Articles II.D.1. and II.D.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date,

the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor.

2. For the second and subsequent fiscal years of construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the Non-Federal Sponsor shall verify to the satisfaction of the Government that the Non-Federal Sponsor has deposited the full amount of the funds required to pay for such additional work in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of

the additional required funds.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal 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 Non-Federal Sponsor's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete; however, the Non-Federal Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

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

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

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal 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 Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal 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 Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

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

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining

to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

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

ARTICLE XI - FEDERAL AND STATE LAWS

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

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XIV - TERMINATION OR SUSPENSION

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

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

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

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

ARTICLE XV - HAZARDOUS SUBSTANCES

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

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

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government,

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

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

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

ARTICLE XVI - NOTICES

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

If to the Non-Federal Sponsor:

**St. John Levee and Drainage District
Attn: Lynn Bock, Attorney
P.O. Box 40
New Madrid, Missouri 63869**

If to the Government:

**U.S. Army Corps of Engineers, Memphis
Attn: CEMVM-DD-P
167 North Main Street, Room B-202
Memphis, Tennessee 38103-1894**

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

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

ARTICLE XVII - CONFIDENTIALITY

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

ARTICLE XVIII - HISTORIC PRESERVATION

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

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

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the Non-Federal Sponsor and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government.

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsor has reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understands that Section 902 establishes the maximum amount of total project costs for the Authorized Project. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the Non-Federal Sponsor, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$153,213,000, as calculated in accordance with ER 1105-2-100 using October 1, 1996 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

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

THE DEPARTMENT OF THE ARMY

THE ST. JOHN LEVEE AND
DRAINAGE DISTRICT

BY: 

GREGORY G. BEAN
District Engineer

U.S. Army Engineer District, Memphis

BY: 

WILLIAM DAVID LAVALLE
President

St. John Levee and Drainage District

DATE: 18 Aug 1997

DATE: 8-18-97

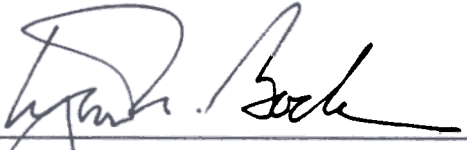
ATTEST: 

LYNN N. BOCK
Secretary

CERTIFICATE OF AUTHORITY

I, Lynn N. Bock, do hereby certify that I am the principal legal officer of the ST. JOHN LEVEE AND DRAINAGE DISTRICT, that the ST. JOHN LEVEE AND DRAINAGE DISTRICT 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 ST. JOHN LEVEE AND DRAINAGE DISTRICT in connection with the ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT, FIRST PHASE, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the ST. JOHN LEVEE AND DRAINAGE DISTRICT have acted within their statutory authority.

IN WITNESS WHEREOF, have made and executed this certification this 18th day of August 1997.



LYNN N. BOCK
Attorney, Executive Secretary
St. John Levee and Drainage District

CERTIFICATION REGARDING LOBBYING

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

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

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

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

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



WILLIAM DAVID LAVALLE

President

St. John Levee and Drainage District

DATE: Aug 18, 1997

AMENDMENT NO. 1
TO
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY,
AND
ST. JOHN LEVEE AND DRAINAGE DISTRICT
FOR CONSTRUCTION OF THE
ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT,
FIRST PHASE

THIS AMENDMENT NO. 1 is entered into this 10th day of October, 2003, by and between the Department of the Army (hereinafter the "Government"), represented by the Acting Secretary of the Army and ST. JOHN LEVEE AND DRAINAGE DISTRICT (hereinafter referred to as the "Non-Federal Sponsor"), represented by the PRESIDENT of the ST. JOHN LEVEE AND DRAINAGE DISTRICT.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on August 18, 1997 (hereinafter the "Agreement"), for the construction of the ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT, MISSOURI, FIRST PHASE (hereinafter the "Project").

WHEREAS, the Project has been modified as described in the REVISED SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (RSEIS) dated June 2002 and the conditions to the water quality certificate issued by the State of Missouri Department of Natural Resources on 9 June 2003. The Record of Decision signed on 25 August 2003 considered and accepted those conditions, thereby satisfying the requirements of applicable environmental laws as specified in the Agreement. The Record of Decision concludes that the Project will meet the authorized objective to provide necessary flood protection, is an environmentally acceptable plan, economically justified, in the public interest, and in compliance with all Federal, state, and local requirements.

WHEREAS, it is necessary to amend this Agreement in order to reflect these Project modifications.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

1. Article I.A. is replaced in its entirety and reads as follows:

"A. The term "Project" shall mean: the improvement of a total of 24.0 miles of channel along St. Johns Bayou, Birds Point New Madrid Levee Ditch, St. James Ditch; the construction of a 1,500 cfs pumping station at the outlet of East Bayou Ditch in the New Madrid Floodway Basin,

except that the gravity outlet portion of this feature shall be considered a feature of the Mississippi River Levees Project; the construction of a 1,000 cfs pumping station at the outlet of St. Johns Bayou in the St. Johns Bayou Basin; the construction of an electrical substation and transmission line necessary to deliver power to the pumping stations; the acquisition and maintenance of a 2,850 acre ponding area for waterfowl in the sump area behind the New Madrid Floodway pumping station; the acquisition and maintenance of a 3,550 acre ponding area for waterfowl in the sump area behind the St. Johns Bayou pumping station; the acquisition and maintenance of restrictive easements along improved channels for disposal of excavated material during construction and maintenance operations, and for use as fish and wildlife habitat; and the acquisition and reforestation of 1,317 acres and creation of 105 acres of shorebird habitat for mitigation of project fish and wildlife impacts, as generally described in the RSEIS dated June 2002 and the Record of Decision signed on 25 August 2003, LIMITED REEVALUATION REPORT, dated March 1997 and approved by the Chief of Engineers on 7 August 1997, and in PHASE II GENERAL DESIGN MEMORANDUM, dated August 1986 and approved by the Chief of Engineers on 15 December 1986, subject to comments that were resolved in April 1987."

2. Article II.A.1. of the Agreement, delete the final sentence.

3. Article II.A.3. of the Agreement replace "\$46,500,000" with "\$57,000,000".

4. The following is made part of the Agreement as new Article IV.C.4.

"4. Crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to 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 USC 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 USC 276c)). Crediting may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws."

5. Article V.C. of the Agreement is replaced in its entirety and reads as follows:

"C. Until the end of the period, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 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 USC 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 USC 327 *et seq.*), and the Copeland Anti-Kickback Act (formerly 40 USC 276c)) for relocations; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair,

replacement, and rehabilitation of the Project; and other related matters.”

6. Article VI.A. of the Agreement replace "\$46,088,000" with "\$57,000,000" and "\$5,345,000" with "\$2,900,000".

7. Article XI of the Agreement is replaced in its entirety and reads as follows:


“In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 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 USC 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly USC 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 USC 276c)).”

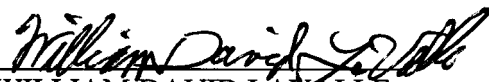
8. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 which shall become effective upon the date it is signed by the Acting Secretary of the Army.

DEPARTMENT OF THE ARMY

ST. JOHNS LEVEE AND DRAINAGE DISTRICT

BY: 
R. L. BROWNLEE
Acting Secretary of the Army

BY: 
WILLIAM DAVID LAVALLE,
President,
St. John Levee and Drainage District

DATE: October 10, 2003


DATE: Oct 10 2003

ATTEST: 
F. S. HUNTER, JR.
Secretary

CERTIFICATE OF AUTHORITY

I, Lynn N. Bock, do hereby certify that I am the principal legal officer of the ST. JOHN LEVEE AND DRAINAGE DISTRICT, that the ST. JOHN LEVEE AND DRAINAGE DISTRICT is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 1, between the Department of the Army and ST. JOHN LEVEE AND DRAINAGE DISTRICT in connection with the ST. JOHNS BAYOU AND NEW MADRID FLOODWAY PROJECT, FIRST PHASE, and to pay damages in accordance with the terms of Amendment No. 1, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the person who have executed Amendment No. 1 on behalf of the ST. JOHN LEVEE AND DRAINAGE DISTRICT have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 10th day of October, 2003.


LYNN N. BOCK
Attorney, Executive Secretary
St. Johns Levee and Drainage District

CERTIFICATION REGARDING LOBBYING

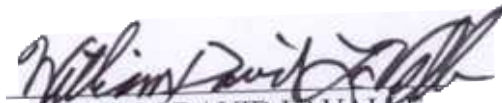
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

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

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


WILLIAM DAVID LAVALLEY

President

St. John Levee and Drainage District

DATE: Oct 10, 2003