

PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE ARKANSAS STATE GAME & FISH COMMISSION  
FOR THE  
WHITE RIVER BASIN, ARKANSAS  
MINIMUM FLOWS PROJECT  
INCLUDING MODIFICATION OF  
QUALIFYING LAKESIDE FACILITIES  
BULL SHOALS LAKE, ARKANSAS/MISSOURI

THIS AGREEMENT is entered into this 19<sup>th</sup> day of January, 2012, by and between the Department of the Army (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works) and the Arkansas State Game & Fish Commission (hereinafter the "Non-Federal Sponsor"), represented by its Director.

WITNESSETH, THAT:

WHEREAS, construction of Norfolk Lake and Bull Shoals Lake were authorized by the Flood Control Act of 1938, Public Law 75-761, as amended, as part of a general comprehensive plan for flood control and other purposes in the White River Basin, with such modifications as in the discretion of the Secretary of the Army and the Chief of Engineers may be advisable;

WHEREAS, Section 132 of the FY 2006 Energy and Water Development Appropriations Act, Public Law 109-103 (hereinafter "Section 132") authorized and directed the Secretary to implement alternatives BS-3 and NF-7, as described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004 and consisting of operational changes and pool increases or reallocations for the purpose of improving environmental conditions supporting cold water trout fisheries below Norfolk Lake and Bull Shoals Lake;

WHEREAS, the November 2008 (Revised January 2009) White River Basin, Arkansas Minimum Flows (WRMF) Project Report and Environmental Impact Statement was approved by the Assistant Secretary of the Army for Civil Works (ASA(CW)) with a signed Record of Decision on January 13, 2009, as modified by the May 2009 (Revised July 2009) Supplement to the WRMF Project Report approved by the Commander, Southwestern Division on July 15, 2009, and as further modified by the White River Basin, Arkansas, Minimum Flows Supplement 2 to the Project Report (January 2009) approved by the Director of Civil Works on October 4, 2011.

WHEREAS, the U.S. Army Engineer, Little Rock District (hereinafter the "District Engineer") has determined that the WRMF Project at Bull Shoals Lake, Arkansas/Missouri (a separable element of the WRMF Project and hereinafter the

“*Project*”, as defined in Article I.A. of this Agreement) is eligible for implementation under Section 132;

WHEREAS, Section 132 requires the Non-Federal Sponsor to provide relocations or modifications to public and private lakeside facilities at Bull Shoals Lake to allow *reasonable continued use* of the facilities with the storage reallocation as determined by the Secretary in consultation with the non-Federal interests;

WHEREAS, the ASA(CW) determined on January 13, 2009 that the relocation and modification of the *Lakeside Facilities* at Bull Shoals Lake, described in the November 2008 (Revised January 2009) White River Basin, Arkansas Minimum Flows Project Report are sufficient to meet the *reasonable continued use* requirement of Section 132;

WHEREAS, Section 132 provides that the Non-Federal Sponsor shall be solely responsible for all design and construction costs for modifying and relocating the *Lakeside Facilities* at Bull Shoals Lake;

WHEREAS, Section 132 provides that the Government shall be solely responsible for providing all design and construction costs for modifying Bull Shoals Lake project facilities, including but not limited to the required modification of computer language used to operate Bull Shoals Lake turbines, to implement the BS-3 alternative described in the White River Minimum Flows Reallocation Study Report, Arkansas and Missouri, dated July 2004;

WHEREAS, Section 314 of the Energy and Water Development Appropriations Act of 2010, Public Law 111-85, amended Section 132 to require the Southwest Power Administration, using receipts collected from the sale of Federal power and energy related services, to compensate the licensee of Federal Energy Regulatory Commission Project No. 2221 for impacts caused by the storage reallocation at Bull Shoals Lake on electric energy and capacity generated at Project No. 2221;

WHEREAS, all lands, easements, and rights of way required for the *Project*, with the exception of the county road described in Article I.G. of this Agreement, are under the ownership of the United States and under the administration of the Government;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the “*Agreement*”) for construction of the *Project*;

WHEREAS, the Government and Non-Federal Sponsor agree that all work on the *Project*, in accordance with the terms of this Agreement, must be complete prior to capture of storage and initiation of minimum flow releases;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in implementation of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to (i) foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied in this Agreement which creates an environment where trust and teamwork prevent disputes, (ii) foster a cooperative bond between the Government and the Non-Federal Sponsor, and (iii) facilitate the successful implementation of the *Project*.

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

#### ARTICLE I – DEFINITIONS

A. The term “*Project*” shall mean the *Federal work* and the *non-Federal work* as generally described in the November 2008 (Revised January 2009) White River Basin, Arkansas Minimum Flows Project Report and Environmental Impact Statement approved by the Assistant Secretary of the Army for Civil Works (ASA(CW)) with a signed Record of Decision on January 13, 2009, as modified by the May 2009 (Revised July 2009) Supplement to the WRMF Project Report approved by the Commander, Southwestern Division on July 15, 2009, and as further modified by the White River Basin, Arkansas Minimum Flows Supplement 2 to the Project Report (January 2009) approved by the Director of Civil Works on October 4, 2011 (all collectively hereinafter “*Project Report*”).

B. The term “*Federal work*” shall mean that portion of the *Project* involving Federal design, construction, and other work to add or modify facilities at Bull Shoals Lake to allow operational changes and reallocations of storage to improve environmental conditions supporting cold-water trout fisheries downstream of the lake, including but not limited to modification of supervisor controlled and data acquisition (SCADA) computer language used to operate Bull Shoals Lake turbines, as generally described in the Project Report.

C. The term “*non-Federal work*” shall mean that portion of the *Project* involving design, modification, or relocation of the *Lakeside Facilities* at Bull Shoals Lake to allow their *reasonable continued use* as determined by the ASA(CW), as generally described in the Project Report.

D. The term “*Government’s supervision of the non-Federal work*” shall mean the Government’s activities, as generally described in Article II.B.1, Article II.B.4., Article II.B.6., and Article II.B.7. of this Agreement, related to reviewing the Non-Federal Sponsor’s detailed plans and solicitations for contracts for, as well as inspecting, the *non-Federal work*.

E. The term “*costs of Federal work*” shall mean all costs incurred by the Government to carry out the *Federal work*.

F. The term “*costs of non-Federal work*” shall mean all costs incurred by the Non Federal Sponsor to carry out the *non-Federal work*.

G. The term “*Lakeside Facilities*” shall mean those recreational facilities and roads at Bull Shoals Lake as generally described in the Project Report, including: (1) portions of Slough Hollow Road, a county road located in Taney County, Missouri, and (2) thirty-one recreation features and portions of four Corps roads at thirteen parks, as follows: Beaver Creek (boat ramp), Buck Creek (swim beach, boat ramp and two parking facilities), Dam Site (boat ramp), Highway 125 (swim beach, boat ramp and parking facility), Lakeview (swim beach, boat ramp and two portions of road), Highway K (road), Lead Hill (swim beach, two boat ramps, handicapped access and parking facility), Oakland (boat ramp, swim beach and two parking facilities), Point Return (swim beach, boat ramp and parking facility), Pontiac (boat ramp and parking/road facility), River Run (light pole), Theodosia (swim beach, boat ramp, two parking facilities and road), and Tucker Hollow (boat ramp and road).

H. The term “*period of construction*” shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XI of this Agreement, whichever is earlier.

I. The term “*reasonable continued use*” shall mean that use determined by the ASA(CW), as generally described in the Project Report, including continued visitation.

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

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”), expeditiously shall carry out the *Federal work*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Federal work* or commence construction of the *Federal work* using the Government’s own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. 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. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any

instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, 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, resolution of contract claims, and performance of all work on the *Federal work* shall be exclusively within the control of the Government.

3. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Federal work*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. As of the effective date of this Agreement, \$12,273,000 of Federal funds have been provided by Congress for the WRMF Project of which \$303,000 is currently projected to be available for the *Project*. The Government makes no commitment to request Congress to provide additional Federal funds for the *Project*. Further, the Government's financial participation in the *Project* is limited to the Federal funds that the Government makes available to the *Project*.

B. Using its funds, the Non-Federal Sponsor expeditiously shall design and construct the *non-Federal work* in accordance with applicable Federal laws, regulations, and policies. The Non-Federal Sponsor may design and construct the *non-Federal work* using its own forces or by contract.

1. For the Non-Federal Sponsor to carry out the *non-Federal work*, the Government shall provide or approve the detailed plans for carrying out such work prior to the Non-Federal Sponsor issuing the solicitation for a construction contract for such work or commencing construction of such work using the Non-Federal Sponsor's own forces. If the Government does not provide plans for the *non-Federal work*, the Non-Federal Sponsor shall provide its detailed plans for carrying out such work for review and approval by the Government. Such plans shall include, but are not necessarily limited to, detailed design documents, plans and specifications, environmental documentation, proposed real estate requirements, a detailed cost estimate, a detailed schedule for the construction of the *non-Federal work*, and projected operation and maintenance requirements. The Government shall expeditiously review such documents. In the event that the District Engineer cannot provide written approval of such documents due to areas of disagreement with the documents, or for other reasons, the District Engineer shall provide a written notice to the Non-Federal Sponsor that describes the areas of disagreement or specific issues that must be resolved before approval can be provided. Upon resolution of all outstanding issues or areas of disagreement, if any, the District Engineer shall provide to the Non-Federal Sponsor written approval of the detailed plans and specifications for carrying out such work.

2. The Non-Federal Sponsor shall not issue the solicitation for a construction contract for the *non-Federal work* or commence construction of the *non-Federal work* using the Non-Federal Sponsor's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341), and until all required real estate interests have been made available.

3. The Non-Federal Sponsor shall obtain all permits and licenses necessary for the design and construction of the *non-Federal work* and, in the exercise of its rights and obligations under this Agreement, shall comply with all applicable Federal, state, and local laws, regulations, ordinances, and policies including but not limited to the laws and regulations specified in Article IX of this Agreement. The Non-Federal Sponsor shall include appropriate provisions in its contracts for the design and construction of the *non-Federal work*, as necessary, to ensure compliance with such laws, regulations, ordinances, and policies. In performing any portion of the *non-Federal work* on the county road described in Article I.G. of this Agreement, the Non-Federal Sponsor, at its own expense, shall provide all real estate interests and obtain all necessary approvals and agreements required by the Government and appropriate agencies of the State of Missouri, and the County of Taney. The Non-Federal Sponsor also shall file for record in Taney County any documents required by the Government to reflect the current condition of the county road as modified by the *non-Federal work*.

4. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *non-Federal work*, including relevant plans and specifications, prior to the Non-Federal Sponsor's issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. However, any modifications or change orders affecting plans and specifications previously approved by the Government must be approved in advance by the Government. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to their resolution. Any construction performed on the *non-Federal work* will be in accordance with applicable permits and the plans and specifications approved by the Government in accordance with paragraph B.1. of this Article.

5. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract for the *non-Federal work*, the Non-Federal Sponsor shall furnish a copy thereof to the Government. Upon completion of the *non-Federal work*, the Non-Federal Sponsor shall furnish to the Government a copy of all final as-built drawings for the construction portion of such work.

6. The Government may perform periodic inspections to verify the progress of construction and that the work is being performed in a satisfactory manner and in accordance with the applicable permits and the plans and specifications approved by the Government in accordance with paragraph B.1. of this Article.

7. The Non-Federal Sponsor shall notify the District Engineer in writing upon completion of construction at each of the thirteen parks and the county road identified in Article I.G. of this Agreement and upon completion of the *non-Federal work*. Following receipt of each written notification from the Non-Federal Sponsor, the Government shall inspect such work to determine if it was accomplished in a satisfactory manner and in accordance with the applicable permits and the plans and specifications approved by the Government in accordance with paragraph B.1. of this Article. Following completion of such inspection, the District Engineer shall notify the Non-Federal Sponsor in writing of the results of such determination.

C. At least sixty (60) days prior to the Non-Federal Sponsor commencing construction of *non-Federal work*, the Non-Federal Sponsor shall provide construction work limit drawings for said construction, and after consultation with the Non-Federal Sponsor, the Government shall determine the land owned by the United States required for the performance of the *non-Federal work*. The Government in a timely manner shall provide the Non-Federal Sponsor with written descriptions, including maps as appropriate, of such land in detail sufficient to enable the Non-Federal Sponsor to meet its obligations under this Agreement for construction of the *non-Federal work*. At least 30 days prior to the Non-Federal Sponsor commencing construction of a portion of the *non-Federal work* using its own forces, the Government shall provide written authorization for entry to the Non-Federal Sponsor for the land owned by the United States that is required for performance of such work.

D. The Government shall pay 100 percent of the *costs of Federal work*.

E. The Non-Federal Sponsor shall pay 100 percent of the *costs of non-Federal work*. In addition, the Non-Federal Sponsor shall pay 100 percent of the costs of the *Government's supervision of the non-Federal work*.

### ARTICLE III - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar 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 matters related to plans and specifications; scheduling; real property requirements; 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 U.S.C. 276a *et seq.*), 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)) for the construction portion of the *non-Federal work*; final inspection of the *Federal work*, the *non-Federal work*, and the entire *Project*; and other matters related to the *Project*. This oversight of the *Project* 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 to the Government and the Non-Federal Sponsor on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government and the Non-Federal Sponsor in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for the *Federal work*, and the Non-Federal Sponsor, having the legal authority and responsibility for the *non-Federal work*, have the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations.

E. The Government and Non-Federal Sponsor each shall be solely responsible for costs incurred in carrying out their responsibilities under this Article.

#### ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, and contributions provided by the parties.

1. As of the effective date of this Agreement, the *costs of Federal work* are projected to be \$303,000; the *costs of non-Federal work* are projected to be \$2,834,000; and the costs of the *Government's supervision of the non-Federal work* are projected to be \$113,000. These amounts are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By January 30, 2012 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims, the

Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: the costs of *Federal work*; the costs of *non-Federal work*; and the costs of the *Government's supervision of the non-Federal work*.

B. The Non-Federal Sponsor shall fund the *Government's supervision of the non-Federal work* in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for the *Government's supervision of the non-Federal work*, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to fund the *Government's supervision of the non-Federal work*. No later than 30 calendar days prior to the Government incurring any financial obligation for Government activities pursuant to the provisions of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to fund such work by delivering a check payable to "FAO, USAED, Little Rock" to the District Engineer or by providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the costs of the *Government's supervision of the non-Federal work*, as such costs are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay the *Government's supervision of the non-Federal work*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why the additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in paragraph C.1. of this Article.

3. Upon conclusion of the *period of construction* and resolution of all relevant claims and appeals, the Government shall conduct an accounting of the Government's financial obligations incurred for the *Government's supervision of the non-Federal work* and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals prevent a final accounting of such financial obligations from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting of financial obligations for the *Government's supervision of the non-Federal work* and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for the *Government's supervision of the non-Federal work* and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the Government's total financial obligations for the *Government's supervision of the non-Federal work* exceed the total contribution of funds provided by the Non-Federal Sponsor for such work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Little Rock" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government. Any delinquent payment owed by the Non-Federal Sponsor 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. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for the *Government's supervision of the non-Federal work* exceeds the Government's total financial obligations for such work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE V - 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. Each party shall pay an equal share 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 VI - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

The Government, subject to the availability of funds and as it determines necessary, shall operate and maintain the *Project*, except that the Government shall have no responsibility for operation, maintenance, repair, rehabilitation, or replacement of any portion of the *non-Federal work* performed on the county road described in Article I.G. of this Agreement.

## ARTICLE VII – HOLD AND SAVE

Subject to the provisions of Article XV of this Agreement, the Non-Federal Sponsor shall hold and save the Government free from all damages arising from design and construction of the *Project*, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE VIII - 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, or 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, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. 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, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal 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-133, and such costs as are allocated to the *Project* shall be solely the responsibility of the Non-Federal Sponsor.

C. In accordance with 31 U.S.C. 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 Amendments of 1996. 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 solely the responsibility of the Government.

## ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall 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; 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 U.S.C. 276a *et seq.*), 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)).

## ARTICLE X - 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 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.

## ARTICLE XI - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) may terminate this Agreement or suspend the Government's future performance under this Agreement.

B. In the event that this Agreement is terminated pursuant to this Article, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article IV of this Agreement.

C. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

## ARTICLE XII – 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 delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Director  
Arkansas State Game & Fish Commission  
2 Natural Resources Drive  
Little Rock, AR 72205

If to the Government:

District Engineer  
U.S. Army Corps of Engineers, Little Rock District  
Post Office Box 0867  
Little Rock, AR 72203-0867

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 XIII - 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 XIV - HISTORIC PRESERVATION

If, during its performance of the *non-Federal work*, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *non-Federal work* that is related to such discovery until the

Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XV - 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 Arkansas, where creating such an obligation would be inconsistent with the Article 16, Section 12 of the Constitution of the State of Arkansas.

B. The Non Federal Sponsor intends to fulfill its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose appropriations of funds in amounts sufficient to fulfill these obligations for that year and shall use all reasonable and lawful means to secure those appropriations. The Non Federal Sponsor reasonably believes that funds in amounts sufficient to fulfill these obligations lawfully can and will be appropriated and made available for this purpose. In the event funds are not appropriated in amounts sufficient to fulfill these obligations, the Non Federal Sponsor shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Further, if the Non Federal Sponsor is unable to fulfill these obligations, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

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

DEPARTMENT OF THE ARMY

ARKANSAS STATE GAME & FISH  
COMMISSION

BY:



Glen A. Masset  
Colonel, US Army  
District Engineer

BY:



Loren Hitchcock  
Director

DATE:

13 Jan 12

DATE:

1-19-12

CERTIFICATE OF AUTHORITY

I, James F. Goodhart, do hereby certify that I am the principal legal officer of the Arkansas State Game & Fish Commission, that the Arkansas State Game & Fish Commission is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Arkansas State Game & Fish Commission in connection with the White River Minimum Flows Project Including Modification of Qualifying Lakeside Facilities at Bull Shoals Lake, Arkansas/Missouri, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Arkansas State Game & Fish Commission have acted within their Constitutional authority.

IN WITNESS WHEREOF, I have made and executed this certification this 19th day of JANUARY 2012.



James F. Goodhart  
General Counsel  
Arkansas State Game & Fish Commission

CERTIFICATION REGARDING LOBBYING

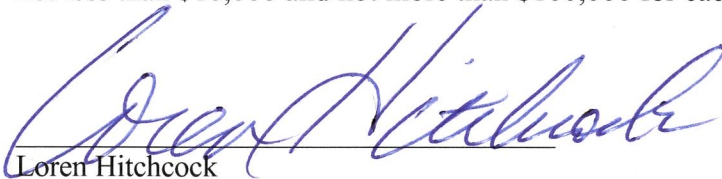
The undersigned certifies, to the best of his or her knowledge and belief that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all 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 31 U.S.C. 1352. 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.



Loren Hitchcock  
Director  
Arkansas State Game & Fish Commission

DATE: 1-19-12