

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
LAKE BORGNE BASIN LEVEE DISTRICT
AND THE PARISH OF ST. BERNARD, LOUISIANA
FOR
REHABILITATION OF A FEDERAL HURRICANE/SHORE PROTECTION
PROJECT**

THIS AGREEMENT, entered into this 2 day of October, 2005, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Engineer, New Orleans District, U. S. Army Corps of Engineers, and the LAKE BORGNE BASIN LEVEE DISTRICT and the PARISH OF ST. BERNARD, LOUISIANA (hereinafter collectively referred to as the "Public Sponsors"), represented by the President of the Board of Commissioners of the Lake Borgne Basin Levee District and the President of the St. Bernard Parish Council, respectively.

WITNESSETH THAT:

WHEREAS, the Government constructed a Hurricane/Shore Protection Project (hereinafter referred to as the HSPP) for the Lake Pontchartrain, Louisiana and Vicinity, Chalmette Area Plan, authorized by the Flood Control Act of 1965, Public Law 298 of the 89th Congress, approved October 27, 1965, as amended, and governed by the Agreements of Local Assurance dated August 16, 1966 and February 15, 1977 and entitled "Act of Assurance" for the Chalmette Area Plan, Lake Pontchartrain and Vicinity, Louisiana, St. Bernard Parish, Louisiana and the "Agreement Between the United States of America and the Board of Commissioners of the Lake Borgne Basin Levee District and the St. Bernard Parish Police Jury for the Lake Pontchartrain and Vicinity, Louisiana Project", respectively, which remain in full effect;

WHEREAS, pursuant to 33 U. S. C. 701n, the Government is authorized to assist in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature;

WHEREAS, via written correspondence, the Public Sponsors hereby represent that they have the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and are willing to participate in the HSPP Rehabilitation Effort in accordance with the terms of this Agreement.

NOW THEREFORE, the Government and the Public Sponsors agree as follows:

ARTICLE I – DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term “Rehabilitation Effort” shall mean the preparation of the levee foundation by leveling scours and shaping of earth along that portion of the Federal levee constructed adjacent to the Mississippi River Gulf Outlet as a part of the Lake Pontchartrain and Vicinity Hurricane Protection project, Chalmette Area Plan that extends between the Bayou Bienvenue and the Bayou Dupre Control Structures from Stations 380 + 00 to 704 + 00 , as generally described in a report entitled “Project Information Report, PL 84-99, Rehabilitation of Damaged Flood Control Works, Lake Pontchartrain, La And Vicinity Hurricane Protection Project, St. Bernard and Orleans Parishes, La”, prepared by the District Engineer, U. S. Army Engineer District, New Orleans, dated October 1, 2005 and approved by the Division Engineer on October 2, 2005.

B. The term “Rehabilitation Effort costs” shall mean all costs incurred by the Public Sponsors and the Government directly related to construction of the Rehabilitation Effort. Such term shall include, but is not necessarily limited to: actual construction costs, including supervision and inspection costs, costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of the hazardous substances as identified in Article XII.A. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor-preferred alternatives; periodic nourishment under the project authorization; or the costs of lands, easements, rights-of-way, borrow, or relocations.

C. The term “betterment” shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsors, whether singly or collectively, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSORS

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using funds provided by the Public Sponsors, shall expeditiously construct the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsors shall be afforded the opportunity to review and comment on all such solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The District Engineer will, in good faith, consider the comments of the Public Sponsors, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed

under contract or by Government personnel), shall be exclusively within the control of the District Engineer.

B. As further specified in Article III, the Public Sponsors shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the HSPP.

C. As further specified in Article IV, the Public Sponsors shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 0.0 percent of Rehabilitation Effort costs.

D. The Public Sponsors shall not use Federal funds to meet their share of Rehabilitation Effort costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

E. The Public Sponsors shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, the HSPP, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsors may request the Government accomplish betterments. The Public Sponsors shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsors in accordance with Article IV.

ARTICLE III – LANDS, RELOCATIONS, AND PUBLIC LAW 91-646

A. The Government shall provide the Public Sponsors with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsors shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Project and the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Public Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations

contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Project and the Rehabilitation Effort, 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 – METHOD OF PAYMENT

A. The Public Sponsors shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsors' obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$1,500,000 and the Public Sponsors' share (cash and services in kind) of Rehabilitation Effort costs is currently estimated to be \$0.0. In order to meet the Public Sponsors' cash payment requirements, the Public Sponsors must provide a cash contribution estimated to be \$0.0. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not construed as the total financial responsibilities of the Government and the Public Sponsors.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsors of the Public Sponsors' estimated share of the Rehabilitation Effort costs including the Public Sponsors' estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsors shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, B2, New Orleans" to the District Engineer of the U. S. Army Engineer District, New Orleans. The Government shall draw on the funds provided by the Public Sponsors such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimated given at the outset of construction, the Government shall immediately notify the Public Sponsors of the additional contribution the Public Sponsors will be required to make to meet the Public Sponsors' share of the revised estimate. Within ten calendar days thereafter, the Public Sponsors shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsors. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsors a final accounting of the Public Sponsors' share of the total Rehabilitation Effort costs.

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

2. In the event total contribution by the Public Sponsors is more than the Public Sponsors' required share of total Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsors; however, the Public Sponsors shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsors for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsors for excess contributions provided.

ARTICLE V – CREDITING OF IN-KIND SERVICES

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0.0 for implementation of such services by the Public Sponsors. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsors shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI – OPERATION AND MAINTENANCE

A. The Public Sponsors maintain responsibility for operating and maintaining the HSPP at all times. After the District Engineer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsors with written notice of such determination, the Public Sponsors shall operate and maintain the HSPP, to include those areas restored by the Rehabilitation Effort, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto and other applicable authorities.

B. The Public Sponsors hereby give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsors own or control for access to the HSPP for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the HSPP. If an inspection shows the Public

Sponsors for any reason are failing to fulfill the Public Sponsors' obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsors. If, after 30 calendar days from receipt of such notice, the Public Sponsors continue to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsors own or control for access to the Project for the purposes of completing, operating, and maintaining the project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsors of responsibility to meet the Public Sponsors' obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VII – FEDERAL AND STATE LAWS

In the exercise of the Public Sponsors' rights and obligations hereunder, the Public Sponsors agree to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII – RELATIONSHIP OF PARTIES

The Government and the Public Sponsors act in an independent capacity in the performance of their respective functions under the Agreement, and none of the parties are to be considered the officer, agent, nor employee of the other parties.

ARTICLE IX – OFFICIALS NOT TO BENEFIT

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

ARTICLE X – COVENANT AGAINST CONTINGENT FEES

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

ARTICLE XI – TERMINATION OR SUSPENSION

If at any time the Public Sponsors fail to carry out their obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort 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 this Rehabilitation Effort and the HSPP. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or the Public Sponsors elect to proceed with further construction or terminate this Agreement.

ARTICLE XII – HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Public Sponsors shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government to identify the existence and extent of hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsors that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost-shared as a construction cost.

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

C. The Government and the Public Sponsors shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsors determine to proceed or continue with the construction after considering liability that may arise under

CERCLA, the Public Sponsors shall be responsible, as between the Government and the Public Sponsors, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsors fail to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsors' responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article X of this Agreement.

D. The Public Sponsors and the Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant paragraph C. of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsors, the Public Sponsors shall be considered the operator of the HSPP (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsors shall operate and maintain the HSPP in a manner that will not cause liability under CERCLA.

ARTICLE XIII – NOTICES

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

If to the Public Sponsors:

Executive Director
Lake Borgne Basin Levee District
P.O. Box 759
COTTONPORT, LA 71327

If to the Government:

District Engineer
U. S. Army Corps of Engineers
P. O. Box 60267
New Orleans, Louisiana 70160-0267

____ [POC TITLE] PRESIDENT
St. Bernard Parish Council
St. Bernard Parish, Louisiana
8201 W JUDGE PEREZ DR
CHALMETTE LA 70043

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

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


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

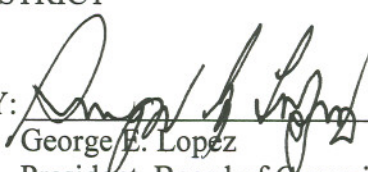
FEDERAL SPONSOR:

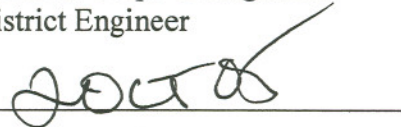
PUBLIC SPONSORS:

THE DEPARTMENT OF THE ARMY

LAKE BORGNE BASIN LEVEE DISTRICT

BY: 
Richard P. Wagenaar
Colonel, Corps of Engineers
District Engineer

BY: 
George E. Lopez
President, Board of Commissioners

Date: 

Date: 02 OCTOBER 2005
ST. BERNARD PARISH COUNCIL
ST. BERNARD PARISH, LOUISIANA

BY: 
Henry J. Rodriguez, Jr.
President

Date: 10/2/05

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.



George E. Lopez
President, Board of Commissioners
Lake Borgne Basin Levee District

DATE: 02 OCTOBER 2005

CERTIFICATION REGARDING LOBBYING

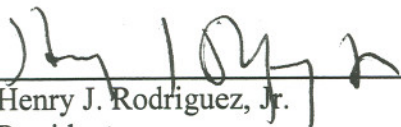
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

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Henry J. Rodriguez, Jr.
President
St. Bernard Parish Council
St. Bernard Parish, Louisiana

DATE: 10/2/05

CERTIFICATE OF AUTHORITY

I, John F. Rowley, do hereby certify that I am the principal legal officer of the Lake Borgne Basin Levee District, that the Lake Borgne Basin Levee 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 Lake Borgne Basin Levee District and the St. Bernard Parish Council, St. Bernard Parish, Louisiana in connection with the Lake Pontchartrain, Louisiana and Vicinity, Chalmette Area Plan project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Lake Borgne Basin Levee District have acted within their statutory authority.


IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of October 2005.

John F. Rowley
Typed Name: JOHN F. ROWLEY
Title in Full: DISTRICT ATTORNEY
3415 JDC
PARISH OF ST. BERNARD, LA

CERTIFICATE OF AUTHORITY

I, ALAN ABADIE, do hereby certify that I am the principal legal officer of the St. Bernard Parish Council, St. Bernard Parish, Louisiana, that the St. Bernard Parish Council, St. Bernard Parish, Louisiana is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Lake Borgne Basin Levee District and the St. Bernard Parish Council, St. Bernard Parish, Louisiana in connection with the Lake Pontchartrain, Louisiana and Vicinity, Chalmette Area Plan project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the St. Bernard Parish Council, St. Bernard Parish, Louisiana have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 3rd day of October 2005.



Typed Name: ALAN ABADIE
Title in Full: Legal Counsel