

**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
THE LAKE BORGNE BASIN LEVEE DISTRICT  
AND THE PARISH OF ST. BERNARD, LOUISIANA  
FOR  
POST FLOOD RESPONSE ASSISTANCE (FLOOD or COASTAL STORM)**

**THIS AGREEMENT**, entered into 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 referred to as the "Public Sponsors"), represented by President of the Board of Commissioners of the Lake Borgne Basin Levee District and the President of the St. Bernard Parish Council, acting in accordance with the request of the Governor of the State.

**WITNESSETH THAT:**

**WHEREAS**, the Governor of the State of Louisiana has declared a state of emergency for the state of Louisiana pursuant to Proclamation No. 48 KBB 2005 issued on August 26, 2005 due to Hurricane Katrina's potential to cause severe storms, high winds, and torrential rain that could cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of Louisiana;

**WHEREAS**, following Hurricane Katrina's striking Louisiana and resulting in severe flooding and damage to the southeastern part of the State which has threatened the safety, health, and security of the citizens of the State of Louisiana, along with private property and public facilities, the Governor issued Proclamation No. 54 KBB 2005 on September 22, 2005 to renew the previous Proclamation thus extending the state of emergency until October 25, 2005;

**WHEREAS**, due to the aftermath of Hurricane Katrina and the continuing threat to the safety, health, and security of the citizens of the State of Louisiana, on October 24, 2005, the Governor has issued Proclamation No. 61 KBB 2005 to extend the state of emergency through Thursday, November 24, 2005 unless terminated sooner;

**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**, the Public Sponsors own, operate, maintain and control certain non-Federal levee(s) situated within the Parish of St. Bernard, State of Louisiana;

**WHEREAS**, on 3 October 2005, as documented in CECW-ZB Memorandum for Record, SUBJECT: ASA(CW) Verbal Approval of Policy Deviations, dated 10 October 2005, a copy of which is attached hereto as Appendix A, the Assistant Secretary of the Army for Civil Works (ASA (CW) approved a one-time exception of policy specific to hurricane/storm protection works in St. Bernard Parish, Louisiana, following Hurricane Katrina regarding use of P.L. 84-99 (33 U.S.C. 701n) and approving a waiver for lands, easements, rights-of-way and disposal or borrow areas (LERDS) for purposes of starting construction of the non-Federal St. Bernard Parish levee to provide interim level of protection to 10 feet;

**WHEREAS**, the Public Sponsors hereby represent that they have the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in accordance with the terms of this Agreement.

**NOW, THEREFORE, the parties agree** as follows:

A. The term "Construction" shall mean the repair, rehabilitation and construction of damaged areas and of particular features of that portion of the non-Federal St. Bernard levee that lies within St. Bernard Parish Louisiana to the interim level of design protection to 10 feet North American Vertical Datum (NAVD), including over build, as appropriate, in accordance with the one-time exceptions to the cost sharing policy, which are described in the attached ASA(CW) Verbal Approval of Policy Deviations dated 10 October 2005.

B. The Public Sponsors shall obtain right of entry to suitable borrow areas, as may be determined by the Government, to be necessary for the provision of borrow material required by the Construction, in the manner hereinafter discussed.

1. The Public Sponsors shall use all suitable borrow areas that they own, claim or control for the provision of borrow material required by the Construction;

2. The Public Sponsors shall use their best efforts to provide right of entry to suitable borrow areas that any other non-Federal governmental entity owns, claims, or controls (hereinafter Other Non-Federal Governmental suitable borrow areas) in a manner that is free and clear of any liens, defects of title, or encumbrances, including the release or subordination to the work effort of any third party interests within such suitable borrow areas, as determined by the Government to be necessary for the provision of borrow material required by the Construction; and

3. The Public Sponsors shall provide right of entry to all other suitable borrow areas not owned, claimed, or controlled by the Public Sponsors or Other Non-Federal Governmental Entities (hereinafter Private suitable borrow areas) as follows:



a. The Public Sponsors shall secure or cause to be secured an executive commandeering order or orders from the President of St. Bernard Parish, Louisiana, which said order or orders shall commandeer Private suitable borrow areas, in accordance with powers set forth in La. R.S. 29:721, et seq., including all privately owned third party interests, as determined by the Government to be necessary for the provision of borrow material required by the construction, operation and maintenance;

b. In the event that the commandeering official is not the presiding official of the Public Sponsors, the Public Sponsors must secure a right of entry from the commandeering official to the Private suitable borrow areas described in the Commandeering Order or Orders; and

c. The Public Sponsors shall tender a right of entry to the Government for the Private suitable borrow areas.

C. The Government in the name of the Public Sponsors will identify and provide just compensation to the owners of a compensable interest in the Private suitable borrow areas and shall acquire the requisite interests in the non-Federal Governmental suitable borrow areas to which the Public Sponsors, despite their best efforts, were unable to obtain a free and unencumbered right of entry, all in accordance 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 the provision of borrow material required by the construction, including those necessary for relocations, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

1. The Government shall obtain a deed or servitude agreement, as appropriate, in the name of the Public Sponsors, for those interests described in the Commandeering Order or Orders referenced in Paragraph B.3.a. of this Cooperation Agreement. In like manner, the Government shall obtain a deed or servitude agreement, as appropriate, in the name of the appropriate Public Sponsor, for those interests in the non-Federal Governmental suitable borrow areas to which the Public Sponsors, despite their best efforts, were unable to obtain a free and unencumbered right of entry.

2. Where the Government is unable to obtain free and unencumbered title on the behalf of the Public Sponsors or to reach an agreement with the interest owners in the Private and Other Non-Federal Governmental suitable borrow areas, the Government shall obtain such interests, in the name of the United States of America, through the exercise of its eminent domain authority.

3. After the construction is complete and the acquisition and

eminent domain proceedings finalized, the Government shall transfer and assign all of the Private and Other Non-Federal Governmental suitable borrow areas acquired in the name of the United States of America to the Public Sponsors through quitclaim deed, which said transfer, quitclaim, and assignment the appropriate Public Sponsors hereby agree to accept.

D. The Public Sponsors will:

1. Hold and save the Government free from damages arising from construction, operation, maintenance, repair, replacement, and rehabilitation of the work, except damages due to the fault or negligence of the Government or its contractors.

2. Operate, maintain, repair, replace, and rehabilitate the completed work in a manner satisfactory to the Government.

3. Remove, at no cost to the Government, all temporary work constructed by the Government.

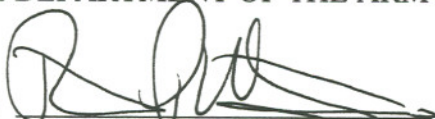
3. ATTACHMENT:

a. Exhibit A - CECW-ZB Memorandum for Record, SUBJECT: ASA(CW) Verbal Approval of Policy Deviations, dated 10 October 2005.

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

**FEDERAL SPONSOR:**

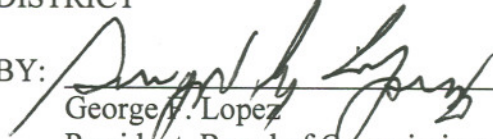
THE DEPARTMENT OF THE ARMY

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

Date: 11/3/05

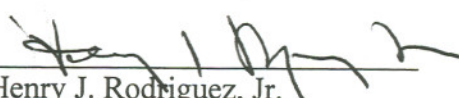
**PUBLIC SPONSORS:**

LAKE BORGNE BASIN LEVEE DISTRICT

BY:   
George F. Lopez  
President, Board of Commissioners

Date: 11/3/05

ST. BERNARD PARISH COUNCIL  
ST. BERNARD PARISH, LOUISIANA

BY:   
Henry J. Rodriguez, Jr.  
President

Date: 11-3-2005



CERTIFICATION REGARDING LOBBYING

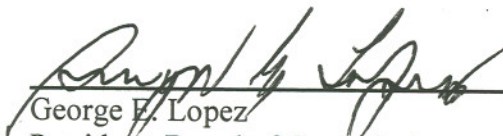
The undersigned certifies, to the best of his or her knowledge and belief that:

(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.

(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.

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

DATE: 11/03/05

## 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.

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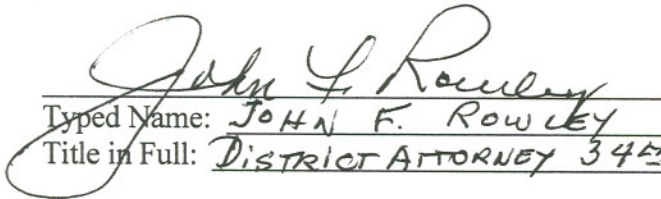
  
Henry J. Rodriguez, Jr.  
President  
St. Bernard Parish Council  
St. Bernard Parish, Louisiana

DATE: Nov-3-2005

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 Cooperation Agreement between the Department of the Army and the Lake Borgne Basin Levee District and the St. Bernard Parish Council, St. Bernard Parish, Louisiana 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.

3<sup>rd</sup> IN WITNESS WHEREOF, I have made and executed this certification this day of NOVEMBER 2005.

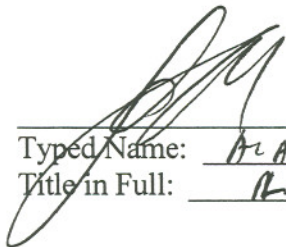
  
Typed Name: JOHN F. ROWLEY  
Title in Full: DISTRICT ATTORNEY 34<sup>th</sup> JDC



CERTIFICATE OF AUTHORITY

I, ALAN J. 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 Cooperation Agreement between the Department of the Army and the Lake Borgne Basin Levee District and the St. Bernard Parish Council, St. Bernard Parish, Louisiana 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 November 2005.

  
\_\_\_\_\_  
Typed Name: ALAN J. ABADIE  
Title in Full: Legal Advisor.



## APPENDIX A



MEMORANDUM FOR THE CHIEF OF BUREAU

10/10/2005 17:00 4200 P.001/001

CECW-ZB

10 October 2005

### MEMORANDUM FOR RECORD

SUBJECT: ASA(CW) Verbal Approval of Policy Deviations

1. On 3 October 2005, Mr. Steve Stockton met with Mr. Woodley in the civil works conference room to provide Mr. Woodley information regarding options for recommended policy deviations to the Corps policy regarding local sponsor requirements to provide all lands, easements, rights-of-way, and disposal or borrow areas (LERRD) associated with rehabilitation of damaged federal and non-federal hurricane protection and flood control projects at no cost to the federal government. MVD representatives participated in the meeting by telephone conference.
2. Mr. Woodley was presented with a summary of the potential deviations to policy for each category of project. In order to address the need to proceed with contracts for the preparation of the borrow areas for the federal Chalmette levee in St. Bernard Parish and to start construction of the non-federal St. Bernard levee to provide interim level of protection to 10 feet. The following policy deviations were approved verbally by Mr. Woodley during the meeting:
  - a. Waiver for the LERRDs on the federal Chalmette levee in St. Bernard Parish.
  - b. Waiver for the LERRDs on the non-federal St. Bernard levee interim level of protection to 10 feet.
3. Mr. Woodley requested that information regarding the remainder of recommended policy deviations be provided with detailed information regarding the category of each of the federal levee segments, list of contracts associated with each of the levee segments that require policy deviations, information regarding the project sponsors ability to pay the required LERRD costs and the estimated cost to federal government for the recommended policy deviations.

STEVEN L. STOCKTON  
Deputy Director of Civil Works

2 15 3157 ON

OCT 10 2005 4:35PM