

CFMS # 705029
APPROVED UNDER OCPR
SPECIAL DELEGATION

Julia Rainford 6-30-11
STATE OF LOUISIANA

CFMS: 705029

Agreement No.: 2511-11-08

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, made and entered into this 27th day of June, 2011, by and between the Office of Coastal Protection and Restoration, State of Louisiana (hereinafter sometimes referred to as "State") and Lake Borgne Basin Levee District (LBBLD) officially domiciled at 6136 E. St. Bernard Hwy., Violet, LA (hereinafter referred to as "Contractor") do hereby enter into contract under the following terms and conditions.

GOAL

The goal of Lake Borgne Basin Levee District is to regain control of vegetation in and around the vicinity of the Hopedale Water Control Structure.

OBJECTIVE

1. To cut down small trees growing in vicinity of the Hopedale Water Control Structure and dispose of properly
2. To cut and remove scrubs growing from underneath structure walkway up and through structure and dispose of properly
3. To cut and remove scrub like vegetation on far side of structure and dispose of properly
4. To cycle, service, and maintain the Hopedale Water Control Structure through monthly visits and occasional weather caused visits.

SCOPE OF SERVICES

Contractor hereby agrees to provide operation and maintenance of the Hopedale Water Control Structure as outlined in Appendix A, of this intergovernmental agreement which is hereby attached and made a part of this agreement.

PERFORMANCE MEASURE

Submission of timely and satisfactory Monthly Progress Reports. Performance measures for this contract shall include Contractor's timely and successful completion, submission, and performance of any work product being sought and provided through this agreement, consistent with the provisions, goals and objectives of this contract. Cleanliness and proper operation and maintenance of the Hopedale Water Control Structure will be used as key gauges in determining the effectiveness of the contractor. Performance pursuant to special closure or opening requests due to weather will also weigh heavily in the performance evaluation.

DELIVERABLES

The LBBLD will record and submit to OCPR on a quarterly basis copies of all operation activity logs associated with the structures. A hard copy of this material shall be submitted to OCPR within 30 days after the end of the quarter.

The operating information is to be included on the operation activity logs as follows:

- 1) date and time of closures
- 2) date and time of the reopening
- 3) other useful information that may be useful in complying with permit conditions

CONTRACT MONITOR

Barry Richard will act as the contract monitor (hereinafter sometimes referred to as "Contract Monitor") for this project, to provide liaison between Contractor and State, and to perform various duties which are specifically provided for in this contract.

PAYMENT TERMS

The State shall pay to the Contractor a total sum not to exceed Twenty-Six Thousand, Seven Hundred Sixty and 00/100 Dollars (\$26,760) for services rendered under this agreement. Travel and other allowable costs shall constitute part of the maximum payable under the terms of this agreement.

Invoices for payment, detailing the fees charged and allowable costs to be reimbursed as set forth in Appendix A shall be submitted monthly (\$660/month).

Invoices shall be submitted to the Contract Manager along with the required Monitoring Report (Appendix B of contract) and any drafts or final version of deliverables.

No authority exists for payments which exceed the approved maximum agreement amount except through written amendment prior to expiration date of the agreement.

TAXES

Contractor hereby agrees that the responsibility for payment of taxes from the funds thus received under this contract and/or legislative appropriation shall be Contractor's obligation and identified under Federal tax identification number 72-6000640.

TERMINATION FOR CAUSE

The State may terminate this contract for cause based upon the failure of the Contractor to comply with the terms and/or conditions of the contract; provided that the State shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have either corrected such failure or, in the case of such failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and the contract shall terminate on the date specified in such notice. The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract; provided that the Contractor shall give the State written notice specifying the State's failure and a reasonable opportunity for the state to cure the defect.

Notwithstanding the above, the Contractor will not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the State from the Contractor is determined.

TERMINATION FOR CONVENIENCE

The State may terminate the contract at any time by giving thirty (30) days written notice to the Contractor. The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

REMEDIES FOR DEFAULT

Any claim or controversy arising out of this contract shall be resolved by the provisions of LSA – R.S. 39:1524 – 1526.

OWNERSHIP

All records, reports, documents, and other material delivered or transmitted to Contractor by the State shall remain the property of the State, and shall be returned by Contractor to the State, at Contractor's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of the State, and shall, upon request, be returned by Contractor to the State, at Contractor's expense, at termination or expiration of this contract.

NONASSIGNABILITY

Contractor shall not assign any interest in this contract by assignment, transfer, or notation, without prior written consent of the State. This provision shall not be construed to prohibit the Contractor from assigning its bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

AUDITORS

It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of Contractor which relate to this contract.

CONTRACT APPROVAL

Neither party shall be obligated under this Contract until both parties have signed and the Contract is reviewed and approved under Delegated Authority by the Department of Natural Resources, Contracts & Grants Management Division.

TERM OF CONTRACT

This contract shall begin on March 1, 2011 and shall terminate on February 28, 2013.

FISCAL FUNDING

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

DISCRIMINATION CLAUSE

The Contractor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

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

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

SUBCONTRACTORS

The Contractor agrees to obtain written State approval prior to subcontracting any portion of the services specified in Appendix A. The Contractor shall include, in any subcontract, the provisions contained in this contract. The Contractor shall submit requests for approval, accompanied by copies of proposed subcontracts, to the State's Contract Monitor. The Contractor further agrees to guarantee and be liable to the State for all services performed under any such contract.

AMENDMENTS

No amendment shall be effective unless it is in writing, signed by duly authorized representatives of both parties, and approved under Delegated Authority by the Department of Natural Resources, Contracts & Grants Management Division..

THUS DONE AND SIGNED on this day, month and year first written above.

IN WITNESS WHEREOF, the parties have executed this contract as of this day of April 8, 2011.

WITNESSES' SIGNATURES:

Mickie Klecker
Bylin

By: Steve Mathies
Steve Mathies, Ph.D.
Executive Director
Office of Coastal Protection and Restoration

WITNESSES' SIGNATURES:

Stuart Williamson
J Semler

CONTRACTOR'S SIGNATURE:

By: Stuart Williamson
Stuart Williamson
Executive Director
Lake Borgne Basin Levee District

APPENDIX A

**SCOPE OF SERVICES
FOR OPERATION AND MAINTENANCE
OF THE
HOPEDALE HYDROLOGIC RESTORATION PROJECT**

INTRODUCTION

The Hopedale Hydrologic Restoration Project (PO-24) was constructed and became operational in 2004. It is designed to relieve impounding problems in the marsh to the north and south of the Bayou La Loutre ridge near Yscloskey in St Bernard Parish, Louisiana.

The Office of Coastal Protection and Restoration (OCPR) and the United States Department of Commerce National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) have agreed to construct the project in accordance with the U.S. Department of Commerce NOAA Cooperative Agreement No. NA07FZ0008. Memorandum of Agreement between OCPR, NOAA and the U.S. Corps of Engineers, fully executed February 10, 1999, specifies the arrangement between parties to execute and fund long term project activities, i.e., operation, maintenance, and monitoring.

PROJECT LOCATION, DESCRIPTION, AND PURPOSE

The 3,805 acre project is located southeast of Yscloskey, in St. Bernard Parish, Louisiana, and is bordered by LA Hwy 46 on the west, the Mississippi River Gulf Outlet (MRGO) spoil deposition area to the north, and LA Hwy 624 and Bayou La Loutre to the south and east.

Wetlands in the area have been adversely impacted because of altered hydrology and semi-impoundment due to construction of LA Hwy. 624 and the MRGO. This project will relieve the impounding problem by replacing a water control structure (Site S-1) located at the point the MRGO borrow canal meets Bayou LaLoutre.

PURPOSE OF INTERGOVERNMENTAL AGREEMENT

This intergovernmental agreement provides for the identification of specific actions and responsibilities to be performed by the Lake Borgne Basin Levee District (LBBLD) and the OCPR in the operation and maintenance of the project. The O&M plan will serve as primary operation and maintenance guidance for the project.

This cooperative agreement includes an initial three (3) year budget which identifies estimated acquisitions and operation and maintenance needs approved by the NOAA, OCPR, and LBBLD. In the succeeding years, LBBLD shall prepare and submit to the OCPR a two year, 24 month, budget estimate by March 1 of each calendar year. The two year budget will include a budget estimate for the forthcoming year and a proposed budget for the subsequent fiscal year. The budgets will cover the periods for the state fiscal year, July 1 to June 30. The LBBLD will submit to the OCPR on a monthly basis an invoice and project monitoring report for the preceding month's activities.

PROJECT FEATURES REQUIRING ROUTINE OPERATION AND MAINTENANCE

The following project water control features will require routine operation and maintenance throughout the life of the project:

- A. Equipment to be operated and maintained by LBBLD in accordance with this intergovernmental agreement:
 - 1. Water control structure (S-1) located at the point the back dike levee meets Bayou La Loutre.
 - 2. LBBLD shall also maintain necessary security features (e.g., locks and gates), and shall ensure that only authorized OCPR and LBBLD representatives will have access to the structures.

Routine operations would include the on-site manual operation of any project structures requiring operation. There will be 12 annual routine operations events. These events will occur every 60 days minimum and LBBLD will not exceed 12 events per year. LBBLD would also be responsible for the maintenance of the hydraulic actuator to be used to operate the structure.

Routine maintenance shall include items that can be handled with their current work force personnel, such as grass cutting, weed and aquatic weed control, spraying, painting of equipment and fencing, and lubrication and routine mechanical upkeep of all moving parts on the structure and actuator. LBBLD will not be responsible for performing major maintenance on the structure.

- B. Equipment to be operated and maintained by OCPR in accordance with this cooperative agreement:
 - 1. OCPR shall also be responsible for performing major maintenance on the structures listed in (A) above.

Detailed descriptions of the above structures and the maintenance functions will be provided in the O&M plan, a copy of which will be provided to LBBLD when completed.

PROCEDURE FOR INITIATING STRUCTURE OPERATIONS

The structure will only be operated for storm events and other emergency scenarios, e.g. oil and chemical spills. After taking the requested action, the LBBLD structure operator shall record the action taken and the time that the action was taken.

EMERGENCY PROCEDURES

The LBBLD will have authority to close any of the structures on an emergency basis when deemed appropriate under guidelines contained in this intergovernmental agreement. The guidelines for closures include chemical, oil or other spills in water bodies that have potential for damaging the project area. The LBBLD would also have the authority to close structures during hurricane and storm events in accordance with established precautionary procedures. The LBBLD would also have the authority to close the structures on a short time basis for the purpose of making emergency repairs or to remove debris from the intake structures. The LBBLD will notify the OCPR project O&M manager of any emergency closure within 24 hours. The LBBLD structure operator is responsible for documenting emergency closures

PURCHASE LIMITATIONS

The LBBLD shall obtain prior OCPR approval of any non-budgeted items which exceed \$1000.

PERMIT COMPLIANCE

The LBBLD will be responsible for compliance with all conditions identified in the Federal and State permits required to operate and maintain the structure. The OCPR will provide technical and financial assistance to the LBBLD in meeting those objectives which mutually benefit both the OCPR and LBBLD.

REIMBURSEMENT

All costs incurred by the LBBLD which are directly related to implementation of the O&M plan will be eligible for reimbursement in accordance with established guidelines.

The LBBLD will be reimbursed 100% for all personnel and material needed to fully maintain and operate the project, including, but not limited to, the following:

- A. Maintenance costs such as grass cutting; weed and aquatic weed control; painting of equipment and fencing; and, lubrication and routine mechanical upkeep of all moving parts on the structures.
- B. All necessary personnel and material needed to properly maintain and operate the water control structure in accordance with the instructions of the O&M Manual.
- C. All necessary personnel, equipment, and material needed to properly maintain the levees at all structures.

The LBBLD shall provide monthly billing of all costs incurred by the LBBLD which are directly related with operating and maintaining this project.

REPORTS

The LBBLD will record and submit to the OCPR on a quarterly basis copies of all operation activity logs associated with the structures. A hard copy of this material shall be submitted to OCPR within 30 days after the end of the quarter. Operating information to be included on the operation activity logs: 1) date and time of closures; 2) date and time of the reopening of the structures; and 3) other information that may be useful in complying with permit conditions. OCPR will develop a recommended form for use by LBBLD.

IDENTIFICATION OF OCPR CONTACT PERSONNEL

Name	Project Position	Office No.
Barry Richard	Project O&M Manager	(504) 280-4059

ANNUAL BUDGET

A one time clearing event will occur in the first year of this contract and will cost \$3,000. This cost is not reflected in the annual cost represented below. The cost below shall apply to the normal annual costs of this agreement. The services in this agreement will be funded 100% by the State. The State will reimburse LBBLD for 100% for all personnel and material costs needed to fully maintain the project:

1.	Monthly Operations	\$ 500
2.	Monthly Routine Maintenance	\$ 160
	Total Annual Cost	\$ 7,920
	Three Year Budget (for first three years)	\$ 26,760

CONTRACT NO. _____

APPENDIX B

MONITORING REPORT

Date: _____

Contracting Party: _____ OCPR Contract No. _____

Project Title: " _____ "

Invoice No. _____ Invoice Amount: _____

Total Contract Amount: \$ _____ Balance: \$ _____

Total invoiced to date: \$ _____

I. WORK COMPLETED TO DATE (ACCORDING TO TYPE CONTRACT):

- A. Percentage of work completed [include percentage completed and/or milestones accomplished (give dates)].
- B. Hourly (include services performed and number of hours worked).
- C. Scope of Services Outlined by Tasks (include tasks completed or portion of task completed to date).
- D. Actual Costs Incurred
- E. Fee Schedule

II FOR EACH PROJECT A NARRATIVE OF IMPLEMENTATION PROGRESS INCLUDING:

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

- B. Tasks and/or milestones not accomplished with explanation or assessment of:
 - 1. Nature of problems encountered:

2. Remedial action taken or planned:

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

4. Likely impact upon achievement:

III DELIVERABLES

IV OTHER DISCUSSIONS OF SPECIAL NOTE

Contracting Party _____ Date _____

Approval _____ Date _____

Barry Richard, OCPR Project Manager