

K22-098

**STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**LIGHTING AGREEMENT
STATE PROJECT NO. H.013617
FEDERAL AID PROJECT NO. H013617
I-10: I-610E INTERCHANGE LIGHTING
ORLEANS PARISH**

THIS AGREEMENT, is made and executed in two originals on this _____ day of _____, 20__, by and between the **Louisiana Department of Transportation and Development**, through its Secretary, hereinafter referred to as **DOTD**, and **City of New Orleans**, a political subdivision of the State of Louisiana, hereinafter referred to as **Entity**.

WITNESSETH That:

WHEREAS, DOTD proposes to construct and install a roadway lighting system at the I-10 and I-610E Interchange (hereinafter, sometimes referred to as the "Project"), provided that, upon completion of the system, Entity will assume ownership and all liability and responsibility for said system, including all future maintenance and operation costs thereof; and

WHEREAS, the Entity is agreeable to the installation of the roadway lighting system; and

WHEREAS, after the construction contract is complete, Entity agrees to assume ownership and all liability and responsibility for said system, including, but not limited to, all maintenance and operation and the costs thereof, to include, but not be limited to, repair, replacement and energy costs, in accordance with the provisions set forth hereinafter; and

NOW, THEREFORE, in consideration of the premises and mutual dependent covenants herein contained, the parties hereto agree as follows:

ARTICLE I: PROJECT IDENTIFICATION

The recitals set forth above are hereby incorporated herein and expressly made a part of this Agreement.

For purposes of identification and record keeping, State and Federal Project Numbers have been assigned to this project as follows: **State Project No. H.013617** and **Federal Project No. H013617**.

ARTICLE II: SCOPE OF SERVICES

DOTD shall, at its expense, prepare complete plans and specifications for the proposed Project within the limits established in the above preamble. DOTD will construct, install and supervise the construction and/or installation of the Project.

The goal of the Project is to construct a highway lighting system at the above specified location that meets the objectives, deliverables and performance measures as determined and dictated by the Project plans and specifications for State Project No. H.013617 and Federal Aid Project No. H013617, which are incorporated herein by reference.

ARTICLE III: FUNDING/PAYMENT

The estimated construction cost is **\$2,987,233.40**. Entity agrees to pay to the order of DOTD, 10% of the estimated construction cost of the project, **\$298,723.34**, prior to advertisement for construction.

The parties agree that the estimated project costs payable to DOTD represent the estimated amounts necessary to construct this project and that cost underruns or overruns may occur. After completion and final acceptance of the project and expiration of the forty-five (45) day lien period, final costs shall be determined. If the final calculation of costs determines that there is an overrun, then Entity shall pay its proportionate share of the amount of the overrun to DOTD immediately upon receipt of an invoice. If, however, the final calculation of costs determines that Entity overpaid DOTD, then DOTD shall reimburse Entity the proportionate share of the underrun relative to the matching funds paid by Entity not later than thirty (30) days after completion of the final estimate.

ARTICLE IV: PRECONSTRUCTION OBLIGATIONS OF ENTITY

Prior to the construction and installation of the lighting system, Entity shall submit to DOTD for approval a copy of its Operational Plan which covers managing, financing, inspecting, and repairing the system, all as outlined in the latest edition of the DOTD publication "A GUIDE TO CONSTRUCTING, OPERATING, AND MAINTAINING HIGHWAY LIGHTING SYSTEMS". Entity shall provide DOTD with documentation of the utility services account in Entity's name.

No later than thirty (30) days prior to advertisement of the Project, Entity shall obtain the necessary permit from DOTD for the lighting system. In the event of a conflict between the provisions of this Agreement and said permit for purposes of maintenance, operation and repair of the lighting system subsequent to the transfer of ownership, the provisions of the permit shall control.

ARTICLE V: FINAL ACCEPTANCE AND TRANSFER

The DOTD shall be responsible for making the final inspection and Final Acceptance of the project. Before making final inspection, DOTD shall give Entity a minimum of two (2) weeks notification, so that Entity may have representatives present to participate in the final inspection. DOTD shall provide Entity with a copy of the Final Acceptance letter. Entity shall record the Final Acceptance letter in the conveyance records of the Parish of Orleans, and shall provide a certified copy of said recordation to DOTD project manager. Entity shall record this Agreement and provide a certified copy of said recordation to the DOTD permit section at the time of permit application.

Upon completion and Final Acceptance of the lighting system by DOTD, Entity will immediately assume ownership of the lighting system and shall be responsible for all maintenance, operation and repair of the lighting system at Entity's sole expense for as long as the right-of-way upon which the project is located remains in the State Highway System, including, but not limited to, the energizing of the system and the repair and/or replacement of any elements of the system which may malfunction or become damaged.

Entity hereby takes notice that upon issuance of the Final Acceptance the one (1) year warranty period begins, and in order to maintain the viability of said warranty, all work performed during the warranty period should be one performed by the construction contractor.

Entity agrees that, at any time after Final Acceptance, Entity shall be responsible for marking the field location and depth of all underground conduits and components of the lighting system within DOTD's right of way within forty-eight (48) hours, excluding weekends and holidays, of receiving written request for same from DOTD.

The party constructing the system shall provide the other party with a copy of the as-built plans indicating the location and depth of the lighting system's underground conduits and components.

ARTICLE VI: AMENDMENTS/MODIFICATIONS

This Agreement may be amended or modified at any time by mutual consent of the parties, provided, however, that any modification, amendment, alteration, variation, or waiver of any provision(s) of this Agreement shall be valid only when it has been reduced to writing and executed by all parties.

Any permit required by this Agreement may be modified as provided by law.

ARTICLE VII: TERM

This Agreement shall commence on the date first written above and shall remain in effect until all the work has been completed and accepted, all payments required to be made have been made, and all obligations and conditions contained herein have been satisfied.

ARTICLE VIII: TERMINATION

This Agreement may be terminated under any of the following conditions:

1. By mutual written agreement and consent of the parties hereto; or
2. By DOTD by giving thirty (30) days written notice to Entity; or
3. By Entity should it desire to cancel the Project prior to the advertisement thereof, provided any federal/state costs that have been incurred for the development of the project shall be repaid by Entity.

ARTICLE IX: NONASSIGNABILITY

Neither DOTD nor Entity shall assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the other party.

ARTICLE X: RECORD KEEPING/AUDITS

The parties will maintain all documents, papers, file books, accounting records, appropriate financial records and other evidence related to costs incurred relative to this Agreement. All such records shall be maintained by the parties for a period of five (5) years following completion and Final Acceptance of the Project.

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 the parties that relate to this Agreement. The parties shall be audited in accordance with La. R.S. 24:513, as applicable.

ARTICLE XI: INDEMNIFICATION/NO THIRD PARTY BENEFICIARY

Entity shall indemnify and save harmless DOTD against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money growing out of, resulting from, or by reason of any act or omission of Entity, its agents, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement or in connection with the services required or performed by Entity or resulting from the ownership, possession or control of the Project.

DOTD shall indemnify and save harmless Entity against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money growing out of, resulting from, or by reason of any act or omission of DOTD, its agents, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement.

Nothing herein is intended, nor shall be deemed to create a third party beneficiary to or for any obligation by DOTD or Entity herein or to authorize any third person to have any action against DOTD or Entity arising out of this Agreement.

ARTICLE XII: COMPLIANCE WITH CIVIL RIGHTS

The Entity agrees to abide by the requirements of the following as applicable: Titles VI and VII of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972, as amended; Federal Executive Order 11246, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990, as amended; and Title II of the Genetic Information Nondiscrimination Act of 2008.

The Entity agrees not to discriminate in its employment practices, and shall render services under this Contract without regard to race, color, age religion, sex, gender identity, national origin, veteran status, genetic information, political affiliation or disabilities.

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

ARTICLE XIII: LEGAL COMPLIANCE

The parties shall comply with all federal, state, and local laws, regulations, and ordinances, including specifically, but not limited to, the Louisiana Code of Ethics (La. R.S. 42:1101, *et seq.*), in carrying out the provisions of this Agreement.

ARTICLE XIV: VENUE

The exclusive venue for any suit arising out of this Agreement shall be in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

ARTICLE XV: FISCAL FUNDING

The continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient

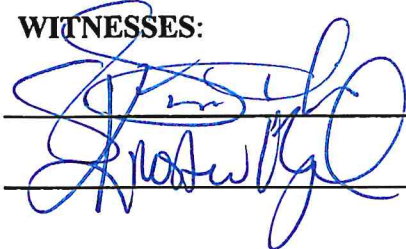
monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect 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.

ARTICLE XVI: SEVERABILITY

If any term, covenant, condition, or provision of this Contract or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Contract or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

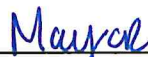


CITY OF NEW ORLEANS

BY: _____



Typed or Printed Name



Title

FORM AND LEGALITY APPROVED:



Law Department, City of New Orleans

Taxpayer Identification Number

84-395-5399

DUNS Number

20.205

CFDA Number

WITNESSES:

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

BY: _____

Secretary

RECOMMENDED FOR APPROVAL:

BY: _____

Division Head