

K20-690

**MAINTENANCE AGREEMENT
INCLUDING MOWING AND LITTER PICKUP**

FOR THE FISCAL YEAR ENDING JUNE 30, 2021

BETWEEN

CITY OF NEW ORLEANS

AND

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

AGREEMENT

This **AGREEMENT**, ("Agreement") is made and entered into this ____ day of _____, _____, by and between the **STATE OF LOUISIANA**, through the Department of Transportation and Development, hereinafter referred to as ("**DOTD**"), represented herein by its Secretary or his duly authorized designee, and the City of New Orleans, hereinafter referred to as ("**Municipality**"), appearing herein through its Mayor, LaToya Cantrell, duly authorized.

WITNESSETH:

WHEREAS, pursuant to the provisions of LSA-R.S. 48:193, **DOTD** is directed to repair and to keep in operating condition, at its sole cost and expense, all municipal roads and streets within the State Highway System as it is defined in LSA- R.S. 48:191, hereinafter sometimes referred to as the "State Highway System" or "State Roadway"; and

WHEREAS, further, LSA-R.S. 48:193 authorizes municipalities to request that the repair and maintenance of said State Roadways located within their respective municipalities be performed by the municipality, at the State's expense; and

WHEREAS, **DOTD** lacks sufficient personnel and equipment to perform mowing and litter collection on a routine and continuing basis and wishes to enter into an agreement with the **Municipality** to perform maintenance directly related to mowing and litter collection on the State Roadways located within the City of New Orleans; and

NOW, THEREFORE, it is hereby agreed between **DOTD** and **Municipality**:

ARTICLE I: Covered Roadways:

This Agreement applies only to those State Roadways identified on the List of Routes for Maintenance Agreement shown on Exhibit "A", a copy of which is appended hereto and made a part hereof by reference. These State Roadways are collectively referred to as "State Roadways" and, for purposes of this Agreement, the term "State Roadway" shall include all rights of ways and roadway shoulders associated with the State Roadways.

ARTICLE II. Mowing Litter and Trash Collection

The **Municipality** shall conduct its operation in a manner such that the safety and convenience of the public shall be regarded as a priority. All equipment and traffic control devices shall be in accordance with the Manual on Uniform Traffic Control Devices. The **DOTD** reserves the right to stop the **Municipality** from working or order any piece of equipment removed from the roadway or right of way should it be determined that the minimum safety standards are not being met.

Prior to beginning a litter collection or mowing cycle the **Municipality** shall contact the **DOTD** District 02 Roadside Development Coordinator, Mr. Robert Alford, at (504) 437-3122, advising him of the starting date.

The Municipality will be required to report daily work activities on a Daily Work Report on the form provided (Exhibit "B" attached) and shall include the work completed (mowing) and litter amount in cubic yards collected each day for the duration of the cycle or period of time that the work is being performed.

Completed Daily Work Reports shall be maintained by the municipality and shall be submitted to the DOTD district contact with the semi-annual invoice for covered time period.

Failure to turn in the Daily Work Reports with the semi-annual invoice will delay payment until the required Daily Work Reports are submitted.

The **Municipality** shall pick up and properly dispose of all trash and debris located on the State Roadways prior to conducting mowing operations. Litter and trash collection shall precede the mowing operation by no more than 24 hours. The **Municipality** shall perform litter and debris pick-up on all grass and vegetative areas, ditches, paved roadside shoulders and areas beneath overhead bridges and roadways. All litter, trash and debris uncovered by the mowing operation shall be picked up within 48 hours of the mowing operation. All litter, trash and debris shall be collected and piled or bagged off of the travel lanes and paved shoulders of the State Roadways and must be removed from the right-of-ways by the close of business the same workday that it is collected. **Municipality** shall provide, at its own expense, all equipment necessary to perform the duties provided for in this Agreement, including but not limited to, all trash bags, mowing and trimming equipment and herbicide applicators. **Municipality** shall record and document the amount of litter collected and report these amounts to the appropriate DOTD District Engineer at the time invoices are submitted for payment.

For purposes of this agreement litter, trash and debris shall mean all trash, debris, litter, junk, rubbish, paper, cardboard, glass, cans, discarded items, garbage, old tires, treads, dead trees, wood materials, concrete, etc. The Municipality will not be required to pick up every isolated cigarette butt, chip of glass or similar small objects.

The **Municipality** shall mow grass and cut or otherwise control mowable vegetation along ditches, around signs, guardrails and bridge ends, trim overhanging grass along curbs, and remove litter and debris within the designated, dedicated or apparent right of way. For purposes of this Agreement, Mowable vegetation is defined as any trees, vegetation, brush, etc., that is two inches in diameter or less measured five inches above the ground. Mowing and litter removal shall be accomplished a minimum of eleven (11) times per year. The dates of the mowing operations shall be set forth on the Mowing Plan submitted by Municipality to Roadside Development Coordinator assigned to the **DOTD** District where the mowing operations are to take place.

Natural stands or planted stands of wildflowers shall not be cut until after seed heads have formed unless, in the opinion of **DOTD** District Administrator, the flowers are causing a traffic hazard or have a very undesirable appearance.

If, during the term of this Agreement, **DOTD** alters or makes repairs to State Roadways covered by this Agreement, **DOTD** will initiate contact with the **Municipality** to revise mowing and litter pick-up practices for the applicable State Roadway.

The **Municipality** shall be responsible for payments to its employees and contractors who perform work pursuant to this Agreement and shall be responsible for payroll taxes and benefits due each employee who is assigned to work pursuant to this Agreement.

Nothing herein is intended to create a statutory employer relationship between **DOTD** and the employees or contractors of the **Municipality**.

ARTICLE III: Use of Herbicide/Chemicals in Mowing Operations

The **Municipality** may utilize Vegetation Management Plans involving the use of herbicides/chemicals by the **Municipality**, provided that the **Municipality** obtains written approval from the **DOTD** District Administrator. The **Municipality** may elect to enter into a contract with third parties to administer herbicides. The following conditions shall apply to all Vegetation Management Plans involving the use of herbicides/chemicals whether performed by the **Municipality** or its contractor:

All liability arising from the use or misuse herbicides/chemicals pursuant to this Agreement shall be the responsibility of the **Municipality** and, when applicable, the **Municipality's** contractor making said chemical applications.

Municipality shall notify **DOTD** of its intention to apply chemicals for growth retarding purposes. Said notification shall be in writing and shall be included in the **Municipality's** Roadside Management Plan. The Roadside Management Plan shall include projected mowing and spraying schedules for the yearly contract. All herbicide applicators must possess a Category 6 Pesticide Applicators license obtained through the Louisiana Department of Agriculture and Forestry. A copy of licenses shall be included in the **Municipality's** Management Plan if the work is to be performed by **Municipality** employees. If herbicide/chemical application will be performed by **Municipality's** contractor, proof of insurance and required Louisiana licensing procedures shall be followed. The **DOTD** reserves the right to inspect and approve all forms of application equipment when making herbicide/chemical applications to **DOTD** Roadways and rights of ways.

All herbicide/chemical applications performed from the traveling roadway shall be performed in accordance with **DOTD's** "Safety Policy and Procedure Manual". This shall include, but is not limited to, the use of arrow boards and crash attenuators when applications are made from the inside lane or fast-moving lane on divided highways. The **DOTD** reserves the right to approve all herbicides/chemicals used in herbicide/chemical treatments to **DOTD** rights of ways. A list of herbicides/chemicals and the quantities to be used are contained in the **DOTD** Policy for Roadside Management. The **DOTD** reserves the right to disallow the use of Integrated Roadside Management practices in sensitive areas or sites or sites deemed by **DOTD** as unsuitable for such practices.

The **Municipality** or its contractor shall consult with the **DOTD** Roadside Development Coordinator, on an annual basis, to verify whether any of these conditions exist.

The maximum number of generalized herbicide applications, shall be limited to two (2) per growing season.

The maximum number of generalized seed-head suppression applications shall be limited to two (2) per growing season.

A combination of the above two types of spraying may be allowed, but no more than two in any given growing season.

Further, there shall be a contract mowing cycle interspersed between any two herbicide applications.

Spot Treatments:

Spot treatments for weed control shall be allowed. Products used for spot treatments shall have no injurious effects to the predominant turf grass. Chemical control of grasses and weeds around signs, guardrails, light standards, revetments and bridge ends will be allowed. The Municipality shall obtain prior approval from the District Roadside Development Coordinator for the chemicals used by the **Municipality** for spot treatments.

All concerns or questions relating to the use of herbicides shall be directed to the DOTD District Administrator.

ARTICLE IV: Reimbursement

DOTD will reimburse the **Municipality** on a semi-annual basis for work performed pursuant to this Agreement. The documentation required in Article II shall be submitted with each invoice. Payment will be withheld until the documentation is submitted and approved by DOTD.

ARTICLE V: Payments

Municipality shall be reimbursed by DOTD the amount of Eight Hundred Seventy Five and 00/100 Dollars, (\$875.00) per cycle, per mile for Interstate Roadways; Five Hundred and 00/100 Dollars, (\$500.00) per cycle, per mile for divided State Roadways; and Two Hundred Fifty and 00/100 Dollars (\$250.00) per cycle, per mile for undivided State Roadways. All such payments shall be for work performed under the provisions of Article II - Litter and Trash Collection of this Agreement.

The total mileage to be maintained by the **Municipality** pursuant to this Agreement and for which the **Municipality** is entitled to reimbursement by DOTD is 7.75 miles. Of this, 0.00 miles are Interstate Roadways; 7.75 miles are divided State Roadways and 0.00 miles are undivided State Roadways. The total maximum amount for which the **Municipality** may claim reimbursement is **FORTY TWO THOUSAND SIX HUNDRED TWENTY FIVE AND 00/100**. (\$42,625.00). It is understood and agreed that the rates per cycle, per mile at which the **Municipality** is to be reimbursed are without regard to

the type of wearing surface of the traffic lanes or other features of the State and Interstate Roadways covered by this Agreement.

ARTICLE VI: Substandard Performance

If, in the opinion of the **DOTD** District Administrator, the **Municipality** has failed to properly fulfill its obligation with respect to any or all State Roadways covered by this Agreement, and after the **Municipality** has been notified in writing and given adequate opportunity to correct the condition, the **Municipality** has failed or refuses to correct said problem, the **DOTD's** District Administrator may order the **DOTD** maintenance forces to perform such work as, in his or her opinion, is necessary for the proper maintenance of the State Roadways and the **DOTD** may deduct the cost thereof from any monies due or that become due to **Municipality**.

ARTICLE VII: Indemnification

The **Municipality** shall defend, indemnify, save and hold harmless the State of Louisiana, through the Department of Transportation and Development, its offices, agents, servants and employees, including volunteers, from and against any and all claims, demands, suits, judgments of sums of money, attorneys' fees, court costs, expense and liability, to any party or third person, including, but not limited to, amounts for or arising out of injury or death to any person for loss of life, injury, damage, loss or destruction of any property, or damages for tort or breach of contract or any other basis of liability growing out of, resulting from, or by reason or any act, omission, operation or work of the **Municipality**, its agents, contractors, servants and employees, or on account of negligence in safeguarding the work or through use of unacceptable materials in maintaining the work, or because of any negligent act, omission or misconduct of the municipality, or because of claims or amount recovered from infringement of patent, trademark or copy right, or from claims or amounts arising or recovered under Worker's Compensation Act, or other law, ordinance, order or decree, or any and all costs, expense and/or attorneys' fees incurred by the municipality or **DOTD** as a result of any claims, demands, and/or causes of action while engaged upon or in connection with the performance of this Agreement by the **Municipality** or its contractors, employees, agents and assigns under this Agreement, except for those claims, demands, and/or causes of action arising out of the sole negligence of the Department or its agents, representatives and/or employees. The **Municipality** agrees to investigate, handle, respond to, provide defense for and defend, any such claims, demand or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claim, demand or suit is groundless, false or fraudulent.

ARTICLE VIII: Funding Contingency

The continuation of this Agreement is contingent upon the appropriation of funds by the Louisiana State Legislature to the **DOTD** to fulfill the requirements of this Agreement. If the Legislature fails to appropriate sufficient monies to provide the continuation of this Agreement, or if such appropriation is reduced by 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 this Agreement, this Agreement shall be reduced or terminate on the date said funds are no longer available.

ARTICLE IX: Limitation On Use of State Funds

The **Municipality** agrees to use the funds provided by the State through **DOTD** only for the services authorized in this Agreement and in accordance with constitutional and statutory restrictions on the use of State funds for public purposes.

ARTICLE X: Term and Cancellation

This Agreement shall begin on **July 1, 2020** and shall end on **June 30, 2021**, but may be terminated earlier under any or all of the following conditions:

By mutual agreement and consent of the parties hereto.

By the **DOTD** as a consequence of the failure of the **Municipality** to comply with the terms or quality of work in a satisfactory manner.

By either party upon failure of the other party to fulfill its obligations as set forth in this Agreement.

By either party giving thirty (30) days written notice to the other party.

By the **DOTD** upon withdrawal or reduction of funding by the Louisiana Legislature or by any other lawful manner.

By either party as the result of an Act of God that prohibits performance, by either party, of duties proscribed in this Agreement.

If termination is made under condition four (4), above, after work has begun, the **Municipality** will be paid for all services rendered to date of termination.

DOTD may, at its option, suspend the services performed pursuant to this Agreement, without penalty of any kind, and without terminating the Agreement. Should the **DOTD** desire to exercise this right of suspension, it may do so by providing the **Municipality** with prior written notice of its intent to suspend the Agreement, thirty (30) days in advance of the effective date of suspension. The Agreement may be reinstated and resumed in full force and effect by **DOTD** by providing the **Municipality** with sixty (60) days written notice to that effect.

ARTICLE XI: Claims for Liens

The **Municipality** shall hold the **DOTD** harmless from any and all claims for liens for labor, services or materials furnished to the **Municipality** in connection with the performance of his obligations under this Agreement.

ARTICLE XII: Compliance With Laws

The **Municipality** agrees to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the 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 Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and the **Municipality** agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

ARTICLE XIII: Agreement Modifications

Any changes or modifications to the terms of this Agreement must be made by a fully executed Supplemental Agreement.

ARTICLE XIV: Disputes

Any dispute concerning a question of fact in connection with the work not disposed of by this Agreement or by agreement of the parties shall be referred to the **DOTD's** Secretary or his duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this Agreement.

ARTICLE XV: Record Keeping, Reporting and Audits

The **Municipality** shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred relative to this project and shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under this Agreement, for inspection by the **DOTD** Audit Control Section, the Legislative Auditor, and/or the Office of the Governor, Division of Administration Auditors under State and Federal Regulations effective as of the date of this Agreement and copies thereof shall be furnished if requested.

ARTICLE XVI: Covenant Against Contingent Fees

The **Municipality** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the **Municipality** to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the **Municipality**, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. The **DOTD** shall have the right to annul this Agreement without liability or, in its discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee if the **Municipality** breaches or violates this warranty.

No member of or delegate to Congress or resident commissioner shall be entitled to any share or part of this Agreement or to any benefit that may arise there from, but this provision shall not be construed to extend to a contract if made with a corporation for its general benefit.

ARTICLE XVII: Subletting, Assignment or Transfer

The **Municipality** shall not subcontract any of his duties or responsibilities under this Agreement without the express written consent of **DOTD**.

The **Municipality** shall not assign any interest in this Agreement and shall not transfer any interest in same, whether by assignment or novation, without prior written consent of the **DOTD**, provided however, that claims for money due or to become due to the **Municipality** from **DOTD** may be assigned to a bank, trust company, or other financial institution without prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the **DOTD**.

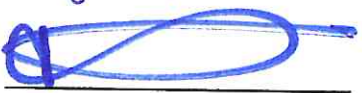
ARTICLE XVIII: Successors and Assigns

This Agreement shall be binding upon the successors and assigns of the respective parties hereto.

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

THUS DONE AND SIGNED at New Orleans, Louisiana, this 21st day of August, 2020.

WITNESSES

FORM AND LEGALITY APPROVED:


Law Department, City of New Orleans

Municipality

BY: 
(Signed Name)

Gilbert Montano
(Printed Name)

Municipality

Address

() _____ (Phone)
() _____ (Fax)

Tax ID. #

THUS DONE AND SIGNED at Bridge City, Louisiana, this _____ day of _____

WITNESSES:

DOTD

BY: _____
Chris G. Morvant, P.E., P.T.O.E.
District 02 Engineer Administrator

Exhibit "A"

CITY OF NEW ORLEANS

<u>ROUTE NAME</u>	<u>DIVIDED ROUTE</u>
Us 90 (Chef Menteur Highway from Downman Road to Industrial Parkway - including litter collection and mowing and weed eating and edging on the outside row that is not maintained by property owners.)	7.75

DAILY WORK REPORT **Exhibit "B"**

Municipality Name:

Service Provider Other than Municipality:

Work Order#:

Day:

Date:

Weather:

Working Conditions:

From Location To Route

To		
To		
To		
To		
To		
To		
To		
To		
To		

Force & Equipment

Operation Started:

Operation Stopped:

AM/PM

AM/PM

Municipality Representative

Signature:

FOR DOTD USE ONLY



District: 02

Parish:

Function 440-21

City Maintenance Contract Work Required

Check List

Litter/Trash Pickup ☐

Mowing ☐

Trimming/Edging ☐

Supt. Initial

Remarks:

Approximate Work Accomplished

Acres Mowed =

Trash, CY =