

K20-1201

COOPERATIVE ENDEAVOR AGREEMENT
between and among
THE STATE OF LOUISIANA
through the

THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
and the
CITY OF NEW ORLEANS

Improvements to the Loyola Drive Interchange

State Project Number H.011670

This **COOPERATIVE ENDEAVOR AGREEMENT**, (the "Agreement") is made and entered into this ____ day of _____, 2020²¹ (the "Effective Date"), in four originals, by and between the State of Louisiana through the Louisiana Department of Transportation and Development ("DOTD") and The City of New Orleans, Louisiana ("City"), each represented herein by its duly authorized representative:

WITNESSETH:

WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that "For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual";

WHEREAS, Congestion currently exists on Loyola Drive in Kenner, Louisiana at its interchange with Interstate 10 ("I-10") and at its intersection with Veterans Boulevard during peak periods on typical weekdays and future traffic demand, notwithstanding the recent opening of the new airport terminal, is expected to result in queuing on the I-10 mainline, and;

WHEREAS, Improvements are needed to provide safe and efficient airport access, to minimize queuing on the interstate system and to be in conformance with goals envisioned in the Kenner 2030 Strategic Plan for a Prosperous Future; and;

WHEREAS, The Loyola Drive Interchange Improvement Project ("Project") consists of widening a portion of I-10 between Loyola Drive and Williams Boulevard, installation of elevated ramps to and from Loyola Drive, improvements to Terminal Drive including the relocation of the TNC access, modification of Aberdeen Street, and improvements to Loyola Drive, to enhance operational conditions and increase the capacity of this interchange in order to accommodate future traffic demand in the area and to serve as the primary ingress and egress for airline passenger traffic to the new Louis Armstrong New Orleans International Airport terminal; and

WHEREAS, completion of design and construction activities for the Project are estimated to cost in excess of One Hundred Twenty-Five Million and 00/100 Dollars (\$125,590,956.81), inclusive of contingencies for cost overruns and change orders; and

WHEREAS, in consideration of the benefits to economic development, intergovernmental planning and local traffic congestion relief in the Greater New Orleans area, the City of New Orleans (“City”) is willing to participate in the design and construction costs for the Project; and

WHEREAS, because of the benefits of the Project in support of the citizens and traveling public of the Greater New Orleans area, the City of Kenner, the Parish of Jefferson, and the New Orleans Regional Planning Commission are also willing to participate in the design and construction costs for the Project.

WHEREAS, the City of New Orleans wishes to cooperate with each of the above named parties for the construction of the Project described above to the extent committed herein; and

WHEREAS, DOTD is willing to accept the funding for the Project under the terms and conditions set forth herein; and

WHEREAS, DOTD intends to construct the Project in accordance with the plans and specifications for State Project Number H.011670; and

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

ARTICLE I

SCOPE AND PURPOSE

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

1.2 The scope of the Project is for modification of existing ramps and construction of a new multi-level interchange at I-10 consisting of a combination of at-grade and elevated ramps, to include two (2) one-way elevated flyovers at the I-10/Loyola Drive interchange, which will be modified to a Diverging Diamond intersection, addition of auxiliary lanes along I-10 between Loyola Dr. and Williams Blvd., upgrades to Loyola Drive north and south of I-10, and modification of Terminal Drive including the relocation of the TNC access to accommodate the interchange improvements.

ARTICLE II

RESPONSIBILITIES OF THE PARTIES

2.1 Responsibilities of DOTD

2.1.1 DOTD shall be responsible for costs of the design and construction of the Project in accordance with the plans and specifications for State Project No. H.011670, including, but not limited to, environmental assessment, right-of-way acquisition, utility relocation, pre-construction engineering services necessary for the preparation of completed plans, specifications and estimates, construction, and construction inspection.

2.1.2 DOTD agrees to use the funds identified in Paragraph 2.2.1, to be provided under this Agreement, exclusively for design and construction of the Project in accordance with this Agreement and any applicable law, unless refunded in accordance with this Agreement.

2.1.3 DOTD shall construct the Project in accordance with all applicable local, state, and federal laws. DOTD shall also adhere to all applicable requirements and specifications, including but not limited to the most current edition of the *Louisiana Standard Specifications for Roads and Bridges*.

2.1.4 Prior to the commencement of any work on Terminal Drive, DOTD shall separate and apart from this Agreement and subject to the terms and conditions as may be required by the New Orleans Aviation Board, enter into a Right of Entry Agreement with the New Orleans Aviation Board relative to State Project Number H.011670, allowing DOTD a non-exclusive Right of Entry and Access onto the property of the Louis Armstrong New Orleans International Airport for the purpose of making modifications to Terminal Drive. This Section shall not be interpreted as providing a Right of Entry and Access prior to the execution of the Right of Entry Agreement with the New Orleans Aviation Board relative to State Project Number H.011670.

2.2 Responsibilities of the City

2.2.1 The City shall contribute a total maximum aggregate amount of Three Million and 00/100 Dollars (\$3,000,000.00) over a period of fifteen (15) consecutive years, in minimum annual installments of Two Hundred Thousand and 00/100 Dollars (\$200,000.00), with payments to begin no later than in State Fiscal Year 2022-2023 (the “Fixed-Party Specific Amount” or the “Contributory Funds”). To the extent that the City issues payment before State Fiscal Year 2022-2023, the Parties agree and acknowledge that the City’s subsequent annual payment will be made no later than the State Fiscal Year

2023-2024, and annually thereafter.

2.2.2 The City shall not be obligated to make any contribution beyond the Fixed Party-Specific Amount above, including, without limitation, if the Project does or will exceed the cost estimate set forth in the Recitals.

ARTICLE III **PAYMENT TERMS**

The Contributing Party shall transfer the Contributory Funds to DOTD as provided in Article II herein above, and said Contributory Funds shall be utilized and expended by DOTD for all costs related to design and construction of the Project, including, but not limited to, costs for design, construction, engineering, and inspection.

ARTICLE IV **RECORD KEEPING**

4.1 DOTD 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 DOTD and/or its consultants and contractors for a period of five (5) years following final payment.

4.2 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 hereto that relate to this Agreement for a period of three (3) years from the Effective Date of this Agreement. DOTD shall be audited in accordance with La. R.S. 24:513.

ARTICLE V **OWNERSHIP**

This Agreement is purely intended as a funding mechanism and nothing herein shall create or vest in the City, nor is it intended to create or vest in same, any ownership interest in the Project(s) contemplated herein, nor does the City assume any responsibility for the design, construction, maintenance, or compliance with any applicable laws relative to the Project(s); but, rather, it is understood and agreed that DOTD is the owner of the Project(s).

ARTICLE VI **TERM/CANCELLATION**

6.1 The terms of this Agreement shall be effective from the date of execution by the parties hereto and shall be binding upon the parties until all obligations have been satisfied and all

payments due under this Agreement have been made, unless terminated earlier as provided in this Agreement. Upon termination for any reason, the terms of Article XI shall survive.

6.2 Termination for Convenience

6.2.1 DOTD may terminate this Agreement by providing 30 days' written notice thereof.

6.2.2 This Agreement may be terminated by mutual written agreement and consent of the parties.

6.2.3 This Agreement may be terminated by DOTD should this Agreement be determined to be illegal or the determination be made by DOTD or the State that the Project should be delayed.

6.3 Termination for Cause

6.3.1 DOTD may terminate this Agreement for cause based upon the failure of any party to comply with its material obligations under this Agreement; provided, however, that DOTD shall first provide said offending party with written notice specifying the failure. If within thirty (30) days after receipt of such notice, the party has not either corrected such failure, or, in the event it cannot be corrected within thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then DOTD may, at its option, place the offending party in default and the Agreement shall terminate on the date specified in such notice.

6.3.2 The City may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of DOTD to comply with the terms and conditions of this Agreement; provided, however, that the City shall first provide DOTD with written notice specifying such failure. If within thirty (30) days after receipt of such notice, DOTD has not either corrected such failure, or, in the event it cannot be corrected within thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the City may, at its option, place DOTD in default and the Agreement shall terminate on the date specified in such notice.

6.3.3 In the event of default by either party, DOTD and the City shall have all rights granted by the general laws of the State of Louisiana.

ARTICLE VII **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.

ARTICLE VIII **REMEDIES FOR DEFAULT**

In the event of default by any party, the City shall have all rights granted by the general laws of the State of Louisiana.

ARTICLE IX **ASSIGNMENTS**

No party may assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of all other parties hereto.

ARTICLE X **FISCAL FUNDING**

The continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Projects by the legislature and the approval of the Louisiana State Bond Commission for an appropriation of the amount of funding appropriated to DOTD for the Project for the then current fiscal year, if applicable. If the legislature fails to appropriate sufficient monies to provide for the continuation of the Project, 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, or if any capital outlay appropriation for the Project is not approved in full by the Louisiana State Bond Commission in accordance with applicable law, and the effect of such reduction or failure to approve is to provide insufficient monies for the continuation of the Project, this Agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

ARTICLE XI **INDEMNIFICATION/INSURANCE**

11.1 The parties hereto shall indemnify and save harmless one another 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 its own or of 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 it or resulting from the ownership, possession or control of the Work.

11.2 Nothing herein is intended, nor shall be deemed to create a third party beneficiary to or for any obligation by any party hereto herein or to authorize any third person to have any action against

any party hereto arising out of this Agreement.

11.3 DOTD is the owner of the Project which is the subject of this Agreement and will not make any claim or seek any indemnity against the City related to liability which may arise from the design, construction and maintenance of such Projects.

ARTICLE XII

DISCRIMINATION CLAUSE

12.1 All parties agree to abide by the requirements of the following as applicable: Titles VI and Title VII of the Civil Rights Act of 1964, as amended; the Equal Opportunity Act of 1972, as amended; 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 Americans with Disabilities Act of 1990, as amended, and Title II of the Genetic Information Nondiscrimination Act of 2008.

12.2 The parties agree not to discriminate in employment practices, and shall render services under this Agreement without regard to race, color, age, religion, gender, national origin, veteran status, genetic information, political affiliation, or disabilities.

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

ARTICLE XIII

CONTROLLING LAW, LEGAL COMPLIANCE AND VENUE

13.1 The validity, interpretation, and performance of this Agreement shall be controlled by and construed in accordance with the laws of the State of Louisiana.

13.2 The parties shall comply with all applicable federal, state, and local laws and regulations, including, specifically, the Louisiana Code of Government Ethics (LSA-R.S. 42:1101, *et seq.*) in carrying out the provisions of this Agreement.

13.3 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 XIV

SEVERABILITY

If any term, covenant, condition, or provision of this Agreement 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 Agreement 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 Agreement shall be valid and enforced to the fullest extent permitted by law.

ARTICLE XV **GENERAL PROVISIONS**

15.1 Notices. All notices required or permitted under this Agreement must be in writing and delivered by mail (postage prepaid) or by hand delivery to the address of the receiving party set out below. Notices sent by email are ineffective. Notices are effective when received by the recipient during the recipient's regular business hours. Notices which do not comply with the requirements of this Agreement are ineffective, and do not impart actual or any other kind of notice.

Timothy Nickel, P.E.
Project Manager
Louisiana Department of Transportation
and Development
1201 Capitol Access Road, Rm. 500G
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&
Sunni J. LeBeouf
City Attorney
City of New Orleans
1300 Perdido Street
Suite 5E03
New Orleans, LA 70112
Tel. 504-658-9800

15.2 Relationship of Parties. Both parties are independent and no partnership, joint venture or agency relationship will be deemed to be formed under this Agreement. No party shall have the right, power or authority to in any way bind the other to any contract or other obligation.

15.3 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will be considered one and the same agreement.

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:


Witness


Witness

City of New Orleans

By: 
LaToya Cantrell
Mayor

FORM AND LEGALITY APPROVED:

Law Department

By: 
Printed Name: Tracy Tyler

WITNESSES:

Witness

Witness

State of Louisiana
Department of Transportation
and Development

By: _____
Shawn D. Wilson, Ph.D.
Secretary

RECOMMENDED FOR APPROVAL

BY: _____
Section Head

Civil Service Com'n of City of New Orleans v. City of New Orleans

Supreme Court of Louisiana. | September 9, 2003 | 854 So.2d 322 | 2003 WL 22081377

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Outline

West Headnotes
Attorneys and Law Firms
Opinion
Concurring In Part / Dissenting In
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