

K20-1174

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SUPERSEDING AGREEMENT
NEW STATE PROJECT NUMBER H.014530
NEW FEDERAL PROJECT NUMBER H014530
FORMER STATE PROJECT NOS. H.004698 & H.007250
FORMER LEGACY STATE PROJECT NOS. 700-36-0142 & 742-36-0104
FORMER FEDERAL AID PROJECT NO. BR-8584(003)
ALMONASTER AVENUE BRIDGE REHABILITATION
ORLEANS PARISH

THIS SUPERSEDING AGREEMENT (hereinafter sometimes "Agreement"), made and executed in six originals on this 10 day of March, 2021, by and between the **Louisiana Department of Transportation and Development**, hereinafter referred to as "**DOTD**", and the **City of New Orleans**, a political subdivision of the State of Louisiana, hereinafter referred to as "**City**", and the **Board of Commissioners of the Port of New Orleans**, a political subdivision of the State of Louisiana, hereinafter referred to as "**Port**". DOTD, Port and City are sometimes collectively referred to as "Parties" and individually as a "Party."

WITNESSETH: That;

WHEREAS, the DOTD, the City and the Port previously entered into an Original Tripartite Agreement dated October 18, 2000, for the replacement of the Almonaster Bridge over the Inner Harbor Navigation Canal (hereinafter sometimes the "Bridge") with a new moveable structure; and Supplemental Agreement No. 1 executed July 23, 2008, to update Phase I to include a Bridge Optimization Study and EA/FONSI and to revise the Funding Article to reflect the Port to provide 20% match of Federal High Priority/DEMO funds; and Supplemental Agreement No. 2 executed June 10, 2014, to update the Pre-Construction Phase to include a Value Engineering Study, and to revise the Funding Article to reflect the Port to provide 20% match of additional FHWA funds; and Supplemental Agreement No. 3 executed October 28, 2014, to revise the Project Description Article and Funding Article to reflect the Port, City and DOTD's match of additional FHWA funds; and

WHEREAS, the Parties now wish to supersede the Original Agreement to change the project scope to a bridge rehabilitation project in lieu of a bridge replacement project; and

WHEREAS, DOTD wishes to make available certain federal highway funds for the bridge rehabilitation project; and

WHEREAS, the DOTD is agreeable to the implementation of this project scope change and desires to cooperate with the City and Port as hereinafter provided; and

WHEREAS, the Parties wish to cooperate for their mutual benefit and for the public purposes contemplated herein:

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

The foregoing recitals are hereby incorporated by reference into this agreement.

ARTICLE I:
PURPOSE / PROJECT DESCRIPTION

1.1 The foregoing recitals are hereby incorporated herein by reference and expressly made a part of this Agreement.

1.2 The Parties agree that the Original Tripartite Agreement for State Project No. 700-36-0142, executed October 18, 2000; its Supplemental Agreement No. 1, executed July 23, 2008; Supplemental Agreement Nos. 2 and 3 for State Project Nos. H.004698 and H.007250, executed June 10, 2014 and October 28, 2014, respectively, all four (4) hereinafter referred to collectively "Existing Agreements," shall terminate on the execution of, and shall be replaced by this Superseding Agreement. Each Party specifically reserves to itself against the other Parties any rights it may have that arose under the Existing Agreements.

1.3 The improvement, hereinafter referred to as "Project," that is to be undertaken under this Agreement is to rehabilitate the Almonaster Avenue Bridge. The project will rehabilitate the existing movable Bridge structure and will rehabilitate or replace all existing fixed approach Bridge structures. The rehabilitated Bridge structures will carry the same two lanes of vehicular/truck traffic, and two freight/passenger railroad tracks. The rehabilitated structure will match the existing horizontal vertical clearances for marine navigation and rail. The Project also includes the rehabilitation or reconstruction of all roadway approaches to the Bridge from France Road to Jourdan Road in the City of New Orleans, Orleans Parish, Louisiana.

1.4 For purposes of identification and record keeping, a new State Project Number, H.014530, and a new Federal Project Number, H014530, have been assigned to this Project. The new Project Numbers will supersede the former State and Federal Project Numbers that were assigned to this Project, specifically: preconstruction activities, engineering, and construction services, State Project Nos. H.004698 and H.007250 and Legacy State Project Nos. 700-36-0142 and 742-36-0104; and Federal Project No. BR-8584(004). All correspondence and other documents pertaining to this Project shall be identified with the new State and Federal Project Numbers.

1.5 The table below (hereinafter "Responsibility Table") defines who will perform the work involved with each item listed, either directly with in-house staff or through a consultant or

contractor. This table does not address funding.

Responsibility Table Almonaster Avenue Bridge Rehabilitation			
	Port	DOTD	Comments
Roadway Owner	Yes	No	Port responsible for bridges, City responsible for approaches
Environmental Process	Yes	No	
Pre-Construction Engineering	Yes	No	
Rights-of-Way			
Services	Yes	No	
Acquisition and Relocation	Yes	No	
Permits	Yes	No	
Utility (Clearance/Permits/Relocation)	Yes	No	
Construction	Yes	No	
Construction Engineering Administration and Inspection	Yes	No	
Construction Engineering Testing	Yes	No	
Non-Infrastructure Enhancements	Yes	No	

ARTICLE II: **FUNDING**

2.1 Except for services hereinafter specifically listed to be furnished at the DOTD's expense or at the City's expense or at the Port's expense, as the case may be, the cost of this Project will be a joint participation between DOTD, the City, the Port, with the Port contributing the local match of the participating approved Project and the Federal Highway Administration, hereinafter referred to as "FHWA," contributing Federal Funds through DOTD, as shown in the Funding Table below.

2.2 The total estimated construction cost for the Project is \$30,000,000. The DOTD will make available a maximum of \$20,000,000 in federal funds for construction phase activities.

The Port shall fund 100% of the costs of permitting, rights-of-way, utilities, pre-construction, design phase engineering and construction administrative services, and any deficit related to construction phase activities. The Port does, however, reserve the right to incorporate items of work into the construction contract not eligible for federal participation if it so desires, and at its own cost subject to prior DOTD and/or federal approval.

Funding Table¹ Almonaster Ave Bridge Rehabilitation				
Method of Payment	Reimbursement			
	Percentage Funded By Port ²	Percentage Funded By City ^{2,3}	Percentage Funded By DOTD ^{4,5}	Comments
Environmental Process	100%	0%	0%	
Pre-Construction Engineering	100%	0%	0%	
Rights-of-Way				
Services	100%	0%	0%	
Acquisition and Relocation	100%	0%	0%	
Utility (Clearance/Permits/Relocation) ⁶	100%	0%	0%	
Construction	All Remaining	\$1,500,000 max.	\$20,000,000 max.	
Construction Engineering and Inspection	100%	0%	0%	
Non-Infrastructure Enhancements	100%	0%	0%	

¹ Percentages are to be applied to the amount shown in the most current approved Transportation Improvement Program (TIP) including subsequent modifications and amendments.

² If DOTD holds contract on a Non-state route, any required matching funds and the DOTD administration fee must be paid to DOTD by the Port prior to any preconstruction contract action or construction letting. If DOTD holds the contract on a State route, any required matching funds must be paid to DOTD by the Port prior to any preconstruction contract action or construction letting.

³ City will contribute \$1.5 million to cost of construction.

⁴ When DOTD consents to use its own staff to provide the required services, the staff will track their time and charge it to the cost of the Project at the indicated percentages.

⁵ DOTD portion shall be funded by Federal Funds

⁶ Includes railroads

2.3 For services for which the Port will be designated as being responsible, as per the

Responsibility Table, and which will receive Federal funding, as per the Funding Table, the Port agrees it will not incur or expend any funds or provide a written notice to proceed (hereinafter "NTP") to any consultant or contractor prior to written notification from DOTD that they can begin work. Any costs incurred prior to such notification will not be compensable.

2.4 If Federal funding is indicated for a Stage/Phase for which the Port is designated as being responsible, as per the Funding Table, the Port will submit an invoice monthly to DOTD with a copy of the cancelled check, in accordance with DOTD's standards and methods. Upon receipt of each invoice, DOTD will reimburse the percentage shown in the Funding Table within 30 days of determining that it is correct. The Port must bill within 90 days of the incurrence of expense or receive a written waiver from their project manager extending the time of submittal.

2.5 All charges shall be subject to verification, adjustment, and/or settlement by DOTD's Audit Section. Before final payment is recommended by DOTD, all supporting documentation shall conform to DOTD policies and procedures. The Port shall submit all final billings for all Stage/Phases of work within 90 days after the completion of the period of performance of this Agreement. Failure to submit these billings within the specified 90-day period shall result in the Project being closed on previously billed amounts and any unbilled cost shall be the responsibility of the Port. The Port shall reimburse DOTD any and all amounts for services which are cited by DOTD as being noncompliant with federal/state laws and/or regulations. The cited amounts which are reimbursed by the Port will be returned to the Port upon clearance of the citation(s).

2.6 Should the Port fail to reimburse DOTD the cited amounts within a thirty-day period after notification, all future payment requests from the Port will be held until the cited amounts are exceeded, at which time only the amount over the cited amounts will be released for payment. Additionally, no new Local Public Agency projects for the Port will be approved until such time as the cited amount is reimbursed to DOTD.

2.7 Reimbursement of Pre-construction Costs for Original Project Scope

2.7.1 The Parties hereby acknowledge that the Project scope has been altered from replacement of the bridge ("Original Scope") to rehabilitation of the bridge, and that certain pre-construction costs were incurred for design services related to the Original Scope.

2.7.2 The Parties further acknowledge that FHWA made formal demand on June 5, 2019 for repayment of the federal portion of pre-construction services for the Original Scope, in the total amount of Four Million Five Hundred Forty-Nine Thousand Seven Hundred Thirty-Seven and 57/100 Dollars (\$4,549,737.57).

2.7.3 DOTD reimbursed FHWA \$4,549,737.57, from state funds and on the Port's behalf, for the above-reference pre-construction costs. DOTD invoiced the Port and made demand for the same amount on January 8, 2020.

2.7.4 By executing this Agreement, the Port commits to timely reimburse DOTD for the federal portion of pre-construction costs, in the amount of \$4,549,737.57. The Port agrees to reimburse DOTD in accordance with the following schedule:

State Fiscal Year 2020-2021 - \$ 549,737.57.
State Fiscal Year 2021-2022 - \$1,000,000.00.
State Fiscal Year 2022-2023 - \$1,000,000.00
State Fiscal Year 2023-2024 - \$1,000,000.00
State Fiscal Year 2024-2025 - \$1,000,000.00

ARTICLE III: PROJECT RESPONSIBLE CHARGE

3.1 Federal regulation provision 23 CFR 635.105 requires a full-time employee of the Port to be in "Responsible Charge" of the Project for the Stages/Phases for which the Port is designated as being responsible, as per the Responsibility Table. The Port's representative in Responsible Charge need not be an engineer. The Port's representative in responsible charge is expected to be accountable for the Project and to be able to perform the following duties and functions:

- (a) Administer inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- (b) Maintain familiarity of day to day project operations, including project safety issues;
- (c) Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- (d) Visit and review the Project on a frequency that is commensurate with the magnitude and complexity of the Project;
- (e) Review financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
- (f) Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation;

- (g) Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all Stage/Phases of the Project.

3.2 The above duties do not restrict the Port's organizational authority over the Port's representative in Responsible Charge or preclude sharing of these duties and functions among a number of Port employees. It does not preclude one employee from having responsible charge of several projects and directing project managers assigned to specific projects.

3.3 The Port at the time of execution of this Agreement shall complete, if not previously completed, the Local Public Agency (LPA) Responsible Charge Form and submit it to the DOTD Project Manager. The Port is responsible for keeping the form updated and submitting the updated form to the DOTD Project Manager.

ARTICLE IV: PERIOD OF PERFORMANCE

If the Tables indicate that Federal funds are used for an authorized Stage/Phase of the Project, a period of performance is required for the authorized Stage/Phase. As per 2 CFR 200.309, the Period of Performance is a period when Project costs can be incurred; specifically, a Project Stage/Phase authorization start and end date. Any additional costs incurred after the end date are not eligible for reimbursement. A DOTD's representative will send the Port a Period of Performance written notification which will provide begin and end dates for each authorized Project Stage/Phase and any updates associated with the dates.

ARTICLE V: CONSULTANT SELECTION

As per the Funding Table, if the Port is responsible for all costs associated with a Stage/Phase, and the Responsibility Table indicates the Port is the contract holder, the Port shall either conduct the specified services or advertise and select a consulting firm (if not previously selected) for the performance of services necessary to fulfill the scope of work for the designated Stage/Phase. If a consulting firm is selected, the Port shall enter into a contract with the selected firm for the performance of the services. The Port is prohibited from selecting or approving any consultant or sub-consultant who is on DOTD's disqualified list or who has been debarred pursuant to LSA-R.S. 48:295.1 et seq.

ARTICLE VI: ENVIRONMENTAL PROCESS

6.1 If it is specified in the Funding Table, the environmental process is eligible as a Project cost.

6.2 The Responsibility Table defines whether DOTD or the Port shall be obligated to complete the work specified in this Article.

6.3 The Project will be developed in accordance with the National Environmental Policy Act (NEPA), as amended, and its associated regulations. Additionally, the Project will comply with all applicable State and Federal laws, regulations, rules and guidelines, in particular 23 CFR Parts 771, 772, and 774, along with the latest version of DOTD's "Stage/Phase 1: Manual of Standard Practice" and "Environmental Manual of Standard Practice." All Stage/Phase 1, environmental documents, and public involvement proposals, prepared by or for the Port, shall be developed under these requirements and shall be submitted to DOTD for review and comment prior to submittal to any agency.

ARTICLE VII: PRE-CONSTRUCTION ENGINEERING

7.1 If it is specified in the Funding Table, pre-construction engineering is eligible as a Project cost.

7.2 The Engineer of Record shall make all necessary surveys, prepare plans, technical specifications and cost estimates and complete any and all required documentation for the Project in accordance with the applicable requirements of the latest edition of the Louisiana Standard Specifications for Roads and Bridges, applicable requirements of 23 CFR Part 630 ("Preconstruction Procedures"), and the following specific requirements:

7.3 The design standards shall comply with the criteria prescribed in 23 CFR Part 625 ("Design Standards For Highways") and DOTD guidelines. The format of the plans shall conform to the latest standards used by DOTD in the preparation of its contract plans for items of work of similar character and as further defined below. Conformance to the applicable Publications and Manuals found on the DOTD website is required. The deliverables must incorporate all applicable accessibility codes and all related regulations including but not limited to: ADAAG, 2010 ADA Standards for Accessible Design, MUTCD, PROWAG, Section 504 of the Rehabilitation Act of 1973, 23 CFR 450, State DOT Regulations, USDOT, 49 CFR Part 37. For information on acronyms see the LPA Manual located on the DOTD website as follows:

(http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/LPA/Pages/default.aspx)

7.4 The Port or the Port's consultant will develop construction drawings detailing the required work. Plans will be developed in AutoCAD and submitted in ".dwg" and ".pdf" format. Plan sheets will use DOTD title blocks and shall conform to DOTD drafting standards; however, use of DOTD ProjectWise and CADConform softwares will not be required. Plans will be submitted to the the City, DOTD and FHWA for review at 30%, 60%, 90%, and 100% design stages.

7.5 The Port or the Port's consultant will prepare and submit for review an engineer's opinion of probable cost for the construction, including material and product quantities, at the 30%, 60%, 90%, and 100% design stages.

7.6 The standard procedures and expectations to be used for this project will be identified in a pre-design kickoff meeting.

7.7 The Port will act as the prime project coordinator between the Port's consultant, if any, and the City, DOTD and public/private entities involved in the project. DOTD's project coordinator will coordinate with DOTD's various sections and with FHWA. Mutual concurrence by the DOTD, the City and the Port on all major milestone submittals of contract plans and specifications shall be required.

ARTICLE VIII: RIGHT-OF-WAY ACQUISITION AND RELOCATION

8.1 If it is specified in the Funding Table, right-of-way acquisition is eligible as a Project cost.

8.2 The Responsibility Table defines whether DOTD or the Port shall be obligated to complete the work specified in this Article

8.3 If right-of-way is required for this Project, acquisition of all real property and property rights required for this Project shall be in accordance with all applicable State and Federal laws, including Title 49 CFR, Part 24 as amended; Title 23 CFR, Part 710 as amended; DOTD's Right-of-Way Manual; DOTD's LPA Right-of-Way Manual; DOTD's Guide to Title Abstracting and any additional written instructions as given by the DOTD Real Estate Section.

8.4 Design surveys, right-of-way surveys and the preparation of right-of-way maps shall be performed in accordance with the requirements specified in the current edition of the "Location & Survey Manual."

8.5 The Port shall sign and submit the LPA Assurance Letter to the DOTD Real Estate Section annually. As soon as it is known that the acquisition of right-of-way is required for this Project, the Port shall contact the DOTD Real Estate Section for guidance.

8.6 DOTD or the Port, as per the Responsibility Table, shall ensure that the design of the Project is constrained by the existing right-of-way or the right-of-way acquired for the Project, as shown on the construction plans. When applicable, the Port will send to the Project Manager a letter certifying that the Project can be built within the right-of-way.

8.7 If right-of-way was acquired by the Port, the letter should also state that the acquisition was performed according to state and federal guidelines, as mentioned above, and it is understood that liability and any costs incurred due to insufficient right-of-way are the responsibility of the Port.

ARTICLE IX:
TRANSFER AND ACCEPTANCE OF RIGHT-OF-WAY

9.1 If the Responsibility Table indicates that parcels of land shall be acquired by DOTD as right-of-way for the Project and if the roadway shall not remain in the State Highway System after completion and acceptance of the Project, these parcels shall be transferred by DOTD, in full ownership, to the City, upon the Final Acceptance of the Project by the DOTD Chief Engineer. The consideration for this transfer of ownership is the incorporation of the property and its improvements, if any, into the City's road system and the assumption by the City of the obligations to maintain and operate the property and its improvements, if any, at its sole cost and expense.

9.2 If the Responsibility Table indicates that parcels of land shall be acquired by the Port as right-of-way for the Project and the roadway shall not remain in the Port's Roadway System after completion and acceptance of the Project, these parcels shall be transferred by the Port to the City, in full ownership, upon final inspection and acceptance of the Project by the all parties. The consideration for this transfer of ownership is the incorporation of the property and its improvements, if any, into the City's Roadway System and the assumption by the State of the obligations to maintain and operate the property and its improvements, if any, at City's sole cost and expense.

9.3 Furthermore, DOTD, City and the Port agree to hold harmless and indemnify and defend the other parties against any claims of third persons for loss or damage to persons or property resulting from the failure to maintain or to properly sign or provide and maintain signals or other traffic control devices on the property acquired pursuant to this Agreement.

ARTICLE X:
PERMITS

The Responsibility Table defines whether DOTD or the Port shall be obligated to obtain the permits and the approvals necessary for the Project, whether from private or public individuals and pursuant to local, State or Federal rules, regulations, or laws.

ARTICLE XI:
UTILITY RELOCATION/RAILROAD COORDINATION

11.1 If specified in the Funding Table, companies that have compensable interest and whose

utilities must be relocated will be reimbursed relocation costs from project funds.

11.2 The responsible party, as defined in the Responsibility Table, shall be obligated to obtain, from affected utility companies or railroads, all agreements and designs of any required systems or relocations.

11.3 The Port will be required to obtain relocation and other necessary agreements related to utilities or railroads on Port's owned routes. The Port will be required to submit a Utility Assurance Letter to the DOTD Project Manager prior to the letting of the Project.

11.4 The Port is responsible for any and all costs associated with utility relocations, adjustments and construction time delays on non-state routes after the project is awarded.

11.5 If the Port is the responsible party, then it shall comply with all utility relocation processes as specified in the LPA Manual.

11.6 DOTD will obtain agreements to relocate utilities and coordinate with railroads on state routes.

ARTICLE XII: BIDS FOR CONSTRUCTION

12.1 DOTD shall prepare construction proposals, advertise for and receive bids for the work, and award the contract to the lowest responsible bidder. Construction contracts will be prepared by DOTD after the award of contract.

12.2 For Port held contracts, DOTD will advertise for and receive bids for the work in accordance with DOTD's standard procedures. All such bids will be properly tabulated, extended, and summarized to determine the official low bidder. DOTD will then submit copies of the official bid tabulations to the Port for review and comment while the DOTD Review Committee will concurrently analyze the bids. The award of the contract shall comply with all applicable State and Federal laws and the latest edition of the Louisiana Standard Specifications for Roads and Bridges. The Port will be notified when the official low bid is greater than the estimated construction costs. The contract will be awarded by DOTD on behalf of the Port following the favorable recommendation of award by the DOTD Review Committee and concurrence by the Federal Highway Administration (FHWA) and the Port. The Port is responsible for all costs above the amounts shown in their MPO's TIP and must acknowledge this with an approval letter, unless additional state/Federal funds are made available. DOTD will transmit the construction contract to the Port for its further handling toward execution. The Port will be responsible for construction contract recordation with the Clerk of Court in the Project's parish. A receipt of filing shall be sent to DOTD Financial Services Section. DOTD will, at the proper time, inform the Port in writing to issue to the contractor an official NTP for construction.

ARTICLE XIII:
CONSTRUCTION ENGINEERING AND INSPECTION

13.1 If it is specified in the Funding Table, construction engineering and inspection is eligible as a Project cost.

13.2 The Responsibility Table defines whether DOTD or the Port shall be obligated to complete the work specified in this Article.

13.3 If DOTD is obligated to complete the work specified in this Article, DOTD will perform the construction engineering and inspection using funds as specified in the Funding Table.

13.4 If the Port is obligated to complete the work specified in this Article, the Port will either perform the construction engineering and inspection with in-house staff or will hire a consultant to perform the work. If federal funds are specified in the Funding Table for construction engineering and inspection, the selection of any consultant will be as provided in Article V, above. The construction engineering and inspection must be performed by a professional licensed to perform the type of work being performed.

13.5 DOTD will assign a representative from a District Office to serve as the District Project Coordinator during project construction. The District Project Coordinator will make intermittent trips to the construction site to ensure that the construction contractor is following established construction procedures and that applicable federal and state requirements are being enforced. The District Project Coordinator will advise the Port's representative in Responsible Charge of any discrepancies noted and, if necessary, will direct that appropriate remedial action be taken. Failure to comply with such directives will result in the withholding of Federal funds by DOTD until corrective measures are taken by the Port.

13.6 Except where a deviation has been mutually agreed to in writing by both DOTD and the Port, the following specific requirements shall apply:

- (a) When it is stipulated in the latest edition of the Louisiana Standard Specifications for Roads and Bridges that approval by the Project Engineer or DOTD is required for equipment and/or construction procedures, such approval must be obtained through the DOTD Construction Section. All DOTD policies and procedures for obtaining such approval shall be followed.
- (b) All construction inspection personnel utilized by the Port and/or the Port's consultant must meet the same qualifications required of DOTD construction personnel. When certification in a specific area is required, these personnel must meet the certification requirements of DOTD. Construction inspection personnel shall be responsible for

ensuring conformity with the plans and specifications.

- (c) All construction procedures must be in accordance with DOTD guidelines and policies established by the latest editions of the Construction Contract Administration Manual, the Engineering Directives and Standard Manual (EDSM), and any applicable memoranda. DOTD shall make these documents available to the Port for use by Project personnel.
- (d) Construction documentation shall be performed in Site Manager by the Port or the Port's consultant. All documentation of pay quantities must conform to the requirements of DOTD as outlined in the Construction Contract Administration Manual, latest edition. DOTD shall make these documents available to the Port for use by Project personnel.
- (e) Quality assurance personnel must follow appropriate quality assurance manuals for all materials to be tested and ensure that proper sampling and testing methods are used. Sampling shall be done in accordance with DOTD's Sampling Manual or as directed by DOTD through Site Manager Materials.
- (f) If the Port is obligated to perform testing, as per the Responsibility Table, the Port will be responsible for all costs associated with the material testing, and any utilized laboratory must be accredited and approved by DOTD. Approved accreditation companies are listed on the Materials Lab website. DOTD may, in its sole discretion, if appropriate and if requested by the Port, perform testing at its Material Testing lab.
- (g) All laboratory personnel utilized by the Port and/or the Port's consultant must meet the same qualifications required of DOTD laboratory personnel. When certification in a specific area is required, these personnel must meet the certification requirements of DOTD.
- (h) Shop drawing review is the responsibility of the design engineer.
- (i) The Port or the Port's consultant shall prepare and submit the final records to DOTD within a maximum of 30 days from the date of recordation of the acceptance of the project for projects under \$2 million and 60 days for projects over \$2 million.

13.7 The Port and/or the Port's consultant shall be required to comply with all parts of this section while performing duties as Project Engineer.

ARTICLE XIV:
SUBCONTRACTING

14.1 Any subcontracting performed under this Project with state or federal funds either by consulting engineers engaged by the Port or the construction contractor must have the prior written consent of DOTD. In the event that the consultant or the contractor elects to sublet any of the services required under this contract, it must take affirmative steps to utilize Disadvantaged Business Enterprises (DBE) as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:

- (a) Including qualified DBE on solicitation lists.
- (b) Assuring that DBE are solicited whenever they are potential sources.
- (c) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum DBE participation.
- (d) Where the requirement permits, establishing delivery schedules which will encourage participation by DBE.
- (e) Using the services and assistance of the Office of Disadvantaged Business Enterprise of the Department of Commerce and the Community Services Administration as required.

14.2 Contractor is encouraged to procure goods and services from labor surplus areas.

ARTICLE XV:
DBE REQUIREMENTS

15.1 It is the policy of DOTD that it shall not discriminate on the basis of race, color, national origin, or gender in the award of any United States Department of Transportation (US DOT) financially assisted contracts or in the administration of its DBE program or the requirements of 49 CFR Part 26. DOTD shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT assisted contracts. The DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.

15.2 In the event that DOTD is designated as being responsible to perform Pre-Construction Engineering Services the Port or its consultant agrees to ensure that the "Required Contract Provisions for DBE Participation in Federal Aid Construction Contracts" are adhered to for the duration of this Project. These contract provisions shall apply to any project with a DBE Goal

and must be included in the requirements of any contract or subcontract. Failure to carry out the requirements set forth shall constitute a breach of this Agreement and, after notification by DOTD, may result in DOTD withholding funds, termination of this agreement by DOTD, or other such remedy as DOTD deems appropriate.

15.3 DOTD will include as part of the solicitation of bids a current list containing the names of firms that have been certified as eligible to participate as a DBE on US DOT assisted contracts. This list indicates the project numbers and letting date for which this list is effective. Only DBEs listed on this list may be utilized to meet the established DBE goal for these projects. It is the Port or its contractor's responsibility to monitor that only the certified DBEs committed to this Project are performing the work items they were approved for.

15.4 The above requirements shall be included in all contract and/or subcontracts entered into by the Port or its contractor.

ARTICLE XVI: DIRECT AND INDIRECT COSTS

16.1 If the Port is indicated in the Responsibility Table as being responsible for a Stage/Phase, the Port may be eligible for reimbursement of direct and/or indirect costs incurred related to administration of the contract for such Stage/Phase. Per 2 CFR 200, the Port must establish and maintain effective internal controls over Federal award to provide reasonable assurance that awards are being managed in compliance with federal laws and regulations. The Port must verify this to DOTD by completing and signing the Risk Assessment form. The Port's failure to comply with these requirements may result in Agreement termination.

16.2 As per 2 CFR 200 the Port may receive indirect costs if it has a financial tracking system that can track direct costs incurred by the project. If the Port has never received a negotiated indirect cost rate, it may elect to charge a de minimis rate of 10% of modified total direct costs as per 2CFR 200.68 Modified Total Direct Cost (MTDC). If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the Port chooses to negotiate for a rate, which the Port may apply to do at any time.

16.3 Allowable direct and indirect costs: Determination of allowable direct and indirect costs will be made in accordance with the applicable Federal cost principles, e.g. 2 C.F.R. Part 200 Subpart E.

16.4 Disallowed direct and indirect costs: Those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

ARTICLE XVII:
RECORD RETENTION / AUDITS

17.1 The Port and all others employed by it in connection with this Project shall maintain all books, documents, papers, accounting records, and other evidence pertaining to this Project, including all records pertaining to costs incurred relative to the contracts initiated due to their participation Stage/Phases for this Project, and shall keep such material available at its offices at all reasonable times during the contract period and for five years from the date of final payment under the Project, for inspection by DOTD and/or Legislative Auditor, FHWA, or any authorized representative of the Federal Government under State and Federal Regulations effective as of the date of this Agreement and copies thereof shall be furnished if requested. If documents are not produced, the Port will be required to refund the Federal Funds.

17.2 For all Stage/Phases for which the Port is designated as being responsible, as per the Responsibility Table, the final invoice and audit shall be hand delivered to DOTD.

17.3 Record retention may extend beyond 5-years if any of the following apply:

- (a) If any litigation, claim, or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (b) When the Port is notified in writing by FHWA, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through Port to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

17.4 It is hereby understood and 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 any Party that relate to this Agreement. Port may be audited in accordance with La. R.S. 24:513.

ARTICLE XVIII:
CANCELLATION

18.1 The terms of this Agreement shall be binding upon the parties hereto until the work has been completed and accepted and all payments required to be made have been made; however, this Agreement may be terminated under any or all of the following conditions:

- (a) By mutual agreement and consent of the parties hereto.

- (b) By the Port should it desire to cancel the Project prior to the receipt of bids, provided any Federal/State costs that have been incurred for the development of the Project shall be repaid by the Port.
- (c) By DOTD due to the withdrawal, reduction, or unavailability of State or Federal funding for the Project.
- (d) By DOTD due to failure by the Port to progress the Project forward or follow the specific program guidelines (link found on the DOTD website). The Program Manager will provide the Port with written notice specifying such failure. If within 60 days after receipt of such notice, the Port has not either corrected such failure, or, in the event it cannot be corrected within 60 days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then DOTD shall terminate the Agreement on the date specified in such notice. Any Federal/State costs that have been incurred for the development of the Project shall be repaid by the Port to DOTD. The Port will not be eligible for other LPA projects for a minimum of 12 months or until any repayment is rendered.
- (e) If the project has not progressed to construction within the time periods provided for below, then the Project will be cancelled and all expended Federal funds must be refunded to DOTD.
- (f) Project for acquisition of rights-of-way. In the event that actual construction on this right-of-way is not undertaken by the close of the twentieth fiscal year following the fiscal year in which the project is authorized, the Port will repay to DOTD the sum or sums of Federal funds paid under the terms of this agreement.
- (g) Preliminary engineering project. In the event that right-of-way acquisition, or actual construction, for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the Port will repay to DOTD the sum or sums of Federal funds paid under the terms of this agreement.

ARTICLE XIX: **COMPLIANCE WITH CIVIL RIGHTS**

19.1 The Port 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.

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

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

ARTICLE XX: INDEMNIFICATION

20.1 Each party hereto shall indemnify and save harmless the other party hereto against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money, to the extent caused by the negligence or the willful acts or omissions, of the indemnifying party or of its employees, agents, servants, or independent contractors while engaged in or in connection with the discharge or performance of the term of this Agreement or in connection with the services required or performed by it. Such indemnification shall include reasonable attorney's fees and court costs. The Port shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

20.2 If the Project includes sidewalks, landscaping, shared use paths, lighting, or any other non-roadway enhancement, the Port shall indemnify, save harmless and defend DOTD against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money growing out of the installation and the use of these items. Such indemnification shall include reasonable attorney's fees and court costs. The Port shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

ARTICLE XXI: CONSTRUCTION, FINAL INSPECTION AND MAINTENANCE

21.1 Construction – DOTD

21.1.1 In the event that DOTD is designated as being responsible to perform Construction, as per the Responsibility Table, the following provisions shall apply:

21.1.2 If DOTD is the roadway owner of any control section of the Project, as per the Responsibility Table, then upon the Final Acceptance of the Project by DOTD and delivery of the Final Acceptance to the Port, DOTD shall assume the ownership and maintenance of the specified improvement at its expense in a manner satisfactory to

FHWA. The Final Acceptance shall be recorded by DOTD in the appropriate parish. Before making the final inspection, DOTD shall notify the City and the Port so that they may have representatives present for such inspection. If the Port or the City are the roadway owners of any control sections of the Project, as per the Responsibility Table, then upon the Final Acceptance of the Project and delivery of the Final Acceptance to the Port or the City, the Port or the City shall assume the ownership and maintenance of the specified improvement at its expense in a manner satisfactory to FHWA. The Final Acceptance shall be recorded by DOTD in the appropriate parish. Before making the final inspection, DOTD shall notify Port so that they may have representatives present for such inspection.

21.1.3 If the Project includes sidewalks, landscaping, shared use paths, lighting, or any other non-roadway enhancement, whether such improvements are located on right-of-way owned by DOTD or the City or the Port, upon the Final Acceptance of the Project, the Port or the City shall assume the ownership and maintenance of all such improvements at its expense in a manner satisfactory to FHWA.

21.1.4 If the Port or the City are the roadway owners of a control section, as per the Responsibility Table, title to that control section right-of-way shall be vested in the Port or the City but shall be subject to DOTD and FHWA requirements and regulations concerning abandonment, disposal, encroachments and/or uses for non-highway purposes.

21.2 Construction– Port

21.2.1 In the event that the Port is designated as being responsible to perform Construction, as per the Responsibility Table, the following provisions shall apply:

21.2.2 If DOTD is the roadway owner of any control section of the Project, as per the Responsibility Table, then before making the final inspection, the Port shall notify the City and the DOTD's District Administrator and District Project Coordinator so that they may have representatives present for such inspection. Upon completion and Final Acceptance of the Project, the Port will adopt a resolution granting a Final Acceptance to the contractor and record it with the Clerk of Court in the appropriate parish. The receipt of filing from the courthouse must be sent to the DOTD Construction Section. Upon delivery of the Final Acceptance to DOTD, DOTD shall assume the ownership and maintenance of the specified improvement at its expense in a manner satisfactory to FHWA. The Final Acceptance shall be recorded by the Port in the appropriate parish. Before making the final inspection, the Port shall notify the City and the DOTD so that they may have representatives present for such inspection.

21.2.3 If the Port or the City are the roadway owners of any control sections of the

Project, as per the Responsibility Table, before making the final inspection, the Port shall notify the City and the DOTD's District Administrator and District Project Coordinator so that they may have representatives present for such inspection. Upon completion and Final Acceptance of the Project, the Port will adopt a resolution granting a Final Acceptance to the contractor and record it with the Clerk of Court in the appropriate parish. The receipt of filing from the courthouse must be sent to the DOTD Construction Section. Upon delivery of the Final Acceptance to DOTD, the Port or the City shall assume the ownership and maintenance of the specified improvement at its expense in a manner satisfactory to DOTD and FHWA.

21.2.4 If the Project includes sidewalks, landscaping, shared use paths, lighting, or any other non-roadway enhancement, then upon the Final Acceptance of the Project and delivery of the Final Acceptance to DOTD, the Port or the City shall assume the ownership and maintenance of all such improvements at its expense in a manner satisfactory to FHWA.

21.2.5 If the Port or the City are the roadway owners of a control section, as per the Responsibility Table, title to that control section right-of-way shall be vested in the Port or the City but shall be subject to DOTD and FHWA requirements and regulations concerning abandonment, disposal, encroachments and/or uses for non-highway purposes.

ARTICLE XXII: HOUSE BILL 1 COMPLIANCE

22.1 The Port shall fully comply with the provisions of House Bill 1, if applicable, by submitting to DOTD, for approval, the comprehensive budget for the Project showing all anticipated uses of the funds appropriated, an estimate of the duration of the Project, and a plan showing specific goals and objectives for the use of the appropriated funds, including measures of performance.

22.2 The Port understands and agrees that no funds will be transferred to the Port prior to receipt and approval by DOTD of the submissions required by House Bill 1.

ARTICLE XXIII: CONTROLLING LAW / LEGAL COMPLIANCE / VENUE

23.1 The validity, interpretation, and performance of this Agreement shall be controlled by and constructed in accordance with the laws of the State of Louisiana. In the event of default by either Party, the aggrieved Party shall have all rights granted by the general laws of the State of Louisiana.

23.2 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.

23.3 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 XXIV **ASSIGNMENTS**

No Party may assign any interest in this Agreement by assignment, transfer, or novation without prior written consent of the other Party.

ARTICLE XXV **THIRD PARTY BENEFICIERIES**

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

ARTICLE XXVI **SEVERABILITY**

If any term, covenant, condition, or provision of this Agreement of the application thereof to any person or circumstances shall, at any time or to any extent, be invalid and unenforceable, the remainder of this Agreement, or the application of such term, covenant condition, and provision of this Agreement shall be valid and be enforced to the fullest extent of the law.

ARTICLE XXVII **ENTIRE AGREEMENT / MODIFICATIONS**

27.1 This Agreement, including any attachments that are expressly referred to in this Agreement, contains the entire agreement between the Parties and supersedes any and all agreements or contracts previously entered into between the Parties on the same subject matter. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

27.2 This Agreement may be modified or amended at any time by mutual consent of the Parties, provided that, before any modification or amendment shall be operative and valid, it shall be reduced to writing and signed by all Parties.

Superseding Agreement
New State Project Number H.014530
New Federal Project Number H014530
Former State Project Nos. H.004698 & H.007250
Former Federal Aid Project Nos. BR-8584(003) & BR-8584(004)
Almonaster Avenue Bridge Rehabilitation
Orleans Parish
Page 22 of 23

27.3 No alteration, variation, or waiver of any provision of this Agreement shall be valid unless it is reduced to writing and executed by all Parties.

ARTICLE XXVIII
PROVISION OF LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the agreement shall forthwith be amended to make such insertion or correction.

ARTICLE XXIX
NOTICES

All notices and other communications pertaining to this Agreement shall be made to the following party representatives:

DOTD:

Mr. Li Yang
Project Manager
1201 Capitol Access Road, Rm. 501D
Baton Rouge, La. 70802-4438
Office: 225-379-1456
e-mail: li.yang@la.gov

City

Keith J. LaGrange
Director of Public Works
1300 Perdido Street, Rm. 6W03
New Orleans, LA 70112
Office: 504-658-8001
e-mail: keith.lagrange@nola.gov

Port:

Anthony Evett
Vice President of Engineering and Facilities
1350 Port of New Orleans Place
New Orleans, LA 70130
Office: 504-528-3309
e-mail: anthony.evett@portnola.com

Superseding Agreement
New State Project Number H.014530
New Federal Project Number H014530
Former State Project Nos. H.004698 & H.007250
Former Federal Aid Project Nos. BR-8584(003) & BR-8584(004)
Almonaster Avenue Bridge Rehabilitation
Orleans Parish
Page 23 of 23

IN WITNESS THEREOF, 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:

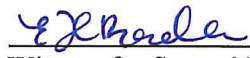


Witness for First Party



Witness for First Party

WITNESSES:

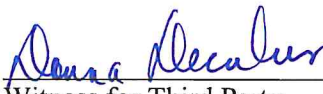


Witness for Second Party



Witness for Second Party

WITNESSES



Witness for Third Party



Witness for Third Party

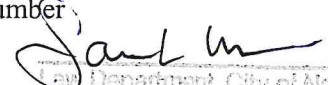
CITY OF NEW ORLEANS

BY: 

TITLE: Mayor

72-6000969
Federal Identification Number

FORM AND LEGALITY APPROVED:



Law Department, City of New Orleans

BOARD OF COMMISSIONERS OF THE
PORT OF NEW ORLEANS

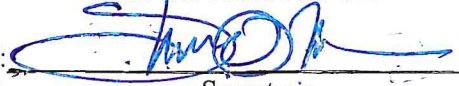
BY: 

Brandy D. Christian

TITLE: President & C.E.O.

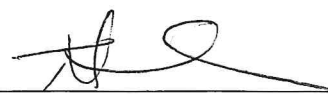
72-6000174-01
Federal Identification Number

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

BY: 

Secretary

RECOMMENDED FOR APPROVAL

BY: 

Section Head