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John Bel Edwards, Governor
Shawn D. Wilson, Ph.D., Secretary

K21-1317

INTERGOVERNMENTAL COOPERATIVE ENDEAVOR AGREEMENT

Between the

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

And

THE CITY OF NEW ORLEANS

Temporary Right-of-Way Access for Removal of Commercial Debris

30th This Intergovernmental Cooperative Endeavor Agreement ("ICEA") is entered into this day of November, 2021, by and between the Louisiana Department of Transportation and Development, represented by its Secretary ("DOTD"), and The City of New Orleans, represented by LaToya Cantrell, Mayor ("City"), for the purpose of memorializing the understanding the respective duties and responsibilities of DOTD and City regarding access to state highway rights-of-way within the City of New Orleans. DOTD and City may be referred to hereinafter as "Party" individually, and "Parties" collectively.

RECITALS

WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that "[f]or 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"; and

WHEREAS, Governor John Bel Edwards issued Proclamation Number 165-JBE-2021, declaring a State of Emergency in response to then-Tropical Storm Ida on August 26, 2021; and

WHEREAS, President Joseph R. Biden, Jr. declared that a major disaster exists in the State of Louisiana following Hurricane Ida, pursuant to Major Disaster Declaration DR-4611-LA issued on August 29, 2021; and

WHEREAS, the passage of Hurricane Ida caused substantial damage to infrastructure, including transportation, power transmission, utility, and communication facilities, as well as dwellings and other structures; and

WHEREAS, DOTD has responsibility to maintain, repair, and regulate the use of the state's public transportation systems, pursuant to La. R.S. 48:21; and

WHEREAS, City has need to occupy state highway rights-of-way within its corporate limits for removal of commercial debris related to Hurricane Ida; and

WHEREAS, the Parties agree to cooperate for the public purposes set forth herein; 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 entirety of the recitals set forth above, as well as any attachments, are incorporated herein and expressly made a part of this ICEA.
- 1.2 The purpose of this ICEA is to delineate the respective responsibilities of the Parties in providing access to certain state highway rights-of-way.
- 1.3 The right of access granted herein shall be limited to removal operations for commercial debris only.

ARTICLE II

RESPONSIBILITIES OF THE PARTIES

Responsibilities of DOTD

- 2.1 DOTD, at its sole discretion, will grant access to, and use of, all state highway rights-of-way ("ROW"), for the purpose of aiding City's removal of commercial debris related to Hurricane Ida.
- 2.2 Use of the ROWs shall be subject to Article III Term / Termination herein.
- 2.3 DOTD will cooperate with City as necessary to maintain the efficient use of the ROWs throughout the duration of this ICEA.
- 2.4 DOTD shall have sole discretion and authority to limit use of any ROW at any point throughout the duration of this ICEA, should DOTD deem necessary and proper under the circumstances. In the event of such limitation of use, and to the extent practicable, DOTD shall provide City with advance notice of an impending closure.

- 2.5 DOTD shall not be responsible to provide funding for any costs associated with the debris removal operations contemplated under this ICEA.

Responsibilities of City

- 2.5 City will cooperate with DOTD as necessary to ensure the most efficient use of the ROW, pursuant to the terms of this ICEA.
- 2.6 City will be responsible to designate entities, if any, that shall have use of the ROW for City purposes, and to establish the extent to which said entities shall have use of the ROW. City will be responsible for the use of the ROW by entities it so designates.
- 2.7 City will provide to DOTD a list of entities, if any, to which City designates use of the ROW. City will keep such list current throughout the duration of this ICEA.
- 2.8 City will be responsible for all costs associated with its debris removal operations as contemplated under this ICEA, and City will not seek reimbursement of any portion of such costs from DOTD.
- 2.9 Subject to Article VIII Indemnification herein, City shall indemnify and hold harmless DOTD for all access to, and use of, the ROW by City and/or its designees, as provided for elsewhere in this Agreement.

ARTICLE III **TERM / TERMINATION**

- 3.1 The terms of this ICEA shall be effective and binding upon the Parties for sixty (60) days following the date of execution, unless extended by mutual agreement of the Parties.
- 3.2 This ICEA may be terminated at any time by the mutual written agreement and consent of the Parties or by any Party by providing ten (10) days' written notice to the other Parties hereto.

ARTICLE IV **RECORD KEEPING**

- 4.1 The Parties shall maintain any documents, papers, file books, records, and other evidence related to this ICEA for a period of five (5) years following execution of this ICEA.
- 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 auditor shall have the option of auditing all accounts of City and DOTD that relate to this ICEA. Audits shall be conducted in accordance with La. R.S. 24:513, as applicable.

ARTICLE V
AMENDMENTS / MODIFICATIONS

This ICEA may be amended or modified at any time by mutual consent of the Parties, provided that any modification, amendment, alteration, variation, or waiver of provisions of this ICEA shall be valid only when it has been reduced to writing and executed by all Parties.

ARTICLE VI
REMEDIES FOR DEFAULT

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

ARTICLE VII
ASSIGNMENTS

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

ARTICLE VIII
INDEMNIFICATION

- 8.1 Subject to Section 8.4, City shall indemnify and save harmless DOTD against any and all claims, losses, liabilities, demands, suits, causes of action (e.g., ex contractu, ex delictu, quasi-contractual, statutory), attorney fees, and judgments of sums of money growing out of, resulting from, or by reason of any act or omission of City's own or of its designees, agents, assignees, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement, or with any use of, ingress to, or egress from, the ROW by its designees, agents, assignees, servants, independent contractors, or employees, or otherwise while performing services required or performed by it or resulting from access to the ROW by City or its designees hereunder in direct connection with this Agreement, including, but not limited to, any omissions, defects or deficiencies, disruptions, inefficiencies or nonpayment of any cost incurred, or any other claim of whatever nature or kind arising from, out of, or in any way connected with, the obligations undertaken pursuant to this Agreement, to the fullest extent permitted by law.
- 8.2 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 arising out of this ICEA.

- 8.3 Nothing herein is intended, nor shall be deemed, to transfer possession of, or create any ownership interest in, any state highway or ROW that did not exist independent to, and prior to the existence of, this ICEA.
- 8.4 Each Party releases and agrees to hold harmless and protect the other Party, its employees, agents, contractors, and subcontractors, from any claims, expenses, demands, damages, or losses resulting from or arising out of bodily injury, death, or damage or destruction of property sustained by the Party, its employees, agents, contractors, and subcontractors while performing the Party's obligations and responsibilities under this Agreement.

ARTICLE IX

DISCRIMINATION CLAUSE

- 9.1 The Parties shall 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 1974; the Americans with Disabilities Act of 1990, as amended; and Title II of the Genetic Information Nondiscrimination Act of 2008.
- 9.2 The Parties shall not to discriminate in any employment practices, and shall conduct their respective obligations under this ICEA without regard to race, color, age, religion, sex, national origin, veteran status, genetic information, political affiliation or disability.
- 9.3 Any act of discrimination committed by any Party hereto, or any failure to comply with these statutory obligations when applicable, shall be grounds for termination of this ICEA.

ARTICLE X

SEVERABILITY

Should any term, covenant, condition, or provision of this ICEA or the application thereof to any person or circumstance shall, at any time or to any extent, be found invalid or unenforceable, the remainder of this ICEA or the application of such terms, 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 ICEA shall be valid and enforced to the fullest extent permitted by law.

ARTICLE XI

LEGAL COMPLIANCE

The Parties shall comply with all federal, state, and local laws and regulations, including,

ICEA – ROW Access
Parish Debris Operations
DOTD / Orleans Parish
6 of 8
K21-1317; 3122

specifically, the Louisiana Code of Governmental Ethics (R.S. 42:1101, et seq.), in carrying out the provisions of this Agreement.

ARTICLE XII

CONTROLLING LAW AND VENUE

- 12.1** The validity, interpretation, and performance of this ICEA shall be controlled by and construed in accordance with the laws of the State of Louisiana.
- 12.2** The exclusive venue for any suits arising out of this ICEA shall be in the Nineteenth Judicial District Court for the City of East Baton Rouge, Louisiana.

ARTICLE XIII

PROVISION OF LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this ICEA 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 ICEA shall forthwith be amended to make such insertion or correction.

ARTICLE XIV

NOTICES

- 14.1** All notices and other communications pertaining to this ICEA shall be made to the following Party representatives:

DOTD:

Vincent Latino, Jr.
Asst. Secretary, Operations
1201 Capitol Access Rd.
Baton Rouge, La. 70802-4438
Office: 225-379-1200

City:

Matt Torri
Director, Department of Sanitation
1300 Perdido St, Suite 1W30
New Orleans, LA 70112
504-221-4710
mrtorri@nola.gov

ICEA – ROW Access
Parish Debris Operations
DOTD / Orleans Parish
7 of 8
K21-1317; 3122

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

- 14.2 Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested.
- 14.3 Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.
- 14.4 Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XV ELECTRONIC SIGNATURE

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

ICEA – ROW Access
Parish Debris Operations
DOTD / Orleans Parish
8 of 8
K21-1317; 3122

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

WITNESSES:

**Louisiana Department of
Transportation and Development**



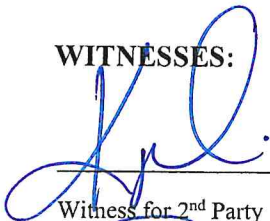
Witness for 1st Party



~~for~~ Secretary / Designee

Witness for 1st Party

WITNESSES:

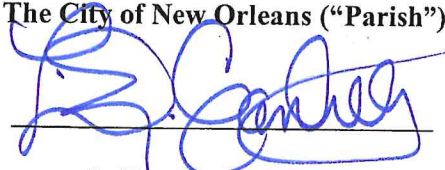


Witness for 2nd Party



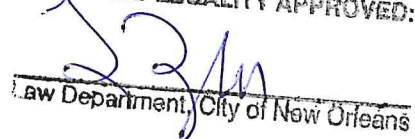
Witness for 2nd Party

The City of New Orleans ("Parish")



LaToya Cantrell, Mayor

FORM AND LEGALITY APPROVED:


Law Department, City of New Orleans