COOPERATIVE ENDEAVOR AGREEMENT
FOR THE MODIFICATION OF STATE HIGHWAY XXXXX
between the
STATE OF LOUISIANA
through the
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
and
Entity Name

THIS AGREEMENT, for the public purpose(s) stated herein, is made and entered on this ___ day of _____, _____ by and between the State of Louisiana, Department of Transportation and Development ("DOTD") and Entity Name ("the Developer").

WITNESS:

WHEREAS, Article VII, Section 14(C) of the Louisiana Constitution 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, Louisiana State Route Highway highway number/designation is part of the Louisiana State Highway System, which is under the authority and control of the DOTD;

WHEREAS, the DOTD owns Louisiana State Route Highway highway number/designation, located in parish Parish, Louisiana;

WHEREAS, the Developer desires to finance and construct the Project described in Section 1.4 of this Agreement and agrees to construct the Project in accordance with the Plans and Specifications for the Project, which in their entirety are made a part of this Agreement;

WHEREAS, the DOTD desires to cooperate with the Developer by allowing the Developer to construct the Project in accordance with the terms and conditions provided in this Agreement;

WHEREAS, upon completion of the Project, the Developer shall donate ownership of the Project and all necessary right-of-way to the DOTD;

WHEREAS, the DOTD and the Developer have determined that the Project serves a public purpose because the DOTD's allowing the Developer to complete the Project will result in improved safety and efficiency to Louisiana State Route Highway highway and mitigate traffic issues or the effects the Developer's store or installation will have upon the DOTD's roads, all at no cost to the DOTD;

WHEREAS, the DOTD and the Developer hereby acknowledge that there is a reasonable expectation that the Project will result in economic benefit to the State and the DOTD that will exceed the value of the DOTD's obligations as set forth in this Agreement.

EXAMPLE

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree to the following:

ARTICLE I
SCOPE

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

1.2 For purposes of identification and record keeping, project agreement number PA###### has been assigned to the Project. All correspondence, other documents pertaining to the Project, and costs associated with the Project, shall be identified by this assigned project number.

1.3 The Project shall be developed and constructed in accordance with the "Plans and Specifications."

1.4 The Developer agrees to Enter Scope Here on highway in parish Parish, Louisiana, to include the acquisition of all required right-of-way and utility relocation (the "Project").

ARTICLE II
DUTIES AND RESPONSIBILITIES OF THE PARTIES

2.1 The Developer shall be solely responsible for performing all aspects and paying all costs of, and associated with, the Project including, but not limited to, design, right-of-way acquisition, utility relocation, engineering, and construction. The Developer shall be responsible for any costs attributable to the errors or omissions of its consultants or subconsultants.

2.2 The development of the Plans and Specifications for the Project and all work on the Project shall be performed in accordance with DOTD requirements and specifications, including but not limited to, the current edition of "*Louisiana Standard Specifications for Roads and Bridges,"* as amended, and the Developer shall provide construction administration and inspection services during construction in accordance with normal DOTD procedures.

2.3 All Plans and Specifications for the Project shall be subject to the DOTD's written approval. Any and all subsequent changes or modifications to the original Plans and Specifications, if any, must be approved by DOTD in writing prior to being incorporated into the Plans and Specifications.

2.4 Prior to beginning construction on the Project, the Developer shall:

2.4.1 Provide documentation acceptable to the DOTD to evidence that all portions of the Project constructed on a state route comply with DOTD policies and procedures and meet or exceed DOTD guidelines, requirements, and specifications.

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2.4.2 Provide documentation acceptable to the DOTD to evidence that all environmental aspects associated with the Project comply with all applicable state and federal laws, rules, and regulations.

2.4.3 Furnish to the DOTD a valid resolution adopted by the Developer acting as the governing authority for the Developer approving the donation of the completed Project improvements and right-of-way to the DOTD, as an addition to the State's highway system. A valid resolution authorizing the Developer's execution of this Agreement shall be deemed sufficient to comply with this requirement.

2.4.4 Execute a Certification for Modifications of State Highways.

2.4.5 Send a request for authorization to begin work to the District Construction Coordinator and receive said authorization from DOTD in writing.

2.5 Upon completion of the Project, the Developer shall provide, within 60 days of the final inspection date, a copy of the final estimate package, including the as-built plans, audit of testing and material, and field records, to the District Construction Coordinator for approval. Once the final estimate package is received the construction acceptance will be issued within 60 days.

2.6 Upon completion of the Project and construction acceptance by the DOTD, the Developer shall donate to the DOTD any and all portions of the Project comprising or affecting the state highway, including any and all drainage improvements and all required right-of-way associated with the Project, and the DOTD shall accept the donation of the Project. The Developer shall execute any documents deemed necessary by the DOTD to effect said donation to the DOTD. In addition to other documentation that may be required, Entity will be responsible for providing Plat Map, Metes and Bounds Description, Title work, and Acquisition Documents (if applicable) to DOTD Real Estate for review. If the Entity is a Public Entity and has acquired right-of-way for the Project, then the following additional requirements apply:

1) Entity shall contact the appropriate Real Estate Manager prior to beginning any ROW acquisition activities for guidance on the required ROW acquisition process.

2) Entity shall follow DOTD's LPA Manual and the Uniform Act to acquire property.

3) Entity shall provide an Appraisal Plan to Real Estate for review and Approval

4) Entity shall submit Appraisals and other necessary documentation to DOTD Real Estate for review prior to negotiations with property owners.

5) Entity shall provide Plat Map (or ROW Maps) Metes and Bounds Description, and Title work to DOTD Real Estate for review prior to beginning acquisitions.

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6) Entity shall provide all acquisition files to DOTD to review for compliance with DOTD's LPA Manual and the Uniform Act prior to construction acceptance.

ARTICLE III
ENGINEERING

3.1 The Developer shall engage a qualified consultant for the performance of all engineering services, which services shall include, but are not limited to, the pre-construction engineering services necessary for the preparation of completed plans, specifications, and cost estimates for the Project. The Developer shall be responsible for all fees and costs associated with the performance of these services.

3.2 The Developer acknowledges and confirms the following:

3.2.1 The DOTD has not participated in and will not participate in the drafting or other preparation of the Plans and Specifications;

3.2.2 The DOTD is not otherwise the author of the Plans and Specifications;

3.2.3 The Developer undertakes sole responsibility for the sufficiency, constructability, validity, and accuracy of the Plans and Specifications; and

3.2.4 The Developer shall hold the DOTD harmless for any liability resulting from any defect or insufficiency in the Plans and Specifications.

ARTICLE IV
PROPERTY ACQUISITION, RIGHT-OF-WAY, UTILITY RELOCATION

4.1 The Developer shall acquire all property and right-of-way required for the Project.

4.2 The Developer shall be responsible for any utility relocations that are necessary for the completion of the Project.

4.3 All real property acquisitions shall be made in accordance with all applicable state and federal laws, the DOTD Right of Way Operations Manual, the Code of Federal Regulations (particularly 23 CFR Part 710 entitled "Right-of-way and Real Estate" and 49 CFR Part 24 entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs"), as amended, and any other applicable laws or regulations and/or instructions given by the DOTD.

4.4 Property acquisitions, appraisals, appraisal reviews, and other specialty valuation reports must be reviewed and certified by the DOTD Right of Way Section.

4.5 Utility relocations must be reviewed and certified by the District Utility Specialist in the District where the Project is located.

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4.6 The Developer shall ensure that the design surveys, right-of-way surveys, and preparation of right-of-way maps comply with all of the requirements specified in the current edition of the DOTD "Location & Survey Manual" and will be subject to DOTD review and approval.

ARTICLE V
CONSTRUCTION ADMINISTRATION AND INSPECTION

5.1 The Developer shall provide contract administration and construction engineering and inspection during the construction of the Project. All inspectors assigned to the Project, at a minimum, must possess the same certifications and fulfill the same requirements that the DOTD requires of its own construction inspectors. Construction engineering inspectors shall operate independently of the construction contractors and subcontractors for the Project.

5.2 The Developer shall not select or approve any consultant, subconsultant, contractor, or subcontractor that is on the DOTD's Disqualified List or that has been debarred from consideration for DOTD contracts pursuant to La. R.S. 48:295.1, *et seq*.

5.3 The Developer shall be responsible for any contract costs attributable to the errors and omissions of its consultants or subconsultants.

5.4 The DOTD shall assign an engineer from its District office to serve as a Construction Coordinator for the DOTD during the construction of the Project. The Construction Coordinator shall make adequate site visits/trips to the construction site and shall advise the Developer's Project Engineer of any discrepancies noted. The Developer's Project Engineer shall ensure that any such discrepancies are promptly corrected. The Construction Coordinator shall review and may approve change orders and honor requests for information to ensure that the work is performed in a manner acceptable to the DOTD.

5.5 Except where both the DOTD and the Developer have mutually agreed to a deviation in writing, the following specific requirements shall apply:

5.5.1 When the current edition of "*Louisiana Standard Specifications for Roads and Bridges"* requires approval by the Project Engineer or the DOTD for equipment and/or construction procedures, such approval shall be obtained from the Developer's Project Engineer. All DOTD policies and procedures for obtaining approval shall apply.

5.5.2 All construction inspection personnel utilized by the Developer on the Project shall meet the same qualifications required of the DOTD construction inspection personnel. Where certification in a specific area is required, personnel shall meet the DOTD's certification requirements.

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5.5.3 All contract administration procedures shall comply with the DOTD guidelines and policies established by the DOTD Construction Contract Administration Manual (latest edition), the DOTD Engineering Directive and Standard Manual (EDSM), and any applicable memoranda. The DOTD shall make these documents available to the Developer.

5.5.4 All materials to be tested shall be sampled in accordance with the DOTD's Sampling Manual.

5.5.5 The Developer shall use a private laboratory for material testing and shall be responsible for all costs associated with the material testing.

5.5.6 All private laboratory personnel utilized by the Developer shall meet or exceed the qualifications required of the DOTD's laboratory personnel. Where certification in a specific area is required, such personnel shall meet or exceed the certification requirements of the DOTD.

5.5.7 The Developer shall require all of its consultants and subconsultants to comply with all parts and subparts of Section 5.5 of this Agreement while performing duties as Project Engineer for the Project.

5.6 In the event that the construction of the Project experiences any delay, and/or unwarranted interruption in the construction of the Project that is attributable to the acts or omissions of Developer or unreasonable disruption of traffic on highway at the project area for a period of thirty (30) consecutive days or greater and such interruption or disruption is not attributable to (a) Weather Conditions (as defined below), (b) Acts of God (as defined below), (c) governmental laws, orders, or regulations, (d) actions of governmental authorities, (e) widespread riots of the local population, or (f) insurrection or war, which is not due to the fault or negligence of the Developer, then the State of Louisiana or the DOTD may: (1) provide written notice to the Developer that it must resolve the conditions that created the interruption or disruption to traffic on highway at the project area, as applicable, within thirty (30) days of the Developer's receipt of said notice, and (2) if the interruption or disruption of traffic on highway at the project area, as applicable, is not resolved within thirty (30) days of the Developer's receipt of the notice, the DOTD may enter the site of the property and, at the Developer's cost, restore or reconstruct highway at the project area, as applicable, to the road design specifications and condition it was in immediately prior to the commencement of construction of the Project. Within thirty (30) days of receipt from the State of Louisiana and/or the DOTD of a detailed invoice or record of the final payment amount to an independent contractor used to restore or reconstruct highway at the project area, as applicable, the Developer shall reimburse the State of Louisiana and/or the DOTD for the actual expenses including, but not limited to, all administrative and legal expenses, including reasonable attorney's fees, incurred in the restoration or reconstruction of highway at the project area, as applicable.

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5.7 All lane closures shall be submitted to and approved by the DOTD District Office. The Developer shall provide notice a minimum of seven (7) calendar days in advance.

5.8 In the event that the Developer discontinues construction of the Project for a period of thirty (30) consecutive days, such discontinuation shall be deemed an unwarranted interruption or disruption to traffic on highway at the project area, as applicable.

ARTICLE VI
TERM AND TERMINATION

6.1 This Agreement shall commence on the date written above. The terms and conditions of this Agreement shall be binding upon the Parties and shall remain in effect until all work on the Project has been completed and accepted and all obligations and conditions contained herein have been satisfied. However, this Agreement may be terminated under any or all of the following conditions:

6.1.1 By mutual consent which has been reduced to writing and executed by the Parties; or

6.1.2 By the Developer, should it desire to cancel the Project. The Developer shall restore highway within the project limits to the condition it was in prior to entering into this Agreement; or

6.1.3 By either party for cause based upon the failure of the other party to comply with the terms and conditions of the Agreement. The party wishing to terminate the Agreement shall give the other party written notice specifying the other party's failure. If, within thirty (30) days after receipt of such notice, the other party has not either corrected the failure or proceeded diligently to complete the correction, the party wishing to terminate the Agreement may, at its option, place the other party in default, and the Agreement shall terminate on the date specified in the notice of default, provided the date is not sooner than thirty (30) days after delivery of the notice. Upon termination by either party pursuant to this provision, the Developer shall restore highway within the project limits to the condition it was in prior to entering into this Agreement.

6.1.4 By the DOTD due to failure of the Developer to progress the Project forward or follow the applicable laws, rules, regulations, or guidelines. The DOTD will provide the Developer with written notice specifying the failure. If, within sixty (60) days after receipt of such notice the Developer has not either corrected the failure, or, in the event it cannot be corrected within sixty (60) days, begun in good faith to correct the failure and thereafter proceeded diligently to complete the correction, then the DOTD shall terminate the Agreement on the date specified in such notice.

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ARTICLE VII
INDEMNIFICATION

7.1 The Developer agrees it shall indemnify and save harmless the DOTD against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money growing out of, resulting from, or by reason of any act or omission of the Developer, its agents, servants, independent contractors, employees, contractors, or consultants, while engaged in, about, or in connection with the services required or performed by the Developer pursuant to this Agreement. The Developer agrees it shall indemnify and save harmless the DOTD from and 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 the Developer, its agents, servants, independent contractors, employees, contractors, subcontractors, consultants, or subconsultants for any defects or deficiencies in the Project. Such indemnification shall include reasonable attorney's fees and court costs. The Developer shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

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

ARTICLE VIII
FINAL INSPECTION AND TRANSFER

8.1 Upon completion of the Project, the DOTD shall take reasonable measures, within thirty (30) calendar days of receiving written notice of completion from the Developer, to inspect the Project for compliance with the Plans and Specifications. If the DOTD determines that any portion of the Project does not comply with the Plans and Specifications and/or with all other applicable DOTD standards, specifications, and requirements, the DOTD shall provide the Developer with a list of the deficiencies, and at such time, the Developer shall correct the deficiencies at its own cost. The DOTD shall re-inspect the Project within fifteen (15) calendar days, or other time period as may be mutually agreed between the Parties, of receiving notice from the Developer that the deficiencies have been corrected. If the Project is in compliance with the Plans and Specifications and all other applicable DOTD standards, specifications, and requirements, then the DOTD's Chief Engineer or designee shall issue the Highway Modification Construction Acceptance of the Project in the standard form provided by the DOTD in connection with the construction of a roadway. If the Developer fails to correct the deficiencies identified by the DOTD within ninety (90) calendar days after the receipt of the notice of deficiencies, the DOTD may correct the deficiencies, either directly or through a contractor, at the Developer's sole cost.

8.2 Upon completion and construction acceptance of the Project, a copy of which shall be furnished by the DOTD to the Developer, the DOTD shall assume the maintenance of the Project at its own expense. Notwithstanding the foregoing, for a period of time compliant with section 104.05 of the DOTD Standard Specifications for Roads and Bridges following construction

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acceptance, the Developer shall assume the maintenance and repair of the Project for all defects in materials and workmanship, normal wear and tear excluded. The DOTD shall record the Highway Modification Construction Acceptance in accordance with DOTD policies.

8.3 Upon completion and Highway Modification Construction Acceptance of the Project, the Developer shall donate any and all of its rights to all applicable property acquired by the Developer in connection with the Project, including all improvements thereto, to the DOTD and the DOTD shall accept the same. The DOTD shall prepare all documents related to and necessary for the effectuation of the donation of the Project. The donation shall be documented in recordable form, including maps, identifying the required right-of-way associated with the Project, and such responsive document(s) shall be recorded in the Conveyance Records of the Parish of parish, State of Louisiana

ARTICLE IX
RECORD RETENTION AND AUDITS

9.1 It is hereby agreed that upon request and as required by law, the Legislative Auditor of the State of Louisiana, the Office of the Governor, Division of Administration's auditors and/or the DOTD's auditors, shall have the option to inspect and audit such data, records, and accounts of the Developer that relate to this Agreement.

9.2 The Developer shall maintain all books and records, reports, and documentation pertaining to this Agreement for a period of five (5) years after the date of final acceptance of the Project by the DOTD. These records shall be made available in connection with an audit as previously described in Section 9.1. Nothing in this Agreement shall be construed as a waiver by the Developer or the DOTD of any privilege or defense to the production of or admissibility in any judicial proceeding of any document, statement, records, or communication unless such waiver is stated in express and unequivocal terms.

9.3 At all times, the DOTD shall have access to all documents necessary to construct the Project or inspect the construction of the Project. The DOTD shall have access to invoices or other documents regarding prices paid for services and/or materials related to the Project.

ARTICLE X
SEVERABILITY

10.1 If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the supplementation 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 be enforced to the fullest extent permitted by law.

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ARTICLE XI
ASSIGNMENT

11.1 The Developer shall not assign any interest in this Agreement and shall not transfer any interest in it (whether by assignment or novation), without the prior written consent of the DOTD.

ARTICLE XII
MODIFICATIONS AND AMENDMENTS

12.1 The Parties may modify, amend, or supplement this Agreement at any time upon their mutual consent, in accordance with applicable law. However, any modification, amendment, alteration, variation, supplement, or waiver of any provision of this Agreement shall be valid only when it has been reduced to writing and executed by the Parties.

ARTICLE XIII
RELATIONSHIP BETWEEN THE PARTIES

13.1 The DOTD and the Developer are engaged with one another solely for the public purposes set forth in this Agreement. The DOTD shall not be deemed in any way or for any purpose to have become, by the execution of this Agreement or any action taken under this Agreement, a partner, agent, or employee of the Developer, in the Developer's business or otherwise, or a member of any joint enterprise with the Developer.

ARTICLE XIV
CONTROLLING LAW, LEGAL COMPLIANCE, AND VENUE

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

14.2 The DOTD and the Developer shall comply with all applicable federal, state, and local laws and regulations, specifically including, but not limited to, the Louisiana Code of Governmental Ethics (La. R.S. 42:1101, *et seq*.).

14.3 The exclusive venue for any suit arising out of this Agreement shall be in the xx Judicial District Court for the Parish of parish, State of Louisiana.

ARTICLE XV
CIVIL RIGHTS COMPLIANCE

15.1 The Parties agree to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972, as amended; Federal Executive Order Number 11246, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act

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of 1974; the Americans with Disabilities Act of 1990, as amended; and Title II of the Genetic Information Nondiscrimination Act of 2008.

15.2 The Parties agree not to discriminate in their employment practices and shall render services under this Agreement without regard to race, color, age, religion, sex, national origin, veteran status, genetic information, political affiliation, or disability.

15.3 Any act of discrimination committed by either party or failure to comply with these statutory requirements shall be grounds for termination of this Agreement.

ARTICLE XVI
NOTICES

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

Entity Contact
Entity Name
Address
Phone Number (Phone)

District Contact
Louisiana Department of Transportation and Development
Address
Phone number (Phone)
Fax Number (Facsimile)

ARTICLE XVII
DEFINITIONS

The following words, when used in this Agreement, shall have the following meanings, unless the context in which they appear clearly reflects otherwise:

17.1 "Act of God" means a cataclysmic phenomenon of nature such as earthquake, tidal wave, tornado, hurricane (but not a hurricane that is classified as a Category 1 or 2 hurricane on the Saffir-Simpson Scale), flood (but not a twenty-five (25) year or less flood), or any catastrophe that generates a disaster declaration for the specific parish that includes the site of the Project.

17.2 "Agreement" means this document, which is a cooperative endeavor agreement/contract that wholly and accurately reflects the Parties' meeting of the minds.

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17.3 "Contractor" means consultants selected pursuant to R.S. 48:285, *et seq*. Contractor shall also include bidders or contractors on projects let pursuant to R.S. 48:251, *et seq*. Contractor shall also include participation as a joint venturer or subcontractor.

17.4 "Debarred" means any person, whether natural or juridical, any unincorporated entity, partnership, or joint venture, that has been disqualified to receive invitations for bids or requests for proposals or the award of any contract by the DOTD. This shall be applicable to the selection of consultants and contractors by the Developer.

17.5 "Developer" means the party to this Agreement that is not the State of Louisiana, Department of Transportation and Development, as described in this Agreement. "Developer," to the extent consistent with the laws of the State of Louisiana and the United States, shall include that Party's agents, servants, independent contractors, or employees, as well as its subcontractors, consultants, subconsultants, joint ventures, partnerships, or other persons or entities hired or contracted by the Developer.

17.6 "Parties" means the State of Louisiana, Department of Transportation and Development and the Developer as listed and/or described in this Agreement.

17.7 "Plans and Specifications" means the final stamped design plans and specifications for the Project which have been prepared or procured by the Developer and approved by the DOTD. Plans and Specifications shall include, but not be limited to, requirements contained in the current edition of the "*Louisiana Standard Specifications for Roads and Bridges,"* as amended.

17.8 "Project" means the design and construction endeavor that is the object of this Agreement.

17.9 "Weather conditions" means weather or weather-related circumstances that do not permit the Developer from proceeding with construction of the Project. Weather conditions shall not be used to excuse the Developer when weather or other conditions not under control of the Developer will permit construction operations to proceed for at least five (5) continuous hours of the day or sixty-five percent (65%) of a normal work day, whichever is greater, on such work as may be scheduled for that day.

(Remainder of this page left intentionally blank.)

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

ENTITY NAME

BY: _____
Entity Contact
Title

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

BY: _____
Secretary

RECOMMENDED FOR APPROVAL

BY: _____
Division Head

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