



Legislative Auditor's Cooperative Endeavor Agreement

Memo and Sample Form

Overview

This Memo includes the following information about cooperative endeavor agreements that relate to changes made by the Supreme Court's 2006 decision in the Cabela's case¹:

- A brief history and introduction to the changes in the law and Attorney General guidance resulting from the Cabela's case;
- A list of the elements of a cooperative endeavor;
- An explanation of each element;
- A list of the legal sources related to cooperative endeavors; and
- A sample cooperative endeavor agreement for the transfer of public funds or public property.

I. Introduction: Cooperative Endeavor Agreements Post-Cabela's

BACKGROUND: Pre-Cabela:

Since 1983, the Attorney General (AG) followed the interpretation of Article VII, §14 of the Constitution provided by the Supreme Court in *City of Port Allen*.² The Court held that Art. VII, §14(A) was violated "whenever the state or a political subdivision seeks to give up something of value when it is under no legal obligation to do so." In accord with the *City of Port Allen* case, the AG consistently opined that a three-prong test for the use of public funds must be met in order to use or transfer public funds or public property. The test was:

¹ *Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al*, 938 So.2d 11 (La. 9/6/06).

² *City of Port Allen v. Louisiana Risk Management, et al.*, 439 So.2d 399 (La. 1983).

1. The expenditure or transfer of public funds or property must be based on a legal obligation or duty evidenced in something like a valid statute, ordinance, charter or contract;
2. The expenditure must be for a public purpose; and
3. The expenditure must create a public benefit proportionate to its cost.

The Supreme Court repudiated its *City of Port Allen* decision in its 2006 decision in *Cabela's*. The Court abandoned the legal obligation component in favor of examining whether there was a non-gratuitous transfer of public funds as evidenced by reciprocal obligations. The AG has tweaked the three-prong test over the years to follow the Court's interpretation of Art. VII, §14(A) provided in *Cabela's*. The elements and an explanation of the AG's three- prong test are discussed below.

II. Elements of a Cooperative Endeavor Agreement Post-Cabela's

All three of the following elements must be met for a cooperative endeavor agreement to be valid:

1. The expenditure or transfer must be for a public purpose that comports with the governmental purpose which the entity has legal authority to pursue; and
2. The expenditure or transfer of public funds or property, taken as a whole, does not appear to be gratuitous;
3. Evidence must demonstrate that the public entity has a demonstrable, objective, and reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

For a more detailed analysis of the Supreme Court's decision, go to the [Cabela Memo](#) on the LLA website.

Explanation of the Elements

1. The nature and description of the public benefit to be derived from the expenditure or transfer must be shown in the cooperative endeavor agreement. The entity's authority will usually derive from the State Constitution, the Revised Statutes and the purpose for which the entity was created. In order for a legal entity to have legal authority for a purchase, the purchase should be related to the purpose for which the entity was created or be of a type that the entity is granted specific authority through the Constitution, statute, or other source of law to engage in. Further, the transaction should not be of a kind that is prohibited by law.
2. A non-gratuitous expenditure or transfer would be one that contemplates a set of reciprocal benefits and obligations between the parties.

3. The public benefit created must be at least equivalent to the expenditure or transfer made by the agency.

III. Current AG Test

The entity spending the funds must have the legal authority to do so and must be able to show:

1. A public purpose for the expenditure or transfer that comports with the governmental purpose that the public entity has legal authority to pursue;
2. That the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.

IV. Legal Sources

Constitution:

Article 7, §14(A)

Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Except as otherwise provided in this Section, neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

Article 7, §14(B)

Authorized Uses. Nothing in this Section shall prevent:

- (1) the use of public funds for programs of social welfare for the aid and support of the needy;
- (2) contributions of public funds to pension and insurance programs for the benefit of public employees;
- (3) the pledge of public funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness to meet public obligations as provided by law;

- (4) the return of property, including mineral rights, to a former owner from whom the property had previously been expropriated, or purchased under threat of expropriation, when the legislature by law declares that the public and necessary purpose which originally supported the expropriation has ceased to exist and orders the return of the property to the former owner under such terms and conditions as specified by the legislature;
- (5) acquisition of stock by any institution of higher education in exchange for any intellectual property;
- (6) the donation of abandoned or blighted housing property by the governing authority of a municipality or a parish to a nonprofit organization which is recognized by the Internal Revenue Service as a 501(c)(3) or 501(c)(4) nonprofit organization and which agrees to renovate and maintain such property until conveyance of the property by such organization;
- (7) the deduction of any tax, interest, penalty, or other charges forming the basis of tax liens on blighted property so that they may be subordinated and waived in favor of any purchaser who is not a member of the immediate family of the blighted property owner or which is not any entity in which the owner has a substantial economic interest, but only in connection with a property renovation plan approved by an administrative hearing officer appointed by the parish or municipal government where the property is located;
- (8) the deduction of past due taxes, interest, and penalties in favor of an owner of a blighted property, but only when the owner sells the property at less than the appraised value to facilitate the blighted property renovation plan approved by the parish or municipal government and only after the renovation is completed such deduction being canceled, null and void, and to no effect in the event ownership of the property in the future reverts back to the owner or any member of his immediate family;
- (9) the donation by the state of asphalt which has been removed from state roads and highways to the governing authority of the parish or municipality where the asphalt was removed, or if not needed by such governing authority, then to any other parish or municipal governing authority, but only pursuant to a cooperative endeavor agreement between the state and the governing authority receiving the donated property;
- (10) the investment in stocks of a portion of the Rockefeller Wildlife Refuge Trust and Protection Fund, created under the provisions of R.S. 56:797, and the Russell Sage or Marsh Island Refuge Fund, created under the provisions of R.S. 56:798, such portion not to exceed thirty-five percent of each fund;

- (11) the investment in stocks of a portion of the state-funded permanently endowed funds of a public or private college or university, not to exceed thirty-five percent of the public funds endowed; or
- (12) the investment in equities of a portion of the Medicaid Trust Fund for the Elderly created under the provisions of R.S. 46:2691 et seq., such portion not to exceed thirty-five percent of the fund.

Article 7, §14(C)

Cooperative Endeavors. 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.

Cases:

City of Port Allen, Louisiana v. Louisiana Municipal Risk Management Agency, Inc., et al
439 So.2d 399 (La. 1983) ***

Distinguished by:

State ex rel. Office of the District Attorney of the Eleventh Judicial District v. Davis, 539 So.2d 803 (La. App. 3 Cir. 02/08/1989)

City of Shreveport v. Chasse Gas Corporation, et al, 794 So.2d 962 (La. App. 2 Cir. 08/22/2001)

Overruled by the Supreme Court:

Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al, 938 So.2d 11 (La. 9/6/06) (Cabela)

State of Louisiana, ex. rel. William J. Guste, Jr., Attorney General v. Nicholls College Foundation and Donald L. Peltier, 564 So.2d 682 (La. 1990) ***

Distinguished by:

Bankston v. Board of Ethics for Elected Officials, 715 So.2d 1181 (La. 06/22/1998)

Safety Net for Abused Persons v. Honorable Robert Segura and Honorable Kathryn Boudreaux, 692 So.2d 1038 (La. 4/8/97) [Distinguished but not overruled.]

Robert A. Varnado v. Hospital Service District No. 1 of the Parish of Assumption, State of Louisiana d/b/a Assumption General Hospital, 730 So.2d 1066 (La. App. 1 Cir. 1999)

City of Shreveport v. Chasse Gas Corporation, et al, 794 So.2d 962 (La. App. 2 Cir. 8/22/01)
[Called in doubt but not overruled.]

Earl Bouillion, et al v. The City of New Iberia, 657 So.2d 397 (La. App. 3 Cir. 1995)

Distinguished by:

Kelly v. Caldwell Parish Police Jury, 740 So.2nd 783 (La. App. 2 Cir. 08/18/1999)

State of Louisiana and Office of the District Attorney of the Eleventh Judicial District v. James Lynn Davis, 539 So.2d 803 (La. App. 3 Cir. 1989)

The Council of the City of New Orleans v. All Taxpayers, Property Owners, 841 So.2d 72 (La. App. 4 Cir. 2/24/03)

Distinguished by:

World Trade Center Taxing Dist. v. All Taxpayers, Property Owners, and Citizens of World Trade Center Taxing Dist. and Nonresidents Owning Property or Subject to Taxation Therein, 894 So.2d 1185, 2005-0048 (La.App. 4 Cir. 2/1/05) (La. App. 4 Cir. Feb 01, 2005)

Board of Directors of Industrial Development Bd. of City of New Orleans v. All Taxpayers, Property Owners, Citizens of City of New Orleans, 848 So.2d 740 (La. App. 4 Cir. 5/29/03)

McPherson v. Foster, 889 So.2d 282 (La. App. 1 Cir. 10/29/04)

World Trade Center Taxing District v. All Taxpayers, Property Owners and Citizens of World Trade Center Taxing District and Nonresidents Owning Property or Subject to Taxation therein, et al., 908 So.2d 623 (La. 6/29/05)

Harrah's Bossier City Inv. Co., LLC v. Bridges, 41 So.3d 438, 2010 WL 2011579, 2009-1916 (La. 5/11/10) (La. May 11, 2010) (NO. 2009-C-1916), rehearing denied (Jun 25, 2010)

Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al, 938 So.2d 11 (La. 9/6/06)
(Cabela)

Citing Cabela's:

Monroe Firefighters Ass'n v. City of Monroe, 2007 WL 1695672 (W.D.La. May 16, 2007) (NO. 06-1092)

Denham Springs Economic Development District vs. All Taxpayers, Property Owners and Citizens of the Denham Springs Economic Development District, 945 So.2d 665 (La. 10/17/06)

Statutes:

The following citations are a sampling of the statutes that include references to cooperative endeavor agreements.

Cooperative Economic Development (R.S. 33:9020, et seq.)

R.S. 33:9022	Cooperative Economic Development - Definitions
R.S. 33:9023	Nonprofit Economic Development Corporations
R.S. 33:9029.1	Cooperative Economic Development with Certain Corporations and Local Governmental Subdivisions
R.S. 33:9029.2	Cooperative Economic Development Involving the State
R.S. 33:9031	Cooperative Economic Development with Public Body
R.S. 33:9031.1	Validation of cooperative endeavor agreements
R.S. 33: 9038.34	Sales tax increment financing
R.S. 33:9038.35	Cooperative endeavors

Capital Outlay Budget

R.S. 39:113	Appropriations
R.S. 39:122	Commencement of work

State Resources Accountability Act (R.S. 39:366.1, et seq.)

This section was added in 2005 to provide greater accountability for transactions involving one million dollars or more per year from the operation or management of a state resource.

R.S. 39:366.2	Purpose and goals
R.S. 39:366.3	Definitions; (1) "Cooperative endeavor" means any agreement including one of cooperative financing, other than a competitive bid or competitively negotiated contract, whether contracted pursuant to Chapter 10 of Title 38 or Chapter 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950 or pursuant to a request for proposals, request for qualifications, solicitation for offers, or other recognized process for competitively seeking qualified contractors, to which the state is a party and pursuant to which the state has obligated state resources, whether funds, credit, property, or things of value of the state to a nonpublic person for the accomplishment of a public purpose or in the public interest, but shall not include projects contained in the comprehensive state capital outlay budget, projects pursuant to the Governor's Economic Development Rapid Response Program, and integrated coastal protection programs and projects authorized in the annual

coastal protection and restoration plan and administered by the Office of Coastal Protection and Restoration.

R.S. 39:366.11 Reporting on the progress and status of cooperative endeavors

Department of Economic Development

R.S. 51:1022 Cooperative endeavors involving the state

R.S. 51:1052 Cooperative endeavors involving the state

Public Contracts

R.S. 38:2225.5 Prohibits public entities from requiring certain agreements related to labor organizations as a condition of bidding on projects.

Local Government Infrastructure

R.S. 33:7632 Declaration of Purpose; applicability

R.S. 33:7633 Cooperative endeavor agreements for local infrastructure projects



NEW
2017

Sharing of Equipment

R.S. 33:4712.18 Sharing of equipment between public entities

V. Executive Orders

Several executive orders dealing with cooperative endeavor agreements are listed below. Executive orders are issued by the governor to provide guidance to executive agencies in the operation of government. Executive orders have the force and effect of law unless they are contrary to the Constitution or law. (See AG Op. No. 80-0281)

Executive orders issued by a governor terminate on the date provided in the order or in a later order. If the order does not contain a termination date, the order terminates 60 days after “...adjournment sine die of the regular session of the legislature after the issuing governor leaves office.” See R.S. 49:215 (C).

Executive Order No JBE 2016-03:

Regarding Executive Branch expenditure freeze and specifically exempts existing cooperative endeavor agreements from prohibitions.

To view a complete list of **Executive Orders** on the Office of the State Register website paste the following link in your web browser:

<http://www.doa.la.gov/Pages/osr/other/exord.aspx>

VI. Attorney General Opinions

The AG opinions listed below were issued post-Cabela and provide insight into the AG's evolving interpretation of *Cabela's* as it exists today.



NEW
2017

AG Op. No. 17-0060

“First, it must be determined whether a public purpose exists for the expenditure that comports with the governmental purpose for which the District has the authority to pursue. A statutory purpose of public hospital service districts includes the cooperation with other public and private institutions and agencies engaged in providing hospital and other health services to residents of the district. La. R.S. 46:1052(5). Additionally, hospital service districts are encouraged to participate in activities designed and conducted to promote the general health of the community. La. R.S. 46:1052(4). Other statutory purposes include administering activities in the promotion of health which may be justified by the facilities, personnel, funds, and other requirements available. See La. R.S. 46:1052(2). We believe that expenditure of hospital funds for the purpose of providing education to future nurses, medical assistants, and medical technicians would fall within the public purpose of a hospital service district. Accordingly, we believe that the proposed expenditure by the District to the LDCC would satisfy the public purpose element.”

“Secondly, it must be determined whether the District's payment to LDCC, when taken as a whole, does not appear to be gratuitous. The Cabela's court placed particular emphasis on reciprocal obligations of the parties when determining whether a use of public funds is gratuitous. *Board of Directors of the Industrial Development Board*, 938 So.2d at 22. This office has concurred with the court, finding that the requirement of a reciprocal obligation renders the payment onerous, rather than gratuitous, since it ensures that the public entity will obtain some advantage in return. La. Atty. Gen. Op. No. 10-0299.”

“According to the proposed CEA to be entered into between the District and LDCC, the District agrees to contribute \$12,000 towards the Advanced Center of Technology capital project. In exchange, LDCC agrees to implement, operate and maintain degree programs in licensed practical nursing, registered nursing, phlebotomy, and EKG technician. LDCC further agrees to include the District in the training and education of students participating in these programs. Additionally, LDCC agrees to allow the District to have the first opportunity for hiring its students in these programs. According to your request, the District has a desire to see the Delta-Tallulah Upgrade/Advancement Project fully funded due to the desire it has to retain specific medical degree and certification programs in North Louisiana from which the District can employ trained and certified individuals at reasonable and comparable salaries for the area. We believe that the District does in fact receive a benefit from LDCC in exchange for its expenditure under the reciprocal obligations set forth in the CEA between the LDCC and the District. Access to properly trained and educated employment pools is an important aspect of operating any public agency or department. Operating in the medical industry, the District is more dependent on such trained individuals, as they will be providing the necessary health care services to the public at large. Accordingly, it is our belief that the proposed expenditure by the District to

LDCC is not gratuitous, as the District will receive the benefit of having access to more trained and educated employees in exchange for the expenditure of funds.”

“Thirdly, the District must have a demonstrable, objective, and reasonable expectation of receiving equivalent value in exchange for making the payment to LDCC. A determination of whether this requirement is satisfied depends on the facts and circumstances surrounding the proposed expenditure. As a general rule, this office refrains from conducting such fact-intensive analyses and leaves such determinations to the public entity seeking to expend public funds or property. According to your request, real data derived from the District will set forth the documented reasonable expectation of value that it expects to receive in exchange for the expenditure. Further, your request states expended dollars for higher salaries and expensive hourly fees for outsourced service providers that are directly related to a lack of qualified graduates in the area far exceed the anticipated contribution amount toward the Delta-Tallulah Upgrade/Advancement Project. Based on your assertions, the District fully expects to receive at least equivalent value in exchange for its expenditure. As long as this expectation is demonstrable, objective, and reasonable, the District's proposed expenditure will satisfy the third element.”

“Considering the above analysis, it is the opinion of this office that La. Const. art. VII, § 14 does not prohibit the District from making payments to LDCC for its Advanced Center of Technology pursuant to the terms of the cooperative endeavor agreement, provided that the District has an objective, demonstrable, and reasonable expectation that the District will receive a benefit commensurate with the payments made to the LDCC.”

AG Op. No. 17-0005

“As indicated above, we believe the purpose for the use of the service charge approved by the voters of the District would encompass the purchase of the radios. Also, the stated purpose for the creation of the District in Ordinance 8148 is for the establishment of Enhanced Emergency 911 Services, which we have opined includes the use of equipment for dispatching emergency calls. Further, the public purpose for communication districts in general is to shorten the time required for a citizen to request and receive emergency aid and provide communication enhancements which will enable law enforcement and public safety agencies to decrease response time and improve effectiveness. See La. R.S. 33:9102(A). It is our opinion that the purchase of radios by the District in furtherance of enhancing 911 emergency response activities qualifies as a public purpose and appears to be an expenditure that comports with the establishment of an enhanced 911 emergency telephone system/service. See La. Rev. Stat. 33:9106 (A). This is consistent with our prior opinion in La. Atty. Gen. Op. No. 12-0054, which similarly held that the purchase of radios by a communications district for use by emergency responders qualified as a public purpose for that district.”

“Turning attention now to the second and third prong of the Cabela's test, we have concerns as to whether the proposed cooperative endeavor agreement is merely gratuitous. In La. Atty. Gen. Op. No. 12-0054, we opined that a communication district's purchase of radios for emergency responders would not be gratuitous if the district maintained ownership of the radios and limited

the use of such radios to only emergency response activities. We agree with the opinion rendered in La. Atty. Gen. Op. No. 12-0054, and opine that the District's purchase would not be gratuitous if the District maintains ownership of the radios and limits the use of the radios to only emergency response activities. However, if the District transfers ownership of the radios, the District would have to be able show a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the transfer of radios for a trier of fact to conclude that the transaction was not a prohibited donation or gratuity.”

“Considering the foregoing, it is the opinion of this office that the District may purchase radios to be used by emergency responders within the District, but only if the District retains ownership and restricts the use to emergency response activities. However, the District cannot be compelled to make such purchases by other local government entities, as the District is a separate political subdivision.”

AG Op. No. 16-0198

“In this instance, the Parish is not necessarily expending money; however, the proposed settlement agreement with the judgment debtor would result in the Parish accepting a lesser amount than what it is entitled to receive. The public purpose behind accepting this lesser amount is not clearly stated in your request; however, we believe that a public purpose does exist. In opting to enter into the settlement agreement, the Parish would be giving up some money in exchange for the security of receiving a definitive sum for the benefit of the public. Additionally, this expenditure would allow Parish resources to be used for other matters for the public benefit. Accordingly, we believe that a public purpose does exist.”

“Secondly, and more concerning in this instance, it must be determined whether the Parish's receipt of less than all money owed it does not appear to be gratuitous. The Cabela's court placed particular emphasis on reciprocal obligations of the parties when determining whether a use of public funds is gratuitous. Board of Directors of the Industrial Development Board, 938 So.2d at 22. This office has concurred with the court, finding that the requirement of a reciprocal obligation renders the payment onerous, rather than gratuitous, since it ensures that the public entity will obtain some advantage in return. La. Atty. Gen. Op. No. 10-0299.”

“Pursuant to the proposed settlement agreement, the judgment debtor will pay a lump sum of money in exchange for a release by the Parish. According to your request, the Parish will receive the following benefits: (1) the immediacy of the lump sum payment, as opposed to possible payment over a period of two years; (2) the certainty of the lump sum payment, as opposed to the unsecured judgment, and (3) the removal of the necessity of any further litigation, formal collection efforts, and/or payment of attorney's fees. While the Parish would receive partial payment of the amounts owed under the settlement agreement, we do not believe that this alone would be sufficient to make the forgiveness of the remaining amounts owed non-gratuitous. Rather, in determining whether the forgiveness of the debt would be gratuitous, we believe that the Parish must compare the benefit or value of the recovery and the costs to be expended pursuing the collection.”

“In La. Atty. Gen. Op. No. 12-0169, the East Feliciana School Board sought an opinion on whether it had to pursue collection of certain sales taxes that were disputed. This office opined that it would be gratuitous for the School Board to not pursue the collection of legally owed taxes. However, we recognized that the School Board had authority to review each disputed tax and make an independent determination as to whether the benefit or value of recovery would equal or exceed the costs expended pursuing collection of the disputed tax.”

“It is our belief that the Parish's acceptance of less than all amounts validly owed by the judgment debtor would be gratuitous, unless the Parish determines that the costs expended pursuing the collection of the entire sum would outweigh the benefit or value of the amounts recovered.”

“Thirdly, the Parish must have a demonstrable, objective, and reasonable expectation of receiving equivalent value in exchange for the supplemental payment. A determination of whether this requirement is satisfied depends on the facts and circumstances surrounding the proposed expenditure. As a general rule, this office refrains from conducting such fact-intensive analyses and leaves such determinations to the public entity seeking to expend public funds or property.”

“Considering the foregoing, it is the opinion of this office that the Parish would violate La. Const. art. VII, § 14 if it failed or declined to pursue all amounts owed by the judgment debtor, unless the Parish determines that the benefit or value of recovery of the full amount owed would not equal or exceed the costs of pursuing collection.”

AG Op. NO. 16-0022

“La. Const. Art. VII, §14 does not prohibit a district attorney from providing space, personnel time, equipment, and money in the form of membership fees or dues to the Foundation (Louisiana District Attorneys’ Training Foundation), provided that the cooperative endeavor agreement imposes obligations on the Foundation to provide training, education, guidance, or other services, and the district attorney has an objective, demonstrable, and reasonable expectation that his/her office will receive a benefit commensurate with the value of the resources provided to the Foundation.”

“Although a district attorney entering an agreement to provide these resources to the Foundation might expect to receive training and education in exchange, it appears as though the Foundation is only obligated to use its best efforts to provide training, guidance, and education. We have some reservations about such language, as the Foundation is not necessarily obligated to provide any services in exchange for the resources provided it. Under the proposed agreement, the Foundation could, despite its best efforts, fail to provide any services to a district attorney's office, yet still receive resources from that district attorney. Such scenario would render the district attorney's pledge of resources a gratuitous donation of public funds to the Foundation. Any cooperative endeavor agreement entered into with the Foundation must impose real obligations upon the Foundation in exchange for the resources it receives. As long as the cooperative endeavor agreement imposes obligations on the Foundation in exchange for the

resources and membership fees provided to the Foundation, then it would appear that the agreement would not be gratuitous.”

[AG Op. No. 15-0089](#)

“The proposed cooperative endeavor agreement between the Marshal and the City does not appear to violate La. Const. art. VII, Sec. 14(A). Both entities are authorized to enter into cooperative endeavor agreements for a public purpose by La. Const. art. VII, sec. 14(C). We believe that the Marshal's provision of administrative and management oversight services to the City's police department will serve a public purpose. The marshal should be mindful that the scope of his authorized duties, as constrained by the statutory authority mentioned herein, and his territorial jurisdiction, which would be limited to the jurisdictional limits of the City, cannot be enlarged by the terms and conditions of an otherwise valid cooperative endeavor agreement. Assuming that the City adequately compensates the Marshal for the extra work that he takes on as a result of the agreement, we do not believe that either party to the cooperative endeavor agreement would be making a gratuitous donation of public property. Both parties would be undertaking reciprocal obligations in this proposed cooperative endeavor agreement. The City would receive services from the Marshal and would be obligating itself to pay fair value for the services. In addition, we note that because the cooperative endeavor agreement would not result in the employment or appointment of a person to the position of police chief, the dual employment provisions of state law, La. R.S. 42:61, *et seq.*, would not be implicated.”

“Accordingly, it is the opinion of this office that the Jeanerette City Marshal may enter into a cooperative endeavor agreement with the City of Jeanerette to provide administrative and management oversight services to the City's police department as long as the Jeanerette City Marshal is able to demonstrate that he will receive fair value for the services rendered, and the arrangement is not made to be an employment or appoint of a person to a city office.”

[AG Op. No. 15-0075](#)

“La. R.S. 40:1492 designates fire protection districts as subdivisions of the state. The District, therefore, is permitted to enter into a cooperative endeavor agreement with public entities in Concordia Parish provided the agreement complies with the Cabela's standard. Pursuant to La. R.S. 40:1500(C), fire protection districts are permitted to enter into contracts deemed necessary or desirable to carry out the purposes for which they were created. La. R.S. 40:1500(B) allows fire protection districts to utilize fire equipment to transport any injured or ill person to a hospital or other place of medical care in an emergency situation where there is no reasonable expectation of the prompt response of an ambulance. Additionally, La. R.S. 40:1501(1) provides a fire protection district the ability to levy ad valorem taxes for purposes involving emergency medical service facilities, vehicles, and equipment. La. R.S. 40:1501(2) notes that a fire protection district has the ability to provide emergency medical services itself to the people within its service area. Furthermore, La. R.S. 33:4791.1, encourages local governing bodies to contract with private ambulance services. See also La. Atty. Gen. Op. Nos. 05-0061 and 08-0054.”

“The provision of ambulance services serves to promote the health, safety, and welfare of citizens within the District. Specifically, helicopter ambulance services will enhance the ability of the District to provide high quality emergency medical care and prompt response times. Considering the aforementioned statutes, such a promotion constitutes a public purpose for which the District has the legal authority to pursue. Accordingly, the District has the ability to enter into a cooperative endeavor agreement with public entities in Concordia Parish to enter into the proposed contract with Air Evac provided that the transaction, taken as a whole, is not gratuitous and that the District has a demonstrative, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure of public funds. Provided the amount contributed is proportionate to the benefit received by the people within the service area of the District, it appears that the agreement is constitutionally permissible.”

AG Op. No. 15-0030

“..., the first prong of the Cabela's analysis is satisfied on the basis of La. R.S. 41:1212, which gives Nicholls the authority to enter into a lease agreement for any legitimate purpose. In order to determine whether the proposed agreement is authorized under the second and third prongs of the Cabela's analysis, however, Nicholls must have a demonstrable, objective and reasonable expectation of receiving value commensurate with the value of the property to be leased. This is consistent with La. Atty. Gen. Op. No. 13-0191, wherein we determined that any in-kind contribution credit granted to non-profits under a lease or authorized cooperative endeavor agreement was permissible only if the city of Ponchatoula was able to demonstrate that (1) it would receive an actual, quantifiable benefit from each activity for which it intended to award an in-kind contribution credit and (2) that the amount of the in-kind contribution credit granted would be commensurate with the benefit received by the city. Also see La. Atty. Gen. Op. No. 13-0005 (police jury may lease property to a nonprofit entity for a pet adoption center but must receive fair value for the lease) and La. Atty. Gen. Op. No. 09-0099 (Fire District may lease property to the United State Postal Service for a post office as long as adequate consideration is paid).”

“Your request indicates that you believe this arrangement would satisfy the criteria for cooperative endeavors as outlined in Cabela's. In support of this belief, you state the following benefits to the campus and the surrounding community:

1. The district office would provide a convenient location to provide support and services for the campus community and citizens and the surrounding areas;
2. The district office would be able to readily support Nicholls in its applications for federal funding through grants and other federal support for its research initiatives;
3. The district office would provide a valuable opportunity for practical applications of research by Nicholls faculty in supporting the congressman's initiatives; and
4. The district office would provide a valuable opportunity for students and faculty to interact with the congressman in an academic setting.”

“Additionally, the District Office intends to offer internships for college credit to Nicholls students who seek government experience and exposure.”

“Nicholls expects the value of the benefits and services it receives from this relationship to be at least equivalent to market value of the leased space and that the relationship will support the overall mission of Nicholls in education and economic development.”

“It is, therefore, the opinion of this office that if Nicholls State University can effectively demonstrate that it has a reasonable expectation of receiving cash, services and/or benefits at least equivalent to the amount representing fair value of the leased office space, then the cooperative endeavor and lease agreement would not be prohibited by Art. VII, § 14 of the Louisiana Constitution.”

[AG Op. No. 14-0199](#)

“In response to your question, we must examine whether the Jackson Parish Police Jury or Jackson Parish School Board have the legal authority to spend public funds for the purpose of repairing a road owned by the Village of Quitman. We first note that the JPPJ is authorized by La. R.S. 33:1236(2)(c) to do the following:

The police juries may, upon request of the governing authority of any incorporated municipality, perform all or any part of the repair, maintenance and care of roads, streets, alleys, bridges and culverts and other drainage facilities, situated within and under the jurisdiction of such incorporated municipality, and may expend for such purposes any funds made available to them for road purposes.”

“This provision clearly authorizes police juries, upon request of the municipality, to spend public funds to repair a road of an incorporated municipality, such as the Village of Quitman.”

“However, our research did not reveal any authority which would permit a school board to expend its funds for the repair of a municipality owned road. While La. R.S 17:158(E) authorizes a school board to contribute funds to the local governing authority for the graveling of school bus turnarounds this provision cannot be read so broadly as to permit general road repairs. In accord is La. Atty. Gen. Op. No. 79-27, which concluded that the Lafourche Parish School Board may not supply materials to the police jury for the general repair of parish roads which were impassable. The opinion also noted that the graveling of school bus turnarounds as authorized by La. R.S. 17:158(E) was not the same thing as road repairs. Because we have determined that the JPSB cannot spend school board funds to repair a municipality owned road, the JPSB is likewise prohibited from entering into a cooperative endeavor agreement with the JPPJ in which it would pledge funds for the village road repair.”

[AG Op. No. 13-0139](#)

“In order to use ‘public forces’ to inter privately-owned animals on private property, some expenditure of public funds is necessary. With the threshold question of whether public funds must be expended answered in the positive, we must examine the public entity’s legal authority to make such expenditures. We have reviewed the Louisiana Revised Statutes and can identify no statutory authority for authorizing a public entity to expend funds or use its resources to inter the remains of dead privately-owned animals on private property. For this reason, it is not

necessary for us to examine the remaining inquiries under the *Cabela's* test outlined above. It is thus the opinion of this office that public entities cannot inter privately-owned animals on private property at no cost to the owner.”

“In the past, we have opined on the urgent need for governmental action in emergency situations and the interaction of that need with general constitutional guarantees and protections. There is little doubt that public entities have the legal authority to respond to a situation in which the public health or safety is threatened. However, what sort of event constitutes a threat to the public’s health or safety is entirely factual and one that must be determined by the public entity on a case-by-case basis. In situations in which a public entity determines that the risks presented by exposed dead animals presents such a threat to the public’s health or safety as to mandate a governmental response (i.e., interment of the remains at the government’s cost), we are of the opinion that the government’s general police powers constitute an authorization to so expend the necessary funds. However, whether the particular public entity meets the additional requirements of the *Cabela's* inquiry noted above is a factual matter that must be determined by the public entity.”

This AG opinion contains what appears to be the definitive test for transfers of public funds or property:

“In light of the *Cabela's* case, it is the opinion of this office that in order for an expenditure or transfer of public funds or property to be permissible under Article VII, § 14(A), the public entity must have the legal authority to make the expenditure or transfer and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds. The *Cabela's* standard places a strong emphasis on the reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds.”

[AG Op. No. 13-0048](#)

“Although the Police Jury cannot simply donate \$15,000 to the District, we note that the Police Jury and District are authorized to enter into a cooperative endeavor agreement for the purpose of running the recreational facility. Cooperative endeavor agreements are authorized by La. Const. art. VII, Sec. 14(C) and La. R.S. 33:1324(5). La. R.S. 33:1324(5) specifically provides that political subdivisions may cooperate to construct, acquire, or improve ‘recreational and educational facilities, such as playgrounds, recreation centers, parks and libraries.’ Therefore, as long as the Police Jury and District are each able to effectively demonstrate that they have a reasonable expectation of receiving a benefit at least equivalent to the amount that will be expended or transferred, it is our opinion that a cooperative endeavor agreement would be acceptable.”

[AG Op. 12-0054](#)

“Since the proposed cooperative endeavor agreement involves the expenditure of public funds, it must be examined in light of La. Const. art. VII, §14 (C). In general terms, cooperative endeavor agreements are authorized by La. Const. art. VII, §14(C), which provides:

“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.”

However, section (C) merely supplements the prohibition against gratuitous donations contained in section (A) of La. Const. art. VII, §14. It does not create an exception to or exemption from the general constitutional norm. Therefore, even though the expenditure of public funds, and transfer of public property is done pursuant to a cooperative endeavor agreement, the expenditure still must be examined in light of La. Const. art. VII, §14(A), which provides in pertinent part, as follows:

Section 14(A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private ...

This constitutional provision is violated “when public funds or property are gratuitously alienated.” *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So.2d 11, 20 (the “*Cabela's*” case). Based on the standard articulated in *Cabela's*, it is our opinion that in order for an expenditure of public funds to be permissible under La. Const. art. VII, §14(A), the entity spending the funds must have the legal authority to do so and must be able to show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.

The *Cabela's* standard places a strong emphasis on the reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds. In *Cabela's*, the Court examined the intent of the public entities to conclude that the alienation of funds was non-gratuitous. The public entities demonstrated a non-gratuitous intent by showing that the project served a public purpose, that financial projections showed financial benefits to the entities exceeded the amount pledged, and that they had a reasonable expectation that the economic benefit from the project would exceed the obligations undertaken by the public entities. These factors alone were not enough to show a non-gratuitous intent on the part of the City and the State. When examining these factors, along with the project and the related documents as a whole, however, the Court concluded that there was a non-gratuitous intent on behalf of the City and the State. Basically, the Court examined the transaction as a whole to determine whether it passed the “smell test.”

AG Op. 11-0144

“Cooperative endeavor agreements, such as the one proposed here, are authorized by La. Const. art. VII, §14(C), which provides:

“For a public purpose, the state and its political subdivisions or political corporation 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.”

Any time public funds are spent, whether pursuant to a cooperative endeavor agreement or otherwise, the public entity is obligated to ensure that the expenditure complies with the terms of La. Const. art. VII, Sec. 14(A), which prohibits public funds or property from being gratuitously alienated. In order to ensure that the agreement does not violate La. Const. art. VII, Sec. 14(A), our office has consistently opined that a public entity spending the funds must have the legal authority to so do and must be able to show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds. See *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So.2d 11, 20 (the “Cabela's” case).”

AG Op. 10-0081

“In order for the Cooperative Endeavor Agreement to be permissible, the Iberville Parish Council must determine and ensure that the benefit it receives is commensurate with the public funds it expends in connection with the proposed cooperative endeavor agreement. Failing such a determination and conclusion, the proposed cooperative endeavor agreement would not be permissible and would amount to a prohibited donation under Article VII, Section 14 of the Louisiana Constitution.”

AG Op. 10-0122

The AG provides an analysis of the Cabela three-prong test and “legal authority to make expenditures.” It appears that the AG now requires “legal authority to make the expenditure” as part of the Cabela test. The AG opines:

“It is our opinion that, because 1) the Plaquemines Parish Government has the statutory authority to conduct levee repairs, 2) the levee repairs serve a public purpose, and 3) the Parish will greatly benefit from the use of the funds, the Plaquemines Parish Government's use of public funds to repair the private levees is not a violation of the restriction against the donation of public funds under La. Const. Art. VII, §14(A).”

AG Op. 09-0302

“In light of the Cabela's case, it is the opinion of this office that in order for an expenditure or transfer of public funds to be permissible under Art. VII, §14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure

or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds. The Cabela's standard places a strong emphasis on the reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds.”

AG No. 07-0018

“However, in order to be acceptable, we believe a cooperative endeavor agreement must now meet the following three requirements: **1) The entity must have the legal authority to enter into the agreement; 2) The agreement is for a public purpose; and 3) there is a reasonable expectation of receiving equivalent value in exchange for the proposed expenditure or transfer of public funds or property.** While it appears that the Town maintains the legal authority to enter into the Amended Agreement and the Amended Agreement would be for a public purpose, if there is not a reasonable expectation of the part of the Town to receive equivalent value for the original obligations that are to be released by the Town in the Amended Agreement, then signing the Amended Agreement may constitute a donation of public funds or property that is prohibited by Article VII, §14 of the Louisiana Constitution.”

VII. Sample Cooperative Endeavor Agreement Form

The sample contract that follows contains the basics of a cooperative endeavor agreement. **(This sample is intended only for your review and education and as a guide to review agency contracts.)** Depending on the facts and circumstances presented in a particular cooperative endeavor agreement, you may need to seek guidance from us.

This sample cooperative endeavor form may be used by any state agency, political subdivision, quasi-public or public entity or private, non-profit corporation or entity., **Agencies that are funded through line item appropriations, however, should also refer to the cooperative endeavor agreement form provided by the Office of State Procurement (OSP).** See **Act 16 of the 2015 Regular Session** of the Louisiana Legislature and Executive Order No. JBE 2016-11.

The form provided by OSP includes additional contractual provisions, as well as several attachments related to program goals and objectives, budget data, staffing, progress reports and disclosure statements. The OSP form may be accessed at:

<http://www.doa.la.gov/Pages/osp/PC/Index.aspx>

SAMPLE

SAMPLE

STATE OF LOUISIANA

COOPERATIVE ENDEAVOR AGREEMENT

THIS COOPERATIVE ENDEAVOR, made and entered into this *(enter date)* day of *(enter month)* 20*(enter year)* by and between *(agency name)* of the State of Louisiana, hereinafter referred to as “State,” and/or “Agency” and *(enter legal name of recipient)* officially domiciled at *(enter address including city, state and zip code)* hereinafter referred to as “Contracting Party”.

(The “Contracting Party” may be another state agency, political subdivision, quasi-public or public entity or private, non-profit corporation or entity.)

ARTICLE I

WITNESSETH:

1.1 WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that “For a public purpose, the state and its political subdivisions...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

1.2 WHEREAS, the State and/or Agency desires to cooperate with the Contracting Party in the implementation of the Project as hereinafter provided;

1.3 WHEREAS, the STATE and/or Agency has the authority to enter into this Agreement as evidenced by its governmental purpose of: *(recommend the entity provide a clear statement of the source of the legal authority such as a statute, the constitution, or other source of law and the governmental purpose for which the entity was created)*

1.4 WHEREAS, the public purpose of the Project is described as: *(provide a detailed description of the public purpose sought to be achieved through the cooperative endeavor agreement)*;

1.5 WHEREAS, the State and/or Agency has a reasonable expectation of receiving a benefit or value described in detail that is at least equivalent to or greater than the consideration described in this Agreement;

1.6 WHEREAS, the transfer or expenditure of public funds or property is not a gratuitous donation;

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

ARTICLE II
SCOPE OF SERVICES

2.1 The Contracting Party shall: *(Narrative should detail the specific nature of the Agreement, the background of the Agreement, and the duties of the contracting agency (i.e. the program goals and objectives as well as the expected outcomes and results. The nature and description of the public benefit to be derived from the expenditure or transfer must be shown in the cooperative endeavor agreement. Authority will usually derive from the State Constitution, the Revised Statutes and the purpose for which the entity was created. In order for a legal entity to have legal authority for a purchase, the purchase should be related to the purpose for which the entity was created or be of a type that the entity is granted specific authority through the Constitution, statute, or other source of law to engage in. Further, the transaction should not be of a kind that is prohibited by law.)*

ARTICLE III
DELIVERABLES

3.1 Deliverables: *(Narrative should identify the actual services that are to be provided, the relevant activities and anticipated outcomes).*

ARTICLE IV
PAYMENT TERMS

4.1 A. In consideration of the services described above, the State and/or Agency hereby agrees to pay the Contracting Party a maximum fee of *(enter maximum amount of contract \$_____)*. Payment will be made in the following manner:

B. In consideration of the services described above, the State and/or Agency hereby agrees to provide benefits to the Contracting Party. Benefits will be received/provided in the following manner:

(We recommend using Option A when monies are transferred. Use Option B when services/benefits are exchanged.)

(Describe in detail the approval process that must be completed before the Contracting Party can be paid including all payment schedules agreed to, as well as all performance measures that must be met before compensation will be tendered. Also, in order to set forth the standards of reciprocity post-Cabela, include a comparison of compensation provided and benefits received with calculations that show a benefit at least equal to or greater than the expenditure.)

(Example provision: The Contracting Party shall submit an invoice for services performed to the State and/or Agency within ten (10) days following the end of each calendar month, including a detailed list of services performed and an itemized account of time spent during that calendar month for each such service. The State and/or Agency shall remit payment for such services within thirty (30) days following receipt of such detailed list of services and acceptance of the work product. The compensation for any extension of the initial term shall be subject to future agreement by the parties.)

SAMPLE

SAMPLE

4.2 Additional Costs and Expenses. No additional costs or expenses incurred by the Contracting Party in performance of this Agreement shall be reimbursed or paid by the State and/or Agency unless agreed upon in writing by the parties.

(All costs and expenses should be explained in detail and provided on a per diem or lump sum basis. For example, "travel expenses, if any, shall be reimbursed only in the event that this Agreement provides for the reimbursement"; "these travel expenses are included in the Contracting Party's approved compensation, budget or allocated amount." Copies of invoices and/or receipts for any pre-approved reimbursable expenses or travel expenses should be provided or attached.)

4.3 Disbursements under this Agreement will be allowed only for expenditures occurring between and including the dates of (authorized beginning date) through (authorized ending date), and this project and all of the Contracting Party's services shall be completed by that date. Payment is contingent upon the availability of funds and upon the approval of this Agreement.

4.4 Taxes: Contracting Party hereby agrees that the responsibility for payment of taxes from the funds thus received under this Agreement and/or legislative appropriation shall be Contracting Party's obligation and identified under Federal tax identification number _____.

ARTICLE V **TERMINATION FOR CAUSE**

5.1 The State and/or Agency may terminate this Agreement for cause based upon the failure of Contracting Party to comply with the terms and/or conditions of the Agreement; provided that the State and/or Agency shall give Contracting Party written notice specifying Contracting Party's failure. If within thirty (30) days after receipt of such notice, Contracting Party shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State and/or Agency may, at its option, place Contracting Party in default and the Agreement shall terminate on the date specified in such notice. The State and/or Agency may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the Contracting Party to comply with the terms and conditions of this Agreement; provided that the State and/or Agency shall give the Contracting Party written notice specifying the Contracting Party's failure and a reasonable opportunity for the Contracting Party to cure the defect.

ARTICLE VI **TERMINATION FOR CONVENIENCE**

6.1 The State and/or Agency may terminate the Agreement at any time by giving thirty (30) days written notice to Contracting Party. Upon receipt of notice, Contracting Party shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities, services and supplies in connection with the performance of this Agreement. The State and/or Agency shall be entitled to payment for deliverables in progress to the extent work has been performed satisfactorily.

ARTICLE VII**OWNERSHIP OF WORK PRODUCT, CONFIDENTIALITY AND COPYRIGHT**

7.1 All work product, including records, reports, documents and other material delivered or transmitted to Contracting Party by the State and/or Agency, shall remain the property of the State and/or Agency, and shall be returned by Contracting Party to the State and/or Agency, at Contracting Party's expense, at termination or expiration of this Agreement. All work product, including records, reports, documents, or other material related to this Agreement and/or obtained or prepared by Contracting Party in connection with performance of the services contracted for herein, shall become the property of the State and/or Agency, and shall, upon request, be returned by Contracting Party to the State and/or Agency at Contracting Party's expense at termination or expiration of this Agreement. The State and/or Agency shall not be restricted in any way whatsoever in the use of such material.

7.2 Furthermore, at any time during the term of this Agreement, and finally at the end of this engagement, the State and/or Agency shall have the right to require the Contracting Party to furnish copies of any and all documents, memoranda, notes, or other material, obtained or prepared in connection with this Agreement within five (5) days of receipt of written notice issued by the State and/or Agency.

7.3 Confidentiality. The above referenced work product shall be held confidential by the Contracting Party and shall not be shared with any other entity without the express consent of the State and/or Agency.

7.4 Copyright. No work product, including records, reports, documents, memoranda or notes obtained or prepared by the Contracting Party under this Agreement shall be the subject of any copyright or application for copyright on behalf of the Contracting Party.

ARTICLE VIII**ASSIGNMENT**

8.1 Contracting Party shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the State and/or Agency, provided however, that claims for money due or to become due to Contracting Party from the State and/or Agency may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State and/or Agency. Additionally, the Contracting Party shall not subcontract any work to any party without the prior written consent of the State and/or Agency.

ARTICLE IX**FINANCIAL DISCLOSURE**

9.1 Each recipient shall be audited in accordance with R.S. 24:513. If the amount of public funds received by the provider is below the amount for which an audit is required under R.S. 24:513, the transferring agency shall monitor and evaluate the use of the funds to ensure effective achievement of the project goals and objectives.

SAMPLE

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ARTICLE X
AUDIT CLAUSE

10.1 It is hereby agreed that the Legislative Auditor of the State of Louisiana, and/or the Office of the Governor, Division of Administration auditors shall have the option of inspecting and auditing all data, records and accounts of the Contracting Party which relate to this Agreement, upon request.

10.2 The Contracting Party and any subcontractors paid under this Agreement shall maintain all books and records pertaining to this Agreement for a period of four years after the date of final payment under the prime contract and any subcontract entered into under this Agreement or four years from the date of termination of the prime contract and any subcontract entered into under this Agreement, whichever is later.

ARTICLE XI
AMENDMENTS IN WRITING

11.1 Any alteration, variation, modification, or waiver of provisions of this Agreement shall be valid only when it has been reduced to writing and executed by all parties.

(State agency contracts must be approved by the Office of State Procurement, Division of Administration.)

ARTICLE XII
FISCAL FUNDING (NON-APPROPRIATION) CLAUSE

12.1 In the event funds are not budgeted or appropriated in any fiscal year for payments due under this Agreement for the then current or succeeding fiscal year, this Agreement shall impose no obligation on the State and/or Agency as to such current or succeeding fiscal year, and said Agreement shall become null and void, and no right of action shall accrue to the benefit of the Contracting Party, its successors or assigns for any further payments.

ARTICLE XIII
TERM OF AGREEMENT

13.1 The term of this Agreement shall commence on the date first above written and shall continue in effect until *(end date)*, unless sooner terminated as provided in Paragraphs V and VI.

ARTICLE XIV
DISCRIMINATION CLAUSE

14.1 The Contracting Party agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, as amended, the Age Act of 1975, as amended, and Contracting Party agrees to abide by the requirements of the Americans with Disabilities Act of 1990, as amended. Contracting Party agrees not to discriminate in its employment practices, and will render services

under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. The Contracting Party acknowledges and agrees that any act of unlawful discrimination committed by Contracting Party, or any other failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement.

ARTICLE XV
INDEMNIFICATION; INSURANCE

15.1 The Contracting Party shall indemnify and save harmless the State and/or Agency against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money to any party accruing against the State and/or Agency growing out of, resulting from, or by reason of any act or omission of the Contracting Party, its agents, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement. Such indemnification shall include the State and/or Agency's fees and costs of litigation, including, but not limited to, reasonable attorney's fees. The Contracting Party shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

ARTICLE XVI
PARTIAL INVALIDITY; SEVERABILITY

16.1 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 invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XVII
ENTIRE AGREEMENT; MODIFICATION

17.1 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. No representations were made or relied upon by either party, other than those that are expressly set forth. 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 both parties.

ARTICLE XVIII
CONTROLLING LAW

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

ARTICLE XIX
LEGAL COMPLIANCE

19.1 The State and/or Agency shall comply with all federal, state, and local laws and regulations, including, specifically, the Louisiana Code of Governmental Ethics (R.S. 42:1101, *et seq.*) in carrying out the provisions of this Agreement.

ARTICLE XX
RELATIONSHIP BETWEEN THE PARTIES; EXCLUSION OF BENEFITS

20.1 The Contracting Party is engaged by the State and/or Agency for the purposes set forth in this Agreement. The relationship between the Contracting Party and the State and/or Agency shall be, and only be, that of an independent contractor and the Contracting Party shall not be construed to be an employee, agent, partner of, or in joint venture with, the State and/or Agency.

ARTICLE XXI
**ACKNOWLEDGMENT OF EXCLUSION OF
WORKER'S COMPENSATION COVERAGE**

21.1 The State and/or Agency and the Contracting Party expressly agree that the Contracting Party is an independent contractor as defined in R.S. 23:1021(7) and, as such, expressly agree that the State and/or Agency shall not be liable to the Contracting Party or to anyone employed by the Contracting Party for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana.

ARTICLE XXII
**ACKNOWLEDGMENT OF EXCLUSION OF
UNEMPLOYMENT COMPENSATION COVERAGE**

22.1 The State and/or Agency and the Contracting Party expressly declare and acknowledge that the Contracting Party is an independent contractor and, as such, is being engaged by the State and/or Agency under this Agreement as noted and defined in R.S. 23:1472(12)(E) and, therefore, it is expressly declared and understood between the parties hereto, that for the purposes of unemployment compensation only:

- A. The Contracting Party has been and will be free from any control or direction by the state and/or Agency over the performance of the services covered by this Agreement;
- B. The services to be rendered by the Contracting Party are outside the normal course and scope of the State and/or Agency's usual business; and
- C. The Contracting Party is customarily engaged in an independently established trade, occupation, profession, or business.

Consequently, neither the Contracting Party nor anyone employed or contracted by the Contracting Party shall be considered an employee of the State and/or Agency for the purpose of unemployment compensation coverage.

ARTICLE XXIII
FORCE MAJEURE

23.1 Neither party to this Agreement shall be responsible to the other party hereto for any delays or failure to perform caused by any circumstances reasonably beyond the immediate control of the party prevented from performing, including, but not limited to, acts of God.

ARTICLE XXIV
EMPLOYMENT OF STATE PERSONNEL

24.1 The Contracting Party certifies that it has not employed and will not employ any person to engage in the performance of this Agreement who is, presently, or at the time of such employment, an employee of the State of Louisiana.

ARTICLE XXV
COVENANT AGAINST CONTINGENT FEES

25.1 The Contracting Party warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the Contracting Party, to solicit or secure this Agreement, and that it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for the Contracting Party any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the State and/or Agency shall have the right to annul this Agreement without liability or, in State and/or Agency's discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE XXVI
REMEDIES FOR DEFAULT

26.1 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 including but not limited to the following:

26.2 *(If the Cooperative Endeavor is with a non-governmental entity for economic development purposes, it must contain the following:*

“If the Contracting Party defaults on the Agreement, breaches the terms of the Agreement, ceases to do business, or ceases to do business in Louisiana, it shall be required to repay the State and/or Agency.”

(The Cooperative Endeavor must set out the terms of the repayment.)

SAMPLE

SAMPLE

**ARTICLE XXVII
NOTICES**

27.1 All notices and other communications pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand-delivery (and receipted for) or deposited in the United States mail, as certified mail, return receipt requested and postage prepaid, to the other party, addressed as follows:

(State/Agency – name of person and title or position)
(Agency name)
(Mailing address or municipal address)
(City, State, Zip Code)

(Contracting Party – name of person and title or position)
(Contracting Party)
(Mailing address or municipal address)
(City, State, Zip Code)

THUS DONE AND SIGNED AT _____, Louisiana, on the *(enter date)* day, of *(enter month)* 20*(enter year)*.

WITNESSES:

Agency Name

Agency Head Name, Title

THUS DONE AND SIGNED AT _____, Louisiana, on the *(enter date)* day, of *(enter month)* 20*(enter year)*.

WITNESSES:

Contracting Party

Authorized Person, Title