



Legislative Auditor's *Cabela's* Test and Cooperative Endeavor Agreements

Memo and Sample Form

Overview

This Memo includes the following information about the use of public funds and cooperative endeavor agreements that relate to 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 needed for the use of public funds/public property and cooperative endeavor by public entities;
- 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.

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).

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

The use of public funds and public property is controlled by the limits set forth in Art. VII, §14 of the Constitution. Section 14(A) generally prohibits the state and its political subdivisions from donating public funds or property. The provision states in pertinent part:

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.

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 In that case, 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.”

However, the Supreme Court repudiated its *City of Port Allen* decision in its 2006 decision in *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) (known as “*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. That is, with *Cabela's*, the Court transformed the analysis of its interpretation of Art. VII, §14 by rejecting the idea that a legal obligation must be a predicate for using public funds or property. Instead of a legal obligation, there must be reciprocal obligations between the parties to ensure that there is not a gratuitous donation of public funds. As a result of this new jurisprudence, even greater emphasis is placed on the strength of promises recorded in a contract or cooperative endeavor agreement and on continuing oversight by the participating governmental entity.

Following the *Cabela's* decision, the AG developed a three-prong test to follow the Court's interpretation of Art. VII, §14(A). The elements and an explanation of the AG's three-prong test are discussed below.

II. The Cabela's Test

The three-prong test developed by the AG following the Louisiana Supreme Court's *Cabela's* decision states that all three of the following elements must be met for a public entity to properly expend or transfer public funds or property:

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

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;
2. The expenditure or transfer of public funds or property, taken as a whole, does not appear to be gratuitous; and
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.

These three elements are referred to as the “*Cabela’s* test.”

Every time a public entity uses public monies, the *Cabela’s* test must be met. Of course, in the ordinary course of a public entity’s business – such as the use of public funds to purchase materials and supplies or for the payment of a public employee’s wages -- the three elements of the *Cabela’s* test are self-evident. That is, when the public entity purchases reasonably priced office supplies, it receives the office supplies in exchange. Or when the public entity pays employees’ wages, it receives the labor in exchange.

In other cases, however, the public benefit may not be as apparent. In such cases, the public entity may enter into a written cooperative endeavor agreement (CEA) with the other party, which outlines each element of the *Cabela’s* test within it.

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.

Explanation of the Elements for Use in CEA’s

1. The CEA should describe the nature of the public benefit to be derived from the expenditure of public funds/transfer of public property. In order for an entity to have legal authority to expend the public funds/transfer public property, the expenditure/transfer 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. See, [AG Op. No. 10-0122](#) and [AG Op. No. 09-0018](#).

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.

IV. Attorney General Opinions

The AG opinions listed below were issued post-*Cabela's* and provide insight into the AG's evolving interpretation of *Cabela's* as it exists today. The most recent opinions are listed first and provide additional clarification by the AG as to how a public entity can meet each of the prongs of the *Cabela's* test.

Whether an expenditure meets the three-prong *Cabela's* test is fact specific determination. Therefore additional analysis should be performed by the public entity in discussion with legal counsel before talking final action in transferring or expending public funds. In some cases, the public entity may consider seeking its own AG opinion.

AG Op. No. 23-0062

The Attorney General in applying the *Cabela's* test opines that a Parish and a Law Enforcement District may, through a written CEA, jointly construct a road on property owned by the District and provide for the donated use of Parish equipment and employees for the construction of the road, so long as the requirements under R.S. 33:4712.18 are met.

AG Op. No. 22-0061 – Educational Incentive Pay

The Attorney General applies the *Cabela's* test to determine that the City of Kenner may institute and maintain an educational incentive pay program, under which employees of the fire department are provided additional incentive pay following completion of various training courses and certifications related to their public duties that are not already required as part of their job duties/qualifications.

AG Op. No. 22-0027 – Retention Pay

The Attorney General applies the *Cabela's* test to determine that the City of New Orleans may institute a retention pay program for the City's police officers, juvenile detention counselors, mechanics, and emergency medical technicians and paramedics as long as the City has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in return for the pay. This opinion **recalls** AG Op. No. 10-0299 to the extent that the opinion concluded that, in general, supplemental salary payments made for purposes of retaining the employment of current public employees is considered an unearned payment or bonus in violation of Art. VII, §14.

AG Op. No. 21-0107 – Retroactive Premium Pay

The American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLFRF) allows for the funds given to local governments to be used to provide retroactive premium pay for essential work related to the pandemic.

The US Treasury encourages recipients to consider using SLFRF funds to provide premium pay retroactively for work performed during the pandemic back to the beginning date of March 1, 2020. In [AG Op. No. 21-0107](#), the Attorney General opines that a public entity may grant its essential critical infrastructure workers/employees retroactive premium pay for past performance of a quantifiable amount of essential work provided that (1) the public entity determines that the pay meets the *Cabela's* test; and (2) adheres to US Treasury rules regarding the qualifications for premium pay. For details on ARPA-SLFRF Treasury rules on premium pay, please see the COVID-19 Legal Guidance FAQ.

The *Cabela's* test requires that the public entity have the legal authority to make the expenditure of public funds and must show all of the following:

1. A public purpose for the expenditure that comports with the governmental purpose for which the public entity has the legal authority to pursue;
2. That the expenditure, taken as a whole, does not appear to be gratuitous;
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure.

In [AG Op. No. 21-0107](#), the Attorney General applies the *Cabela's* test to determine whether public entities may provide retroactive premium pay using ARPA funds. The Attorney General states that a public entity has the legal authority to compensate its employees. Therefore, the first prong of the *Cabela's* test is met. As to the second prong, the Attorney General states that the requirements of the ARPA and Treasury's Interim Final Rule "ensure that the premium pay is not gratuitous. The premium pay is to compensate essential workers, who earn lower wages, live in socioeconomically vulnerable communities, and have not yet been compensated for the heightened risk they faced and continue to face, for the essential work during the COVID-19 public health emergency." As to the third prong of the *Cabela's* test, that is a fact-specific inquiry. The Attorney General states that the public entity must conclude that it received something "real and substantial in exchange for an expenditure of public funds in the form of retroactive premium pay." The Attorney General further states that if the entity concludes that "retroactive premium pay is tied to a quantifiable amount of essential work performed by eligible workers during the COVID-19 public health emergency" then Art. VII, §14 would not prohibit the retroactive payment.

All determinations by the public entity as to which employees are eligible to receive premium pay and how the *Cabela's* test is met in the retroactive payment of premium pay should be documented.

See also, [AG Op. No. 21-0101](#) wherein the Attorney General opines that elected officials, such as a mayor or council member, would not be considered an essential worker/front-line employee under Treasury Rule. However, the US Department of Treasury is the ultimate arbiter of whether a local government has used ARPA Fiscal Recovery Funds properly.

And see, [AG Op. No. 22-0038](#) wherein the Attorney General distinguishes concerning mayors and council members to opine that the determination of whether an elected official, such as a chief of police or city marshal, is considered an "eligible worker" who performed "essential work" under ARPA and is therefore eligible to receive retroactive premium pay is one that must

be made by the public entity. This is a fact-intensive determination. The Attorney General again notes that the US Department of Treasury is the ultimate arbiter of whether a local government has used ARPA Fiscal Recovery Funds properly.

AG Op. No. 22-0044

The Attorney General opines that the Office of State Examiner may use public funds to provide stainless steel water bottles to employees if the State Examiner determines that the purchase of such water bottles will assist personnel in carrying out their public duties and/or responsibilities. The water bottles will be public property and must be returned at the end of employment to avoid violations of Article VII, § 14.

AG Op. No. 22-0024

The Attorney General applies the *Cabela's* test to determine that the West Baton Rouge Convention & Visitors Bureau (CVB) may not partially fund security measures around the premises of West Baton Rouge hotels. The AG opines that providing security measures or funding such measures to privately owned businesses within the parish does not comport with the CVB's governmental purpose, which is to promote and advertise information related to tourist attractions within the parish.

AG Op. No. 21-0125

The Attorney General applies the *Cabela's* test to determine that sheriffs in parishes affected by Hurricane Ida may provide hurricane emergency supplemental pay to their deputies, including retroactive pay, as long as the supplemental pay is reasonably commensurate with the benefit received by the sheriff's office in providing the supplemental pay.

AG Op. No. 21-0118

The Attorney General applies the *Cabela's* test to determine that the Town of Tullos may not absorb the loss or pay the difference in new utility connection costs. The AG opines that because the Town is under no obligation to provide the installation or connection of utilities to private property, forgoing the full cost against the customer would violate Article VII, §14.

AG Op. No. 21-0114

The Attorney General opines that St. Bernard Parish Government may enter into a CEA with a Louisiana nonprofit corporation for the design and construction of a public street and related infrastructure for the purposes of economic benefit activities. Donation of funds and land for the public works project must occur prior to advertisement for the public work.

AG Op. No. 21-0110

The Attorney General opines that application of the *Cabela's* test is not required to decide whether the Town of Oberline may retroactively contribute, on an actuarially computed bases, to an employee's retirement that are necessitated to correct a clerical error because employee retirement contributions are specially allowed by law. Article VII, §14(B).

AG Op. No. 21-0109

The Attorney General opines that the Jackson Parish Police Jury is required to comply with Art. VII, §14 and the Local Services Law when entering into CEAs with the Jackson Parish Recreation District, the Jackson Parish Watershed District, and the Jackson Parish Museum Board.

AG Op. No. 21-0106

The Attorney General opines that Art. VII, §14 prohibits the St. Landry Government from reimbursing a public official for spa services received during an out of state business related conference, since those services are considered personal services.

AG Op. No. 21-0089

The Attorney General opines that the Jackson Parish School Board may utilize the exception found in Article VII, §(B) to donate personnel to the Tax Collection Agency for a particular defined use, purpose or activity, such as the defined purpose of performing certain accounting and banking functions for the Tax Collection Agency per a CEA between the entities.

AG Op. No. 21-0080

The Attorney General applies the *Cabela's* Test to determine that the City of Baton Rouge-Parish of East Baton Rouge (City-Parish) may provide parking benefits to City-Parish Metropolitan Councilmember and their aides if City-Parish has a demonstrable, objective, and reasonable expectation that doing so will provide a real and substantial benefit to the City-Parish.

AG Op. No. 21-0071

The Attorney General opines that the St. Landry Parish Solid Waste Disposal District (District) may utilize the exception found in Article VII, §14(B) to donate the use of equipment or personnel to another political subdivision for a singular activity or function that the requesting political subdivision is authorized to pursue. The donation of such use of equipment should be done by entering into a CEA. The AG further opines that the District may utilize the exception found in Article VII, §14(E) to freely exchange or donate movable surplus property to other political subdivisions whose functions include public safety. The exchange or donation should be accomplished by following the procedures to first declare the property surplus.

AG Op. No. 21-0067

The Attorney General opines that the Cameron Parish Waterworks District No. 2 is responsible for repairing and servicing fire hydrants within its waterworks systems and may enter into a CEA with the Hackberry Fire District for the costs of supplying water as well as for fire hydrant rentals and service, including sandblasting and repainting fire hydrants.

AG Op. No. 21-0042

The Attorney General applies the *Cabela's* Test to determine that the Jefferson Parish Coroner's Office (JPCO) may use public funds to pay for the education and training of employees. The AG opines that where funds are used to educate and equip public officials and personnel with regard to their public duties and responsibilities, the expenditure comports with a governmental purpose for which the public entity has the authority to pursue.

AG Op. No. 21-0060

The Attorney General applies the *Cabela's* Test to demonstrate that a public entity may provide free modestly priced coffee to its employees as a benefit of employment without violating Article VII, §14, by demonstrating a reasonable and objective expectation that doing so will provide a real and substantial benefit to the public entity, such as higher productivity, employee recruitment and retention, and employee morale.

AG Op. No. 20-0112

The Attorney General, in applying the three prongs of the *Cabela's* Test, opines that a parish council may purchase and erect signage encouraging citizens to donate to Parish programs for the needy instead of making in-person donations to panhandlers without violating Article VII, §14. The AG notes that signage erected along a state-owned right-of-way is subject to approval and permitting by DOTD.

AG Op. No. 20-0099

The Attorney General discusses the exception provided in Article VII, §14(B) concerning the donation of the “use” of equipment and personnel between political subdivisions. The AG notes that a political subdivision must comply with the requirements of R.S. 33:4712.18 and may not purchase materials and supplies on the behalf of another political subdivision under the provisions of Article VII, §14.

AG Op. No. 20-0095

The Attorney General opines that a museum board can transfer ownership of museum owned items to the parish’s historical association through a cooperative endeavor agreement where the museum retains custody and control of the items in return for the association undertaking the costs associated with insuring the items and obtaining collections maintenance software and storage space for when the items are not placed on exhibit.

AG Op. No. 20-0074

The Attorney General opines that an entity may grant its essential critical infrastructure workers/front-line employees retroactive hazard pay for past performance of a quantifiable amount of hazardous work provided that the public entity determines that the pay meets the *Cabela's* test. The *Cabela's* test requires that the public entity have the legal authority to make the expenditure of public funds and must show all of the following:

1. A public purpose for the expenditure that comports with the governmental purpose for which the public entity has the legal authority to pursue;
2. That the expenditure, taken as a whole, does not appear to be gratuitous;
3. That the public entity has a demonstrable, objective, and reasonable expectation of receiving something real and substantial in exchange for the expenditure.

In the specific circumstances involved in that Opinion, the entity determined that its critical care workers would have received hazard pay at the time the work was performed but for budgetary constraints involving the receipt of CARES Act funds. In that case, the Attorney General concludes that payment of the hazard pay would not be gratuitous, as the US Treasury guidelines allow for CARES Act funds to be used for hazard pay.

AG Op. No. 20-0078

AG opines that the Terrebonne Port Commission does not have the legal authority to pay membership dues to organizations such as the South Central Industrial Association (“SCIA”) under R.S. 51:1201. The specific language of that statute states the Commission may become “members in councils chartered by the state as nonprofit corporations [that are] governed by boards comprised of members appointed by the governing authorities of the participating political subdivisions.” The SCIA is not the type of organization the Legislature authorized the Commission to join.

AG Op. No. 19-0114

AG opines that the Town of Plain Dealing may enter into a CEA with the Bossier Parish Fire District No. 7 for fire protection services as long as the Fire District does not spend any of its ad valorem tax proceeds outside of the Fire District’s boundaries.

AG Op. No. 19-0134

AG opines that the proposed CEA between the West Feliciana Parish Sheriff’s Office and the Louisiana Department of Public Safety for the Sheriff to transfer materials and component parts of a building owned by the Sheriff to the Department in exchange for three temporary buildings meets the *Cabela’s* test requirements.

AG Op. No. 19-0110

AG opines that an expenditure of \$40,000 by the West Baton Rouge Convention and Visitors Bureau (Bureau) to the City of Port Allen for the city’s Riverfront Walking Trail Extension Project (Project) meets the *Cabela’s* test requirements. The AG’s analysis turns on the facts that (1) the Bureau was created to promote the parish’s “history, culture, art, folklife, recreational and leisure opportunities;” (2) it is authorized to enter into CEAs to promote tourism within the parish; and (3) the Project serves the purpose of attracting patrons to the area, which is a stated mission of the Bureau.

AG Op. No. 19-0001

AG discusses how operation of a non-emergency 311 call center is not within the authorized statutory purpose of a communications district, tasked with providing 911 emergency call service. Therefore, the district may not expend its funds for the administration of a 311 call center.

AG Op. No. 18-0171

AG opines that if the Parish uses Parish Transportation Fund monies to gravel portions of private driveways within the Parish right of way and install culverts under said driveways, the maintenance must be done in connection with a general road improvement program and in furtherance of a public purpose.

AG Op. No. 18-0145

AG discusses how a fire protection district can transfer tax revenues dedicated for fire protection services to another neighboring fire protection district through a Cooperative Endeavor Agreement. The transfer of funds is reimbursement for fire protection services previously rendered by the neighboring fire protection district within the jurisdiction of the fire protection district transferring the funds.

AG Op. No. 18-0106

AG Opines that public funds cannot be used to build a bridge located on private property unless the Parish determines that the benefit of doing so would accrue to the Parish and not the private landowner.

AG Op. No. 17-0060

AG discusses how a hospital service district may contribute funds to a capital project by a local community college under a cooperative endeavor agreement for the purpose of construction of facilities to house a nursing and medical training program from which the hospital service district will gain an additional trained local employment pool.

AG Op. No. 17-0005

AG discusses how a communications district may purchase radios for use by emergency responders within the district so long as the radios remain property of the district and use of the radios is restricted to emergency response activities.

AG Op. No. 16-0198

AG discusses how a public entity will violate Article VII, §14 if it failed or declined to pursue all amounts owed by a judgment debtor, unless the public entity determines that the benefit or value of recovery of the full amount would not equal or exceed the costs of pursuing collection.

AG Op. No. 16-0046

AG discusses how the placement of municipal law enforcement equipment in the personal vehicle of a chief of police or law enforcement officer may be allowed so long as the equipment is only used in accordance to the official duties of the police chief or officer and no policy is in place prohibiting the placement of municipal equipment on or in private vehicles.

AG Op. No. 16-0057

AG discusses how a public entity may weigh the costs in disposing of surplus waste dirt from dredging compared to the potential value the entity might obtain in any sale of the waste dirt, and thereby dispose of the waste dirt to private parties in order to realize substantial cost savings.

AG Op. No. 16-0022

AG discusses how reciprocal obligations will ordinarily render a payment or transfer onerous and thus sufficient to satisfy the second prong of the *Cabela* analysis. However, the AG cautions public entities against the use of language which might fail to impose a real obligation on the other party, such as “use its best efforts”, as this would create a possibility for a public entity to provide payment or services with no reciprocal return and thus lead to an impermissibly gratuitous payment or transfer in violation of Article VII, §14.

AG Op. No. 16-0001

AG discusses how a Parish Governing Authority may transfer funds to municipalities and the sheriff's office under the local services law, R.S. 33:1321, et seq., in order to assist in purchases of law enforcement vehicles and other equipment related to law enforcement without violating Article VII, §14.

AG Op. No. 15-0137

AG noted that an Economic Development District and municipality could not utilize public funds and bonding authority to purchase property to develop and sell for commercial and residential use under the auspices of economic development as this constituted the use of public funds in private enterprise which is generally prohibited under Article VII, §14(A). Further, the AG noted that a lack of established agreements with private developers failed to provide any objective evidence that the project would be non-gratuitous in nature. The AG noted that a statement that a public entity will receive at least the amount of public funds expended on the project is not sufficient alone to show that an agreement is non-gratuitous. A public entity should document and maintain evidence of mutual binding obligations showing a non-gratuitous nature and evidence that supports its reasonably belief of receiving a benefits of equal or greater value than the amount of public funds expended.

AG Op. No. 15-0180

AG opined that a rural public entity's expenditure of public funds for the renovation or construction of a public building in order to enter into a long-term lease with a private medical practitioner would not violate Article VII, §14 as there was a public purpose (providing access to medical care in a rural setting) and the proposed long-term lease agreements demonstrated that the municipality would likely receive an equivalent benefit to the amount of public funds expended.

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."

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.

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.

“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 (JPPJ) 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 gravelling 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.”

“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. No. 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. No. 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. No. 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. No. 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’s* 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. No. 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 Op. No. 07-0018

Following the Louisiana Supreme Court decision in *Cabela's*, the AG states that in order for a cooperative endeavor agreement to be acceptable under Article VII, §14 of the Louisiana Constitution it must 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.**

V. Authority to Waive Fees after Natural Disasters

The following Attorney General Opinions (AG) discuss waiver or reduction on fees owed to a public entity following a natural disaster.

AG Op. No. 08-0256

AG opines that a waterworks district may waive or adjust downward the high water bills resulting from damage caused by a hurricane or other act of God in order to preserve property and recover from a natural disaster. Such action would be for the public purpose of promoting the general welfare of the people and helping to fulfill statutory provisions on emergencies. The Louisiana Legislature has specifically designated that relief from hurricanes or other natural disasters creating emergencies is a “public purpose.” [R.S. 29:722](#).

AG Op. No. 09-0315

AG opines that a public marina may waive rental payments for the period of time the marina was closed and inaccessible due to damages caused by a hurricane. The hurricane severely impacted the marina and most of the boathouses and the boat slips were inaccessible. The damage and resulting inaccessibility was not caused by renters or the marina, but rather by an act of God. Under these facts, the waiving of rental payments for the limited period of time the marina was closed and inaccessible due to damage caused by the hurricane would not amount to a prohibited donation inasmuch as the boathouses and boat slips were inaccessible and renters could not use them for their intended purposes.

AG Op. No. 17-0022

AG discusses the authority of a public entity to reduce or waive abnormally high sewer usage fees that were caused by the 2016 Flood, pursuant to the public policy of providing for the general welfare of the public following a natural disaster.

AG Op. No. 17-0157

AG discusses the authority of a water board to reduce or waive excessive water usage fees that were caused by leaks that were a result of a hurricane. Although the standard rule is that utility or water fees may not be waived or reduced unless there is an error by the public entity, that rule is not strictly applicable in situations involving natural disasters.

AG Op. No. 18-0052

AG opines that a Town could not reduce or waive a customer's sewer bill due to a broken pipe on the customer's property caused by below freezing temperatures. Below freezing weather does not qualify as a natural disaster causing a declared emergency. Therefore, the standard rule that the Town has no authority to set-aside, reduce, or otherwise forgive a debt owed to the Town, absent any error or misread meter on the part of the Town applied in this case.

VI. 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 additional guidance from your legal counsel or the Attorney General.

Entities should work with their legal counsel in the drafting and review of all cooperative endeavor agreements prior to their execution.

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 Executive Order No. JBE 2016-36 and JBE 2016-38.

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 and above noted Executive Orders may be accessed under Cooperative Endeavor Agreements at:

<https://www.doa.la.gov/dao/osp/agency-resources/osp-professional-contracts/>

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) a(n) (agency/political subdivision) of the State of Louisiana, hereinafter referred to as “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, Agency desires to cooperate with the Contracting Party in the implementation of the Project as hereinafter provided;

1.3 WHEREAS, 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, 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 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, 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.)

(When the parties to the agreement are both public entities, this Section may be replaced with a section describing the obligations and duties of each party to provide fund, services, etc. The CEA should document the reciprocal obligations of each public entity to show how the second prong of the Cabela's test is met.

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 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 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 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 Agency may, at its option, place Contracting Party in default and the Agreement shall terminate on the date specified in such notice. 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 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 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.

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 Agency, shall remain the property of Agency, and shall be returned by Contracting Party to 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 Agency, and shall, upon request, be returned by Contracting Party to Agency at Contracting Party's expense at termination or expiration of this Agreement. 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, 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 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 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.

(This Section is generally used when a public entity is providing data or materials to be developed or produced into a deliverable, such as a report, customized software, etc).

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 Agency, provided however, that claims for money due or to become due to Contracting Party from 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 Agency. Additionally, the Contracting Party shall not subcontract any work to any party without the prior written consent of 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.

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.

(This Section is used when a public entity is contracting with a vendor or subrecipient that is not otherwise subject to reporting under the Audit Law, R.S. 24:513, et seq.)

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 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 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 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 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.

(When the parties are both public entities, this Section may need to be edited to provide for mutual indemnification of the public entities. Further, it may need to reflect the self-insured nature of the public entity, as applicable.)

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 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 Agency for the purposes set forth in this Agreement. The relationship between the Contracting Party and Agency shall be, and only be, that of an

SAMPLE

independent contractor and the Contracting Party shall not be construed to be an employee, agent, partner of, or in joint venture with, Agency.

(Contracts between public entities that provide for the shared used of employees, may need to provide language addressing this.)

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

21.1 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 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.

(Contracts between public entities that provide for the shared used of employees, may need to provide language addressing this.)

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

22.1 Agency and the Contracting Party expressly declare and acknowledge that the Contracting Party is an independent contractor and, as such, is being engaged by 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 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 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 Agency for the purpose of unemployment compensation coverage.

(Contracts between public entities that provide for the shared used of employees, may need to provide language addressing this.)

ARTICLE XXIII **FORCE MAJEURE**

SAMPLE

SAMPLE

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.

(Local political subdivisions may want to modify this language to provide for prohibitions against employment of any of its employees by the third-party contractor to avoid any potential Code of Governmental Ethics issues.)

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, Agency shall have the right to annul this Agreement without liability or, in 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 Agency."

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

ARTICLE XXVII **NOTICES**

SAMPLE

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:

(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

VII. Appendix of 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;
 - (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;
 - (13) the investment of public funds to capitalize a state infrastructure bank and the loan, pledge, or guarantee of public funds by a state infrastructure bank solely for transportation projects; or
 - (14) pursuant to a written agreement, the donation of the use of public equipment and personnel by a political subdivision upon request to another political subdivision for an activity or function the requesting political subdivision is authorized to exercise.

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.

Article 7, §14(C)

Surplus Property. Nothing in this Section shall prevent the donation or exchange of movable surplus property between or among political subdivisions whose functions include public safety.

Cases:

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's)

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)
Huston v. City of New Orleans, 2012-1171 (La. App. 4 Cir. 2/27/13), 157 So.3d 600
Harrah's Bossier City Inv. Co., LLC v. Bridges, 2009-1916 (La. 5/11/10), 41 So.3d 438

Statutes:

Various statutes provide for the use of CEAs in certain circumstances. A public entity should ensure they follow the specific requirements noted in the following statutory provisions, if applicable. 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
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

Sharing of Equipment

[R.S. 33:4712.18](#) Sharing of equipment between public entities

Oilfield Site Restoration Commission

R.S. 30:4(T) Cooperative endeavors for plugging orphaned wells require an audit clause.

VIII. 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.

Executive Order No JBE 2016-36:

Requires Executive Branch departments, agencies, boards, commissions and offices to submit for review and approval by the Office of State Procurement all cooperative endeavor agreements which require the expenditure of public funds.

Executive Order No JBE 2016-38:

Provides for accountability for cooperative endeavor agreements involving line item appropriations.

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>