

1 Introduced May 25, 2021, by Councilman
2 Tamborella, seconded by Councilwoman
3 Denham, (by request of Administration)

4 **RESOLUTION R21-14**
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6 A Resolution authorizing the City of Slidell to enter into an agreement with the
7 State of Louisiana, Department of Transportation and Development under the Louisiana
8 Statewide Flood Control Program for assistance in the implementation of a flood control
9 improvement project; providing for the necessary documentation of the need for the flood
10 control improvement; and providing for other matters in connection therewith.

11 WHEREAS, the City of Slidell has a need for flood control improvements; and

12 WHEREAS, the City of Slidell has reviewed the application for State Project
13 No. H.014396 (Bayou Pattasat Drainage Upgrades) (the "Project") and agrees with same;
14 and
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16 WHEREAS, the City of Slidell has applied for State matching funds to
17 implement the Project and the City of Slidell is fully aware of its obligations under the law;
18 and
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20 WHEREAS, the City of Slidell is a political body duly organized and existing
21 under the laws of the State of Louisiana and is eligible to apply for funds under the law;
22 and
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24 WHEREAS, the State has made funds available for the Project.
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26 NOW, THEREFORE, BE IT RESOLVED by the Slidell City Council as follows:
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28 1. The City of Slidell acknowledges that an application was submitted for it for the
29 Project to the Louisiana Statewide Flood Control Program.
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31 2. That at the appropriate time and upon approval of funding assistance and prior to
32 commencement of work on the Project, the City of Slidell agrees to execute a Project
33 Agreement and a Statement of Sponsorship pursuant to applicable law and hereby
34 authorizes and empowers the Mayor Of the City of Slidell to enter into and execute said
35 documents with the Louisiana Department of Transportation and Development. The
36 general form of said Agreement is attached hereto as Exhibit A.
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2 **RESOLUTION R21-14**
3 **PAGE 2**

4 3. That the Mayor of the City of Slidell is hereby the Authorized Representative for the
5 City of Slidell to represent the City of Slidell with regards to the receipt of funds from the
6 Louisiana Statewide Flood Control Program for the Project.

7 4. That the said Authorized Representative shall have the authority to sign and
8 approve all documents that are necessary under the circumstances to accomplish the
9 Project.

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12 **ADOPTED** this 25th day of May, 2021.

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15 Kenny Tamborella
16 President of the Council
17 Councilman, District E

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19 Thomas P. Reeves
20 Council Administrator
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EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

BETWEEN

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

AND

CITY OF SLIDELL

STATE PROJECT NO. H.014396
BAYOU PATTASAT DRAINAGE UPGRADES
ST. TAMMANY PARISH

THIS INTERGOVERNMENTAL AGREEMENT, made and executed in two (2) original copies on this _____ day of _____, 2021, by and between the Louisiana Department of Transportation and Development hereinafter referred to as "DOTD", and the City of Slidell, a political subdivision of the State of Louisiana, hereinafter referred to as "Sponsor".

WITNESSETH: That;

WHEREAS, under the provisions of Title 38, Louisiana Revised Statutes of 1950, "Public Contracts, Works and Improvements", as amended, state funds have been appropriated by the Louisiana Legislature to finance flood control improvement projects approved through the Statewide Flood Control Program under the direct administration of the DOTD; and

WHEREAS, the Sponsor has requested and received an appropriation of State funds to financially assist in the improvement of a flood control infrastructure Project as described herein; and

WHEREAS, the Sponsor has local revenues and self-generated funds available for its share of participation in the flood control Project; and

WHEREAS, the Sponsor agrees to furnish all lands, easements, rights-of-way, wetland mitigation areas, and spoil disposal areas necessary to construct and maintain the Project without cost to the State; and

WHEREAS, the Sponsor agrees to operate and maintain the Project in accordance with the "Operation and Maintenance Manual" approved by the DOTD; and

WHEREAS, the Sponsor agrees to assume all maintenance and operation costs for the Project and all future alterations as may be required without cost to the State; and

WHEREAS, the Sponsor agrees to accomplish all necessary utility and any other facility relocations, alterations and maintenance without cost to the State; and

WHEREAS, the Sponsor agrees to provide not less than ten percent (10%) local participation of the amount necessary to construct the Project; and

WHEREAS, the DOTD's participation shall not exceed ninety percent (90%) of the eligible cost of constructing the Project, not to exceed the amount made available by the Legislature; and

WHEREAS, the Sponsor is agreeable to the implementation of this Project and desires to cooperate with DOTD as hereinafter provided;

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

ARTICLE I – PROJECT DESCRIPTION

1.1 The improvement that is to be undertaken under this Project shall be flood control improvements which consists of the widening of approximately 0.5 miles of the Bayou Pattasat waterway and approximately 0.95 miles of ditches within the Park Place neighborhood and its surrounding areas. This improvement shall hereinafter be referred to as the "Project".

1.2 The entire scope of the Project shall be as shown in the approved application which constitutes the basis for funding the Project and is hereby made a part of and incorporated into this Agreement by reference as Exhibit "A".

1.3 For purposes of identification, State Project Number H.014396 has been assigned to this Project. All progress reports, invoices, etc. incurred in the performance of these services shall be identified with this Project number.

1.4 Project development and construction shall be in accordance with DOTD, Public Works and Water Resources Division's "Statewide Flood Control Program Procedures Manual for Funded Projects".

ARTICLE II – FUNDING

2.1 The Sponsor has local revenues and self-generated funds available for its share of participation in the Project and agrees to provide, from non-state funding, not less than ten percent (10%) of the amount necessary to construct the Project.

2.2 The DOTD's participation shall not exceed ninety percent (90%) of the eligible Project costs, provided, however, that this amount shall not exceed the amount approved by the Legislature.

2.3 The maximum state funding share shall be as stated in the letter(s) from DOTD's Secretary, or his or her designee, announcing Project approval, and/or the amount of program funding for the Project, but in no case shall the state funding share exceed ninety percent (90%) of eligible Project costs, as identified in the Louisiana Statewide Flood Control Program "Guidelines and Procedures." This funding share was established in accordance with said "Guidelines and

Procedures.” All cost overruns shall be the responsibility of the Sponsor. The Sponsor may incorporate, at its own cost, items of work into the construction contract not eligible for DOTD cost share participation.

2.4 The Sponsor is aware that DOTD’s legislatively mandated Cash Management Plan may cause a delay in authorization to advertise the Project for construction. This contract is contingent upon the appropriation by the Legislature of sufficient monies to the Statewide Flood Control Program to fulfill its requirements. If the Legislature fails to appropriate sufficient monies to provide for the continuation of this contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the Capital Outlay Act, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies to the Statewide Flood Control Program for the continuation of this contract, the contract is subject to termination for lack of sufficient appropriations to fulfill its requirements.

2.5 Funds will be disbursed in accordance with Article VII - Payment.

2.6 The Sponsor agrees to provide a schedule indicating cash flow requirements projected over the anticipated construction period of the Project.

2.7 Under no circumstance will DOTD participate in the funding of any costs of the Project incurred prior to the execution of this agreement.

ARTICLE III - PRELIMINARY ENGINEERING

3.1 The Sponsor or Consulting Engineer employed by it shall make all necessary surveys and prepare plans, specifications, and estimates for the Project in accordance with the applicable Statewide Flood Control Program, DOTD requirements, and the following specific requirements:

- 1 If the Sponsor employs a Consulting Engineer, it shall be done at no cost to the State.
- 2 The design standards shall comply with the DOTD criteria. The format of the plans shall conform to the standards used by the DOTD in the preparation of its contract plans for items of work of similar character, including plans for all drainage and utilities affected, as contained in the current edition of DOTD’s Hydraulics Manual.
- 3 Design surveys, right-of-way surveys and the preparation of right-of-way maps shall be performed by the Sponsor in accordance with the requirements specified in the current edition of the DOTD "Location & Survey Manual.”
- 4 After preliminary plans have been developed to show all information required, four (4) sets of prints shall be submitted to the DOTD for review and comments. If DOTD determines that a plan-in-hand inspection is required, one complete set of reproducibles, if required, shall be submitted to DOTD for its use in scheduling a plan-in-hand field inspection with

members of DOTD, the Sponsor, and/or its Consulting Engineer at a time and date mutually agreed upon in advance by all parties.

- 5 Subsequent to the review and comments, the Sponsor shall make such changes in the plans as necessary to reflect agreements reached at this stage and shall show existing and taking lines required for rights-of-way.
- 6 Following the completion of preliminary plans, four (4) complete sets of prints of the basic plans, dated and stamped "Advanced Check Prints," together with four (4) draft copies of the bid proposal and four (4) copies of the Project cost estimate shall be submitted to the DOTD for review and comment.
- 7 Specifications for the Project shall be in accordance with the current edition of the "Louisiana Standard Specifications for Roads and Bridges," latest revision, as amended to comply with the DOTD current practices. Any exceptions to use of these Standard Specifications must have the prior approval of the DOTD.
- 8 Upon completion of its review of the preliminary plans and advance draft of the bid proposal, the DOTD will return one (1) set to the Sponsor with comments, if any, marked thereon and the above documents will be revised to reflect agreements reached.
- 9 Upon completion of the DOTD's review of the design and right-of-way plans and written approval of same, the Sponsor may proceed with acquisition of right-of-way.
- 10 Subsequent to the completion of the DOTD's review of final plans, acquisition of all required rights-of-way and agreements to relocate and/or adjust all utility conflicts, and the securing of the Sponsor's portion of funds, the Sponsor shall adopt a Resolution certifying completion of the above and submit a certified copy of said Resolution to the DOTD.

ARTICLE IV - RECEIPT OF BIDS

4.1 The Sponsor shall advertise and receive bids in accordance with Louisiana Revised Statute 38:2211, et seq., and the "Statewide Flood Control Program Procedures Manual," and generally as follows:

4.2 Construction projects are to be advertised for the receipt of bids on three (3) separate occasions in the Official Journal in the Sponsor's locale, plus any other required publications to ensure appropriate widespread advertisement commencing prior to the bid date.

4.3 Upon advertising for bids, the Sponsor shall add the DOTD Statewide Flood Control Program Manager to the bidders list and forward two (2) sets of plans and construction proposals marked "Not For Bid" to the DOTD.

4.4 Following the receipt and extension of bids, a designated official representing the Sponsor shall affix his stamp thereto certifying the accuracy of the tabulation. In addition, a column containing estimated unit prices shall be added to the tabulation sheet with a summation reflecting the total estimate cost.

4.5 One (1) copy of the bid tabulation shall be submitted to the DOTD along with a non-collusion affidavit, the Engineer's Recommendation, and a copy of the Sponsor's proposed action, (recommending acceptance of the bid of the lowest responsible bidder or rejection of all bids received). After review, the DOTD will make recommendations to the Sponsor as deemed necessary. DOTD's concurrence in, and approval of, the award is required for DOTD's participation in the project.

4.6 The Sponsor shall execute the contract with the contractor for the construction of the Project. Following the execution of the contracts, three (3) originals shall be submitted to the DOTD for review. Upon written notice of the completion of the DOTD's review, the Sponsor will have an original of the contract and performance bond recorded in the mortgage records of the parish or parishes where the work is to be performed. A copy of the recordation data shall be furnished to the DOTD. The Sponsor may proceed to issue the work order and will provide the DOTD with one copy of the work order when issued.

ARTICLE V – CONSTRUCTION

5.1 The Sponsor or its consultant will provide technical administration and inspection during the Project construction; however, in the event a consultant provides this service for the Sponsor, it will be performed under the direct supervision of a full time employee of the Sponsor who will have charge and control of the Project at all times.

5.2 Except where a deviation has been mutually agreed to in writing by both the DOTD and the Sponsor, the following specific requirements shall apply.

1. When it is stipulated in the current edition of the "Louisiana Standard Specifications for Roads and Bridges" that approval by the Engineer or the DOTD is required for equipment and/or construction procedures, such approval must be obtained from the DOTD's Project Engineer.
2. All construction inspection personnel utilized by the Sponsor and/or the Sponsor's consultant must meet the same qualifications required of DOTD construction personnel. When certification in a specific area is required, these personnel must meet the certification requirements of DOTD.
3. All construction procedures must be in accordance with DOTD guidelines and policies established by the "Engineering Directives and Standard Manual," and any applicable memoranda. These documents will be made available to the consultant through the Sponsor.

4. All documentation of pay quantities must conform to the requirements of DOTD as outlined in the "Construction Contract Administration" Manual. This manual will be made available to the consultant through the Sponsor.

5.3 The Consultant and/or the Sponsor shall be required to comply with all parts of this section while performing duties as Project Engineer.

ARTICLE VI - INCIDENTAL COSTS

6.1 For incidental Project costs incurred by the Sponsor in negotiating preliminary engineering contracts, right-of-way settlements, railroad and utility adjustments and for bid advertisements, contract recordation, and such other costs not provided for in Article VII, payment shall be the responsibility of the Sponsor.

6.2 Incidental Project costs incurred by the DOTD for services relating to preliminary engineering, right-of-way acquisitions, utility relocations, construction and construction engineering will be the responsibility of the DOTD.

ARTICLE VII – PAYMENT

7.1 The Sponsor shall render invoices monthly for payment, which invoices shall be certified as correct by the Sponsor's Project Engineer and by the proper designated official of the Sponsor. All such charges shall be subject to verification, adjustment and/or settlement by DOTD. The DOTD shall pay ninety percent (90%) of the eligible invoiced costs of construction, but not to exceed the amount made available by the Legislature. Costs in excess of this amount shall be borne one hundred percent (100%) by the Sponsor.

7.2 When the final cost of construction has been determined, adjustments will be made so that the amount of participation in these items will not exceed the authorized percentages. Before final payment is recommended by the DOTD, all documentation of pay quantities shall conform to DOTD policies and procedures. The Sponsor acknowledges, however, that the DOTD will not participate in the cost of those items not constructed in accordance with the approved plans and specifications and in this event the Sponsor will be obligated to assume full financial responsibility.

7.3 For purposes of this Agreement, the DOTD shall not be a party to any contract between the Sponsor and its contractor, and participation by DOTD in the Project shall not be construed to make the DOTD a party to the contract between the Sponsor and its contractor. Furthermore, nothing in this Agreement is intended to, nor shall, confer any rights in any such contract to the DOTD.

ARTICLE VIII - COST RECORDS

8.1 The Sponsor and all others employed by it in connection with this Project shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred

relative to this Project and shall keep such material available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the Project, for inspection by the DOTD and/or Legislative Auditor, or any authorized representative of the State Government under State Regulations effective as of the date of this contract and copies thereof shall be furnished if requested.

ARTICLE IX - CANCELLATION

9.1 In the event the Sponsor should desire to cancel the Project prior to the receipt of bids, any cost that has been incurred for the preparation of plans will not be eligible for payment by the DOTD. If the Sponsor does not complete the following tasks within the time indicated, this agreement will become null and void and the funds allocated for said Project shall be reallocated:

<u>TASK</u>	<u>MAXIMUM TIME, YEARS</u>
Execution of Agreement with the DOTD	½
Application of Permits	1
Submittal of Preliminary Plans to DOTD (Advanced Check Prints, Bid Proposal, and Cost Estimate)	2
Submittal of Plans, Specifications, and Cost Estimate	3
Acquisition (Rights-of-Way, Permits, Utility Relocation, and Funding)	3 ½
Advertising for Bids and Awarding of a Construction Contract	4

9.2 The date of the letter from the Chairman of the Flood Control Evaluation Committee advising the Sponsor that its Project has been initially funded shall be used as the beginning point in determining the amount of time that has elapsed.

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

1. By mutual agreement and consent of the parties hereto.
2. By the Sponsor should it desire to cancel the Project prior to award of a contract.
3. By the DOTD due to the withdrawal of State funding for the Project.

ARTICLE X - PROJECT RESPONSIBILITY

10.1 The DOTD, its officers, engineers and employees shall not be required to supervise or perform such other services in connection with the development of this Project except as specifically set forth herein.

10.2 Sponsor shall assume full responsibility for the Project development and shall indemnify, save harmless and defend DOTD against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money growing out of, resulting from, or by reason of any act or omission of the Sponsor, 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 reasonable attorney's fees and court cost. Sponsor shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Agreement.

The duty of Sponsor to defend under this document is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of DOTD. In any and all claims against any of the Indemnitees by any employee of Sponsor or one of its subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this agreement will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable under any worker's compensation acts, disability benefit acts or other employee benefit acts. This indemnity applies during the entire period of the Project and shall survive the expiration or termination of the Utility Relocation until such time as any action or accounting of any matter covered by such indemnity is determined by a court in a final and unappealable ruling as being barred by the applicable statute of limitations.

The duty of Sponsor to defend arises at the first assertion of a claim and shall be based on such claim's allegations, without regard to the validity of any such claim or its ultimate resolution.

ARTICLE XI - FINAL INSPECTION AND MAINTENANCE

11.1 Upon completion and final acceptance of the Project (copy of said acceptance shall be furnished to the DOTD by the Sponsor), the Sponsor shall assume the operation and maintenance of the improvement at its expense and in accordance with the "Operation and Maintenance Manual" prepared by the Sponsor and approved by the DOTD. The final acceptance will be properly recorded by the Sponsor. Before making the final inspection, the DOTD, Statewide Flood Control Program Manager shall be notified, so that he may have a representative present for said inspection.

11.2 Title to the Project rights-of-way shall be vested in the Sponsor but shall be subject to the DOTD requirements and regulations concerning abandonment, disposal, encroachments and/or uses for non-flood control purposes.

11.3 The Sponsor shall monitor the Project for at least three years as stated in the Louisiana Statewide Flood Control Program Guidelines and Procedures.

ARTICLE XII - PROGRESS SCHEDULE

12.1 Within thirty (30) days after this agreement is executed, the Sponsor shall submit to DOTD a progress schedule that indicates, using a bar graph, the various activities that must be

accomplished to develop construction plans and specifications and let a construction contract within the time allotted. The schedule shall be submitted to the DOTD, Statewide Flood Control Program Manager.

ARTICLE XIII: COMPLIANCE WITH LAWS

13.1 The parties shall comply with all applicable federal, state, and local laws and regulations, including, specifically, the Louisiana Code of Government Ethics (LSA-R.S. 42:1101, *et seq.*), in carrying out the provisions of this Agreement.

ARTICLE XIV: CONTROLLING LAW AND VENUE

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

14.2 Venue for all disputes concerning this Agreement shall be the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

ARTICLE XV: DISCRIMINATION

15.1 The Parties agree to abide by the requirements of the following as applicable: Titles VI and VII of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972, as amended; Federal Executive Order 11246, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1974; the Americans with Disabilities Act of 1990, as amended; and Title II of the Genetic Information Nondiscrimination Act of 2008.

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

15.3 Any act of discrimination committed by either Party or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this Contract.

ARTICLE XVI: ENTIRE AGREEMENT / MODIFICATION

16.1 This Agreement, including any attachments that are expressly referred herein, 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 herein.

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

ARTICLE XVII: SEVERABILITY CLAUSE

17.1 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 XVIII: THIRD PARTY BENEFICIARY / ASSIGNMENT

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

18.2 Neither Party may assign any interest in this Agreement, by assignment, transfer, or novation, without prior written consent of the other Party hereto.

ARTICLE XIX: PROVISION OF LAW DEEMED INSERTED

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

(The remainder of this page intentionally left blank.)

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

WITNESSES:

CITY OF SLIDELL

BY: _____
(Signature)

(Witness for First Party)

Typed or Printed Name

(Witness for First Party)

Title

Sponsor's Federal Identification Number

WITNESSES:

STATE OF LOUISIANA
THROUGH THE DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT

By: _____
Chief Engineer

RECOMMENDED FOR APPROVAL

BY: _____
Division Head