

**THE LEGISLATIVE AUDITOR'S**

**COOPERATIVE ENDEAVOR AGREEMENT MEMO AND SAMPLE FORM**

This memo includes the following information related to cooperative endeavor agreements that incorporates changes related to the Supreme Court's 2006 decision in the Cabela's case<sup>1</sup>:

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

**Introduction: Cooperative Endeavor Agreements Post-Cabela**

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

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

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

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<sup>1</sup> *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).

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

## **Elements of a Cooperative Endeavor Post-Cabela**

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

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

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

### **Explanation of the Elements**

1. A non-gratuitous expenditure or transfer would be one that contemplates a set of reciprocal benefits and obligations between the parties.
2. 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 which 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 which is prohibited by law.
3. The public benefit created must be at least equivalent to the expenditure or transfer made by the agency.

### **Legal Sources**

#### **Constitution:**

##### **Article 7, §14(A)**

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

**Article 7, §14(B)**

**Authorized Uses.** Nothing in this Section shall prevent:

- (1) the use of public funds for programs of social welfare for the aid and support of the needy;
- (2) contributions of public funds to pension and insurance programs for the benefit of public employees;
- (3) the pledge of public funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness to meet public obligations as provided by law;
- (4) the return of property, including mineral rights, to a former owner from whom the property had previously been expropriated, or purchased under threat of expropriation, when the legislature by law declares that the public and necessary purpose which originally supported the expropriation has ceased to exist and orders the return of the property to the former owner under such terms and conditions as specified by the legislature;
- (5) acquisition of stock by any institution of higher education in exchange for any intellectual property;
- (6) the donation of abandoned or blighted housing property by the governing authority of a municipality or a parish to a nonprofit organization which is recognized by the Internal Revenue Service as a 501(c)(3) or 501(c)(4) nonprofit organization and which agrees to renovate and maintain such property until conveyance of the property by such organization;
- (7) the deduction of any tax, interest, penalty, or other charges forming the basis of tax liens on blighted property so that they may be subordinated and waived in favor of any purchaser who is not a member of the immediate family of the blighted property owner or which is not any entity in which the owner has a substantial economic interest, but only in connection with a property renovation plan approved by an administrative hearing officer appointed by the parish or municipal government where the property is located;
- (8) the deduction of past due taxes, interest, and penalties in favor of an owner of a blighted property, but only when the owner sells the property at less than the appraised value to facilitate the blighted property renovation plan approved by the parish or municipal government and only after the renovation is completed such deduction being canceled, null and void, and to no effect in the event ownership of the property in the future reverts back to the owner or any member of his immediate family;
- (9) the donation by the state of asphalt which has been removed from state roads and highways to the governing authority of the parish or municipality where the asphalt was removed, or if not needed by such governing authority, then to any other parish or municipal governing authority, but only pursuant to a cooperative endeavor agreement between the state and the governing authority receiving the donated property;

(10) the investment in stocks of a portion of the Rockefeller Wildlife Refuge Trust and Protection Fund, created under the provisions of R.S. 56:797, and the Russell Sage or Marsh Island Refuge Fund, created under the provisions of R.S. 56:798, such portion not to exceed thirty-five percent of each fund;

(11) the investment in stocks of a portion of the state-funded permanently endowed funds of a public or private college or university, not to exceed thirty-five percent of the public funds endowed; or

(12) the investment in equities of a portion of the Medicaid Trust Fund for the Elderly created under the provisions of R.S. 46:2691 et seq., such portion not to exceed thirty-five percent of the fund.

#### **Article 7, §14(C)**

**Cooperative Endeavors.** For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

#### **Cases:**

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

Distinguished by:

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

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

#### **Overruled by the Supreme Court:**

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

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

Distinguished by:

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

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

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

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

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

Distinguished by:

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

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

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

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

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

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

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

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

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

Citing Cabela's:

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

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

### **Statutes:**

The following citations are a sampling of the statutes that include references to cooperative endeavor agreements. A more detailed listing is available. (See [List of Statutory References to Cooperative Endeavor Agreements](#)).

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

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

Capital Outlay Budget

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

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

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

R.S. 39:366.2	Purpose and goals
R.S. 39:366.3	Definitions ( <b>Amended by Act 734 of the 2010 Regular Session to amend the definition of cooperative endeavor</b> ): (1) "Cooperative endeavor" means any agreement including one of cooperative financing, other than a competitive bid or competitively negotiated contract, whether contracted pursuant to Chapter 10 of Title 38 or Chapter 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950 or pursuant to a request for proposals, request for qualifications, solicitation for offers, or other recognized process for competitively seeking qualified contractors, to which the state is a party and pursuant to which the state has obligated state resources, whether funds, credit, property, or things of value of the state to a nonpublic person for the accomplishment of a public purpose or in the public interest, but shall not include projects contained in the comprehensive state capital outlay budget, projects pursuant to the Governor's Economic Development Rapid Response Program, and <b>integrated coastal protection programs and projects authorized in the annual coastal protection and restoration plan and administered by the Office of Coastal Protection and Restoration. (New language in bold)</b>

R.S. 39:366.11	Reporting on the progress and status of cooperative endeavors
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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. (New: Act 134 of the 2011 Regular Session)

### 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 A.G. Op. No. 80-281).

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 BJ 2011-07:**

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

#### **Executive Order No BJ 2010-11:**

Regarding property use for Emergency Berm Project for Deepwater Horizon oil Spill (a Spill of National Significance-SONS) directs all entities to cooperate with the Office of Coastal Protection and Restoration (OCPR) and Coastal Protection Restoration Authority (CPRA) in implementing provisions of the Executive Order including execution of Cooperative Endeavor Agreements.

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.louisiana.gov/osr/other/2010BJexo.htm>

#### **Attorney General Opinions:**

The AG opinions listed below were issued post-Cabela.

**AG Op. 11-0144** Cooperative endeavor agreements, such as the one proposed here, are authorized by La. Const. art. VII, Sec. 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 has an obligation to ensure that the expenditure complies with the terms of La. Const. art. VII,

Sec. 14(A), which prohibits public funds or property 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. 11-0044**

On legal authority to expend public funds

**AG Op. 10-0081**

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

**AG Op. 10-0122**

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

The AG opines:

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

**AG Op. 10-0123**

Applies the Cabela three-prong test to a donation by parish to the American Legion Post. The AG opines that the parish has no expectation of receiving” anything (and certainly not equivalent value) in return for the donation.”

**AG Op. 09-0302**

The AG reiterates his opinion in 09-0018:

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. 09-0018** 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 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.

**AG No. 07-0164** The overtime pay policy established by the City of Thibodeaux does not violate Article VII, Section 14 of the Louisiana Constitution.

**AG No. 07-0155** Addresses the requirements of La. R.S. 17:56 as it relates to the reduction of salary to be paid to school board members and approves retroactive pay.

**AG No. 07-0154** The Gravity Drainage District No. 1 of the Parish of Livingston (“Drainage District”) may enter into a cooperative endeavor agreement with the Juban Crossing Community Development District (“Development District”) and the Parish of Livingston, whereby the Drainage District agrees to pledge the proceeds of its 0.5% sales and use tax within the Development District to secure bonds issued by the Development District to finance certain drainage improvements within the Development District.

**AG No. 07-0150** The Parish does not have an obligation to return the bonus and that such a return would constitute a violation of La. Const. Art. VII, §14.

**AG No. 07-0134** The AG’s new three-prong test for the transfer of public funds announced. In order for an expenditure or transfer of public funds or property to comply with Art. VII, §14(A), the public entity must show:  
A public purpose for the expenditure or transfer;  
That the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and

Evidence demonstrating that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

- AG No. 07-0132** The Tangipahoa Parish Sheriff's Office may pay the reasonable attorney's fees for legal services requested by the sheriff-elect, and performed prior to the sheriff-elect's inauguration as sheriff where the work product was delivered to, accepted by, and utilized by the TPSO after the inauguration.
- AG No. 07-0097** Acadia Parish Sheriff's Department may enter into a cooperative endeavor agreement with a non-profit organization.
- AG No. 07-0060** The Lafourche Basin Levee District and the St. Charles Parish government may enter into a cooperative endeavor agreement, whereby St. Charles Parish agrees to pay the Lafourche Basin Levee District for all services rendered above the minimum expenditure requirement of La. R.S. 38:344.
- AG No. 07-0057** The City of New Iberia may pay for the contracted services for the director of the Mayor's Youth Advisory Board ("MYAB") out of the City's general fund, provided the contract for services clearly sets out the services to be performed and those services will be for the benefit of the City. If the City can demonstrate that it has a reasonable expectation of receiving a benefit at least equivalent to the amount it pays for MYAB expenses, then payment of those expenses would not appear to be prohibited under Art. VII, §14.
- AG No. 07-0050** Addresses whether ten and eleven month employees may receive retroactive pay.
- AG No. 07-0018** The Mayor of a Lawrason Act municipality is the sole authority to sign and execute contracts and agreements approved by the Board of Alderman. Regarding Cooperative Endeavor Agreements, the AG opines:
- However, in order to be acceptable, we believe a cooperative endeavor agreement must now meet the following three requirements: **1) The entity must have the legal authority to enter into the agreement; 2) The agreement is for a public purpose; and 3) there is a reasonable expectation of receiving equivalent value in exchange for the proposed expenditure or transfer of public funds or property.** While it appears that the Town maintains the legal authority to enter into the Amended Agreement and the Amended Agreement would be for a public purpose, if there is not a reasonable expectation of the part of the Town to receive equivalent value for the original obligations that are to be released by the Town in the Amended Agreement, then signing the Amended Agreement may constitute a donation of public funds or property that is prohibited by Article VII, §14 of the Louisiana Constitution.
- AG No. 06-0337** Morgan City Harbor and Terminal District may reduce rent in exchange for a number of concessions by the lessee.
- AG No. 06-0330** We find no support in the Louisiana Constitution for creating exemptions from ad valorem taxation for corporeal property used in connection with the exploration for or production of oil and gas in Louisiana.

- AG No. 06-0328** Although the AG does not think the cooperative endeavor violates the Constitution, the AG commented that it may have answered differently under City of Port Allen due to the "... the speculative nature of the return anticipated by the District under the lease (i.e., the fact that, in 2032, the District may receive thirty-year-old buildings that may or may not be equal to the value of the rental payments that the District had foregone for that period)
- It is the opinion of this Office that the District's lease cannot survive the failure of its cause. The District should seek a declaratory judgment for finality regarding the enforceability of the lease.
- AG No. 06-0315** The East Feliciana Parish Police Jury may not purchase full time life insurance policies for volunteer firefighters. The proceeds of any special tax shall constitute a trust fund to be used exclusively for the objects and purposes for which the tax was levied. The exact authority the Fire District has over an individual volunteer fire department would depend on the terms and conditions of the contract or cooperative endeavor agreement the volunteer fire department entered into with the Fire District.
- AG No. 06-0314** The Tensas Basin Levee District and Franklin Parish Police Jury may enter into a cooperative endeavor agreement, whereby the Levee District would contribute funds or monies to help in the construction of the boat ramp landing, with the sole ownership and management vested with the Police Jury.
- AG No. 06-0307** Under the facts presented, the Gas District may construct a privately owned bridge. The proposed transaction benefits the public and proportionately benefits both the Gas District and the private land owner such that it does not amount to a gratuitous donation.
- AG No. 06-0292** La. Const. Art. VII, §14 is violated only when public funds or property are gratuitously alienated. Under the proposed plan, the Office of Group Benefits may reimburse its members for the value of certain non-sufficient funds (NSF) checks in exchange for the members assigning the checks and right of recovery to the Office of Group Benefits. In this opinion, the AG applies the Cabela test.
- AG No. 06-0286** Under the facts presented, the Calcasieu Parish Ward 4 Fire District 2 may retroactively give its employees pay raises. The proposed payments are not made out of a motive of beneficence, but are deserved and made as recompense for service rendered, for which the employees were not adequately paid.

## **Sample Cooperative Endeavor Agreement Form**

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

This sample cooperative endeavor form may be used by any state agency, political subdivision, quasi-public or public entity or private, non-profit corporation or entity. **However, agencies that are funded through line item appropriations should also refer to the cooperative endeavor agreement form provided by the Office of Contractual Review (OCR)** (See Act 18 of the 2007 Regular Session of the Louisiana Legislature and Executive Orders No. KBB 2006-32 and No. KBB 2005-14).

OCR's form includes additional contractual provisions as well as several attachments relating to program goals and objectives, budget data, staffing, progress reports and disclosure statements. OCR's form may be accessed at <http://www.doa.louisiana.gov/ocr/endeavor.htm>

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**SAMPLE**

**SAMPLE**

**STATE OF LOUISIANA**

**COOPERATIVE ENDEAVOR AGREEMENT**

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

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

**ARTICLE I**

WITNESSETH:

1.1 WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that “For a public purpose, the state and its political subdivisions...may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual;” and

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

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

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

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

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

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

**ARTICLE II**  
**SCOPE OF SERVICES**

2.1 The Contracting Party shall: *(Narrative should detail the specific nature of the Agreement, the background of the Agreement, and the duties of the contracting agency (i.e. the program goals and objectives as well as the expected outcomes and results. The nature and description of the public benefit to be derived from the expenditure or transfer must be shown in the cooperative endeavor agreement. Authority will usually derive from the State Constitution, the Revised Statutes and the purpose for which the entity was created. In order for a legal entity to have legal authority for a purchase, the purchase should be related to the purpose for which the entity was created or be of a type which 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 which is prohibited by law.)*

**ARTICLE III**  
**DELIVERABLES**

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

**ARTICLE IV**  
**PAYMENT TERMS**

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

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

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

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

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

## **SAMPLE**

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

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

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

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

### **ARTICLE V** **TERMINATION FOR CAUSE**

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

### **ARTICLE VI** **TERMINATION FOR CONVENIENCE**

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

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

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

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

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

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

**ARTICLE VIII**  
**ASSIGNMENT**

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

**ARTICLE IX**  
**FINANCIAL DISCLOSURE**

9.1 Each recipient shall be audited in accordance with R.S. 24:513. If the amount of public funds received by the provider is below the amount for which an audit is required under

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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.

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### **ARTICLE X AUDIT CLAUSE**

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

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

### **ARTICLE XI AMENDMENTS IN WRITING**

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

*(State agency contracts must be approved by the Director of the Office of Contractual Review, Division of Administration.)*

### **ARTICLE XII FISCAL FUNDING CLAUSE**

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

### **ARTICLE XIII TERM OF AGREEMENT**

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

**ARTICLE XIV**  
**DISCRIMINATION CLAUSE**

14.1 The Contracting Party agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and Contracting Party agrees to abide by the requirements of the Americans with Disabilities Act of 1990. 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. Any act of discrimination committed by Contracting Party, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement.

**ARTICLE XV**  
**INDEMNIFICATION; INSURANCE**

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

**ARTICLE XVI**  
**PARTIAL INVALIDITY; SEVERABILITY**

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

**ARTICLE XVII**  
**ENTIRE AGREEMENT; MODIFICATION**

17.1 This Agreement, including any attachments that are expressly referred to in this Agreement, contains the entire agreement between the parties and supersedes any and all agreements or contracts previously entered into between the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. This Agreement

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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.

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### **ARTICLE XVIII CONTROLLING LAW**

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

### **ARTICLE XIX LEGAL COMPLIANCE**

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

### **ARTICLE XX RELATIONSHIP BETWEEN THE PARTIES; EXCLUSION OF BENEFITS**

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

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

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

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

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

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

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

### **ARTICLE XXIII** **FORCE MAJEURE**

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

### **ARTICLE XXIV** **EMPLOYMENT OF STATE PERSONNEL**

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

### **ARTICLE XXV** **COVENANT AGAINST CONTINGENT FEES**

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

**ARTICLE XXVI  
REMEDIES FOR DEFAULT**

26.1 In the event of default by either party, the aggrieved party shall have all rights granted by the general laws of the State of Louisiana including but not limited to the following:

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

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

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

**ARTICLE XXVII  
NOTICES**

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

*(State/Agency – name of person and title or position)*

*(Agency name)*

*(Mailing address or municipal address)*

*(City, State, Zip Code)*

*(Contracting Party – name of person and title or position)*

*(Contracting Party)*

*(Mailing address or municipal address)*

*(City, State, Zip Code)*

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

**WITNESSES:**

**Agency Name**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
*Agency Head Name, Title*

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

**WITNESSES:**

**Contracting Party**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
*Authorized Person, Title*