

# QUARTERLY REPORT OF THE INFRASTRUCTURE ADVISORY BOARD

**Second Quarter 2020**  
**(April 1, 2020 through June 30, 2020)**

In accordance with its obligations under Executive Order LC 19-02 issued by Mayor LaToya Cantrell on August 6, 2019, the Infrastructure Advisory Board (IAB) respectfully submits this report of actions undertaken and recommendations offered for the second quarter of 2020.

## **I. Executive Summary**

The goals of the Fair Share Agreement were to provide \$50 million of one-time emergency funds, which has largely materialized, and a stable, long-term source of infrastructure funding for the City of New Orleans, which has yet to materialize. In addition to the severe and immediate impacts of the coronavirus pandemic on recurring revenues, several governmental actions required to make funds available for infrastructure spending have proven painfully slow to enact. At the start of 2020, the Fair Share Agreement was projected to provide approximately \$26 million in annual revenue for infrastructure spending. Revised projections now anticipate between \$5 million and \$10 million in annual collections for all of fiscal year 2020.

Thus far, all recurring revenues have been produced by the “Lost Penny” 1% sales tax on hotels,\* which has generated \$8, 211,293 during its first 11 months of collections, and nearly half of that amount was collected in 2019. Prior to the pandemic, monthly collections were averaging approximately \$1 million per month but have since fallen to \$366,815 for March 2020, \$302,089 for April 2020, and \$107,637 for June 2020, with no recovery expected in the near term. All Lost Penny revenues are maintained in the Infrastructure Maintenance Fund (IMF), and with the signing of the IMF Master Cooperative Endeavor Agreement on July 7, 2020, those funds are now available to support critical infrastructure projects in New Orleans.

Despite this qualified success, additional recurring revenue streams remain mired in a governmental and administrative morass. The Mayor’s Office and the Downtown Development District (DDD) are at an impasse over payment terms for an agreed-upon infrastructure work program, with the City requiring the transfer of funds from the DDD prior to commencing work and the DDD offering payment only upon completion of the work and approval by the DDD’s engineer. Because of this disagreement, critical downtown drainage infrastructure work has yet to begin.

Although the levy of a 6.75% short-term rental equalization tax was approved by voters on November 16, 2019, the City Council has yet to pass an ordinance officially levying the tax and

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\* As part of the Fair Share Agreement, the Louisiana Legislature passed and the Governor signed HB 522, which reinstated, effective July 1, 2019, a 1% hotel occupancy tax relinquished by the City of New Orleans in 1966 to ease the burden of new taxes imposed to fund the construction of the Superdome.

defining collection mechanics and penalties for nonpayment. As such, the IMF has missed out on months of short-term rental tax collections, including the lucrative 2020 Mardi Gras season.

Under the terms of the Fair Share Agreement, the hotel occupancy local privilege tax was intended to be redirected from the New Orleans Tourism and Marketing Corporation (NOTMC) to the IMF. However, following concerns over the legality of redirecting the funds, NOTMC was instead reconstituted as the New Orleans Tourism and Cultural Fund (NOTCF) and will retain the full local privilege tax dedication. The City has publicly pledged on multiple occasions to place an amount equivalent to what the IMF would have received from local privilege tax collections directly into the IMF; however, whether due to insufficiency of funds or regulatory obstacles, it has yet to do so.

Given the dramatic decrease in Fair Share revenues anticipated for 2020, the IAB has continued its work to identify the highest priority infrastructure projects to be funded through the IMF. To that end, the IAB has worked closely with the Sewerage & Water Board (S&WB) to understand its most critical infrastructure needs and prioritize them for funding accordingly. A more thorough discussion of the IAB's activities, the state of the Fair Share Agreement, and potential priority projects follows.

## **II. IAB Meetings and Activities**

The IAB met twice since its previous quarterly report, convening on April 9, 2020 and June 4, 2020. Both meetings were conducted via videoconference, in accordance with public meetings guidance issued by Mayor LaToya Cantrell, Attorney General Jeff Landry, and Governor John Bel Edwards in the wake of the coronavirus pandemic. The agenda was presented at the start of each meeting, and the public was offered an opportunity to make comments for the record. Minutes and agendas from each meeting are attached as Exhibit A, and full recordings of the proceedings can be found at [https://www2.swbno.org/news\\_boardmeetings.asp](https://www2.swbno.org/news_boardmeetings.asp).

### *A. Presentations by S&WB*

At each of its meetings, the IAB received information and updates from S&WB Executive Director Ghassan Korban regarding the current state of S&WB infrastructure as well as the most pressing short- and medium-term needs for the utility. The IAB continues to work directly with S&WB to develop a comprehensive list of major projects and equipment upgrades that can best be supported by recurring revenues from the Fair Share Agreement. Among the priority projects under consideration are: (1) implementation of an automated metering system; (2) development of a Master Plan to guide investment in water, sewerage, and drainage systems over the coming decades; (3) improving the reliability S&WB's power supply; (4) repairing the Sycamore Street Filter Gallery; (5) inspecting canals on a regular schedule; and (6) eliminating the cross-connection between water used for cooling turbines and the drinking water supply. The viability and need for each of these projects is discussed in greater detail below.

### *B. Presentations by the City of New Orleans*

The IAB received regular updates from the City of New Orleans regarding anticipated, ongoing, and completed paving and drainage-related projects throughout the city. This work by the Department of Public Works includes, among other projects, installation of underground storage tanks beneath Easton Park and the development of the Pontilly Neighborhood Stormwater Network, which incorporates bio swales, rain gardens, and pervious surfacing.

In addition, the City provided regular updates on the status of one-time and recurring Fair Share Agreement revenues, including amounts collected to date and outstanding administrative issues prohibiting full implementation of the Fair Share Agreement. The IAB continues to advocate for swift implementation of all steps required to ensure collection of the full amount of one-time and recurring revenue contemplated under the Fair Share Agreement. The status of recurring Fair Share Agreement funding is discussed in greater detail below. Presentations from the City of New Orleans relevant to Fair Share funding are attached as Exhibit B.

*C. Updates on Economic Impact of Coronavirus*

Nearly all recurring revenues under the Fair Share Agreement are tied directly to hospitality tax collections. Therefore, the IAB requested an update from New Orleans & Co. on the economic impacts of the coronavirus pandemic on the convention and tourism sectors. New Orleans & Co. observed the economic impacts of the pandemic, thus far, have been catastrophic and are likely to last well into 2021. Based on per-week averages of hospitality and tourism spending in New Orleans, the City lost over \$1.6 billion in direct spending during the eight weeks New Orleans was under the stay-at-home order designed to slow the spread of coronavirus; airport traffic fell by 97% during this same time period. New Orleans & Co. calculated the cancellation of 2020 conventions will cost New Orleans \$1.2 billion in direct spending and the cancellation of 2020 festivals and special events will cost the City \$1.5 billion in direct spending. Such actions have not only drastically reduced recurring revenue under the Fair Share Agreement but also severely impacted sales tax collections, which comprise a major component of the City's annual budget. The IAB will continue to closely monitor hospitality spending and will adjust projections for recurring Fair Share revenues accordingly.

*D. Updates on S&WB-related Legislation from the 2020 Legislative Session*

The IAB also received a legislative update from the Mayor's Office on infrastructure-related legislation from the 2020 legislative session. Two parts of the City's state legislative agenda relevant to S&WB – SB313 and SB390 – passed the Senate and House and were signed by the Governor; while, a third bill, SB265, was never heard in committee.

SB313 authorizes S&WB to negotiate a settlement with the Orleans Parish School Board for the payment of unpaid and overdue water bills, which has the potential to increase revenues available for operations in 2020 and going forward. SB390 makes governance

changes to remove the requirement that one S&WB director be a retired engineer, modifies S&WB procurement requirements to better align them with state public bid law, and clarifies that property owners bear the financial responsibility for paying the cost of new water and new sewer connections. SB265, which did not pass, would have allowed S&WB to contract out of late penalties for failure to pay contractors timely.

#### **IV. Master IMF Cooperative Endeavor Agreements**

On June 18, 2020, following lengthy negotiations between the Mayor's Office and S&WB, the City Council gave final approval to the Master IMF Cooperative Endeavor Agreement (CEA), attached as Exhibit C. The Mayor and S&WB Executive Director executed the IMF CEA on July 7, 2020, clearing the way for \$8,211,293 in Lost Penny tax collections deposited into the IMF to be released for infrastructure projects in the City. Among other things, the IMF CEA establishes that IMF funds will be used exclusively for infrastructure projects and will be distributed 75/25 between S&WB and the City, respectively. Based on the current IMF balance, S&WB will receive \$6,158,470, and the City will receive \$2,052,823 for infrastructure projects.

Under the terms of the IMF CEA, S&WB must provide to the IAB and the City a complete and detailed written accounting of revenues and expenditures made pursuant to the IMF CEA at least five working days before each IAB meeting (or at such other time as reasonably requested by the IAB or City). Each accounting will cover the previous quarter or the period of time since the last accounting was provided to the IAB, whichever is greater. In addition, S&WB must provide a complete and detailed year-end written accounting of revenues and expenditures made pursuant to the IMF CEA, which is due on or before June 30 of each year. At each IAB meeting, S&WB will provide a review of the work completed in the previous quarter using IMF funds as well as a summary of work planned for the upcoming quarter to be funded by IMF funds. Prior to each meeting, S&WB and IAB will coordinate to ensure S&WB is able to provide an adequate level of detail regarding the planned and completed work.

Also under the IMF CEA, it will be the responsibility of the IAB to provide quarterly reports of its activities to the City and S&WB and to provide to the City quarterly and year-end reports on S&WB's administration of IMF funds, which shall include at a minimum a complete and detailed written accounting of revenues and expenditures of IMF funds made pursuant to IMF CEA.

#### **V. Status of One-Time Funds**

The Fair Share Agreement contemplated approximately \$51.6 million in one-time funds for S&WB. Approximately \$35,648,650 has been transferred to S&WB and utilized to pay overdue vendor invoices and to retire debt incurred by the drainage division. Only \$16 million in Hazard Mitigation Grant Program (HMGP) funds remain outstanding. Amendment 10 to the HMGP agreement, which provides \$1,741,920 for weatherization and software for Turbine 6, has been approved and is available to fund this work upon vendor selection. Amendment 11, which provides \$12,258,080 for frequency converters and \$2,000,000 for an emissions package, has been

submitted to the Governor’s Office of Homeland Security and Emergency Preparedness and is moving through the lengthy administrative approval process.

**VI. Status of Recurring Revenue Under the Fair Share Agreement**

Several components of the recurring revenue contemplated by the Fair Share Agreement face collections and implementation challenges. The coronavirus pandemic has only exacerbated these challenges by diminishing the amounts collected and delaying progress of outstanding administrative actions. A chart detailing the current status of each revenue stream of the Fair Share Agreement is attached as Exhibit D.

*A. “Lost Penny” 1% Sales Tax on Hotels*

Lost Penny tax receipts constitute the entirety of the IMF balance so far, and with the execution of the Master IMF CEA on July 7, 2020, these funds are now available for disbursement. Over the first 11 months of Lost Penny collections (August 2019 – June 2020), total receipts amounted to \$8, 211,293, of which \$3,867,336 was collected in 2019 and \$4,343,957 was collected in 2020. The IMF CEA calls for funds to be split 75/25 between S&WB and the City, meaning, based on the current IMF balance, S&WB will receive \$6,158,470, and the City will receive \$2,052,823 for infrastructure projects.

At the start of the year, the Lost Penny hotel sales tax was anticipated to generate approximately \$12 million for the IMF in 2020. Prior to the emergence of the coronavirus in New Orleans, revenues averaged approximately \$1 million per month and were on pace to meet or beat early estimates. However, tax receipts dropped dramatically with the outbreak of the virus and the implementation of stay-at-home mandates, falling to \$366,815 for March 2020, \$302,089 for April 2020, and \$107,637 for June 2020. Based on the resurgence of the coronavirus throughout the US and in Louisiana, in particular, the IAB expects Lost Penny collections to remain at or below \$300,000 per month for the remainder of 2020, generating up to an additional \$1.8 million for the IMF.

*B. 6.75% Tax on Short-Term Rentals*

Following approval by voters on November 16, 2019, the City is authorized to begin collection of a 6.75% sales tax on short-term rentals. By law, the proceeds are dedicated 75% to the IMF (which will then be split 75/25 between S&WB/City) and 25% to New Orleans & Company. The ordinance officially levying the tax and defining collection mechanics and penalties for nonpayment was not placed on the City Council’s legislative agenda until March 19, 2020, missing the lucrative Mardi Gras season when short-term rentals are in very high demand. Following the suspension of City Council proceedings due to coronavirus and after multiple deferrals of the legislation, the levy ordinance will not be heard until August 6, 2020, at the earliest, with an effective date of September 1, 2020.

The delayed implementation of collections regulations have deprived the IMF of months of potential revenues. In addition, the diminished demand for short-term rentals and the revised registration requirements for short-term rental units are likely to further reduce the amount of tax revenue collected in 2020. Originally, the short-term rental tax was expected to generate \$7.8 million in new revenue for infrastructure each year. Based on the delayed enactment and diminished demand, the IAB estimates 2020 short term rental tax collections will not exceed \$750,000 in 2020.

*C. Downtown Development District (DDD) Millage*

As part of the Fair Share Agreement, DDD was expected to rededicate \$2.5 million from its annual millage to the IMF each year for five years beginning in 2020. For 2020, DDD committed \$1.5 million from its millage roll forward and \$1 million from cash reserves to fund an infrastructure improvement plan agreed with the City. The five-year workplan, to which DDD and the City have agreed, includes installing permeable paving in parking lanes and replacing undersized drainage pipes with larger diameter pipes.

However, as of this report, work has not yet begun due to the inability of the parties to reach agreement on how and when funds will be transferred from DDD to the City. DDD insists that the City must perform project work and that that work must be approved by DDD's engineer prior to receiving any funding from DDD. The City, for its part, has refused to enter into a reimbursement scheme with the DDD. due to pandemic-related cash flow constraints and the challenges reimbursement would pose to project implementation. Project construction has been delayed for months due to the parties' inability to reach consensus on payment terms. The DDD project when completed will slow the flow of thousands of gallons of water into the drainage system and help reduce downtown flooding. It is an essential project to improving drainage in the City and should not be delayed further.

*D. Rededication of Hotel Occupancy Local Privilege Tax.*

For decades, the Hotel Occupancy Local Privilege Tax has funded the NOTMC, which is responsible for promoting leisure travel to New Orleans. As part of the Fair Share Agreement, it was agreed that NOTMC would be merged with New Orleans & Co. and the local privilege tax would be rededicated to the IMF. However, following examination of the legislation authorizing the levy, the City determined the local privilege tax must go exclusively towards funding tourism promotion (and not infrastructure).

NOTMC was reconstituted as the NOTCF and retains receipt of the full Hotel Occupancy Local Privilege Tax. The City has publicly pledged on multiple occasions to deposit annually into the IMF an amount equivalent to what would have been received if the Hotel Occupancy Local Privilege Tax were transferred to the IMF as originally intended.

For 2020, the amount the City is obligated to transfer to the IMF is approximately \$3.6 million. However, to date, no such transfer has taken place. Although the City is facing severe financial pressures created by the pandemic, the Fair Share Agreement

unambiguously calls for and the IAB absolutely recommends the City ensure all components of the original agreement are fulfilled as promised by the parties. To that end, the amounts pledged for infrastructure investment prior to the pandemic should be transferred to the IMF without delay.

*E. Impacts of COVID-19*

On March 11, 2020, Mayor LaToya Cantrell proclaimed a state of emergency for the City of New Orleans due to the spread of COVID-19. On the same day, Governor John Bel Edwards declared a public health emergency for the entire state of Louisiana. As cases continued to rise, Mayor Cantrell issued a stay-at-home ordinance for New Orleans on March 16, 2020, and Governor Edwards issued a stay-at-home order for the state on March 22, 2020, commencing what would become an eight-week shutdown of virtually all tourism and commerce in the state in order to slow the spread of the virus. Those efforts were initially successful, and New Orleans and Louisiana saw a rapid decline coronavirus infections and deaths. However, since mid-June, the state has seen a rapid rise in cases and is continuing to do so, prompting concerns that the City and state will need to reinstitute earlier restrictions. What is clear is that it will take the economy a significant period of time to recover from the coronavirus. Because the majority of Fair Share Agreement revenues are tied directly to taxes generated by the tourism industry, recurring revenues are expected to fall well below initial projections for some time. Therefore, the IAB has been working directly with S&WB to prioritize the list of infrastructure projects it would like to fund with Fair Share revenues, in the event that collections fall below projections for an extended period.

**III. *Setting Project Prioritization for Use of Recurring Fair Share Agreement Funds***

During the second quarter of 2020, the IAB worked closely with S&WB to identify the highest and best uses for recurring Fair Share Agreement funds. At the start of the year, it was anticipated that the Fair Share Agreement would generate \$26 million for 2020. However, it is becoming clear that the total amount for the year will be significantly less than that. S&WB first presented a list of priority projects at the December 5, 2019 IAB meeting. Since that time, the list has become more refined, with some projects being deferred until 2021, in the hope that greater funding will be available. The most recent proposed project matrix, attached as Exhibit E, presents for consideration the following:

*A. Automated Metering Infrastructure (AMI)* – Incorporating AMI into the metering system will serve to modernize and automate how water usage is tracked and, ultimately, how bills are calculated. AMI will allow S&WB to provide consistent, timely, and accurate customer billing, and it will lead to improved system management by better tracking water usage and leak detection. The problem of inaccurate billing has become particularly acute during the coronavirus pandemic, with S&WB experiencing a severe shortage of water meter readers and a substantial increase in the number of estimated bills and bills covering

a greater-than-30-day cycle issued to customers.<sup>†</sup> More accurate billing and system management should translate into improved revenue for S&WB, and should serve as a foundation for rebuilding customer trust in the utility.

Phase 1 of the project focuses on surveying the existing meter infrastructure and drafting a request for proposals (RFP) for a comprehensive AMI solution. This work will form the basis for Phase 2, which is the selection of a vendor to provide the AMI system. Phase 3, which includes full AMI implementation, is expected to be completed in 2023. Phase 1 will cost approximately \$2 million, Phase 2 proceeds with no cost, and Phase 3 is anticipated to cost approximately \$40 million.

In December 2019, S&WB issued an RFP for Phase 1 of the AMI program. However, in May 2020, S&WB rebid the Phase 1 RFP following complaints from bidders and S&WB's own recognition of a flawed bidding process. Ultimately, S&WB selected Jacobs as the winning bidder of the reissued RFP, but one of the losing bidders has formally protested the award. The bid protest has the potential to delay the start of Phase 1 work until late 2020, or possibly beyond. S&WB has proposed using \$1.5 million in recurring Fair Share revenues in 2020 towards AMI. However, given the bid protest delay, it is unclear to what extent that amount can be utilized in 2020.

B. *Master Plan* – While the S&WB will continue to focus on immediate resolutions for existing challenges such as billing and power, it will also begin to develop a longer-term Master Plan with the input of its Board and staff. The Master Plan will constitute the blueprint for S&WB's long-term, comprehensive, integrated, sustainable vision for managing the City's water, sewer, and major drainage systems for years to come. The Master Plan will serve as a roadmap to guide S&WB decision-making and inform citizens of where S&WB is heading. IAB has specifically requested that the Master Plan include consideration of an Asset Management Plan that will serve to track and manage S&WB infrastructure and other assets, enabling S&WB to maintain and extend the useful life of its assets in order to optimize costs and improve service delivery.

Phase 1 includes requests for information and workshops. Phase 2 includes developing a vision and strategy and engaging in community outreach. Phase 3 involves developing the master plan for water, wastewater, and drainage systems. Phase 1 is underway and is expected to be complete by the end of the year. Phase 2 is expected to run through 2021 and cost approximately \$1 million. Phase 3 is anticipated to begin in 2021 and be completed

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<sup>†</sup> Estimated billing by S&WB often results in underestimates of water consumption by customers, resulting in much higher “true-up” bills when meters are eventually read. Extended billing cycles result in residential customer water usage for the billing period triggering higher commercial water rates and much higher utility bills. In order to manually read all the meters in the City each month, S&WB has stated it requires approximately 50 meter readers to report for duty on a daily basis. In order to account for higher pandemic-related absenteeism, S&WB pushed to hire 60 meter readers in the hope of having 50 available for duty each day. Instead, S&WB currently has approximately 43 meter readers on staff, and, for various reasons, only 10 to 15 are available for meter-reading duty each day. In response to this critical shortage, S&WB announced on July 22, 2020, that it plans to contract with a third-party vendor to provide additional meter readers for daily duty on a temporary basis. The IAB strongly supports this decision, given that it will improve billing and revenues and will align S&WB with future workforce needs once AMI is implemented.

in 2022 at a cost of approximately \$2.5 million. Phase 1 work was put on hold briefly due to cash constraints related to lower billing collections during the pandemic but has since resumed. S&WB has expressed that it would like to utilize \$500,000 million of Fair Share revenues to support the Master Plan in 2020.

C. *Making Power More Reliable* – Due to the explosion of Turbine 5 (T5) on December 14, 2019, S&WB has lost 20MW of backup power generation capability. Presently, S&WB has a total of approximately 45 MW of power generation capability, which is sufficient to run the drainage system at full power but provides little to no redundancy. Should any additional power equipment fail, S&WB could face a scenario where it is forced to ration power among drainage pumps. Therefore, S&WB is taking steps to “harden” the existing power system by providing a feeder line directly from Turbine 6 (T6) to the Carrollton pumping station and by improving T6’s control system. Any long-term solution, however, will include replacing the lost capacity from T5.

S&WB is already working to identify a potential replacement turbine, dubbed Turbine 7 (T7), with the goal of having the new unit operational by August 2021. Equipment, site preparation work, and installation of T7 is expected to cost approximately \$18 million to \$20 million, of which, the state has offered a commitment of \$12.5 million in funding from the Community Development Block Grant program. S&WB anticipates funding the remainder of the purchase with Fair Share Agreement revenues. The IAB believes the purchase and installation of T7 is a prudent long-term investment that will provide a reliable power solution for the utility, and the IAB would be supportive of using IMF funds for this project. However, as discussed above, the IAB remains concerned that recurring revenues may not return to pre-coronavirus levels for an extended period. To the extent the T7 project requires cash contributions beyond what the IMF is able to provide in the near term, the IAB strongly recommends S&WB to seek and the City Council to provide direct financial support for the purchase of T7, as a critical component of drainage infrastructure needed to protect New Orleans from flooding during heavy rain events.

D. *Water Treatment Plant – Sycamore Filter Gallery* – This project includes repairs to structural, piping, and filter equipment that form a critical component of the drinking water plant. The work will address deferred capital maintenance by replacing 10 of 24 total filters, improving public health, and resulting in more effective operations. Phase 3 (of five total Phases) was originally expected to be completed in 2020 at a cost of approximately \$5 million. However, due to ongoing capital constraints and lower recurring Fair Share revenues, the scope of project goals for 2020 will likely be reduced to the extent possible. In S&WB most recent priority projects matrix (Exhibit E), it is asking the IAB to fund \$3 million of the filter gallery project.

E. *Underground Drainage Canal Inspection Program* – After years of neglect, S&WB instituted routine inspections and maintenance of all underground drainage canals in order to proactively identify and address any blockage issues. The work establishes a

baseline for underground canal conditions, removes obstructions and improves drainage, and ultimately reduces damage from flooding. Prior to the pandemic, S&WB planned to utilize \$1 million of recurring Fair Share revenues to institute a plan to inspect all canals on a five-year cycle. Diminished Fair Share revenues have caused S&WB to reevaluate this initiative and to consider moving canal inspection duties, which are typically performed by outside contractors, to in-house personnel.

F. *Cross Connection Remediation* – This project serves to correct a longstanding issue whereby water used to cool Turbine 4 is returned to the potable drinking water system. The project currently under consideration is only a temporary fix, and ultimately S&WB will need to study if further investment in Turbine 4 is warranted, given its long-term goal of reducing S&WB dependence on self-generated electricity. Phase 2 of this project is estimated to be completed in 2020 at a cost of \$1.5 million. In total, eliminating the turbine cross-connection and rerouting drinking away from the turbines is expected to cost approximately \$10 million. However, due to capital constraints and the future retiring of Turbine 4, this project has been temporarily placed on hold.

G. *SELA Algiers Drainage Project* – S&WB has agreed to participate in a new federally funded SELA construction project on Algiers drainage canals, similar to the previous Uptown projects. Once completed, the SELA Algiers Drainage Project will provide improved drainage to Algiers and surrounding areas by increasing water storage area during rain events. As part of the agreement with the Corps of Engineers, S&WB is required to pay 5% of the project costs up-front, which is \$1,030,625. S&WB has proposed utilizing Fair Share revenues for this payment.

H. *Stormwater Fee Study* – In addition to its ongoing water and sewerage rate study, S&WB is seeking a detailed stormwater fee study – including a full analysis of the rate structure, assessment methodology, affordability, incentives, and timing of a potential stormwater management fee. The stormwater fee study will serve as the first step towards developing a reliable recurring revenue source for drainage projects to supplement existing millage. S&WB proposes using up to \$250,000 from Fair Share revenues to pay for the stormwater fee study.

## **V. Anticipated IAB Actions in the Coming Quarter**

In the third quarter of 2020, the IAB anticipates working closely with S&WB to definitively determine a list of priority projects to be funded through the IMF and to vote its recommendations of those projects. Thus far, the project list has focused on the complementary goals of mitigating environmental, safety, and/or public health threats; eliminating the backlog of deferred maintenance; accelerating capital projects that will improve customer service and result in more efficient operations; and enhancing the utility’s long-term financial sustainability. However, it is likely that earlier ambitions will need to be scaled back as recurring revenues continue to fall short of earlier projections. Upon proper consideration and deliberation, the IAB will fulfill its charge

under Executive Order LC 19-02 and forward its recommendations for how best to utilize the IMF funds to the Mayor, the Governor, the New Orleans City Council, and the Louisiana Legislature.

In addition, the IAB will continue monitoring implementation of the Fair Share Agreement in order to promote that each revenue stream promised for infrastructure improvement is appropriately deposited into the IMF. The IAB will also monitor and analyze the economic impacts of the coronavirus on the Fair Share Agreement and will modify its revenue projections and project recommendations accordingly.

**Attachments**

Exhibit A – IAB Meeting Agendas and Minutes .....1  
Exhibit B – Presentations by City of New Orleans to IAB .....5  
Exhibit C – Infrastructure Maintenance Fund Cooperative Endeavor Agreement.....24  
Exhibit D – Fair Share Agreement Chart .....41  
Exhibit E – Proposed IMF Project Matrix .....44

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## PUBLIC NOTICE

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### INFRASTRUCTURE ADVISORY BOARD MEETING

Thursday, April 9, 2020 | 2:00 pm

Via videoconference at: <https://zoom.us/j/236379680>

Via teleconference at: (346) 248-7799

Meeting ID: 236 379 680

#### Agenda

- I. Call to Order
- II. Roll Call
- III. Presentation of Agenda

*Agenda items will be read including the matter to be discussed and the potential action to be taken. Public comments can be emailed [rgroom@iabno.org](mailto:rgroom@iabno.org) or via telephone (504) 826-1116 prior to the meeting until 30 minutes after the presentation of the agenda is complete.*
- IV. Executive Session

*Executive Session pursuant to La. R.S. §42:17(A)(5) for purposes of discussing the impact of the COVID-19 Emergency Declaration.*
- V. Public Comment

*Public comments received until 30 minutes after the presentation of agenda will be read into the record.*
- VI. Approval of Agenda
- VII. Approval of Minutes
- VIII. Approval of Quarterly Report
- IX. Update: Fair Share Agreement
  - a. Funding Status
  - b. S&WB Projects and Priorities
- X. Other Business
- XI. Adjournment

#### Infrastructure Advisory Board Members

Paul Flower, Chair

Neil Abramson, Secretary

Bill Hammack

Karen Raymond

Elisa Speranza

Lewis Stirling

Casey Tingle

**MINUTES OF THE REGULAR MEETING OF  
THE INFRASTRUCTURE ADVISORY BOARD  
FEBRUARY 6, 2020**

The regular meeting of the Infrastructure Advisory Board (IAB) was held on Thursday, February 6, 2020, at the Sewerage & Water Board, 2<sup>nd</sup> Floor Board Room, 625 St. Joseph Street, New Orleans, Louisiana.

The following members were present:

1. Paul Flower, Chair
2. Neil Abramson, Secretary
3. Bill Hammack
4. Karen Raymond
5. Elisa Speranza
6. Lewis Stirling
7. Casey Tingle

**REGULAR ORDER OF BUSINESS**

The Chair called the meeting to order at 2 p.m.

Agenda

The agenda was presented and unanimously approved.

Minutes

The minutes of the December 5, 2019 regular meeting were presented, and no corrections were offered. The minutes were unanimously approved.

Presentations

Robert Turner, General Superintendent, Sewerage & Water Board (S&WB), reported on the status of Turbine 5 (T5). T5 suffered an explosion in the combustion chamber on December 14, 2019. S&WB is in the process of evaluating the damage and has hired a consultant to determine the cause of the explosion. The investigation could take up to a year to complete, and there is no expectation T5 will be placed back into service anytime soon. S&WB has increased inspections of other turbines and plans to rely on Turbine 6 for backup power generation. In order to ensure sufficient electricity is available at all times, the purchase and installation of frequency converters has become a priority for S&WB.

Chris Saucier, Project Analyst, City of New Orleans, updated the IAB on funding expected as part of the Fair Share Agreement. As of February 6, \$35.6 million in one-time funds had been transferred to the city, and the 1% hotel tax had produced \$2.5 million in recurring revenue in its first four months of implementation, with lower-than-projected numbers reported for December due to the cyberattack. Local privilege tax revenues that currently go to the New Orleans Tourism and Marketing Corporation (NOTMC) were expected to be redirected to the Infrastructure Maintenance Fund. However, following in-house legal analysis, the Administration determined that the local privilege tax must be used for tourism promotion and decided to reconstitute NOTMC as the New Orleans Tourism and Cultural Fund. NOTMC is scheduled to vote on the necessary changes to its articles and bylaws on February 10. The Downtown Development District (DDD), which approved \$2.5 million for infrastructure projects, is still in negotiations with the city of New Orleans on a Cooperative Endeavor Agreement to govern how the funds will be accessed by the city. An ordinance governing collection of the Short-Term Rental equalization tax has not yet passed City Council.

S&WB Proposed Projects and Priorities

The IAB reviewed a list of proposed projects to be funded through the Infrastructure Maintenance Fund. The list included: automated water metering infrastructure, underground drainage canal inspection, development of a Master Plan, continuing renovations to the Sycamore Filter Gallery, and eliminating the cross-connection between turbine cooling and drinking water. Which projects are funded and to what degree is contingent upon the revenues received into the Infrastructure Maintenance Fund as a result of the Fair Share Agreement.

Public Comment

There was no public comment.

There being no further business, the meeting was adjourned at 3:20 p.m.

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## PUBLIC NOTICE

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### INFRASTRUCTURE ADVISORY BOARD MEETING

Thursday, June 4, 2020 | 2:00 pm

Via videoconference at: <https://zoom.us/j/91447349627>

Via teleconference at: (346) 248-7799

Meeting ID: 914 4734 9627

#### Agenda

- I. Call to Order
- II. Roll Call
- III. Presentation of Agenda

*Agenda items will be read including the matter to be discussed and the potential action to be taken. Public comments can be emailed [rgroom@iabno.org](mailto:rgroom@iabno.org) or via telephone (504) 826-1116 prior to the meeting until 30 minutes after the presentation of the agenda is complete.*
- IV. Presentations:
  - a. Status of Fair Share Agreement: Revenues Collected and Governing Cooperative Endeavor Agreements
  - b. Impacts of the Coronavirus Pandemic on the Tourism, Hospitality, and Convention Economy of New Orleans
  - c. Review of Sewerage & Water Board Legislation from the 2020 Legislative Session
  - d. Sewerage & Water Board Projects and Priorities
    - i. Current Power Generation Capabilities and Progress Towards Entergy Substation
    - ii. Automated Metering Infrastructure
    - iii. Rate Study
    - iv. Master Plan
    - v. Canal Inspections
    - vi. Sycamore Filter Gallery
    - vii. Turbine Cross-Connection
- V. Public Comment

*Public comments received until 30 minutes after the presentation of agenda will be read into the record.*
- VI. Approval of Agenda **\*\*Action Item\*\***
- VII. Approval of Minutes **\*\*Action Item\*\***
- VIII. Other Business
- IX. Adjournment

#### Infrastructure Advisory Board Members

Paul Flower, Chair  
Lewis Stirling

Neil Abramson, Secretary  
Elisa Speranza

Bill Hammack  
Casey Tingle

Karen Raymond

**MINUTES OF THE REGULAR MEETING OF  
THE INFRASTRUCTURE ADVISORY BOARD  
APRIL 9, 2020**

The regular meeting of the Infrastructure Advisory Board (IAB) was held on Thursday, April 9, 2020, via video and teleconference due to health and safety concerns and in compliance with the Governor's Proclamation 33 JBE 2020.

The following members were present:

1. Paul Flower, Chair
2. Neil Abramson, Secretary
3. Bill Hammack
4. Karen Raymond
5. Elisa Speranza

**REGULAR ORDER OF BUSINESS**

The Chair called the meeting to order at 2 p.m.

Public Comment

The Chair presented the draft agenda and opened a 30-minute period for public comment by email or by telephone. No public comment was received.

Executive Session

The IAB entered into executive session pursuant to La. R.S. §42:17(A)(5) for the purpose of discussing the impact of the pandemic on IAB activities. During executive session, the IAB took no action and held no vote.

Agenda

The agenda was unanimously approved.

Minutes

The minutes of the February 6, 2020 regular meeting were presented, and no corrections were offered. The minutes were unanimously approved.

Quarterly Report

Pursuant to Executive Order LC 19-02, the IAB approved its first quarterly report to be presented to the Mayor and the directors of the Sewerage & Water Board (S&WB).

Presentations

Chris Saucier, City of New Orleans, updated the IAB on Fair Share Agreement funding. As of April 9, 2020, \$35.6 million in one-time funds had been transferred to the city, and the 1% local privilege tax had produced \$5.5 million in recurring revenue during its first six months of implementation. All recurring revenues are held in the Infrastructure Maintenance Fund (IMF) and cannot be utilized until a cooperative endeavor agreement between the city and S&WB is agreed and approved by the City Council. The City Council has yet to enact legislation governing the collection of the short-term rental equalization tax, which had been anticipated to generate \$7.8 million per year. The Downtown Development District and the city were still in negotiations regarding a cooperative endeavor agreement for the provision of \$2.5 million per year for infrastructure projects. Local privilege tax revenues that went to the New Orleans Tourism and Marketing Corporation (NOTMC) were expected to be redirected to the IMF as part of the Fair Share Agreement. However, NOTMC was instead reestablished as the New Orleans Tourism and Cultural Fund, and it is uncertain whether the city will be able to replace the anticipated \$5.3 million in recurring annual revenue.

Ghassan Korban, Executive Director, S&WB, discussed S&WB's priority projects, including automated water metering infrastructure, underground drainage canal inspection, development of a Master Plan, continuing renovations to the Sycamore Filter Gallery, and eliminating the cross-connection between turbine cooling and drinking water. Which projects are funded and to what degree is contingent upon the revenues generated under the Fair Share Agreement. As of April 9, 2020, collections under the Fair Share Agreement had fallen well behind original estimates.

There being no further business, the meeting was adjourned at 3:10 p.m.



# **Update on Infrastructure Fair Share Agreement**

**Infrastructure Advisory Board - IAB**

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**City of New Orleans**

April 9, 2020

# Fund Collections to Date: *All Revenue*

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- **One-Time Funds** - \$35,648,650 transferred to SWBNO Includes:
  - MCC Funds
  - FEMA Revolver
  - HMGP – 3 Phases (In process) - \$16M
    - Amendment 10 – (Approved) - \$1,741,920 (No Disbursement)
      - Anti-icing System & Software
    - Amendment 11 – (Pending) Submitted to GOHSEP/FEMA (\$12,258,080 & \$2M)
    - Frequency Converter & Emissions Package
- **Recurring Funds** - \$5.5M -1% Lost Penny in IMF Fund
  - Awaiting IMF CEA – sent back from SWBNO to CNO Legal for review on April 2, 2020.
  - Upon completion of review, set to go before City Council for Approval.

# Estimate vs. Actuals: *Work in Progress*

Designation	Target	Actual		
HMGP	\$ 16,500,000	\$ -		
MCC/FG Safety CEA	\$ 2,000,000	\$ 2,000,000	SWBNO	
MCC/Convention Center Blvd	\$ 6,000,000	\$ 6,000,000	SWBNO	
MCC Cash Reserves	\$ 20,000,000	\$ 20,000,000	SWBNO	
FEMA Revolver Forgiveness	\$ 7,450,000	\$ 7,648,650	SWBNO	
DDD Millage	\$ 2,500,000	\$ -		
Local Privilege	\$ 5,300,000	\$ -		
1% Lost Penny	\$ 12,000,000	\$ 5,534,770	IMF	July 19 – January 2020
STR Equalization	\$ 7,800,000	\$ -		
Capital Outlay	\$ 7,300,000	\$ -	P5 - \$46.7M	
GO ZONE Deferral	\$ 3,500,000	\$ -		
Hotel Pilot	\$ 2,000,000	\$ -		
NOTCF Local Privilege	\$ 700,000	\$ -	Pending Transition	
NOTCF STR Equalization	\$ 2,700,000	\$ -	Pending Transition	
<b>Total:</b>	<b>\$ 95,750,000</b>	<b>\$ 41,183,420</b>		

# NOTMC/NOCO Transition: *In Process*

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- Possible redirection of 25% NOCO split – TBD
- Once decided:
  - Local Privilege Redirection (IMF CEA) – 100% - Office of Cultural Economy – “Culture Bearer.”
  - STR Equalization – 75% IMF / 25% NOCO (IMF CEA)
  - Then: 75% SWBNO / 25% DPW (IMF CEA)
- Ordinance introduced to City Council 02/06/19 for approval date TBD.
- **\*\*\*Dependent upon the transition being finalized.**
  - - 1% Lost Penny (IMF CEA) – 75%SWBNO/25%DPW

# Actual 1% Lost Penny Collections: *Began July 1, 2019*

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Month	Revenue
August (2019)	\$702,776
September	\$652,454
October	\$911,457
November	\$1,429,086
December	\$352,702
January (2020)	\$1,486,295
<b>Total</b>	<b>\$5,534,770</b>
<i>6 Month Average</i>	<i>\$922,462</i>

# CEA Status': Work in Progress

---

- **Infrastructure Maintenance Fund CEA**
  - CNO LAW finalizing proposed revisions for internal revision. (1% Lost Penny/Local Privilege/STR Equalization)
- **STR Equalization CEA (CEA with NOCO)**
  - Pending internal discussions on use of funds. Believe this is sometimes also referred to as the NOCO 25% CEA. (Note: Austin Wilty is the City's attorney for this contract)
- **CEA Amendment – Public Safety**
  - Complete
- **CEA Amendment – Traffic Configuration**
  - Complete
- **Electrical Substation (Power Plant) CEA – SWBNO**
  - Signed; Awaiting final BRASS Approval from “Mayor’s Assistant”
- **DDD CEA**
  - Negotiations pending; Law finalizing proposed revisions for internal circulation
- **Local Privilege CEA – IMF-CEA**
  - Dependent on NOCO-NOTMC transition
- **NOCO-NOTMC Transition**
  - My understanding is NOBC Counsel is working on this agreement
- **Race Street Transfer**
  - Complete
- **Euterpe Street CEA – FUNDS ALREADY DISTRIBUTED**
  - Draft pending internal City review, then will need to go to Convention Center

# Original Estimates Revision

Recurring Revenue - *Cyber access (Department of Revenue), CEA status, Commencement of collections, COVID 19 delays.*

---

- **Department of Revenue access to RCS website financial data** – Back online. Department of Accounting has reconciled through January 2020. (1% Lost Penny)
- **STR Equalization** – As determined by City Council (Pending – date collections will begin). Originally, it was estimated that collections would begin on January 1, 2020. (Possibly May 2020).
- **STR Equalization** – Department of Permits and determination of the participants that will be removed from the platform (Eligibility). Open discussion about percentage of loss experience and timing (Q1 – Q3).
- **Local Privilege** – IMF CEA pending and decision regarding fund retention as it relates to previous obligations (Essence, Superbowl, Rockin New Year’s Eve, et al)
- **Costing in terms of transition timeline** – Originally, transition was to occur 01/01/20. Re-estimations are pending.
- **DDD CEA** – Negotiations pending. LAW finalizing proposed revisions for internal review.

Fair Share Redirection

Recurring Revenue -  
Local Privilege \$5.3M

Fund

\$1.7M est.  
Hospitality  
costs paid out.  
(Essence, Super  
bowl, et al)

NOTMC <-----> NOTCF  
- Same Business Entity  
(Renamed) for new purpose

General Fund

This fund will now contribute toward Cultural Economy

\*\*Subject to internal reallocation  
for the Office of Cultural Economy

Office of Cultural Economy  
- CNO -  
100% Dedication - \$3.68M

Funds drawn  
from GF to  
replenish the  
Tourism offset  
- Infrastructure  
focused.  
\$3.68M

Infrastructure  
Specific

IMF

<b>75%</b>	<b>25%</b>
<b>SWBNO</b>	<b>DPW</b>
\$2.76M	\$920K

\*\*\$3.68M split anticipated

# Local Privilege Redirection

Office of Cultural Economy – “Culture Bearers”



# Infrastructure Advisory Board Meeting

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**City of New Orleans**

June 4, 2020

# Fund Collections to Date: *All Revenue*

*As of 06/04/2020*

- 
- **One-Time Funds** - \$35,648,650 transferred to SWBNO Includes:
    - MCC Funds
    - FEMA Revolver
    - HMGP – 3 Phases (In process) - \$16M
      - Amendment 10 – (Approved) - \$1,741,920 (No Disbursement)
        - Anti-icing System & Software
      - Amendment 11 – (Pending) Submitted to GOHSEP/FEMA (\$12,258,080 & \$2M)
      - Frequency Converter & Emissions Package
  - **Recurring Funds** - \$7.9M -1% Lost Penny in IMF Fund
    - Awaiting IMF CEA – Currently, being routed to City Council for Approval. (Thursday)

# Estimate vs. Actuals: *Work in Progress*

As of 06/04/20

Designation	Target	Actual		
HMGP	\$ 16,500,000	\$ -		
MCC/FG Safety CEA	\$ 2,000,000	\$ 2,000,000	SWBNO	
MCC/Convention Center Blvd	\$ 6,000,000	\$ 6,000,000	SWBNO	
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FEMA Revolver Forgiveness	\$ 7,450,000	\$ 7,648,650	SWBNO	
DDD Millage	\$ 2,500,000	\$ -		
Local Privilege	\$ 5,300,000	\$ -		
1% Lost Penny	\$ 12,000,000	\$ 7,982,706	IMF	July 19 – April 2020
STR Equalization	\$ 7,800,000	\$ -		
Capital Outlay	\$ 7,300,000	\$ -	P5 - \$46.7M	
GO ZONE Deferral	\$ 3,500,000	\$ -		
Hotel Pilot	\$ 2,000,000	\$ -		
NOTCF Local Privilege	\$ 700,000	\$ -	Pending Transition	
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<b>Total:</b>	<b>\$ 95,750,000</b>	<b>\$ 43,631,356</b>		

# NOTMC/NOCO Transition: *In Process*

---

- Possible redirection of 25% NOCO split – TBD
- Once decided:
  - Local Privilege Redirection (IMF CEA) – 100% - Office of Cultural Economy – “Culture Bearer.”
  - STR Equalization – 75% IMF / 25% NOCO (IMF CEA)
  - Then: 75% SWBNO / 25% DPW (IMF CEA)
- Being routed to City Council (06/04/20).
  - - 1% Lost Penny (IMF CEA) – 75%SWBNO/25%DPW

# Actual 1% Lost Penny Collections: *Began July 1, 2019* As of 06/04/20

---

Month	Revenue
October (2019)	\$911,457
November	\$1,429,086
December	\$352,702
January (2020)	\$1,486,295
February	\$1,077,744
March	\$1,003,376
April	\$366,815
<b>Total (July 19 – April 20)</b>	<b>\$7,982,706</b>

# Fair Share Agreement

## *Effects of COVID-19*

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### V. Impacts of COVID-19

On March 11, 2020, Mayor LaToya Cantrell proclaimed a state of emergency for the City of New Orleans due to the spread of COVID-19. On the same day, Governor John Bel Edwards declared a public health emergency for the entire state of Louisiana. Since then, the number of COVID-19 cases in the state has continued to increase rapidly, prompting Mayor Cantrell to issue a stay-at-home ordinance for New Orleans on March 16, 2020, and Governor Edwards to issue a stay-at-home order for the state on March 22, 2020. It is too early to assess the impacts of COVID-19 on the local economy or how long it will take for the economy to recover from those impacts. Nevertheless, COVID-19 is anticipated to significantly decrease the recurring revenue portion of the Fair Share Agreement, as the majority of those revenue streams are tied directly to taxes generated by the tourism and hospitality industry. The IAB will continue to monitor the economic impacts of the virus on anticipated recurring revenues and update its projections accordingly.

# Fair Share Agreement

## *Outstanding Issues*

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- Hotel occupancy rates and convention cancellations
- Prolonged effects of COVID-19. Economic impacts
- Changes related to SWBNO financial leadership
- Original financial estimation changes
- Continued evolution of Fair Share Agreement
- DDD CEA negotiations continued

# CEA Status': Work in Progress

---

- **Infrastructure Maintenance Fund CEA**
  - CNO LAW finalizing proposed changes, being routed to City Council. (1% Lost Penny/Local Privilege/STR Equalization)
- **STR Equalization CEA (CEA with NOCO)**
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- **CEA Amendment – Public Safety**
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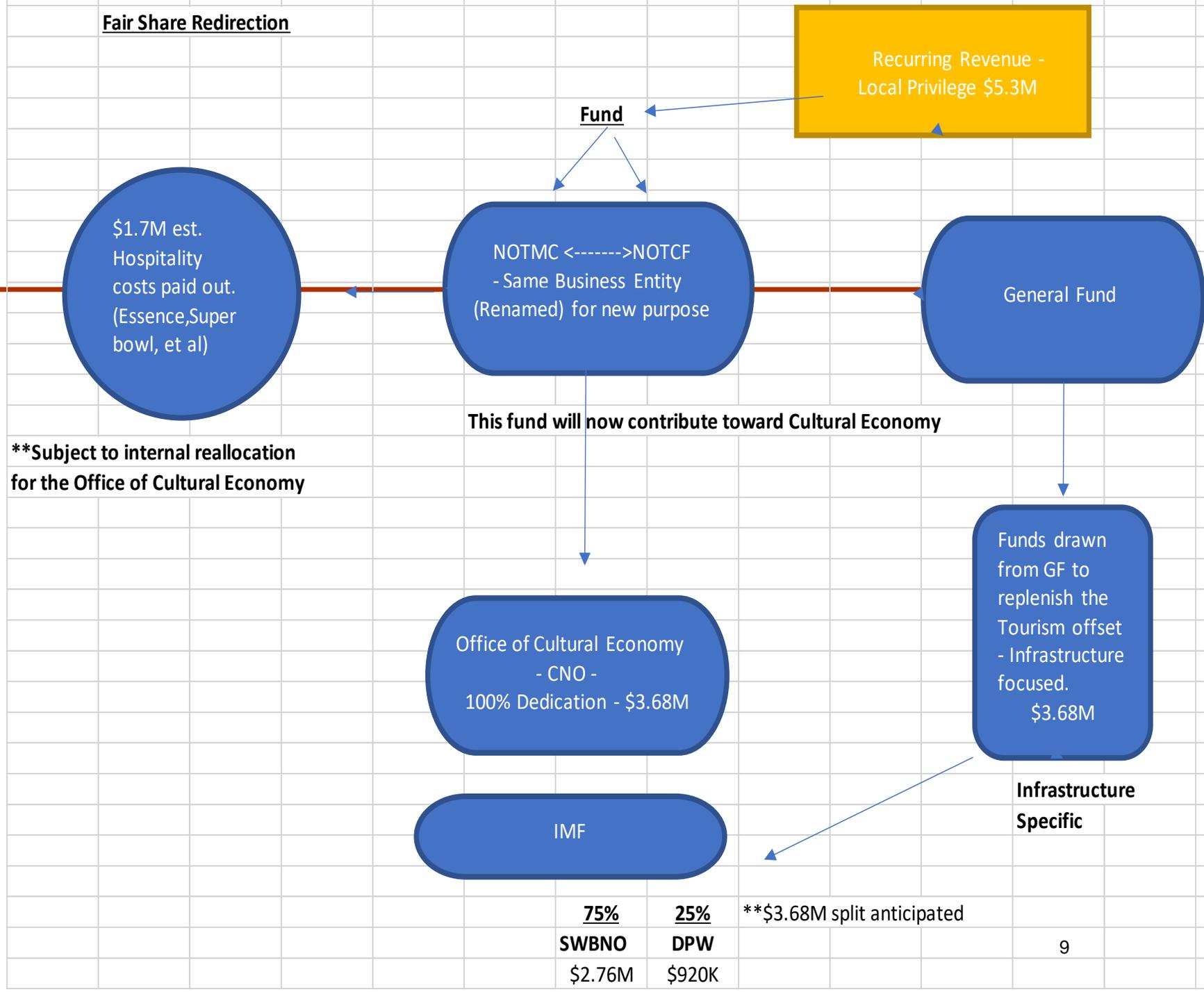
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# Local Privilege Redirection

Office of Cultural Economy – “Culture Bearers”

## Fair Share Redirection



# Fair Share Agreement

*Major Items over the next 30 days*

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- IMF CEA currently being routed to City Council. (Thursday).
- Additional month of Revenue tracking for 1% Lost Penny. (April)
- Possible re-evaluation of original Revenue estimates.
- DDD conclusion of CEA for agreement.
- IAB Board member meeting.
- Office of Cultural Economy status report.
- Local Privilege resolution and Redirection update.
- Possible STR Equalization platform update. (Permit holders).
- Draw for P1 of Capital Outlay.

**COOPERATIVE ENDEAVOR AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
SEWERAGE AND WATER BOARD OF NEW ORLEANS  
INFRASTRUCTURE MAINTENANCE FUND**

**THIS COOPERATIVE ENDEAVOR AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Sewerage and Water Board of New Orleans, represented by Ghassan Korban, Executive Director (the “**Board**”), pursuant to the authority granted by Board resolution. The City and the Board may sometimes be collectively referred to as the “**Parties**”. The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, the City is a political subdivision of the State of Louisiana;

**WHEREAS**, the Board is a political corporation organized under the laws of the State of Louisiana;

**WHEREAS**, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

**WHEREAS**, the City has created a special fund designated as the City of New Orleans Infrastructure Maintenance Fund, with a sub-account named Sewerage and Water Board (the “**IMF**”), into which is deposited funds from taxes authorized and approved by the voters of New Orleans to be used by the City and the Board for infrastructure maintenance, and other funds, including but not limited to a fee, designated by lawful authority for deposit in the fund;

**WHEREAS**, effective July 1, 2019, Act 169 of the 2019 Regular Session of the Louisiana Legislature authorized the City to impose an occupancy tax on short-term rentals, not to exceed six and three-quarters percent of the rent or fee charged for such occupancy, provided a proposition authorizing the levy of the tax was approved by a majority of the electors of the city (referred to as the Short-Term Rental or STR Occupancy Tax):

**WHEREAS**, on November 16, 2019, pursuant to City Council Resolution No. R-19-308, a majority of the electors of the city authorized the levy of the STR Occupancy Tax;

**WHEREAS**, the City has or will adopt an ordinance to impose the STR Occupancy-Tax, with proceeds to be dedicated to the infrastructure fund of the City pursuant to Act 169;

**WHEREAS**, the City has or may authorize or provide for additional means of generating revenue, including without limitation, sources of funds commonly referred to as the Local Privilege and Lost Penny, whose proceeds are to be used for the Infrastructure Maintenance Fund as provided in the City Code of New Orleans, Sections 70-415.278 through 70-415.282, as may be amended;

**WHEREAS**, on August 6, 2019, the Mayor signed Executive Order LC 19-02, creating the Infrastructure Advisory Board (“**Advisory Board**”) to review the Board's spending of IMF funds and to provide related recommendations;

**WHEREAS**, the City and the Board desire to enter into a cooperative endeavor agreement for the purpose of establishing the procedures, requirements, and reporting obligations for transfers and use of IMF funds by the Board;

**WHEREAS**, the City and the Board agree that their mutual goals and objectives satisfy a legitimate and objective public purpose as the transfer and use of IMF funds by the Board will serve to improve and maintain the water, sewer, and drainage infrastructure for the City of New Orleans, and in turn improve the health, welfare, and safety of the citizens of New Orleans;

**WHEREAS**, the Board will use IMF funds in accordance with applicable requirements and restrictions to build and maintain water, sewer, and drainage infrastructure; and

**WHEREAS**, the City will remit authorized IMF funds to the Board for use on allowed activities.

**NOW THEREFORE**, the City and the Board, each having the authority to do so, agree as follows:

## **ARTICLE I - THE BOARD'S OBLIGATIONS**

### **A. Reporting**

1. **Finances**. The Board will submit to the Advisory Board and City:
  - i. A complete and detailed written accounting of revenues and expenditures made pursuant to this Agreement at least five working days before each Advisory Board meeting (or at such other time as reasonably requested by the Advisory Board or City). Each accounting will cover the previous quarter or the period of time since the last accounting was provided to the Advisory Board, whichever is greater.
  - ii. A complete and detailed year-end written accounting of revenues and expenditures made pursuant to this Agreement, which is due on or before June 30 of each year. The records must include, at a minimum, sufficient detail to allow for compliance with City Code Section 70-415.281;
  - iii. Any additional documentation, including supporting documentation, financial information, or project related information requested by the Advisory Board; and
  - iv. Any additional documentation requested by the City.
2. **Completed Work**. At each Advisory Board meeting, the Board will provide a review of the work completed in the previous quarter with the use of IMF funds. The Board and Advisory Board will coordinate so that the Board can provide an adequate level of detail regarding the review of completed work.

3. **Future Work.** At each Advisory Board meeting, the Board will provide a summary of work planned for the upcoming quarter with the use of IMF funds. The Board and Advisory Board will coordinate so that the Board can provide an adequate level of detail regarding the planned work.

**B. Board Obligations.** The Board will, in addition to the above, perform or cause to be performed the following:

1. Only expend or use IMF funds in accordance with City Code Section 70-415.279, as may be amended from time to time.
2. Only expend or use IMF funds in accordance with any additional restrictions, of whatever nature, imposed or related to specific funding sources for the IMF. When the City becomes aware of any new restrictions, it will promptly notify the Board in writing of such restrictions, when such restrictions will become effective, and the funds so restricted (if less than the entire amount provided to the Board).
3. Obtain all required governmental regulatory reviews and approvals required in connection with the particular project.
4. As applicable, comply with pertinent local and state laws concerning the bidding of work and the expenditure of public funds by the City, including, but not limited to, La Rev. Stat. § 38:2212, *et seq.*, and award projects to the lowest responsive and responsible bidder in accordance with the Louisiana Public Bid Law, and on request provide the City with documentation of the process used in obtaining design or construction bids;
5. Provide all documentation reasonably requested by the Advisory Board or City to show funds were expended in compliance with this Agreement and any applicable local, state, and federal regulations and statutes, notwithstanding any approved waivers, that are applicable to the use of said funds;
6. As requested by the Advisory Board or the City, allow periodic access during normal business hours to the sites by Advisory Board or City representatives to review progress of any work;

**C. Board Representations & Warranties.** The Board will represent and warrant that:

1. The Board has not employed or retained any entity or person, other than a bona fide employee or professional working solely for the Board, to solicit or secure this Agreement nor has the Board paid or agreed to pay any entity or person, other than a bona fide employee, any gift, commission, percentage, brokerage or any other such fee for the purpose of assisting the Board in securing this Agreement. The Board acknowledges its understanding that any gifts made or fees paid in contravention of this representation and warranty shall be considered bribery pursuant to City Code Section 70-509 and shall subject the offender to criminal penalties in addition to suspension from participation in the City contracting process for a period of not less than three years. The execution of this Agreement by the Board's duly authorized representative shall be deemed a sworn

statement by the Board of its compliance with this representation and warranty, as required by City Code Section 46-51;

2. The Board, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding and enforceable against the Board in accordance with its terms;
3. The Board is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit, or impair in any way its performance of any obligations hereunder;
4. The Board has the requisite expertise, qualifications, and staff to enable it to fully perform its obligations under this Agreement;
5. As of the Effective Date of this Agreement, the Board has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations, or its ability to fulfill its obligations under this Agreement;
6. The Board is not in breach of any federal, state, or local statute or regulation applicable to the Board or its operations that would materially affect the Board's obligations under this Agreement;
7. The Board, to the best of its ability, will complete, or cause to be completed, delivery of the selected projects in accordance with information presented to the Advisory Board; and
8. The Board has read and fully understands the terms, covenants, and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

**D. Reliance on Representation, Warranties, and Covenants.** All representations, warranties, covenants, and agreements made in this Agreement are intended to be material and shall be conclusively deemed to have been relied upon by the received party.

## **ARTICLE II - ADVISORY BOARD**

**A. Administration.** The Advisory Board will:

1. Review Board overviews of future work.
2. Review Board reports of work completed.
3. Make recommendations to the Board and City regarding the Board's receipt and expenditure of IMF funds.
4. Hold all meetings in accordance with its own rules and by-laws, as well as state law regarding public meetings.

**B. Reporting.** The Advisory Board will:

1. Provide quarterly reports of its activities to the City and the Board.
2. Provide to the City quarterly and year-end reports on the Board's administration of IMF funds, which shall include at a minimum a complete and detailed written

accounting of revenues and expenditures of IMF funds made pursuant to this Agreement.

### **ARTICLE III - THE CITY'S OBLIGATIONS**

**A. Administration.** The City will:

1. Administer this Agreement through the Department of Public Works;
2. Monthly remit IMF funds to the Board, as provided in Article IV – IMF Fund. Such remittance may occur via electronic transfer. Required supporting documentation shall include at least Advisory Board minutes reflecting the Board's proposed plan of work, a monthly invoice submitted electronically via the City's supplier portal, and the anticipated amount of funds approved for use by the Board. The City may request any additional documentation necessary to justify or confirm any past or proposed transfer of funds.

### **ARTICLE IV- IMF FUND**

**A. Overview.**

1. Of the revenue deposited into the IMF, seventy-five percent will be made available to the Board. The remaining twenty-five percent of revenue deposited into the IMF will remain with the City for use by the City's Department of Public Works.
2. The City may deposit and use other funds in the Infrastructure Maintenance Fund that are not part of the sub-account named Sewerage and Water Board (IMF). Funds not placed in the sub-account named Sewerage and Water Board (IMF) shall not be included in, shall not be considered, and are not part of the funds to be split 75/25 between the Board and City.
3. IMF funds will be provided to the Board on a regularly occurring monthly basis, subject to the requirements of this Article IV. However, only funds received by the City, deposited in the IMF, allocated by the City Council, and properly made available to the Board will be subject to transfer. This Agreement creates no right in the Board to any future funds that may be placed in the IMF or that could be allocated to the Board.

**B. Requirements and Limits on Funds:**

1. No City funds are obligated to the Board or for Board projects as a result of this Agreement. The Parties agree the following listed conditions shall be suspensive conditions to any payments, partial or full, from City to the Board: allocation of funds by the City Council; compliance with all other notification, reporting, and restrictions on IMF funds; and availability of funds in the IMF. All risk of non-payment, for any reason, shall be exclusively borne by the Board.
2. The Board acknowledges that no part of this Agreement will constitute a warranty to the Board of any eligibility or right to IMF funds.
3. **Limitation on Available Funding.** The City will not be liable for any costs or expenses paid or incurred by the Board in excess of the amounts properly

transferred to the Board under this Agreement, except as may be specifically set forth in a duly authorized amendment. The Board agrees to provide or obtain all funding for its projects not provided by the IMF funds.

4. **No Payment for Services Beyond Scope of Agreement.** Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request the Board to provide services that would result in the performance of services beyond the scope of this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such services and/or expenditures. The City shall not be required to reimburse or compensate the Board for any services that are provided by the Board that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto.

C. **Non-Compliance.** If the City determines the Board's expenditures, in whole or in part, were not in accordance with any restrictions on IMF funds, then the City expressly reserves its rights to any available remedy, including without limitation, the rights to seek return of all or part of the IMF funds provided to the Board and to cease any future transfers of the IMF funds. In the event of the Board's non-compliance, the City will provide the Board written notice of such non-compliance and 30 days to cure the non-compliance, or, if such non-compliance cannot be cured within 30 days, the Board will be permitted 30 days to provide the City a plan to cure such non-compliance. If the non-compliance is such that a plan to cure is required, the Board shall be obligated to proceed with its plan in a commercially expeditious fashion at all times.

#### **ARTICLE V- MAINTENANCE AND OPERATION**

Following completion of projects, the Board, at its sole cost and expense, shall maintain the completed projects in first class condition, good working order, and free from defects. Following completion of projects, the Board shall be fully responsible for the condition and operation of the completed projects.

#### **ARTICLE VI- DURATION AND TERMINATION**

A. **Term.** The term of this agreement shall be for 5 years from the Effective Date, subject to Art. XII(V) (Survival of Certain Provisions).

B. **Extension.** The City can opt to extend the term of this Agreement provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

C. **Termination for Convenience.** The City or Board may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of the termination at least 30 calendar days before the intended date of termination.

D. **Termination for Cause.** The City or Board may terminate this Agreement for cause by providing written notice to the other party of such cause and 30 days to cure the cause, or, if such cause cannot be cured within 30 days, the other party will be permitted 30 days to provide a plan to cure such cause. If the cause is such that a plan to cure is required, the party shall be obligated to proceed with its plan in a commercially expeditious fashion at all times. "Cause" includes without limitation any failure to perform any obligation or abide by

any condition of this Agreement or the failure of any representation or warranty in this Agreement. If a termination for cause is subsequently challenged in a court of law and the City prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the Board or City; no further notice will be required.

**E. Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds by the City, sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

### **ARTICLE VII - INDEMNITY**

**A. Board's Duty to Indemnify the City.** To the fullest extent permitted by law, the Board will protect, defend, indemnify, and hold harmless the City, its agents, elected officials, employees, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, actions, liabilities, losses, or costs, arising out of or related to: (a) any actual or alleged act or omission in the performance of this Agreement by the Board, its employees, contractors, subcontractors, vendors, agents, or assigns, or (b) any act outside the scope of this Agreement by the Board, its employees, contractors, subcontractors, vendors, agents, or assigns. The Board will also be responsible for, and will protect, defend, indemnify, and hold harmless the Indemnified Parties from any claims, actions, administrative proceedings, penalties, fines, loss of funds, or reimbursements, arising out of or in any way relating to the Board's receipt or use of funding under this Agreement.

**B. Limitation.** The Board's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Board nor any of its agents or employees contributed to such gross negligence or willful misconduct

**C. Independent Duty.** The Board has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Board is ultimately absolved from liability.

**D. Expenses.** Notwithstanding any provision to the contrary, the Board shall bear the expenses including, but not limited to, the City's reasonable attorneys' fees and expenses, incurred by the City in enforcing this indemnity.

### **ARTICLE VIII- INSURANCE**

**A.** Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Board shall maintain or require their contractor to provide the following insurance in full force and effect for the duration of the work under this Agreement. The Board shall retain the right to self-insure for any and/or all of the following required insurance coverages:

1. **Minimum Requirements:**

- i. Commercial General Liability (CGL): Including contractual liability insurance,

products and completed operations, personal injury, bodily injury, property damage, advertising injury, abuse and molestation, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form.

- ii. Workers' Compensation: as required by the State of Louisiana, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- iii. Professional (Errors and Omissions) Liability Insurance: Insurance appropriate to the Contractor's profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six months.

- iv. Automobile Liability Insurance: Using Insurance Services Office (ISO) Form Number CA 00 01 or its substantial equivalent including liability coverage for all autos owned, rented, hired or borrowed as well as liability for mobile equipment subject to compulsory insurance or financial liability laws or other motor vehicle insurance laws with limits of not less than \$1,000,000 per accident for bodily injury or property damage. If applicable, policy to include the Broad Form Transportation Pollution Form CA 99 48, or most current form available.
  - v. Umbrella Insurance: Limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance in the amount of not less than \$5,000,000.
  - vi. Crime Insurance: Contractor shall maintain coverage to include but not limited to employee dishonesty, forgery or alteration, on premises, computer crime/fraud with limits of not less than the total of all funds received by S&WB per year.
2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- i. Additional Insured Status. The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used) CG 20

37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein.

The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06-City Hall, New Orleans, LA 70112.

The Additional Insured Box must be marked "Y" for Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation /Employers Liability and Property.

- ii. Primary Coverage. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor's coverage.
  - iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this agreement.
  - iv. Waiver of Subrogation. The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
  - v. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except with prior notice to the City of no less than 30 days.
  - vi. Acceptability of Insurers. Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
  - vii. The obligations of the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the contract/agreement.
3. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 - Ref.: CEA) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:
- i. Copies of all policies of insurance, including all policies, forms, and endorsements;
4. Without notice from the City, the Contractor will:

- i. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- ii. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.

#### **ARTICLE IX - RETENTION, ACCESS, AND OWNERSHIP OF RECORDS**

**A. Retention.** The Board agrees to keep all such business records related to, or arising out of, this Agreement as would be kept by a reasonably prudent practitioner of the Board's profession for a period of three (3) years after the termination of this Agreement, or such longer period of time required by the City. All accounting records shall be maintained in accordance with generally accepted principles and practices.

**B. Right to Audit; Access.** At any time during normal business hours, upon receipt of reasonable notice and as often as the City may deem necessary, the Board shall make all data, records, reports, and all other materials relating to this Agreement available to the City for examination and copying.

**C. Ownership.** All data collected and all products of work prepared, created, or modified by the Board in the performance of this Agreement, including, without limitation, any and all plans, notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings, or other such material, regardless of form and whether finished or unfinished, and any related intellectual property, but excluding the Board's personnel and administrative records and any proprietary tools, systems, and information used by the Board to perform the services under this Agreement (collectively, "**Work Product**") will be the exclusive property of City and the City will have all right, title, and interest in any Work Product, including, without limitation, the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Board's consent and for no additional consideration to the Board

#### **ARTICLE X – HIRENOLA PROGRAM**

The Board agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Board fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

#### **ARTICLE XI – NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Board (1) will not discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Board's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental

disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry,

**B. Non-Discrimination.** In the performance of this Agreement, the Board will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Board in any of the Board's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Board. The Board agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Incorporation into Subcontracts.** The Board will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**D.** The City may terminate this Agreement for cause if the Board fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

## **ARTICLE XII - NOTICE**

**A. In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:  
Director  
Department of Public Works  
City of New Orleans  
1300 Perdido Street, Suite 6W03  
New Orleans, LA 70112  
  
&  
City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112
2. To the Board:  
Ghassan Korban  
Executive Director

Sewerage and Water Board of New Orleans  
625 St. Joseph Street  
New Orleans, LA 70165

&

Special Counsel  
Sewerage and Water Board of New Orleans  
625 St. Joseph Street  
New Orleans, LA 70165

- B. Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.
- C. Notification of Change.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

### **ARTICLE XIII - ADDITIONAL PROVISIONS**

- A. Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.
- B. Assignment.** This Agreement and any part of the Board's interest in it are not assignable or transferable without a validly executed written amendment hereto. This Agreement shall inure to and be binding upon the parties hereto and their respective successors and permitted assigns.
- C. Voluntary Execution.** The parties have read and fully understand the terms, covenants, and conditions set forth in this Agreement and are executing the same willingly and voluntarily of their own volition.
- D. Acknowledgment of Exclusion of Workers' Compensation Coverage.** The Board expressly agrees and acknowledges that it is an independent contractor as defined in La R. S. § 23:1021 and as such, it is expressly agreed and understood between the parties hereto, in entering into this Agreement, that the City shall not be liable to the Board for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of La R.S. § 23:1034, anyone employed by the Board shall not be considered an employee of the City for the purpose of Workers' Compensation coverage.
- E. Waiver of Benefits.** The City and the Board each agree and understand that the Board, acting as an independent agent, or its respective employees shall not receive any sick or annual leave, health or life insurance, pension, or other benefits from the City.
- F. Jurisdiction.** The Board consents to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas of jurisdiction on account of residence elsewhere.
- G. Choice of Law.** Any dispute arising from or relating to this Agreement or the performance of any obligations under this Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

H. **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement or in connection with any of its provisions, the prevailing party shall be entitled to an award for the attorneys' fees and the costs and expenses incurred therein in addition to any other right of recovery.

I. **Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Board on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

J. **Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

K. **Fiscal Funding for the City's Obligations.** The fulfillment of the City's obligations under this Agreement are contingent upon the availability of funds to fulfill such obligations. If, for any reason, funds are no longer available to provide for the support of this Agreement, the Agreement shall terminate without further penalty to the City. If this Agreement is terminated due to insufficient funds, the Board shall be notified in writing of the same prior to termination.

L. **Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

M. **No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

N. **Non-Solicitation Statement.** The Board has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Board has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

O. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other party shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right, or seek any available remedy with respect to that default, breach, or defective performance, or any prior, contemporaneous, or subsequent default, breach, or defective performance.

P. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or

employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Board, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Board pursuant to this Agreement without regard to the Board's otherwise satisfactory performance of the Agreement.

**Q. Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**R. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**S. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part of the Agreement.

**T. Survival of Certain Provisions.** All representations and warranties and all obligations concerning insurance, records retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

**U. Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

#### **ARTICLE XIV - COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

#### **ARTICLE XV- ELECTRONIC SIGNATURE AND DELIVERY**

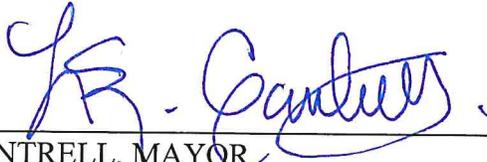
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**[The remainder of this page is intentionally left blank]**

**[SIGNATURES CONTAINED ON NEXT PAGE]**

IN WITNESS WHEREOF, the City and the Board, through their duly authorized representatives, execute this Agreement.

**CITY OF NEW ORLEANS**

BY:   
LATOYA CANTRELL, MAYOR

Executed on this 7<sup>TH</sup> of July, 2020

**FORM AND LEGALITY APPROVED:**  
Law Department

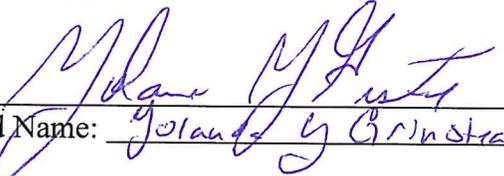
By:   
Printed Name: Andrew Gregorich

**SEWERAGE AND WATER BOARD OF NEW ORLEANS**

BY:   
GHASSAN KORBAN, EXECUTIVE DIRECTOR

Signed on this of 24<sup>th</sup> of June, 2020

**FORM AND LEGALITY APPROVED:**  
Special Counsel

By:   
Printed Name: Yolande Y Brinstra

**COOPERATIVE ENDEAVOR AGREEMENT BETWEEN THE SEWERAGE AND WATER BOARD OF NEW ORLEANS AND THE CITY OF NEW ORLEANS**

**WHEREAS**, Article 7, Section 14 of the Louisiana Constitution of 1974, as amended, permits public bodies to enter into cooperative endeavor agreements to serve valuable public purposes; and

**WHEREAS**, the Sewerage and Water Board of New Orleans (“the Board”) is the provider of water, sewer and drainage for the City of New Orleans (the "City"); and

**WHEREAS**, the Board is experiencing financial challenges which are restricting its ability to provide improvements that will enhance the ability of the Board to continually provide water, sewer and drainage services, especially during hurricane season, to the City without interruption; and

**WHEREAS**, the City has created a special fund designated as the City of New Orleans Infrastructure Maintenance Fund, with a sub-account named Sewerage and Water Board (the “IMF”), into which is deposited funds from taxes authorized and approved by the voters of New Orleans to be used by the City and the Board for infrastructure maintenance, and other funds, including but not limited to a fee, designated by lawful authority for deposit in the fund; and

**WHEREAS**, effective July 1, 2019, Act 169 of the 2019 Regular Session of the Louisiana Legislature authorized the City to impose an occupancy tax on short-term rentals, not to exceed six and three-quarters percent of the rent or fee charged for such occupancy, provided a proposition authorizing the levy of the tax was approved by a majority of the electors of the city (referred to as the Short-Term Rental or STR Occupancy Tax); and

**WHEREAS**, on November 16, 2019, pursuant to City Council Resolution No. R-19-308, a majority of the electors of the city authorized the levy of the STR Occupancy Tax; and

**WHEREAS**, the City has or will adopt an ordinance to impose the STR Occupancy-Tax, with proceeds to be dedicated to the infrastructure fund of the City pursuant to Act 169; and

**WHEREAS**, the City has or may authorize or provide for additional means of generating revenue, including without limitation, sources of funds commonly referred to as the Local Privilege and Lost Penny, whose proceeds are to be used for the Infrastructure Maintenance Fund as provided in the City Code of New Orleans, Sections 70-415.278 through 70-415.282, as may be amended; and

**WHEREAS**, on August 6, 2019, the Mayor signed Executive Order LC 19-02, creating the Infrastructure Advisory Board (“**Advisory Board**”) to review the Board's spending of IMF funds and to provide related recommendations; and

**WHEREAS**, the City and the Board desire to enter into a cooperative endeavor agreement for the purpose of establishing the procedures, requirements, and reporting obligations for transfers and use of IMF funds by the Board; and

**WHEREAS**, the City and the Board agree that their mutual goals and objectives satisfy a legitimate and objective public purpose as the transfer and use of IMF funds by the Board will serve to improve and maintain the water, sewer, and drainage infrastructure for the City of New Orleans, and in turn improve the health, welfare, and safety of the citizens of New Orleans; and

**WHEREAS**, the Board will use IMF funds in accordance with applicable requirements and restrictions to build and maintain water, sewer, and drainage infrastructure; and

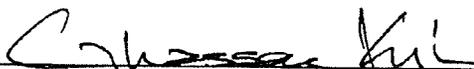
**WHEREAS**, the City will remit authorized IMF funds to the Board for use on allowed activities.

**NOW, THEREFORE, BE IT RESOLVED**, the Sewerage and Water Board be authorized to enter into a Cooperative Endeavor Agreement with the City of New Orleans to receive recurring funds through the IMF that will enhance Sewerage and Water Board facilities and operations for the purpose of providing adequate water, sewer, and drainage services that will positively impact the overall economic development for the City of New Orleans.

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I, Ghassan Korban, Executive Director,  
Sewerage and Water Board of New Orleans, do hereby  
certify that the above and foregoing is a true and  
correct copy of a Resolution adopted at the Regular  
Monthly Meeting of said Board, duly called and held,  
according to law, on June 17, 2020.

  
**GHASSAN KORBAN, EXECUTIVE DIRECTOR**  
**SEWERAGE AND WATER BOARD OF NEW ORLEANS**

# EXHIBIT D

## Fair Share Agreement Status

		REVENUE STREAM	AMOUNT	STATUS	NOTES
ONE-TIME FUNDS		Transfer of unobligated cash reserves from Morial Convention Center to the Sewerage & Water Board (S&WB)	\$20 MM	Transferred to S&WB September 2019.	\$14MM used to pay vendor invoices and \$6MM used for "AP repayments to Sewer."
		Rededication of Convention Center Boulevard funds to S&WB	\$6 MM	Transferred to S&WB December 2019.	Council approved (7/25/19) and Mayor signed (7/31/19) Ordinance 32,714 authorizing CEA amendment and transfer \$6 MM of funds previously dedicated to Convention Center Boulevard maintenance to S&WB; New Orleans Exhibition Hall Authority (NOEHA) delayed transfer until certain public streets were rededicated to NOEHA; CPC recommended transfer (9/25/19); City Council approved Act of Revocation of Public Dedication of Street Right-of-Way (12/19/19).
		Transfer of Public Safety and Homeland Security funds to S&WB	\$2 MM	Transferred to S&WB December 2019.	NOEHA board authorized Executive Director to amend public safety CEA with City of New Orleans (6/26/19); NOEHA delayed transfer until certain public streets were rededicated to NOEHA; CPC recommended transfer (9/25/19); City Council approved Act of Revocation of Public Dedication of Street Right-of-Way (12/19/19).
		Transfer of unspent FEMA revolver loan funds from Division of Administration to S&WB	\$7.6 MM	Transferred to S&WB August 2019.	Full amount used to pay vendor invoices.
		Transfer of Hazard Mitigation Grant Program funding	\$16 MM	Pending transfer and project approvals by FEMA and Governor's Office of Homeland Security & Emergency Preparedness.	Amendment 10 - \$1,741,920 for weatherization and software for Turbine 6 (approved and awaiting disbursement), expected by end of July 2020. Amendment 11- \$12,258,080 for frequency converter; \$2,000,000 for emissions package (submitted and awaiting approval).
	<b>TOTAL ONE-TIME FUNDS:</b>			<b>\$51.6 MM</b>	

COMPLETED
  IN PROGRESS
  SUSPENDED

Fair Share Agreement Status (cont'd)

		REVENUE STREAM	AMOUNT	STATUS	NOTES
RECURRING REVENUE		"Lost Penny" 1% Sales Tax on Hotels	\$12 MM (annual est.)	Completed	<p>HB 522 passed legislature (6/1/19) and signed by Governor (6/7/19); law effective 7/1/19.</p> <p>CEA governing distribution of IMF funds signed 7/7/20.</p> <p><b>\$8.3MM from 1% sales tax collected from 7/2019 to 5/2020.</b></p> <p>Funds in IMF to be split 75/25 between S&amp;WB and City.</p>
		6.75% Tax on Short-Term Rentals – to be split 75/25 between City of New Orleans and New Orleans & Co.	\$7.8 MM (annual est.)	In Progress	<p>HB 43 passed legislature (5/30/19) and signed by Governor (6/7/19); tax approved by voters (11/16/19).</p> <p>Tax levy ordinance introduced in City Council (2/6/20); City Council vote scheduled (8/6/20).</p> <p>Collections to be split 75% to IMF and 25% to New Orleans &amp; Co.</p> <p>Funds deposited into IMF are split 75% to S&amp;WB and 25% to City.</p>
		Downtown Development District (DDD) Millage Increase	\$2.5 MM (annual)	In Progress	<p>DDD Board approved \$2.5MM for infrastructure for 2020 -- \$1.5MM from millage roll forward, \$1MM from cash reserves.</p> <p>City and DDD have not reached agreement on CEA governing how funds will be administered.</p> <p>100% of funds to go to City for downtown drainage projects.</p>
		Rededication of Hotel Occupancy Local Privilege Tax (Art. VIII, Sec. 150-1002)	\$5.3 MM* (annual est.)	Suspended	<p>NOTMC voted to rededicate the Hotel Occupancy Local Privilege Tax to support the cultural economy of New Orleans.</p> <p>The Administration has promised to place an amount equivalent to expected tax receipts directly into IMF.</p> <p>NOTMC Board voted on 2/10/20 to reform NOTMC as the New Orleans Tourism and Cultural Fund (NOTCF), dedicated to supporting the cultural economy of New Orleans.</p> <p>The full amount of the Hotel Occupancy Local Privilege Tax will be used to support the NOTCF.</p> <p><i>The Administration has stated publicly that it plans to find other sources to make up for the Local Privilege Tax, including possibly redirecting general funds to the Infrastructure Maintenance Fund.</i></p>
		<b>TOAL RECURRING REVENUE:</b>	<b>\$27.6 MM (annual est.)</b>		

\* After payment of outstanding NOTMC obligations, 2020 total estimated at \$3.68MM

**Fair Share Agreement Status (cont'd)**

		ACTION	STATUS
<b>OTHER ACTIONS</b>		Creation of Infrastructure Advisory Board to oversee spending of Recurring Revenue	Infrastructure Advisory Board created; Paul Flower, Chair; first meeting <b>9/26/19</b> .
		Strategic marketing plan and transition study for the merger of NOTMC and New Orleans & Co.	NOTMC Board voted on <b>2/10/20</b> to reform NOTMC as the NOTCF, dedicated to supporting the cultural economy of New Orleans.
		Capital outlay from state general obligation bonds to pay for S&WB power plant upgrades	HB 2 passed ( <b>6/6/19</b> ) and signed by Governor ( <b>6/28/19</b> ); Priority 1 (\$7.3 MM) funded by State Bond Commission – S&WB beginning power plant site preparation work August 2020; Priority 5 (\$46.7 MM) TBD.
		Deferral of \$3.5 MM per year for five years (\$17.5MM total) of S&WB GO Zone payments	Approved and ordered by Governor.
		Payment in lieu of taxes (PILOT) from Convention Center hotel	HB 617 passed legislature ( <b>6/2/19</b> ) and signed by Governor ( <b>6/7/19</b> ); PILOT effective upon construction of Convention Center hotel. Estimated \$2 MM per year in revenue.

**REVISED Infrastructure Maintenance Fund Projects Matrix (Recurring Revenue)**

**EXHIBIT E**

Title	Description	Schedule	Benefits	2020 Amount	2020 REVISED AMOUNT
Advanced Metering Infrastructure (AMI)	To modernize and automate the SWBNO's water meter system	Phase 1— Survey/Project management Selection (2020) Phase 2— AMI Selection RFP (2021) Phase 3 – Project Implementation (2021-2023)	<ul style="list-style-type: none"> <li>• Consistent, timely, and accurate customer billing</li> <li>• Real-time tracking of water usage and revenue</li> <li>• Improved water system management, including leak detection</li> <li>• Customer education</li> <li>• Optimized system operation</li> </ul>	\$2,000,000	<p style="text-align: right;"><b>\$1,500,000</b></p> <p>Phase 1 – Additional \$3.5M by July 2021 Phase 2 – No Cost Phase 3 - \$40M</p>
Master Plan	To implement SWBNO's first comprehensive, integrated, sustainable plan to managing the city's water, sewer, power, and major drainage systems	Phase 1— Pre-Planning: RFI's and Workshops (2020) Phase 2—Vision & Strategy: Community Outreach and Strategic Plan (2020 – 2021) Phase 3 – Systems Planning: Water, Wastewater & Drainage Master Plan development (2021 – 2022)	<ul style="list-style-type: none"> <li>• Platform for sustainable and resilient utility management</li> <li>• Better-informed decisions on investment in system improvements</li> <li>• Public involvement and buy-in</li> </ul>	\$1,500,000	<p style="text-align: right;"><b>\$500,000</b></p> <p>Phase 2 – \$2M Phase 3 – \$2.5M</p>
Underground Drainage Canal Inspection Program	To inspect all underground drainage canals on a 5-year maintenance schedule, with the purpose of proactively identifying	5-year plan, beginning in 2020	<ul style="list-style-type: none"> <li>• Establish a baseline for underground canal conditions</li> <li>• Remove obstructions to promote better drainage</li> <li>• Reduce property and environmental damage due to flooding</li> <li>• Establish a 5-year routine maintenance schedule</li> </ul>	TBD	<p style="text-align: right;"><b>\$0 – determining in-house capacity to perform</b></p> <p>Each year thereafter: TBD</p>

**REVISED Infrastructure Maintenance Fund Projects Matrix (Recurring Revenue)**

	and addressing blockages or issues				
Water Treatment Plant Improvements: Sycamore Filter Gallery	Repairs to structural, piping, and filter equipment of a critical component of the drinking water plant	Phases 3 & 4 of 5 total phases (2020)	<ul style="list-style-type: none"> <li>Addressing a backlog of capital maintenance by replacing 10 of 24 total filters</li> <li>Better public health protection</li> <li>More effective and efficient operations; technology improvements through SCADA</li> <li>Employee safety concerns</li> </ul>	5,000,000 Phase 3 5,000,000 Phase 4 (2020-2021)	<p><b>\$3,000,000</b></p> <p>Critical repairs with no alternative funding source</p>
Cross-Connection Phase 2 Remediation	Correction of a longstanding situation where cooling water is returned to the potable water system	Immediately	<ul style="list-style-type: none"> <li>Enhancing public health protection</li> <li>State regulatory compliance</li> <li>Best alternative to total T4 overhaul</li> </ul>	1,500,000	<p>TBD – Reducing reliance on T4 by implementing T7 solution</p>
<b>New Priorities</b>					
SELA – Algiers Drainage Project	New federal funding and construction on Algiers drainage canals, similar to uptown projects – SWBNO required to pay 5% up-front cost	Payment due August 1; planning and work by Corps underway	<ul style="list-style-type: none"> <li>Provides improved drainage to Algiers and surrounding areas by increasing water storage area</li> <li>Ongoing partnership with Corps and federal stakeholders</li> <li>New project</li> </ul>	N/A	<p><b>\$1,030,625</b></p>
T7 Solution	Purchase of a new 60Hz generator to replace T5 and work in conjunction with a new frequency changers to replace 20MW of power for our drainage system	Immediate – working on frequency changer design and implementation now; purchase of generator asap to have on site and functional by August 2021	<ul style="list-style-type: none"> <li>Most reliable and resilient solution for replacing power lost when T5 became unavailable</li> <li>60Hz equipment consistent with system modernization and power master plan</li> <li>Funding already available for frequency changer</li> </ul>	N/A	<p><b>\$4,000,000</b></p> <p>Total cost = \$17M; seeking additional funding sources and may use Fair Share funds in 2021 to supplement</p>
Stormwater Fee Study	We are seeking a detailed stormwater fee study – including	Immediate – currently considering proposals	<ul style="list-style-type: none"> <li>Provides a full analysis on stormwater fee possibilities, including affordability, rate structure, incentives, timing</li> </ul>	N/A	<p><b>\$250,000</b></p>

**REVISED Infrastructure Maintenance Fund Projects Matrix (Recurring Revenue)**

	analysis and fee proposal – in additional to our rate study. This would begin the discussion on development of a stormwater management fee and program.		<ul style="list-style-type: none"> <li>First step toward developing a recurring, reliable revenue source for drainage projects to supplement existing millage</li> </ul>		
				<b>TOTAL:</b>	<b>\$10.25M*</b>

\*Conservative estimate for Fair Share funding in 2020, based on collections to date and COVID impact. IMF currently holding \$8.2M.