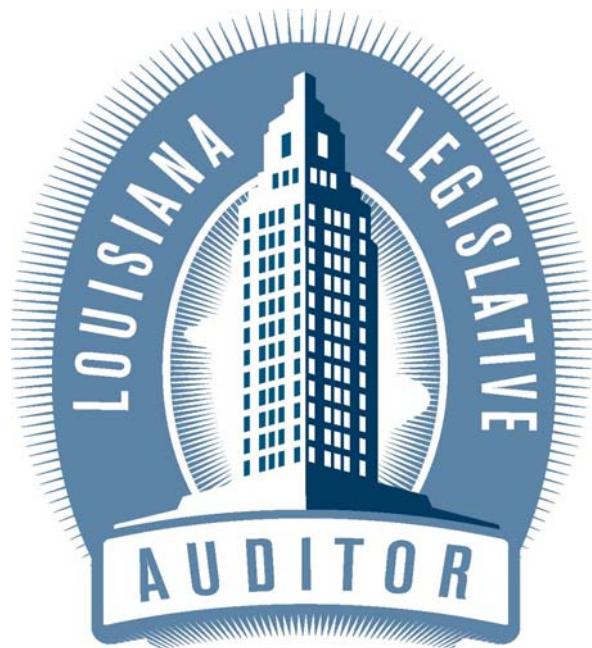


ALGIERS DEVELOPMENT DISTRICT  
OF THE CITY OF NEW ORLEANS



ADVISORY SERVICES REPORT  
ISSUED APRIL 23, 2008

**LEGISLATIVE AUDITOR  
1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
BATON ROUGE, LOUISIANA 70804-9397**

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LOUISIANA LEGISLATIVE AUDITOR  
STEVE J. THERIOT, CPA

April 23, 2008

**REPRESENTATIVE JEFFERY "JEFF" J. ARNOLD,  
CHAIRMAN, AND BOARD MEMBERS OF THE  
ALGIERS DEVELOPMENT DISTRICT OF THE  
CITY OF NEW ORLEANS**

New Orleans, Louisiana

At the request of the Algiers Development District of the City of New Orleans (ADD), staff of my Advisory Services Division performed an assessment of the role of ADD in *Federal City*.

Attachment I contains our recommendations resulting from our limited assessment. We are also providing brief background information on *Federal City*, including a diagram in Appendix A of key organizational and project relationships. Management's response is presented in Appendix B.

Our recommendations are intended to assist ADD in ensuring that its legal and contractual requirements are met and its controls over public funds, both state and local, are adequate. Management of ADD should consider the costs of implementing our recommendations compared to the benefits they will provide.

This assessment is substantially less in scope than an audit conducted in accordance with generally accepted auditing standards; therefore, we are not offering an opinion on ADD's financial statements or system of internal control nor assurance as to compliance with laws and regulations.

Respectfully submitted,

Steve J. Theriot, CPA  
Legislative Auditor

JSI:ESS:MDC:dl

ALGIERS08

## Background

## **Algiers Development District of the City of New Orleans**

Algiers Development District of the City of New Orleans (ADD) was created by state law effective January 1, 1993, as a special taxing district for the 15<sup>th</sup> ward of Orleans Parish. According to state law [Louisiana Revised Statute (R.S.) 33:2740.27B], the City Council of New Orleans (City Council) has the power and control over, and the responsibility for the functions, affairs and administration of ADD.

State law (R.S. 33:2740.27E) requires ADD to prepare, or cause to be prepared, an economic development plan for the district for submission to the City Planning Commission of New Orleans and to the City Council for adoption within 10 years from the date of creation of ADD. ADD's failure to meet this statutory requirement resulted in its automatic dissolution by operation of law effective January 1, 2003, (R.S. 33:2740.27G), at which time all of its power and authority under law became null and void.

Furthermore, as of February 29, 2008, ADD's legal standing under state law has not been reestablished. However, despite ADD's apparent lack of legal capacity, it has continued to operate after January 1, 2003. ADD has an executive director and a seven-member board of commissioners comprised of two Louisiana state senators, two Louisiana state representatives, the assessor for the 15<sup>th</sup> ward of Orleans Parish, one city councilman, and an appointee of the mayor of New Orleans.

## **Algiers Economic Development District No. 1**

The Algiers Economic Development District No. 1 (AEDD) was created by ordinance of the City Council and became law on October 8, 2003. City and state sales tax increment (TIF) revenues are being generated within the boundaries of this district, an area within Algiers anchored by the Wal-Mart Supercenter on Behrman Highway.

On December 31, 2004, AEDD entered into a cooperative endeavor agreement with ADD [who was already dissolved by operation of law on January 1, 2003, (R.S. 33:2740.27G)] and the City of New Orleans to provide for the collection, deposit, transfer, and oversight of the TIF revenues. Also on the same date, AEDD entered into a separate cooperative endeavor agreement with the State of Louisiana and ADD for the administration of the state's portion of TIF revenues.

## **Algiers Economic Development Fund**

The Algiers Economic Development Fund (TIF Fund) was created by ordinance of the City Council and also became law on October 8, 2003. The TIF Fund is a special economic development fund established for the deposit of the city and state sales tax increments collected within the AEDD. Although ADD was already dissolved by operation of law on January 1, 2003, (R.S. 33:2740.27G), the ordinance gave ADD the use of these monies pursuant to a plan recommended by the mayor of New Orleans and approved by ordinance of the City Council.

### ***Federal City Project***

According to the *Federal City* Web site (<http://www.nolafederalcity.com>) and a presentation made in August 2007 to the ADD board, *Federal City* is an estimated \$160-\$230 million public-private venture in Algiers that will develop and operate a mixed-use complex that attracts a large, diverse set of federal government, non-federal government and commercial tenants with the intention of driving local economic development.

As we understand, the goal is to retain and grow new military jobs and attract new jobs from other federal and commercial sectors. The objective is to have at least a total of 10,000 employees working in the complex within the next 10 to 12 years. Construction activities are to begin no later than September 30, 2008, with initial tenant occupancy targeted for early to middle 2010. Currently, there is no guaranteed number of federal government, non-federal government or commercial leases/tenants.

### **Public Funding**

Two sources of public funds have been committed to ADD for use in the *Federal City* project, both of which transpired after ADD's dissolution by operation of law on January 1, 2003, (R.S. 33:2740.27G):

1. TIF Revenues - Cooperative endeavor agreements entered into on December 31, 2004, with AEDD provide ADD with up to a maximum of \$2 million per year (\$1 million from both the city and state) for a 10-year period. TIF revenues are incremental sales tax revenues generated in AEDD that have been foregone by the City of New Orleans and the State of Louisiana for the benefit of ADD with certain restrictions on their use.
2. Capital Outlay Appropriation - In the 2007 Capital Outlay bill (Act No. 28, House Bill No. 2, 2007 Regular Session), the state legislature appropriated \$100 million to ADD for use in the *Federal City* project. Before funds are made available, by law, capital outlay appropriations are subject to further approvals, including those of the commissioner of administration, the attorney general, and the state Bond Commission. As of March 18, 2008, these approvals have not occurred.

### **Project Management**

ADD has a principal-agent relationship/arrangement (not in writing) with the New Orleans Federal Alliance (NOFA), a 501(c)(3) private nonprofit corporation. NOFA, as agent, is responsible for managing the project on behalf of ADD, the project principal. Retired Marine Major General David Mize (General Mize) is the president/CEO of NOFA and is the person actually managing the project. NOFA has no employees and has contracted directly with BearingPoint, Inc., and Adams and Reese, LLP, to provide project staff and administrative and legal support to General Mize.

Also, Louisiana Economic Development (LED) has executed a written *Memorandum of Understanding* with NOFA which provided NOFA, among other things, with the authority to act as the state's sole representative in all negotiations with the Department of Navy (DON), other potential federal entities, developers, and tenants to best facilitate planning, development, construction, and operation of *Federal City*.

#### Property

As we understand, *Federal City* is to be constructed by a private developer on approximately 165 acres of property in Algiers, of which approximately 95% is owned by the DON and includes the Algiers Naval Base (Naval Support Activity).

The forthcoming appraisal of the property and the leasing arrangement negotiated by NOFA and the DON is critical to the success of the project and the economic development benefits envisioned for the district. The DON is expected to execute a long-term lease, and in turn, receive state of the art facilities constructed on-site as consideration for some or all of the appraised value of the property. We were informed that ownership of the property is also being negotiated.

**NOTE:** After review of our preliminary findings/issues, ADD management determined that certain issues needed to be addressed immediately through legislation. The result was the passage of House Bill No. 45 (Act No. 6, 2008 Second Extraordinary Session) which became law (on March 24, 2008) prior to the public issuance of this report. The legislation focused on several issues, including the legal status of ADD, and those issues are addressed by management in its response (see Appendix B).

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## **Attachment I**

The following recommendations are intended to assist ADD in ensuring that its legal and contractual requirements are met and its controls over public funds, both state and local, are adequate.

### **Legal Status of ADD**

ADD has not met the statutory requirements to maintain its legal capacity beyond January 1, 2003.

State law (R.S. 33:2740.27E and F) requires the submission of an economic development plan (plan) to the City Planning Commission (CPC) of New Orleans and the adoption of such plan by the City Council by January 1, 2003, (within 10 years from the date of creation of ADD). Because no plan was reviewed by CPC and adopted by the City Council within the statutory time limit, ADD was dissolved by operation of law on January 1, 2003, (R.S. 33:2740.27G), at which time all of its power and authority under law became null and void.

**Recommendation:** ADD should retain legal counsel to explore options and assist in whatever actions may be necessary to reestablish its legal status under state law.

### **Legal Status of Contracts and Arrangements**

Despite its lack of legal capacity, ADD has continued to actively function over the past five years and has entered into certain arrangements with state and local government and private entities relating to the *Federal City* project. For example, our assessment revealed the following contracts and legal relationships/arrangements entered into after January 1, 2003:

1. Cooperative Endeavor Agreements (CEAs) - On December 31, 2004, ADD entered into separate CEAs with the State of Louisiana and the City of New Orleans and has received millions of dollars of sales tax funding through such agreements for the financing of economic development projects, including *Federal City*. The term of both CEAs is for 10 years.
2. Capital Outlay Bill - State of Louisiana - In the 2007 Capital Outlay bill (Act No. 28, House Bill No. 2, 2007 Regular Session), the state legislature appropriated \$100 million to ADD for use in the *Federal City* project. Before funds are made available, by law, capital outlay appropriations are subject to further approvals, including those of the commissioner of administration, the attorney general, and the state Bond Commission. As of March 18, 2008, these approvals have not occurred.
3. Contracts - ADD has entered into contracts with Apogen, LLC, for the consulting services of General Mize, senior vice-president. In 2006 and 2007, ADD paid approximately \$95,000 to Apogen.

4. **Principal-Agent Arrangement** - NOFA, a 501(c)(3) private nonprofit corporation, is operating as the agent of ADD in the *Federal City* project. NOFA, as agent, is responsible for managing the project (e.g., administering, negotiating, contracting, et cetera) on behalf of ADD.

**Recommendation:** ADD should retain legal counsel to explore options and assist in whatever actions may be necessary to amend contracts and relationships/arrangements entered into after January 1, 2003.

### **Lack of Oversight by City Council**

According to state law (R.S. 33:2740.27B), the City Council has the power and control over, and the responsibility for, the functions, affairs and administration of ADD. Although the city has representation on the ADD board, our assessment revealed that ADD did not seek or obtain certain approvals of the City Council as required by state statute, local ordinance, and a CEA as follows:

1. **Arrangement and Contracts Not Approved** - There was no documentation that the mayor and City Council approved ADD's principal-agent arrangement with NOFA nor was there documentation that the contracts entered into (e.g., BearingPoint, Inc., Adams & Reese, LLP, et cetera) under the arrangement were approved as required by law. R.S. 33:2740.27H(3) allows ADD with the prior approval of the mayor and City Council to contract with other entities when the service sought is not ordinarily provided by the City of New Orleans.
2. **Federal City Plan Not Approved** - The economic development plan for the *Federal City* project was not approved by ordinance of the City Council as required by law. In 2007, without approval of the City Council, ADD spent approximately \$1.7 million of TIF revenues on the *Federal City* project.

City Council Ordinance No. 21,283 became law on October 8, 2003, and provides TIF revenues can only be used by ADD pursuant to a plan approved by ordinance of the council. Also, R.S. 33:2740.27E and F require that a plan of the public improvements, facilities, and services proposed to be furnished, constructed, or acquired for the district be submitted to the City Council for adoption.

3. **Annual Budgets Not Approved** - The annual budgets of the TIF Fund were not submitted to and approved by the mayor and City Council as required by the CEA (Article 1.4) that governs ADD's use of TIF revenues. To date, as of December 31, 2007, ADD has spent approximately \$2 million of TIF revenues.

**Recommendation:** The ADD board should submit all contracts/arrangements, plans, and annual budgets to the City Council for review and approval as required by state and local laws and the CEA.

## Legal Status of NOFA

Our assessment revealed that NOFA, organized as a private 501(c)(3) nonprofit corporation, is operating as a quasi-public entity in the *Federal City* project and should be adhering to the Louisiana audit law and other public laws.

A nonprofit entity that receives and/or expends public funds in excess of \$25,000 in any fiscal year is subject to the requirements of Louisiana audit law (R.S. 24:513). Also, private nonprofit entities that are subject to the audit law are generally subject to other public laws including the open meetings (R.S. 42:4.1), public records [44:1(A)(1)], public bid (R.S. 38:2212), and Code of Governmental Ethics laws [R.S. 42:1102(2)(a)]. The extent to which a private nonprofit is subject to these other public laws depends on a variety of factors, including the purpose and function of the entity and how it is being funded.

NOFA, as the agent of ADD, is performing significant public (e.g., project management) functions on behalf of ADD, is 100% funded by public monies, and has constructively received and expended more than \$25,000 in public funds during 2007.

In leading the *Federal City* project, NOFA has contracted with the BearingPoint, Inc., consulting firm and the Adams and Reese, LLP, law firm to provide project staff and program administrative and legal support to President/CEO General Mize. Under ADD's arrangement with NOFA, all bills for services provided to NOFA/General Mize are forwarded to ADD for approval and payment. ADD pays the bills on behalf of NOFA which results in no monies flowing directly through NOFA. In 2007, ADD spent approximately \$1.7 million of its public funds (TIF revenues) to pay liabilities incurred by NOFA. As we understand, NOFA does not have an accounting system nor does it prepare financial statements on its operations.

Recommendation: ADD should retain legal counsel to review the legal and tax status of its agent in the *Federal City* project. In addition, consideration should be given to requesting the legal opinion of the Louisiana Attorney General regarding the status of NOFA. ADD should also ensure that its agent strictly complies with all applicable public laws.

## Conflict of Interest Considerations

To avoid any potential conflict of interest, we recommend that ADD retain legal counsel to review the following relationships in the *Federal City* project and consider consulting with the Louisiana State Board of Ethics:

1. Common Board Members on the ADD and NOFA Boards - There is greater potential for conflicts of interest, or the appearance of such, to arise in the *Federal City* project as a result of the ADD board and the NOFA board having common board members.
2. Multiple Roles of General Mize - General Mize is senior vice-president of Apogen, LLC, and the president/CEO (and former chairman) of NOFA. As such,

ADD's consulting contract with Apogen and its principal-agent arrangement with NOFA puts General Mize on both "ends" of transactions in the *Federal City* project. On one end, General Mize is a consultant to ADD and on the other end, he is actually performing the project management for ADD.

Note: LED appears to be in a similar position to ADD with respect to General Mize. LED has a contract with Apogen for the consulting services of General Mize and LED has entered into a *Memorandum of Understanding* with NOFA that gives NOFA/Mize the authority to act as the state's sole representative in all negotiations of *Federal City*.

### Lack of Written Agreements

We did not find written agreements supporting the following relationships/arrangements:

1. ADD and NOFA - In 2007, ADD spent approximately \$1.7 million of its public funds (TIF revenues) to pay liabilities of NOFA. There was no written agreement between ADD and NOFA that establishes the authorities, responsibilities, and obligations of both entities, including specific goals and objectives, plans and budgets required, and oversight responsibilities that would ensure protection of the public's interest in this major public-private venture.

Recommendation: ADD should retain legal counsel to assist and ensure that a valid and comprehensive CEA is developed. In addition, ADD should cease paying the bills of the private non profit entity until the CEA is executed.

2. ADD and LED - Without a written agreement with ADD (project principal), LED entered into a *Memorandum of Understanding* with NOFA (agent of ADD) which provided NOFA the authority to act as the state's sole representative in all negotiations with the DON, other potential federal entities, developers, and tenants to best facilitate planning, development, construction, and operation of *Federal City*.

Recommendation: ADD should retain legal counsel to assist and ensure that a comprehensive CEA, which clearly defines ADD's rights, obligations, and responsibilities in the *Federal City* project, is developed and executed with the state.

3. ADD and Algiers Economic Development Foundation - In 2006, ADD transferred \$75,000 of public funds to the Algiers Economic Development Foundation (Foundation). There was no written agreement detailing the public purpose for the transfer or the specific source (e.g., TIF revenues) of the public funds transferred.

Recommendation: We suggest that ADD confirm in writing with the Foundation the non-gratuitous nature and public purpose of the transfer of public funds,

including the benefit(s) to be received by ADD and the source of funds (e.g., TIF revenues) used by ADD to make the transfer.

If any funds were gratuitous, such funds should be repaid to ADD. Also, we remind the ADD board that the City of New Orleans, through its CEA with ADD, provides specific restrictions on ADD's use of the TIF revenues and requires that an annual audit be conducted of the TIF Fund.

### ***Ownership of Property - Federal City***

The details of property (land and improvements) ownership were not included in the Plan for *Federal City* and it is not clear who will have legal title to the land and improvements. As we understand, NOFA is negotiating the ownership of the property with the DON.

*Federal City* is to be constructed by a private developer on approximately 165 acres of property in Algiers, of which approximately 95% is owned by the DON. The DON is expected to execute a long-term lease, and in turn, receive state of the art facilities constructed on-site as consideration for some or all of the appraised value of its property.

Recommendation: ADD should retain legal counsel to review state laws governing the ownership of land and improvements constructed on land owned by another entity. Legal counsel should ensure that the negotiations and final structure of the arrangement negotiated by NOFA and the DON satisfy state law and the specific, written requirements of ADD and the State of Louisiana as established in their CEA.

### ***Strengthen Controls Over Federal City Project***

ADD and the State of Louisiana should implement controls to strengthen oversight of the *Federal City* project. NOFA, through its principal-agent arrangement with ADD and its *Memorandum of Understanding* with LED, appears to have been given significant responsibility for overseeing the public's interests in this major public-private venture.

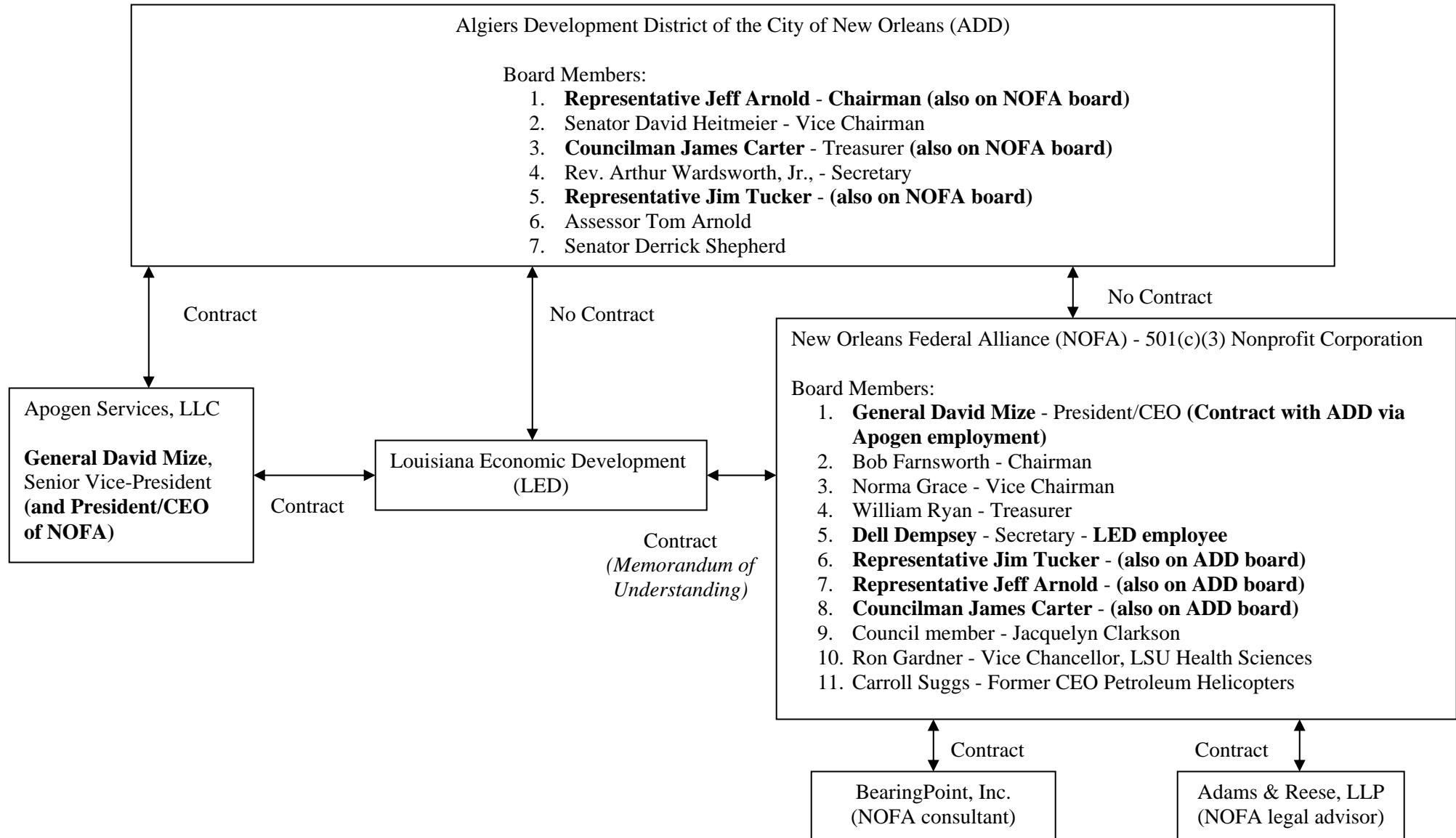
For example, under the leadership of General Mize, NOFA is negotiating the property leasing arrangement with the DON, the arrangement that is critical to the success of the project and the economic development benefits envisioned for the district. Should General Mize become unavailable to continue for any reason, the impact could cause delays or even project failure.

Recommendation: ADD should coordinate with officials of the executive and legislative branches of state government to ensure there are strong controls over project management decisions, expenditures of public funds, and project deliverables.

Furthermore, a steering committee is strongly advised that would be comprised of appropriate state and local government officials who would have overall responsibility for the final project results (e.g., economic development benefits) and the accountability of the public funds being spent. This will ensure that the public funding is adequately monitored, state and local government interests are considered, and state and local laws are followed.

## Appendix A

## City of New Orleans



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## Appendix B

# ALGIERS DEVELOPMENT DISTRICT



## BOARD OF COMMISSIONERS:

Representative Jeffery "Jeff" Arnold, Chairman  
Pastor Arthur Wardsworth, Jr., Secretary  
Representative Jim Tucker, Treasurer  
Assessor Tom Arnold  
Councilmember James Carter  
Val P. Exnicios  
Senator Derrick Shepherd

April 18, 2008

Mr. Steve J. Theriot  
Louisiana Legislative Auditor  
1600 North Third St.  
Baton Rouge, LA 70802

RE: Response of Algiers Development District to the Assessment  
Performed by the Advisory Services Division

Dear Mr. Theriot:

The Algiers Development District ("ADD") is in receipt of, and has reviewed the assessment performed by the Staff of your Advisory Services Division. As you are aware, at the request of the Board of Commissioners you performed an assessment of the role of the ADD in the *Federal City* project.

The Board requested this assessment to ensure that the ADD was in compliance with all appropriate federal and state laws, to ensure that all legal and contractual requirements were being met, to confirm that the ADD had appropriately dispensed public funds and that appropriate controls were in place for the future dispensing of public funds.

Please be advised that the ADD appreciates the recommendations of the Advisory Services Division and will incorporate the recommendations of your office where appropriate and as soon as practicable.

## **ADD Legislation**

Louisiana Revised Statute 33:2740.27(B) created the ADD by state law effective January 1, 1993, as a special taxing district for the Fifteenth Ward of Orleans Parish. The New Orleans City Council ("City Council") designated the ADD as an economic development district by ordinance in October of 2003.

Louisiana Revised Statute. 33:2740.27(E) required the ADD to prepare, or cause to be prepared an economic development plan for the district for submission to the City Planning Commission of New Orleans City Council for adoption within 10 years from the date of creation of the ADD. While economic development plans as required by City Ordinance and State Statute were fully reviewed with City Officials, including a representative of the City Council and the Mayor's appointee to the ADD, the City Council never formally adopted an "economic development plan" as defined in the Statute, and the ADD technically dissolved as a matter of law on January 1, 2003. However, the ADD continued to operate, without knowledge that its legal status had expired by operation of law.

### **House Bill 45 (HB 45)**

During the Second Extraordinary Session of 2008, HB 45 (Act 6) was passed which amended and re-enacted La. R.S. 33:2740.27 relative to the Algiers Development District. Although the legal status of the ADD technically expired by operation of law in January of 2003, with passage of HB 45, the Legislature of the State of Louisiana returned the ADD's legal status and validated, ratified, approved and confirmed all acts on behalf of the Algiers Development District from January 1, 1993 to the effective date of HB 45. HB 45 further provided that all obligations, contractual or otherwise, incurred by the ADD on or after January 1, 1993, to the effective date of HB 45 "should survive and shall be fully enforceable." HB 45 was signed by Governor Jindal on March 24, 2008. Thus, all actions of the ADD from January 1, 1993 to present were validated, approved, confirmed and ratified as a matter of state law. Moreover, HB 45 made all contracts and obligations incurred by the ADD from January 1, 1993 to present enforceable as a matter of law.

### **Federal City**

*Federal City* is an initiative started by state and local leaders to save the Naval Support Activity from closure, due to the federal Base Closure and Realignment (BRAC) Commission review. Thanks to the efforts of these individuals, the BRAC Commission reversed its prior recommendation to close NSA New Orleans. In its final recommendation, codified in the 2005 Base Realignment Act, the BRAC Commission recommended that the Marine Corps units now located at NSA New Orleans (East Bank) and the personnel at the Marine Corps Support Activity, Kansas City, Missouri, relocate to *Federal City* at NSA New Orleans (West Bank). State financing for the project is in place and construction must begin on *Federal City* no later than September 30, 2008. *Federal City* is envisioned to be a type of public-private venture that develops and operates a new kind of federal installation that is more effective and efficient than current models for small to mid-size bases. *Federal City*'s goal is to create state of the art facilities that will attract thousands of federal and private sector workers to New Orleans. Under this concept, the state of Louisiana has committed to contribute to the capital cost of this installation in return for the economic and social benefits of retaining and growing the workers in the DOD, federal, and "spin off" civilian organizations that would occupy the *Federal City*.

### **New Orleans Federal Alliance (NOFA)**

NOFA is a private, 501(c) (3) not for profit entity created for the sole purpose of facilitating the planning, development, construction and operation of *Federal City*. NOFA through a *Memorandum of Understanding* with the State of Louisiana is the designated agent for development of *Federal City*.

## **The Economic Development Fund**

In addition to the ADD, the City Council created the Algiers Economic Development Fund by ordinance 21,283 M.C.S. The Economic Development Fund was created to finance economic development projects proposed by the ADD. *Federal City* is one such project.

In December of 2004, the City and the ADD entered into a Cooperative Endeavor Agreement (“CEA”) to finance certain economic development projects proposed by the ADD and for the receipt of dedicated Tax Incremental Financing Funds (TIF) from the City.

The CEA requires the ADD to annually submit a budget for the expenditure of funds to the Mayor and the City Council for approval. Also, each subsequent change or group of changes to the approved budget that aggregates \$100,000 dollars or more must be submitted to the Mayor with a copy to the Clerk of Council, for approval.

### **State of Louisiana CEA**

In August of 2005, the State of Louisiana, the City of New Orleans and the ADD entered into a CEA for the pledge of state TIF funds to the ADD to further economic development within the tax financing district to include *Federal City*.

### **Specific Responses to Assessment Findings**

After consultation with representatives of the NOFA, in response to the assessment performed by your staff the ADD responds as follows:

#### **Legal Status of ADD**

##### **Finding**

ADD has not met the statutory requirement to maintain its legal capacity beyond January 1, 2003.

State Law (R.S. 33:2749.27(E) and (F) requires the submission of an economic development plan (plan) to the City Planning Commission (CPC) of New Orleans and the adoption of such plan by the City Council by January 2003 (within ten years from the date of creation of ADD). Because no plan was reviewed by CPC and adopted by the City Council within the statutory time limit, ADD was dissolved by operation of law on January 1, 2003 (R.S. 33:2740.27G), at which time all of its power and authority under law became null and void.

##### **Recommendation:**

ADD should retain legal counsel to explore options and assist in whatever actions may be necessary to re-establish its legal status under state law.

##### **RESPONSE:**

**Although the City Council did not formally adopt an “economic development plan” as defined in the Statute, which may call into question the ADD’s legal**

**status after January 1, 2003, HB 45, (attached hereto as Exhibit "A") which was passed during the Second Extraordinary Session of the 2008 legislature, amended and re-enacted Louisiana Revised Statute 33:2740.27 relative to the Algiers Development District. HB 45 specifically removed the requirement that the ADD submit an economic development plan to the New Orleans City Planning Commission to be adopted by the City Council within a statutory time frame. Although the ADD may have dissolved by operation of law on January 1, 2003, HB 45 recreated the ADD and gave it legal status with all its former power and authority. Consequently, the ADD's legal authority and status has been re-established.**

### **Legal Status of Contracts and Arrangements**

Despite its lack of legal capacity, ADD has continued to actively function over the past five years and has entered into certain arrangements with state and local government and private entities relating to the *Federal City* project. For example, our assessment revealed the following contracts and legal relationships/arrangements entered into after January 1, 2003:

**1. Cooperative Endeavor Agreements (CEAs)**

On December 31, 2004, ADD entered into separate CEAs with State of Louisiana and the City of New Orleans and has received millions of dollars of sales tax funding through such agreements for the financing of economic development projects, including *Federal City*. The term of both CEAs is for ten years.

**2. Capital Outlay Bill – State of Louisiana**

In the 2007 Outlay Bill (Act No. 28, House Bill No. 2, 2007 Regular Session), the State legislature appropriated \$100 million to ADD for use in the *Federal City* project. Before funds are made available, by law, capital outlay appropriations are subject to further approvals, including those of the Commissioner of Administration, the Attorney General, and the State Bond Commission. As of March 18, 2008, these approvals have not occurred.

**3. Contract**

ADD has entered into contacts with Apogen, LLC, for the consulting services of retired Marine Major General David Mize, Senior Vice-President. In 2006 and 2007, ADD paid approximately \$95,000 to Apogen.

**4. Principal-Agent Arrangement**

The New Orleans Federal Alliance (NOFA), a 501(c) (3) private nonprofit corporation, is operating as the agent of ADD in the *Federal City* project. NOFA, as agent, is responsible for managing the project (e.g., administering, negotiating, contracting, etc.) on-behalf of ADD.

**Recommendation:**

ADD should retain legal counsel to explore options and assist in whatever actions may be necessary to amend contracts and relationships/arrangements entered into after January 1, 2003.

**RESPONSE:**

**Cooperative Endeavor Agreement**

**HB 45, signed into law in March of 2008, by operation of law validated, ratified, approved and confirmed all acts on behalf of the ADD from January 1, 1993 to the effective date of HB 45, March 24, 2008. Additionally, HB 45 provided that all obligations of the ADD contractual or otherwise after January 1, 1993, survived and is fully enforceable. See HB 45 attached as Exhibit A. Thus by operation of law, all agreements entered into by the ADD, since January 1993, are valid and enforceable.**

**While we agree that the ADD entered into several agreements and arrangements after January of 2003, when it apparently lacked legal capacity, the ADD did not receive any Capitol Outlay funds while it technically lacked legal status. Although the state legislature appropriated \$100 million to ADD for use in the *Federal City* project, ADD has yet to receive any of those funds as the appropriation of those funds has not been approved by the Commissioner of Administration, the State Attorney General and the State Bond Commission. Thus, the ADD has not expended or received those Capitol Outlay Funds. Prior to any advancement or expenditure of such funds, a Cooperative Endeavor Agreement with the State of Louisiana will be executed as required for State approval.**

**CEA-City of New Orleans and State of Louisiana**

**With regard to the CEAs with the City of New Orleans and the State of Louisiana, which were executed when the ADD technically lacked legal capacity, HB 45, which became effective March 24, 2008, ratified, validated and confirmed the CEAs by operation of law and made each agreement fully enforceable. However, out of an abundance of caution ADD will re-execute the CEAs with the State of Louisiana and the City of New Orleans as soon as practicable.**

**Apogen Contract:**

**With regard to the contract executed with Apogen for the consulting services of General David Mize, which was executed when the ADD technically lacked legal capacity, HB 45 which became effective March 24, 2008 ratified, validated and confirmed all acts of the ADD from January 1993 to the effective date of HB 45, March 24, 2008. HB 45 also by operation of law made this obligation enforceable as a matter of law. However, out of an abundance of caution ADD at its next board meeting, or as soon as practicable, will vote to renew and re-execute the Apogen agreement or NOFA will contract directly with Apogen.**

**Principle – Agent Relationship**

**With regard to the principal-agent relationship with NOFA, the ADD will retain legal counsel to confect and execute a formal CEA with NOFA, which will delineate the roles and responsibilities of NOFA and ADD with regard to the *Federal City* project. This CEA will be formally adopted by the ADD board as soon as practicable.**

**Lack of Oversight by City Council**

According to state law (R.S. 33:2740.27B), the City Council of New Orleans has the power and control over, and the responsibility for the functions, affairs and administration of ADD. Although the City has representation on the ADD board, our assessment revealed that ADD did not seek or obtain certain approvals of the City Council as required by state statute, local ordinance, and a Cooperative Endeavor Agreement (CEA) as follows:

1. **Arrangement and Contracts Not Approved**

There was no documentation that the mayor and City Council approved ADD's principal agent arrangement with NOFA nor was there documentation that the contracts entered into (e.g., BearingPoint, Inc., Adams & Reese, LLP, et cetera) under the arrangement were approved as required by law. R.S. 33:2740.27H(3) allows ADD with the prior approval of the Mayor and City Council to contract with other entities when the service sought is not ordinarily provided by the City of New Orleans.

2. **Federal City Plan Not Approved**

The economic development plan for the *Federal City* project was not approved by ordinance of the City Council as required by law. In 2007, without approval of the City Council, ADD spent approximately \$1.7 million of TIF revenues on the *Federal City* project.

City Council ordinance No. 21, 283 became law on October 8, 2003, and provides that sales tax increment (TIF) revenues can only be used by ADD pursuant to a plan approved by ordinance of the council. Also, R.S. 33.27040.27 E and F requires that a plan of the public improvements, facilities, and services proposed to be furnished, constructed, or acquired for the district to be submitted to the City Council for adoption.

3. **Annual Budgets Not Approved**

The annual budgets of the Algiers Economic Development Fund (TIF Fund) were not submitted to and approved by the Mayor and the City Council as required by the CEA (Article 1.4) that governs ADD's use of TIF revenues. To date, as of December 31, 2007, ADD has spent approximately \$2 million of TIF revenues.

**Recommendation:**

The ADD board should submit all contracts/arrangements, plans, and annual budgets to the City Council for review and approval as required by state and local law and the cooperative endeavor agreement.

**RESPONSE:**

**While the ADD agrees that the City Council of New Orleans, through its legislative power has power and control over, and responsibility for the function, affairs and administration of the ADD, HB 45, passed in the 2008 Extraordinary Session, eliminated the requirement under Louisiana Revised Statute 33:2740.27E and F which mandated that the City Council approve contracts entered into by the ADD. However, the New Orleans City Council and the Mayor of New Orleans, via the CEA executed in December of 2004, must still approve the ADD's budget on an annual basis and the ADD can only expend funds pursuant to a plan recommended by the Mayor and approved by the City Council, via ordinance.**

**Although the ADD did not submit its 2008 budget to the Mayor and the City Council for approval, the ADD will, as soon as practicable, submit to both the Mayor of New Orleans and the City Council, its 2008 budget to include line items for all anticipated contractual expenditures and will specifically identify all parties and entities with whom the ADD currently contracts, or intends to contract with, in 2008.**

**In the future, the ADD will submit its budget to both the Mayor and the City Council for approval during October, November or December of each year, when all city departments, boards and commissions and political subdivisions are required to submit their budgets to the City Council for adoption and approval by both the Mayor and City Council. All anticipated contracts will be noted in the budget submitted for approval to the City Council and the Mayor of New Orleans. As required by the CEA, each subsequent change or groups of changes to the approved budget that are in aggregate of \$100,000 or more will also be submitted to the Mayor and City Council for approval, as necessary. Lastly, the ADD stands ready to again present its plan for *Federal City* to both the Mayor and the City Council.**

**Legal Status of NOFA**

Our assessment revealed that NOFA, organized as a private 501(c) (3) nonprofit corporation, is operating as a quasi-public entity in the *Federal City* project and should be adhering to the Louisiana audit law and other public laws.

A nonprofit entity that receives and/or expends public funds in excess of \$25,000 in any fiscal year is subject to the requirements of Louisiana audit law [R.S. 24:513]. Also, private, nonprofit entities that are subject to the audit law are generally subject to other public laws including the open meetings [R.S. 42:4.1], public records [44:1(A)(1)], public bid [R.S. 38:2212], and Code of Governmental Ethics law [R.S. 42:1102(2)(a)]. The extent to which a private nonprofit is subject to these other public laws depends on a variety of factors, including the purpose and function of the entity and how it is being funded.

NOFA, as the agent of ADD, is performing significant public (e.g., project management) functions on-behalf of ADD, is 100% funded by public monies, and has constructively received and expended more than \$25,000 in public funds during 2007.

In leading the *Federal City* project, NOFA has contracted with the Bearing Point, Inc., a consulting firm, and the Adams and Reese, LLP law firm to provide project staff and program administrative and legal support to President/CEO General David Mize. Under ADD's arrangement with NOFA, all bills for services provided to NOFA/General Mize are forwarded to ADD for approval and payment. ADD pays the bills on-behalf of NOFA which results in no monies flowing directly through NOFA. In 2007, ADD spent approximately \$1.7 million of its public funds (TIF revenues) to pay liabilities incurred by NOFA. As we understand, NOFA does not have an accounting system nor does it prepare financial statements on its operations.

**Recommendation:**

ADD should retain legal counsel to review the legal and tax status of its agent in the *Federal City* project. In addition, consideration should be given to requesting the legal opinion of the Louisiana Attorney General regarding the status of NOFA. ADD should also ensure that its agent strictly complies with all applicable public laws.

**RESPONSE:**

**The Federal City project is an initiative started by state and local leaders to save the Naval Support Activity (NSA) New Orleans from closure due to the federal Base Closure and Realignment (BRAC) Commission's review. The State of Louisiana took the lead role in this project by committing State resources to ensure its success. The State of Louisiana, through the Department of Economic Development, designated NOFA as the State's agent in development of Federal City. As memorialized in the Memorandum of Understanding cited in the Legislative Auditor's report, NOFA's role in this development is as an agent of the State. This was done strategically to guarantee the Department of the Navy that NOFA, by designation of the State of Louisiana, has the authority to enter into a lease arrangement and develop *Federal City*.**

**Further, while we do not agree with the Legislative Auditor's assessment that NOFA could be characterized as a quasi-public entity, recent changes to La. R.S. 33:2740.27 clarify this point and resolve this issue. HB 45 provides that no entity that contracts with the ADD for development within the boundaries of the district shall be considered a "public or quasi public entity or a public body" as a result of entering into such a contract or as a result of "receiving or expending funds of or on behalf of the district." La. R.S. 33:2740.27 (K).**

**NOFA is a private, 501(c) (3), not-for-profit entity created for the sole purpose of facilitating the planning, development, construction and operation of *Federal City*. As has been noted, the Department of Defense has concluded that it cannot enter into an Enhanced Use Lease of NSA – West Bank with a public entity or political subdivision. This is a key component of implementing the *Federal City* plan. Without a lease from the Department of**

**the Navy, the congressionally imposed deadlines to begin construction of Federal City cannot be met and the base will be closed.**

**To address this issue, NOFA and ADD, as soon as practicable, will enter into a CEA outlining the terms and conditions of each entity's role and designating NOFA as the lead entity for development of Federal City. In these regards, as outlined above, the private nature of NOFA is specifically defined in HB 45, which now creates a specific exemption to the law defining a quasi public entity. The CEA will clearly identify NOFA as a private entity to which the exception contained in HB 45 is applicable.**

**All funds expended to date by ADD on NOFA's behalf were for purposes of facilitating *Federal City* and for the intended public purpose. NOFA is currently reviewing any obligations it may have in these regards, and we assure the Legislative Auditor that any funds received directly by NOFA from State or local sources are and will be accounted for, have a proper audit trail, and will be subject to and compliant with all regulations or restrictions placed upon the funds by State and/or local governments and applicable law.**

### **Conflict of Interest Considerations**

To avoid any potential conflict of interest, we recommend that ADD retain legal counsel to review the following relationships in the *Federal City* project and consider consulting with the Louisiana State Board of Ethics:

**1. Common Board Members on the ADD and NOFA Boards**

There is greater potential for conflicts of interest or the appearance of such to arise in the *Federal City* project as a result of the ADD board and the NOFA board having common board members.

**2. Multiple Roles of General David Mize**

General Mize is Senior Vice-President of Apogen, LLC, and the President/CEO (and former chairman) of NOFA. As such, ADD's consulting contract with Apogen and its principal-agent arrangements with NOFA put General Mize on both "ends" of transactions in the *Federal City* project. On one end, General Mize is a consultant to ADD and on the other end he is actually performing the project management for ADD.

**Note:**

Louisiana Economic Development (LED) appears to be in a similar position to ADD with respect to General Mize. LED has a contract with Apogen for the consulting services of General Mize and LED has entered into a *Memorandum of Understanding* with NOFA that gives NOFA/Mize the authority to act as the State's sole representative in all negotiations of *Federal City*.

**RESPONSE:**

**Common Board Members on the ADD and NOFA Boards**

**HB 45 provides that a member of the Board of the ADD notwithstanding any provision to the contrary, may serve on the board of a private entity which enters into a contract with the district, provided that the member does not receive compensation from the private entity.** NOFA is a private entity, a 501(c) (3). Thus, HB 45 allows an individual to serve on the boards of ADD and NOFA as long as the individual is not being compensated by NOFA. Currently, there are no ADD board members who are directly compensated for their service on NOFA or the ADD.

**The only board members that serve on both the ADD Board and the NOFA Board are elected officials who are prohibited from doing business with either NOFA or the ADD. However, out of an abundance of caution, ADD will seek an opinion from the Louisiana State Board of Ethics as to whether or not it presents a conflict of interest for an individual to serve on the NOFA and ADD boards simultaneously. The ADD will abide by the opinion of the Louisiana State Board of Ethics.**

**Multiple Roles of General Mize**

**The ADD is currently reviewing the issues raised by the Legislative Auditor and will consult with the Louisiana State Board of Ethics to ensure the potential for a conflict of interest does not exist. ADD and or NOFA will make appropriate changes to its board structure and or contractual arrangements to avoid any potential conflict of interest.**

**Lack of Written Agreements**

We did not find written agreements supporting the following relationships/arrangements:

1. **ADD and NOFA**

In 2007, ADD spent approximately \$1.7 million of its public funds (TIF revenues) to pay liabilities of NOFA. There was no written agreement between ADD and NOFA that establishes the authorities, responsibilities, and obligations of both entities, including specific goals and objectives, plans and budgets required, and oversight responsibilities that would ensure protection of the public's interest in this major public-private venture.

**Recommendation:**

ADD should retain legal counsel to assist and ensure that a valid and comprehensive CEA is developed. In addition, ADD should cease paying the bills of the private, non-profit entity until the CEA is executed.

**RESPONSE:**

**ADD acknowledges that it has disbursed 1.7 million dollars of public funds (TIF revenues) to pay liabilities of NOFA without a written agreement between ADD and NOFA. NOFA is a 501(c)(3) private non-profit corporation responsible for planning, developing, constructing and operating the *Federal City* project. Moreover, the Louisiana Economic Development Unit (“LED”) has executed a *Memorandum of Understanding* with NOFA which provides that NOFA has the exclusive authority to act as the State’s sole representative in all negotiations with the Department of the Navy and other federal entities for the development of the *Federal City* project.**

**All monies expended by ADD on behalf of NOFA were for a public purpose and in compliance with the mandates of the CEAAs with the City of New Orleans and the State of Louisiana, Council Ordinances 21282 and 21283 and in furtherance of the *Federal City* project. All expenditures were authorized and approved by the ADD Board of Commissioners after thorough review to ensure protection of the public’s interest. *Federal City* is a public-private partnership to drive the local economy and to retain and grow jobs in the federal and commercial sectors.**

**The ADD shall immediately retain legal counsel to develop and negotiate a valid CEA with NOFA that documents the authorities, responsibilities, and obligations of both entities, including specific goals and objectives and proper controls as soon as practicable. Additionally, the ADD will not advance any monies to or pay any existing obligations of NOFA until a CEA has been adopted and executed by the Boards of ADD and NOFA.**

**2. ADD and LED**

Without a written agreement with ADD (project principal), Louisiana Economic Development (LED) entered into a *Memorandum of Understanding* with NOFA (agent of ADD) which provided NOFA the authority to act as the State’s sole representative in all negotiations with the Department of Navy, other potential federal entities, a developers and other tenants to best facilitate planning, development, construction and operation of *Federal City*.

**Recommendation:**

ADD should retain legal counsel to assist and ensure that a comprehensive CEA, which clearly defines ADD’s rights, obligations, and responsibilities in the *Federal City* project, is developed and executed with the State.

**RESPONSE:**

**ADD will retain legal counsel to draft, adopt and execute a valid CEA with the LED which will clearly define the rights, obligations, and responsibilities of both the ADD and LED with regards to the *Federal City* project.**

**3. ADD and Algiers Economic Development Foundation**

In 2006, ADD transferred \$75,000 of public funds to the Algiers Economic Development Foundation (Foundation). There was no written agreement detailing the public purpose for the transfer or the specific source (e.g., TIF revenues) used by ADD to make the transfer.

**Recommendation:**

We suggest that ADD confirm in writing with the Foundation the non-gratuitous nature and public purpose of the transfer of public funds, including the benefit(s) to be received by ADD and the source of funds (e.g., TIF revenues) used by ADD to make the transfer.

If any funds were gratuitous, such finds should be paid to ADD. Also, we remind the ADD board that the City of New Orleans, through its CEA with ADD, provides specific restrictions on ADD's use of the TIF revenue and requires that an annual audit be conducted of the TIF Fund.

**RESPONSE:**

**ADD acknowledges that \$75,000 in public funds was transferred from ADD accounts to AEDF accounts with no written agreement detailing the public purpose for the transfer. In 2006, ADD and AEDF shared office space, resources and personnel. Currently, ADD operates out of facilities leased by AEDF. In 2006, monies were transferred from ADD to AEDF pursuant to an invoice received from AEDF. The amount transferred represented the fair market value of ADD's cost of shared office space, supplies, personnel and services. This invoice was reviewed and approved for payment by the ADD Board of Commissioners.**

**ADD will retain legal counsel to draft a formal agreement or CEA with AEDF for the sharing of office space and supplies with AEDF. This agreement will be presented to the Board of Commissioners for approval and execution as soon as practicable. ADD will also obtain a statement from AEDF detailing the nature and purpose of the expenditures. Upon further review of the invoice with AEDF, if it is shown that there was an overpayment, ADD will work with AEDF to ensure ADD receives a refund of funds, if necessary. As required by state statute, ADD undergoes yearly audits which it will make available to the legislative auditor upon request.**

**Ownership of Property – Federal City**

The details of property (land and improvements) ownership were not included in the Plan for *Federal City* and it is not clear who will have legal title to the land and improvements. As we understand, NOFA is negotiating the ownership of the property with the Department of Navy (DON).

*Federal City* is to be constructed by a private developer on approximately 165 acres of property in Algiers, of which approximately 95% is owned by the DON. The DON is expected to execute a long-term lease, and in turn, receive state of the art facilities constructed on-site as consideration for some or all of the appraised value of its property.

**Recommendation:**

ADD should retain legal counsel to review state laws governing the ownership of land and improvements constructed on land owned by another entity. Legal counsel should ensure that the negotiations and final structure of the arrangement negotiated by NOFA and the Department of Navy satisfy state law and the specific, written requirements of ADD and the State of Louisiana as established in their Cooperative Endeavor Agreement.

**RESPONSE:**

**To clarify, NOFA is negotiating a long-term Enhanced Use Lease of NSA New Orleans – West Bank and all improvements contained thereon. It is not contemplated that the Department of the Navy will transfer title of the property, but will retain all rights as a Lessor.**

**As suggested in your review, ADD's legal counsel will review any issues related to the lease and ownership of the improvements for NSA New Orleans – West Bank to ensure that applicable state laws and any contractual obligations are met. We assure the Legislative Auditor that any transfer of property rights, will be well documented in accordance with all applicable State laws and Federal laws and regulations. At this time, it is premature to evaluate the legality of the transfer of "title" as suggested, as a review of the proper mechanisms for execution of an Enhanced Use Lease and the ramifications of such are still being reviewed by the Department of the Navy.**

**Strengthen Controls Over Federal City Project**

ADD and the State of Louisiana should implement controls to strengthen oversight of the *Federal City* project. NOFA, through its principal-agent arrangement with ADD and its *Memorandum of Understanding* with LED, appears to have been given significant responsibility for overseeing the public's interests in this major public-private venture.

For example, under the leadership of General Mize, NOFA is negotiating the property leasing arrangement with the Department of Navy, the arrangement that is critical to the success of the project and the economic development benefits envisioned for the district. Should General Mize become unavailable to continue for any reason, the impact could cause delays or even project failure.

**Recommendation:**

ADD should coordinate with officials of the executive and legislative branches of state government to ensure there are strong controls over project management decisions, expenditures of public funds, and project deliverables.

Furthermore, a steering committee is strongly advised that would be comprised of appropriate state and local government officials who would have overall responsibility for the final project results (e.g., economic development benefits) and the accountability of the public funds being

spent. This will ensure that the public funding is adequately monitored, state and local government interests are considered, and state and local laws are followed.

**RESPONSE:**

**As suggested in your review, ADD herein will coordinate with the executive and legislative branches of state government to ensure proper controls are in place for the project.**

**In further response, the named entities submit that the New Orleans Federal Alliance was created for the purpose of facilitating the planning, development, construction and operation of Federal City. The Board of Directors of the New Orleans Federal Alliance is comprised of appropriate state and local government representatives and private citizens dedicated to ensuring the public funding is adequately monitored, state and local government interests are considered, and state and local laws are followed. The ADD will work along with the other appropriate entities to establish proper controls in these areas that will ensure the risk of delays or project failure is minimized.**

ADD hopes that you will find this response sufficient. Our staff is available to answer any questions that you may have regarding this response. Please advise if there is any other information that we can provide to assist you in your assessment or to clarify any of our responses. Please do not hesitate to contact me if you have any questions.

Sincerely,

  
Representative Jeffery Arnold



**ENROLLED**

Second Extraordinary Session, 2008

HOUSE BILL NO. 45

BY REPRESENTATIVES ARNOLD AND TUCKER AND SENATORS HEITMEIER  
AND SHEPHERD

1

AN ACT

2 To amend and reenact R.S. 33:2740.27, relative to the Algiers Development District; to  
3 provide relative to the status of the district and its actions; to provide relative to the  
4 appointment and terms of the members of the board of commissioners; to provide  
5 relative to the powers and duties of the district; to provide relative to plans for public  
6 improvements, facilities, and services; to provide relative to all acts by and on behalf  
7 of the district since its creation; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 33:2740.27 is hereby amended and reenacted to read as follows:

10 §2740.27. The Algiers Development District; creation, composition, and powers;  
11 preparation of plans; levy of ad valorem taxes and issuance of bonds

12 A.(1) There shall be, and there hereby is, created a special taxing district  
13 comprised of all territory within the fifteenth ward of Orleans Parish, which ward  
14 extends to the center of the Mississippi River.

15 (2) The ~~said~~ special taxing district shall be known as, and is hereby  
16 designated, the Algiers Development District of the city of New Orleans ~~hereinafter~~  
17 ~~in this Section~~ referred to in this Section as the "district", ~~said such~~ creation to be  
18 effective January 1, 1993.

19 (3) For federal purposes of military base realignment, the district shall be  
20 considered a local redevelopment authority (LRA).

21 B. The council of the city of New Orleans, or its successor exercising the  
22 legislative powers of ~~said~~ the city, ~~hereinafter referred to~~ in this Section, collectively,

1 as the "city council", shall have such power and control over, and responsibility for,  
2 the functions, affairs, and administration of the district as are prescribed.

3 C. In order to provide for the orderly planning, development, acquisition,  
4 construction, and effectuation of the services, improvements, and facilities to be  
5 furnished by the district, and to provide for the representation in the affairs of the  
6 district of those persons and interests immediately concerned with and affected by  
7 the purposes and development of the district, there is hereby created a board of  
8 commissioners for the district ~~hereinafter~~, referred to in this Section as the "board".

9 D. The board shall be composed of seven members, all of whom shall ~~be~~  
10 ~~qualified voters of the city of New Orleans and residents of the fifteenth ward of~~  
11 ~~Orleans Parish. Each such member shall also have his principal place of business in~~  
12 ~~or own property in the fifteenth ward of Orleans Parish. Such members shall possess~~  
13 ~~additional qualifications and shall be appointed as follows: possess qualifications as~~  
14 ~~provided in this Subsection. The board shall be composed as follows:~~

15 (1)(a) ~~Two members, one appointed by each of the~~ The two state  
16 representatives who represent the fifteenth ward of Orleans Parish, or their  
17 designees.

18 (b) ~~Two members, one appointed by each of the~~ The two state senators who  
19 represent the fifteenth ward of Orleans Parish, or their designees.

20 (c) ~~One member appointed by the~~ The city council member who represents  
21 the fifteenth ward of Orleans Parish, or his designee.

22 (d) ~~One member appointed by the~~ The mayor of the city of New Orleans, or  
23 his designee.

24 (e) ~~One member appointed by the~~ The assessor for the fifteenth ward of  
25 Orleans Parish, or his designee.

26 (2)(a) ~~The members of the board~~ Each designee shall be a resident of the  
27 fifteenth ward of Orleans Parish and a qualified voter of the city of New Orleans.  
28 Each designee shall also have his principal place of business in or own property in  
29 the fifteenth ward of Orleans Parish. Each designee shall serve at the pleasure of

1           their his respective appointing designating authority. Members shall serve until their  
2           successors have been appointed and qualified.

3           (b) Any vacancy which occurs in the membership of the board shall be filled  
4           in the same manner as the original appointment.

5           (3) As soon as practicable after their its appointment, the board shall meet  
6           and elect from their its number a chairman, a vice chairman, a treasurer, and such  
7           other officers as it may deem appropriate. A secretary of the board may be selected  
8           from among the members or may be otherwise selected or employed by the board.

9           The duties of the said officers shall be fixed by bylaws adopted by the board.

10          (4) The board shall adopt such rules and regulations as it deems necessary  
11          or advisable for conducting its business and affairs and shall engage such assistants  
12          and employees as is needed to assist the board in the performance of its duties. It  
13          shall hold regular meetings as shall be provided by its bylaws and may hold special  
14          meetings at such time and places within or without the districts as may be prescribed  
15          in its rules or regulations.

16          (5) A majority of the members of the board shall constitute a quorum for the  
17          transaction of business. The board shall keep minutes of all regular and special  
18          meetings and shall make them available to the public in conformance with law.

19          (6) The members of the board shall serve without compensation; however,  
20          they shall receive travel allowance as reimbursement for expenses incurred while  
21          attending to the business of the district.

22          (7) Notwithstanding any provision of law to the contrary, a member of the  
23          board may serve on the board of a private entity which enters into contracts with the  
24          district provided that the member does not receive compensation from the private  
25          entity.

26          E.(1) The board shall prepare, or cause to be prepared, a plan or plans, such  
27          plan or plans, and the plan provided for in Subsection F of this Section, being  
28          hereinafter referred to, collectively, as the "plan", specifying the public  
29          improvements, facilities, and services proposed to be furnished, constructed, or  
30          acquired for the district, and it shall conduct such public hearings, publish such

1 notice with respect thereto, and disseminate such information as it in the exercise of  
2 its sound discretion may deem to be appropriate or advisable and in the public  
3 interest:

4 (2) Any plan may specify and encompass any public services, capital  
5 improvements, and facilities which the city of New Orleans is authorized to  
6 undertake, furnish, or provide under the constitution and laws of the state of  
7 Louisiana, and such specified public services, improvements, and facilities shall be;  
8 and shall for all purposes be deemed to be, special and in addition to all services,  
9 improvements, and facilities which the city of New Orleans is then furnishing or  
10 providing, or may then, or in the future, be obligated to furnish or provide with  
11 respect to persons or property within the boundaries of the district.

12 (3) Any plan shall include:

13 (a) An estimate of the annual and aggregate cost of acquiring, constructing,  
14 or providing the services, improvements, or facilities set forth therein.

15 (b) The proportion of the tax to be levied on the taxable real property within  
16 the district which is to be set aside and dedicated to paying the cost of furnishing  
17 specified services, and the proportion of such tax to be set aside and dedicated to  
18 paying the cost of capital improvements, or paying the cost of debt service on any  
19 bonds to be issued to pay the cost of capital improvements, such proportions, in each  
20 case, to be expressed in numbers of mills.

21 (c) An estimate of the aggregate number of mills required to be levied in  
22 each year on the taxable real property within the district in order to provide the funds  
23 required for the implementation or effectuation of the plan for furnishing the services  
24 specified and for capital improvements or debt service, or both.

25 (4) The board shall also submit the plan to the planning commission of the  
26 city of New Orleans. Said planning commission shall review and consider the plan  
27 in order to determine whether or not it is consistent with the comprehensive plan for  
28 the city of New Orleans, and shall within thirty days following receipt thereof submit  
29 to the city council its written opinion as to whether or not the plan or any portion or

1 detail thereof is inconsistent with the comprehensive plan for the city, together with  
2 its written comments and recommendations with respect thereto.

3 (5) After receipt of the plan, together with the written comments and  
4 recommendations of the city planning commission, the city council shall review and  
5 consider the plan, together with such written comments and recommendations. The  
6 city council may by a majority vote of its members adopt or reject the plan as  
7 originally submitted by the board, or it may alter or modify the plan or any portion  
8 or detail thereof, but only by a majority vote of all of its members. If the plan as  
9 originally submitted by the board is adopted by the majority vote of the city council,  
10 it shall become final and conclusive and may thereafter be implemented. If,  
11 however, the city council alters or modifies the plan by a majority vote of its  
12 members, the plan as so altered or modified shall be resubmitted to the board for its  
13 concurrence or rejection. The board may concur in such modified plan by a majority  
14 vote of all of its members. If the board so votes to concur in the plan as modified by  
15 the city council, the plan shall become final and conclusive and may thereafter be  
16 implemented. If, however, the board does not concur in the plan as modified by the  
17 city council, it shall notify the city council in writing of its action. Thereafter, and  
18 as often and at such time or times as the board may deem to be necessary or  
19 advisable, it shall prepare, or cause to be prepared, a plan or plans and submit the  
20 same to the city planning commission in accordance with the same procedure  
21 hereinabove prescribed with respect to the original plan. The city planning  
22 commission shall, in turn, submit such plan, together with their written comments  
23 and recommendations, to the city council for its adoption, modification, or rejection  
24 in the same manner and with the same effect as hereinabove provided with respect  
25 to the original plan.

26 F. The provisions of Subsection E of this Section to the contrary  
27 notwithstanding, the board may prepare and submit directly to the city council a plan  
28 or plans setting forth its intention to employ professional consultants and experts and  
29 such other advisors and personnel as it in its discretion shall deem to be necessary

1 or convenient to assist it in the preparation of a plan or plans for the orderly and  
2 efficient development of services and improvements within the district. Such plan  
3 shall also specify the services proposed to be rendered by such employees, an  
4 estimate of the aggregate of the proposed salaries of such employees and an estimate  
5 of the other expenses of the board required for the preparation of such plan or plans,  
6 together with a request that a tax, within the limits hereinafter in this Section  
7 prescribed, in an amount sufficient to cover the costs of such salaries and expenses  
8 be levied on the real property within the district. The city council shall review and  
9 consider such plan within thirty days following the submission to it by the board, and  
10 shall adopt or reject such plan by a majority vote of its members. If the city council  
11 adopts such a plan, it shall become final and conclusive and the tax shall be levied  
12 as hereinafter provided. If the city council rejects the plan, it shall notify the board  
13 of its action, and the board may again and from time to time prepare and submit to  
14 the city council for its review, consideration, adoption, or rejection in accordance  
15 with the procedures provided for in this Subsection, a plan setting forth the matters  
16 hereinabove in this Section.

17 G. If no plan is finally and conclusively adopted in accordance with the  
18 procedures prescribed in this Section within ten years from and after January 1,  
19 1993, all power and authority conferred hereby shall lapse, the district shall be  
20 dissolved and all power and authority incident thereto shall become null and void as  
21 a matter of law; provided that, in such event, all obligations, contractual or  
22 otherwise, incurred by the district during its existence shall survive and shall be fully  
23 enforceable in accordance with their terms.

24 H. E.(1) All services to be furnished within the district pursuant to any plan  
25 finally and conclusively adopted hereunder, shall be furnished, supplied, and  
26 administered by the city of New Orleans through its regularly constituted  
27 departments, agencies, boards, commissions, and instrumentalities as appropriate in  
28 the circumstances; and all capital improvements and facilities to be acquired,  
29 constructed, or provided within the district, whether from the proceeds of bonds or

1           otherwise, shall likewise be so acquired, constructed, or provided by the city of New  
2           Orleans through its regularly constituted departments, agencies, boards,  
3           commissions, and instrumentalities as appropriate in the circumstances, it being the  
4           intention hereof to avoid absolutely the duplication of administrative and  
5           management efforts and expense ~~in the implementation of any plan adopted for the~~  
6           ~~benefit of the district.~~

7           (2) In order to provide such services ~~and/or and to~~ provide, construct, or  
8           acquire such capital improvements or facilities, the board may enter into contracts  
9           with the city of New Orleans. The cost of any such services, capital improvements,  
10          and facilities shall be paid ~~for~~ to the city of New Orleans from the proceeds of the  
11          special tax levied upon real property within the district as ~~herein~~ provided in this  
12          Section, or from the proceeds of bonds, as the case may be.

13          (3) However, with the prior approval of the mayor and the city council, when  
14          the service sought is not ordinarily provided by the city of New Orleans, the board  
15          may contract with other entities in accordance with the approval of the mayor and  
16          the city council for such services. The cost of such specially contracted services  
17          shall be paid for by the board with its funds budgeted therefor.

18          (4) Notwithstanding the provisions of this Subsection, the board may  
19          exercise all of the powers granted to a community development district as provided  
20          in R.S. 33:9039.19, 9039.20, and 9039.32 ~~to execute and implement its plans under~~  
21          this Section.

22          F. E. The city council, in addition to all other taxes which it is now or  
23          hereafter may be authorized by law to levy and collect, is hereby authorized to levy  
24          and collect as ~~hereinafter specifically provided in this Section~~ for a term not to  
25          exceed fifty years from and after the date the first tax is levied pursuant to the  
26          provisions of this Section, in the same manner and at the same time as all other ad  
27          valorem taxes on property subject to taxation by the city are levied and collected, a  
28          special ad valorem tax upon all taxable real property situated within the boundaries  
29          of the Algiers Development District. The tax ~~herein authorized~~ shall be levied and

1           collected only after the question of its imposition has been submitted to and  
2           approved by a majority of the qualified voters of the district voting on the question  
3           at a regularly scheduled primary or general election to be conducted in accordance  
4           with provisions of the Louisiana Election Code. Any tax levied pursuant to the  
5           provisions of this Section shall be subject to the homestead exemption as provided  
6           by Article VII, Section 20 of the Constitution of Louisiana. ~~No such tax shall be~~  
7           ~~levied until a plan requiring or requesting the levy of a tax is finally and conclusively~~  
8           ~~adopted in accordance with the procedures prescribed in this Section.~~ The proceeds  
9           of ~~said~~ the tax shall be used solely and exclusively for the purposes and benefit of the  
10          district. ~~Said~~ The proceeds shall be paid over to the Board of Liquidation, City Debt,  
11          day by day as the same are collected and received by the appropriate officials of the  
12          city of New Orleans and maintained in a separate account. ~~Said~~ The tax proceeds  
13          shall be paid out by the Board of Liquidation, City Debt, solely for the purposes  
14          herein provided for in this Section upon warrants or drafts drawn on ~~said~~ such Board  
15          of Liquidation, City Debt, by the appropriate officials of the city and the treasurer  
16          of the district.

17           F. G.(1) The city of New Orleans, when requested by resolution adopted by  
18          the vote of a majority of the members of the board, approved by a resolution of the  
19          city council adopted by a majority vote of its members, and by resolution adopted  
20          by the vote of a majority of the members of the Board of Liquidation, City Debt,  
21          shall have power and is hereby authorized to incur indebtedness for and on behalf  
22          and for the sole and exclusive benefit of the district, and to issue at one time, or from  
23          time to time, negotiable bonds, notes, bond anticipation notes, renewal notes,  
24          revenue bonds, short-term revenue bonds, refunding bonds, interim certificates,  
25          certificates of indebtedness, certificates of participation, debentures, warrants,  
26          commercial paper, ~~short term~~ short-term loans, and other obligations or evidences  
27          of indebtedness herein referred to in this Section collectively as bonds of the city of  
28          New Orleans, the principal of, premium if any, and interest on which shall be  
29          payable from the proceeds of the special tax authorized, levied, and collected

1           pursuant to the provisions of this Section or from any other sources whatsoever that  
2       may be available to the district, including funds derived from rentals and leases of  
3       its property for the purpose of paying the cost of acquiring and constructing capital  
4       improvements and facilities within the district. Such bonds shall not constitute  
5       general obligations of the state of Louisiana, the parish of Orleans, or the city of New  
6       Orleans, nor shall any property situated within the city other than property situated  
7       within the boundaries of the district be subject to taxation for the payment of the  
8       principal of, premium if any, and interest on such bonds. Furthermore, any  
9       indebtedness incurred by the city of New Orleans for and on behalf and for the  
10      benefit of the district pursuant to the provisions of this Section, whether evidenced  
11      by bonds, notes, or other evidences of indebtedness, or otherwise, shall be excluded  
12      in determining the power of the city of New Orleans to incur indebtedness and to  
13      issue its general obligation bonds. The principal amount of such bonds which may  
14      be outstanding and unpaid at any one time shall never exceed the sum of two  
15      hundred million dollars. The proceeds derived from the sale of all such bonds shall  
16      be paid over to the appropriate officials of the city of New Orleans and shall be  
17      disbursed solely for the purposes and benefit of the district. All such bonds shall be  
18      sold by the Board of Liquidation, City Debt, and shall bear such rate or rates of  
19      interest, and shall, except as herein otherwise specifically provided in this Section,  
20      be in such form, terms, and denominations, be redeemable at such time or times at  
21      such price or prices, and payable at such times and places, within a period of not  
22      exceeding fifty years from the date thereof, as the Board of Liquidation, City Debt,  
23      shall determine.

24           (2) Said Such bonds shall be signed by the mayor of the city of New Orleans  
25      and the director of finance of the city of New Orleans, or officers exercising a similar  
26      function, and countersigned by the president or vice president and the secretary or  
27      assistant secretary of the Board of Liquidation, City Debt, provided that in the  
28      discretion of the Board of Liquidation, City Debt, all but one of said such signatures  
29      may be in facsimile, and the coupons attached to said such bonds shall bear the

1 facsimile signatures of ~~said the~~ director of finance and ~~said the~~ secretary or assistant  
2 secretary. In case any such officer whose signature or countersignature appears upon  
3 such a bond or coupon shall cease to be such officer before delivery of ~~said the~~ bonds  
4 or coupons to the purchaser, such signature or countersignature shall nevertheless be  
5 valid for all purposes. The cost and expense of preparing and selling ~~said the~~ bonds  
6 shall be paid from the proceeds thereof.

7 (3) The resolution of the Board of Liquidation, City Debt, authorizing the  
8 issuance and sale of such bonds and fixing the form and details thereof, may contain  
9 such other provisions, not inconsistent nor in conflict with the provisions of this  
10 Section, as it may deem to be necessary or advisable to enhance the marketability  
11 and acceptability thereof by purchasers and investors, including but without limiting  
12 the generality of the foregoing, covenants with bondholders setting forth conditions  
13 and limitations on the issuance of additional bonds constituting a lien and charge on  
14 the special tax levied on real property within the district pari passu with bonds  
15 theretofore issued and outstanding, and the creation of reserves for the payment of  
16 the principal of and interest on such bonds. These bonds and the interest thereon are  
17 exempt from all taxation levied for state, parish, or municipal or other local  
18 purposes; and savings banks, tutors of minors, curators of interdicts, trustees, and  
19 other fiduciaries are authorized to invest the funds in their hands in ~~said the~~ bonds.

20 (4) The Board of Liquidation, City Debt, as now organized and created, and  
21 with the powers, duties, and functions prescribed by existing laws, shall be continued  
22 so long as any bonds authorized by this Section are outstanding and unpaid.

23 ~~K:~~ (5) Notwithstanding any other provision of this Section to the contrary,  
24 ~~no tax authorized herein shall be levied and no bonds shall be issued unless and until~~  
25 ~~the maximum amount of the tax and the maximum amount of the bonds has been~~  
26 ~~approved by a majority of the electors voting thereon in the city of New Orleans in~~  
27 ~~an election called for that purpose. No bonds issued pursuant to this Section shall~~  
28 ~~be general obligations of the state of Louisiana, the parish of Orleans, or the city of~~  
29 ~~New Orleans.~~

1           E. H. The district shall have the power to acquire, to lease, to insure, and to  
2       sell real property within its boundaries ~~in accordance with its plans~~.

3           M. I. The district shall have the power to advance to the city of New Orleans  
4       funds for payment for services rendered by the city pursuant to a contract or  
5       contracts between the district and the city.

6           N. J.(1) Notwithstanding any law to the contrary, if the board determines, in  
7       its discretion, that it is in the best interest of the taxpayers and that completion of  
8       public improvements and facilities ~~in its plans~~ will be expedited, the design and  
9       construction phases of any project may be combined.

10          (2) The board shall adopt and promulgate rules for administering  
11       design-build contracts. Such procedures shall include but not be limited to:

12           (a) Prequalification requirements of competitors for design-build projects.

13           (b) Public announcement procedures for solicitation of interested  
14       design-build competitors.

15           (c) Scope of service requirements to be met by the successful  
16       designer-builder.

17           (d) Requirements of letters of interest by competitors for the design-build  
18       contract.

19           (e) Criteria and procedures for choosing a short list of interested competitors  
20       from which to request the submission of technical proposals.

21           (f) Requirements for bid proposals by competitors for design-build contracts.

22           (g) Composition of and appointment of qualified individuals to the technical  
23       review committee which shall grade and judge the technical proposals for ranking  
24       and recommendation to the board.

25           (h) Selection, process of award, and execution of the design-build contract  
26       for a stipulated sum certain.

27          (3) Notwithstanding any law to the contrary, the board may utilize a  
28       competitive request for proposals process to select a design-build contractor as  
29       follows:

1                             (a) For a contract to be let under the provisions of this Subsection, the board  
2                             shall give adequate public notice of the request for proposals by advertising in the  
3                             official journal of the city at least thirty days before the last day that proposals will  
4                             be accepted. In addition, the board shall mail written notice to persons, firms, or  
5                             corporations who are known to be in a position to furnish the required services at  
6                             least thirty days before the last day that proposals will be accepted.

7                             (b) The request for proposals shall clearly indicate the relative importance  
8                             of price and other evaluation factors, the criteria to be used in evaluating the  
9                             proposals, and the time frames within which the work must be completed.

10                           (c) Written or oral discussions shall be conducted with all responsible  
11                             offerers offerors who submit proposals determined in writing to be reasonably  
12                             susceptible of being selected for award. Discussions shall not disclose any  
13                             information derived from proposals submitted by competing offers.

14                           (d)(i) The contract award shall be made to the responsible offerer offeror  
15                             whose proposal is determined in writing by the board to be the most advantageous  
16                             to the district, taking into consideration review of price and the evaluation factors set  
17                             forth in the request for proposals.

18                           (ii) A request for proposals or other solicitation may be cancelled canceled  
19                             or all proposals may be rejected only if it is determined, based on reasons provided  
20                             in writing, that such action is taken in the best interest of the district.

21                           (e) Each contract entered into pursuant to this Subsection shall contain as a  
22                             minimum:

23                             (i) Description of the work to be performed and/or and objectives to be met,  
24                             when as applicable.

25                             (ii) Amount and time of payments to be made.

26                             (iii) Description of reports or other deliverables to be received, when  
27                             applicable.

28                             (iv) Date of reports or other deliverables to be received, when applicable.

29                             (v) Responsibility for payment of taxes, when applicable.

1                             (vi) Circumstances under which the contract can be terminated either with  
2 or without cause.

3                             (vii) Remedies for default.

4                             (viii) A statement giving the legislative auditor the authority to audit records  
5 of the individual(s) or firm(s).

6                             (f) When written proposals are submitted by ~~offerers~~ offerors, the proposals  
7 of the successful ~~offerer~~ offeror shall be incorporated into the final contract  
8 consummated with that ~~offerer~~ offeror.

9                             (4) There shall be no challenge by any legal process to the choice of the  
10 successful designer-builder other than for fraud, bias for pecuniary or personal  
11 reasons not related to the interest of the taxpayers, or arbitrary and capricious  
12 selection by the board. Once the designer-builder has been chosen and a contract for  
13 a stipulated sum certain executed, the price of the design-build contract shall not be  
14 increased other than for inflation, as prescribed in the contract, and for site or other  
15 conditions existing at the site or concerning the design and construction of which the  
16 designer-builder had no knowledge and should not have had knowledge as a  
17 reasonable possibility.

18                             K. The district may enter into contracts with any private entity for the  
19 purpose of development within the boundaries of the district. No such private entity  
20 shall be considered a public or quasi public entity or a public body as a result of  
21 entering into a contract with the district. No such private entity shall be considered  
22 a public or quasi public entity or a public body as a result of receiving or expending  
23 funds of or on behalf of the district.

24                             Section 2. All acts by and on behalf of the Algiers Development District, on and  
25 after January 1, 1993, to the effective date of this Act, are hereby validated, ratified,  
26 approved, and confirmed. All obligations, contractual or otherwise, incurred by the district  
27 on and after January 1, 1993, to the effective date of this Act shall survive and shall be fully  
28 enforceable in accordance with their terms.

29                             Section 3. This Act shall become effective upon signature by the governor or, if not  
30 signed by the governor, upon expiration of the time for bills to become law without signature

HB NO. 45

ENROLLED

- 1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
- 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
- 3 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_