

# **COOPERATIVE ENDEAVOR AGREEMENT**

**BY AND BETWEEN**

**THE AUDUBON COMMISSION**

**AND**

**THE NEW ORLEANS REGIONAL TRANSIT AUTHORITY**

This Cooperative Endeavor Agreement ("Agreement") is made and entered into by and between the **Audubon Commission**, domiciled at 6500 Magazine Street, New Orleans, LA (hereinafter referred to as "**Audubon**"), and the **New Orleans Regional Transit Authority**, domiciled at 2817 Canal Street New Orleans, LA (hereinafter referred to as "**RTA**").

## **WITNESSETH:**

**WHEREAS**, Article VII, Section 14(c) of the Constitution of the State of Louisiana provides that "for a public purpose, the State and its political subdivisions...may engage in cooperative endeavors with each other, or with any public or private association, corporation, or individual"; and

**WHEREAS**, the Louisiana Legislature in 1986 enacted Act 309, which authorized the Audubon Park Commission to establish, acquire, construct, operate, and maintain an aquarium in the City of New Orleans, now known as the Audubon Aquarium of the Americas, which serves as a place of public resort, pleasure, and recreation;

**WHEREAS**, Audubon accordingly has a strong interest in the ongoing maintenance, upkeep, and beautification of the Aquarium and its environs;

**WHEREAS**, in 2017 the Audubon Park Commission formally changed its name to the Audubon Commission;

**WHEREAS**, the New Orleans Regional Transit Authority (the "RTA") is a political subdivision of the State of Louisiana, created by an Act of the State Legislature in 1979, for purposes of administering a transit system within the metropolitan New Orleans area;

**WHEREAS**, the Louisiana Department of Transportation and the RTA entered a Cooperative Endeavor Agreement dated February 16, 2014, for the RTA to operate and maintain the Ferry Terminal and Services;

**WHEREAS**, the RTA has recently undertaken a certain Canal Street Ferry Terminal project ("the Project"), which will create a seamless Riverfront connecting the Audubon Aquarium to Spanish Plaza, and which will focus on opening the Riverfront and re-envisioning the connectivity between all transit modes to provide safe, reliable connections for riders;

**WHEREAS**, Audubon wishes to assist the RTA with certain landscaping and beautification modifications to the Project, which will be enjoyed by RTA riders, Audubon Aquarium visitors, tourists, and the general public;

**WHEREAS**, the parties desire to enter into this Cooperative Endeavor Agreement to facilitate and advance the goals recited herein which will benefit the RTA, Audubon, the City of New Orleans, and its citizens, residents, and tourists;

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

## **ARTICLE I STATEMENT OF PUBLIC PURPOSE**

Section 1.1 In accordance with Article VII, Section 14(C) of the Louisiana Constitution, the parties enter into this Agreement for the public purpose of public beautification and betterments to public property, and promoting tourism and public recreation in the City of New Orleans and the State of Louisiana more broadly.

Section 1.2. Audubon has a reasonable expectation of receiving a benefit or value from this endeavor that is equal to or exceeds the value of the funds expended. Specifically, Audubon anticipates the receipt of public beautification and tourism benefits that meet or exceed the value of the payment obligation set forth herein.

## **ARTICLE II SCOPE OF SERVICES**

Section 2.1 Audubon shall provide funds, in an amount not to exceed \_\_\_\_\$1,226,374.00\_\_\_\_\_, that the RTA shall use to fund certain change orders and/or modifications for landscaping and beautification improvements to the Project. For illustrative purposes only, such improvements may include or be similar to the Proposed Plan attached hereto as Exhibit A. Funds provided by Audubon shall be used to fund all additional expenses incurred to the project based on these changes including but not limited to construction costs, professional fees, delay costs, and internal costs directly related to the modifications to the Project.

Section 2.2 Audubon and RTA agree and understand that Infinity Engineering Consultants, LLC is and shall remain for all purposes the Professional of Record with respect to the Project, and shall have exclusive and final authority for the preparation of any Change Orders or other modifications to the Project that relate to the funds to be contributed by Audubon. The Professional of Record with respect to the Project shall only make modifications that are approved by the RTA, and the RTA shall have exclusive and final authority to direct the Professional of Record with respect to the Project. However, RTA agrees that Audubon's consultants, including, but not limited to, Eskew Dumez Ripple, shall consult with the Professional of Record and/or its subcontractors or consultants, to the greatest extent possible in order to arrive at mutually acceptable designs/plans for the alterations to the Project contemplated by this Agreement. Audubon shall be exclusively responsible for compensating its professionals and professionals contracted by the RTA in any tasks related to these endeavors.

Section 2.3 RTA agrees, prior to approving any Change Orders that relate to the improvements contemplated hereunder, or any Payment Applications that relate to the work that is the subject of said Change Orders, to consult with and obtain Audubon's approval of same, so as to ensure that both parties find that the proposed improvements are consistent with the aims and intent of this Agreement.

Section 2.4 Upon approval of any Payment Applications that includes work that is the subject of this Agreement, RTA shall submit a written request to Audubon for payment in an amount reflecting the portion of the Pay Application that arises out of the work and improvements envisioned by this Agreement. The RTA and its Professional of Record agree to provide Audubon with any and all such documentation that is requested by Audubon to ensure that the work has been performed satisfactorily and in accordance with the plans and specifications for said work. Upon Audubon's approval of the RTA's written request, Audubon shall remit funds to the RTA within 15 days of approval.

Section 2.5 RTA and its Professional of Record will implement the construction activities and work contemplated hereunder in compliance with all applicable state and federal laws and regulations. RTA will require that all of its contractors and all tiers of its subcontractors adhere to all applicable state and federal laws and regulations, and will ensure that appropriate monitoring is conducted to confirm such compliance.

Section 2.6. Audubon agrees that it shall be responsible for the general maintenance and upkeep of any beautification/landscaping improvements that are the subject of this Agreement. Audubon shall make all repairs in and about said areas that may be necessary to preserve them in good order and condition, with ordinary wear and tear excepted. RTA agrees that Audubon and its contractors, subcontractors, and vendors shall have reasonable access to said improvements for such maintenance and upkeep.

Section 2.7. RTA agrees that it shall follow all applicable state and local public procurement laws in connection with this Agreement, including any applicable requirements for the furnishing of appropriate labor and performance bonds.

Section 2.8. RTA shall be included in all design meetings regarding any proposed changes to their property and to the Project, and RTA shall have final right of approval and refusal for all proposed changes to the Project and all work performed on RTA owner properties. RTA shall not exercise its final right of approval and refusal in an unreasonable or arbitrary manner.

Section 2.9 Audubon and RTA agree to establish written communications protocols related to the activities required in section 2.6.

### **ARTICLE III TERM OF AGREEMENT**

Section 3.1 This Agreement shall begin on \_\_\_\_\_ 2022 and terminate on \_\_\_\_\_, 2037 unless earlier terminated as set forth in Article IV.

### **ARTICLE IV TERMINATION FOR CAUSE**

Section 4.1 Audubon may terminate this Agreement for cause based upon the failure of RTA to comply with the terms and/or conditions of this Agreement or failure to fulfill its performance obligations under this Agreement, provided that Audubon shall give RTA written notice specifying RTA's failure. If within thirty (30) days after receipt of such notice, RTA shall not have corrected such failure or, in the case of

failure which cannot be corrected within thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then Audubon may, at its option, place RTA in default and terminate this Agreement on the date specified in such notice, and seek all remedies available at law for said default.

Section 4.2 RTA may terminate this Agreement for cause based upon the failure of Audubon to comply with the terms and/or conditions of this Agreement or failure to fulfill its performance obligations under this Agreement, provided that RTA shall give Audubon written notice specifying Audubon's failure. If within thirty (30) days after receipt of such notice, Audubon shall not have corrected such failure or, in the case of failure which cannot be corrected within thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then RTA may, at its option, place Audubon in default and terminate this Agreement on the date specified in such notice, and seek all remedies available at law for said default.

## **ARTICLE V ASSIGNMENT**

Section 5.1 RTA shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of Audubon.

Section 5.2. It is agreed and understood that Audubon will utilize the Audubon Nature Institute, Inc., a non-profit corporation authorized to do business in the State of Louisiana, to assist in the endeavors described herein. The Audubon Commission is authorized to enter into any contracts and/or cooperative endeavor agreements with the Audubon Nature Institute, Inc, in order to carry out its obligations under this agreement.

## **ARTICLE VI AUDITOR'S CLAUSE**

Section 6.1 It is agreed that Audubon shall have the right and authority to audit all records of RTA and any subcontractor which relate to this Agreement.

Section 6.2 RTA and any subcontractors paid under this Agreement shall maintain all books and records pertaining to this Agreement for a period of five (5) years after completion of the work envisioned hereunder.

## **ARTICLE VII AMENDMENTS IN WRITING**

Section 7.1 Any alteration, variation, modification, or waiver of provisions of this Agreement shall be valid only-after such has been reduced to writing and executed by all parties. There shall be no oral modifications of this Agreement.

## **ARTICLE VIII MISCELLANEOUS**

Section 8.1 RTA shall be liable to Audubon for the repayment of any funds misappropriated, converted, or spent in violation of this agreement upon such a finding by an executive, administrative, or judicial body of competent jurisdiction.

Section 8.2 Any claim or controversy arising out of this agreement shall, prior to the initiation of litigation, be submitted to mediation, which shall be a condition precedent to the filing of any suit. Any such mediation shall be conducted in New Orleans, Louisiana. The parties hereto shall jointly select a mediator; if the parties cannot agree, then each party shall identify a mediator, and the two mediators selected by the parties shall confer and select a mediator.

Section 8.3 Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between RTA and Audubon, the existence of any such relationship being hereby expressly denied.

Section 8.4 This is a Louisiana contract and shall be governed, interpreted, and enforced in accordance with the laws of the State of Louisiana and of the United States of America. If any provision of this Agreement shall be found unenforceable or against public policy, said finding shall not affect the remainder of the remaining provisions of the Agreement, the provisions herein to be considered severable. Should a court be called on to interpret a provision hereof, no weight shall be given, nor shall any construction or interpretation be influenced, by any presumption of preparation of this Agreement by RTA or Audubon. Further, this Agreement is a Cooperative Endeavor Agreement as provided in Article 7, Section 14 of the Louisiana Constitution.

Section 8.5. Any notices required hereunder shall be delivered as follows:

To RTA:

To Audubon:

## **ARTICLE IX ANTI-DISCRIMINATION CLAUSE**

Section 9.1 RTA agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and RTA agrees to abide by the requirements of the Americans with Disabilities Act of 1990. RTA agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by the RTA, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this agreement.

## **ARTICLE X INDEMNIFICATION**

Section 10.1 RTA shall defend, indemnify, and hold free and harmless Audubon, the Audubon Nature Institute, Inc., and the City of New Orleans, and their respective authorized agents, officers, and employees, against all claims for labor and materials in connection with the landscaping and beautification project, or the improvements and alterations thereto that are the objective of this Agreement, including reasonable attorneys' fees. RTA further agrees to defend, indemnify, and hold free and harmless Audubon, the Audubon Nature Institute, Inc., the City of New Orleans, and their respective authorized agents, officers, and employees against any claims, suits, penalties, or fines brought by any person for personal injury,

including, but not limited to, death, disability, mental injury or emotional distress, or property damage, that arise out of or relate to the installation of the landscaping and beautification project or the improvements and alterations thereto that are contemplated by this Agreement. The RTA will not indemnify or hold any party harmless in the event that a party indemnified hereunder acts in a manner which constitutes an intentional tort, fraud, or which results in criminal penalties.

Section 10.2 Audubon shall defend, indemnify, and hold free and harmless RTA, and the City of New Orleans, and their respective authorized agents, officers, and employees, against all claims for labor and materials in connection with the general maintenance and upkeep of any beautification/landscaping improvements and alterations thereto that are the objective of this Agreement, including reasonable attorneys' fees. Audubon further agrees to defend, indemnify, and hold free and harmless RTA and the City of New Orleans, and their respective authorized agents, officers, and employees against any claims, suits, penalties, or fines brought by any person for personal injury, including, but not limited to, death, disability, mental injury or emotional distress, or property damage, that arise out of or relate to the general maintenance and upkeep of any beautification/landscaping improvements and alterations thereto that are contemplated by this Agreement. Audubon will not indemnify or hold any party harmless in the event that a party indemnified hereunder acts in a manner which constitutes an intentional tort, fraud, or which results in criminal penalties


**THUS DONE AND SIGNED** by RTA on this \_\_\_\_ day of \_\_\_\_\_, 2022.

**NEW ORLEANS REGIONAL TRANSIT AUTHORITY**

  
\_\_\_\_\_  
**Alex Z. Wiggins**  
**CEO, New Orleans Regional Transit Authority**

**THUS DONE AND SIGNED** by the Audubon Commission on this 5<sup>th</sup> day, of October, 2022.

**AUDUBON COMMISSION**

  
\_\_\_\_\_  
**J. Kelly Duncan**  
**President, Audubon Commission**