

LOUISIANA DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT

AND

REGIONAL TRANSIT AUTHORITY

COOPERATIVE ENDEAVOR AGREEMENT
FOR
FERRY SERVICES

(Lower Algiers-to-Chalmette, Canal Street-to-Algiers Point,
and Gretna-to-Canal Street Ferry Service Lines
in Orleans, Jefferson, and St. Bernard Parishes)

RFx # 30000001294

COOPERATIVE ENDEAVOR AGREEMENT

between the

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

STATE OF LOUISIANA,

the

REGIONAL TRANSIT AUTHORITY

This **COOPERATIVE ENDEAVOR AGREEMENT**, for the public purposes hereinafter declared, is made and entered as of this 16th day of February 2014 (“Effective Date”), by and between:

a) The Department of Transportation and Development, State of Louisiana, hereinafter “DOTD” or “Owner”, represented herein by its Secretary, Sherri LeBas, P.E.; and

b) Regional Transit Authority, hereinafter “RTA” or “Charterer”, represented herein by its duly authorized representative, Salvador G. Longoria, Chairman, Regional Transit Authority Board of Commissioners.

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 or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual”; and

WHEREAS, Article VI, Section 20 of the Constitution of the State of Louisiana provides that a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state, or with the United States or its agencies; and

WHEREAS, Sub-Part A, Part VII, Chapter 2 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:1321, et seq.) (the “Local Services Law”), provides that political subdivisions may engage jointly in the construction, acquisition or improvement of any public project or improvement, the promotion of and maintenance of any undertaking or the exercise of any power, provided at least one of the participants is authorized under a provision of general or special law to perform such activity or exercise such power as may be necessary for completion of the undertaking; and

WHEREAS, under the Local Services Law such arrangements may provide for the joint use of funds, facilities, personnel or property or any combination thereof necessary to accomplish the purpose of the Agreement (as defined below), and such agreements may include but are not limited to activities concerning the improvement, operation, repair and maintenance of public assets or improvements; and

WHEREAS, Chapter 27 of Title 33 of the Louisiana Revised Statutes of 1950, as amended (La. R.S. 33:9020, et seq.) (the "Cooperative Economic Development Law"), provides that local governmental subdivisions and political subdivisions may cooperate or engage in cooperative endeavors with other local governmental subdivisions or with any other private or public entity or person, for the purpose of aiding in cooperative development, all as defined in the Cooperative Economic Development Law; and

WHEREAS, as of January 1, 2013, the Crescent City Connection Division ("CCCD") no longer exists as a separate division of the DOTD, and operations previously conducted by the CCCD, including operation of Ferry Service (as defined below), has been folded into the DOTD's day-to-day operations; and

WHEREAS, the DOTD has ceased collecting tolls on the Crescent City Connection Bridge, some of which toll revenue was utilized in the operation of the Ferry Services; and

WHEREAS, the DOTD is statutorily obligated to operate and provide insurance for the Chalmette-to-Lower Algiers ferry and contribute from its operating budget not more than \$4 million annually for this ferry service line; and

WHEREAS, in accordance with 2013 La. Sess. Law Serv. Act 273 (S.B. 215) (West), monies from the statutorily created New Orleans Ferry Fund shall be appropriated and be used exclusively by the DOTD to fund operations of the Chalmette ferry and to provide other ferry service formerly operated by the CCCD;

WHEREAS, in accordance with 2013 La. Sess. Law Serv. Act 273 (S.B. 215) (West), the DOTD may enter into a cooperative endeavor agreement for ferry service with a political subdivision of the state;

WHEREAS, the DOTD and RTA determined that the Ferry Services constitute a public purpose within the meaning of Article VII, Section 14(C) of the Constitution of the State of Louisiana and specifically it has been determined by DOTD and RTA that the continuance of ferry services for public transit is an essential public purpose, whereby the ferry services provide a critical portion of transit in this region.

WHEREAS, the RTA seeks to provide operation of the ferry lines at Chalmette-to-Lower Algiers and other ferry services formerly operated by the CCCD, (specifically Canal Street-to-Algiers Point, and Gretna-to Canal Street in Orleans, Jefferson and St. Bernard Parishes); and

WHEREAS, the RTA is authorized by statute to operate Ferry Services, and

WHEREAS, the parties hereto wish to cooperate for the purposes of: a) the efficient operation, management, and administration of the designated ferry lines; and b) maintaining access to the designated ferry lines in accordance with the terms and conditions set forth in this Agreement, including any exhibits thereto;

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

**ARTICLE I
DEFINITIONS AND SCOPE**

1.1 For purposes of this Agreement the terms below are defined as set forth:

a. "Agreement" means this Cooperative Endeavor Agreement between the DOTD and the RTA setting forth the obligations of the parties thereunder. The Agreement includes this Cooperative Endeavor Agreement and all exhibits and attachments thereto (collectively the "CEA Documents"); the Notice to Proceed ("NTP"); and any amendments that are required to complete the performance of the Agreement in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

b. "Alteration" means the definition as defined in the regulation implementing the Americans with Disabilities Act, 49 CFR 37.3.

c. "DOTD" means the Department of Transportation and Development, State of Louisiana.

d. "Ferry Service" means the three (3) ferry service lines formerly operated by the CCCD: (1) the Chalmette-to-Lower Algiers ferry line, (2) the Canal Street-to-Algiers Point ferry line, and (3) the Gretna-to-Canal Street ferry line.

e. "Ferry Services Transition Period" means that period of time commencing upon the Effective Date of this Agreement and ending on December 31, 2014.

f. "Gross Revenue" means all revenues received by RTA or its subcontractors of any tier, designee(s), assignee(s), and/or sub-charterer(s) in connection with Ferry Services minus the subsidy repayment requirement in Section 2.5(e).

g. "Operating Cost" means expenses incurred in the operation and support of Ferry Services, including any insurance deductibles, accruals or claim expenses.

h. "Operating Subsidy" means necessary State of Louisiana public funding provided to assist in deferring the cost of Ferry Services.

i. "Project Year" means that period of time commencing on July 1st of any year and ending on June 30th of the following year.

j. "RTA" means the Regional Transit Authority, the party authorized to operate transportation services in Orleans, St. Tammany, Plaquemines, Jefferson and St. Bernard Parishes of Louisiana and engaged by the DOTD to manage the Ferry Service.

k. "Vessels" means the six (6) ferries owned by the DOTD covered from time to time under the Blanket Bareboat Charter Agreements between DOTD and RTA (as Owner and Charterer, respectively) and between RTA and its assignee (as Charterer and Sub-Charterer, respectively), and

separately chartered under individual charter orders and as approved by the Maritime Administration Charter Order MA-7042, all attached herein as Exhibit "A," as follows:

1. Louis B. Porterie, USCG Doc. No. 236610
2. Thomas Jefferson, USCG Doc. No. 242522
3. St. John, USCG Doc. No. 582890
4. Sen. Alvin T. Stumpf, USCG Doc. No. 593578
5. Capt. Neville Levy, USCG Doc. No. 588306
6. Col. Frank X. Armiger, USCG Doc. No. 593755

"Vessels" also includes those barges owned by DOTD and chartered and sub-chartered pursuant to individual Charter Orders under the respective Blanket Bareboat Charter Agreements.

Additionally, all defined terms in the Blanket Bareboat Charter Agreement and Blanket Bareboat Sub-Charter Agreement shall have the same meanings in this Agreement, unless otherwise expressly defined herein.

1.2 The Parties agree to execute any documents necessary to effect the covenants set forth in this Agreement including without limitation the Blanket Bareboat Charter Agreement, the Blanket Bareboat Sub-Charter Agreement, and the Charter Orders for each Vessel all in substantially the present form contemporaneously with the execution of this Cooperative Endeavor Agreement, as approved pursuant to the Maritime Administration's Charter Order MA-7042, which documents are attached hereto as:

Exhibit "B," Blanket Bareboat Charter Agreement and Charter Orders; and

Exhibit "C," Blanket Bareboat Sub-Charter Agreement and Sub-Charter Order.

1.3 For purposes of identification and record keeping, the following Purchase Order Number has been assigned to this Agreement:

RFx # 30000001294

All correspondence, invoices, progress reports, and other such documents submitted to the DOTD in relation to the performance of this Agreement shall be identified by the Purchase Order Number.

ARTICLE II AGREEMENT TERM AND TERMINATION

2.1 Term. The initial term of this Agreement shall be for Five (5) Project Years. This Agreement shall commence on the Effective Date, which will commence the First Project Year, and terminate on at the conclusion of the Fifth Project Year, unless terminated earlier as provide in this Agreement. This Agreement may be extended for two (2) additional terms each for five (5) Project Year periods, each requiring consent of the parties to effectuate the term extension.

2.2 Ferry Services Transition Period. Each month during the Ferry Services Transition Period, RTA, or its assignee, will review the operational and financial data from the operation and evaluate any proposals for amendments of the operations model to assure viability. DOTD will be provided monthly copies of all operational and financial data.

2.3 Termination for Default. This Agreement may be terminated by either party for default. Prior to any termination for default, the terminating party(ies) shall give written notice of default to the alleged defaulting party(ies) and provide said party with thirty (30) days within which the alleged defaulting party(ies) may cure the default. Should the alleged defaulting party(ies) fail to cure the default within the thirty (30) day cure period (or, in circumstances where the alleged default cannot reasonably be cured in thirty (30) days, have failed to take reasonable efforts to cure the default in a commercially reasonable time period) this Agreement shall terminate on the date specified in the notice of default. Nothing herein shall be construed to limit any rights or remedies of the non-defaulting party(ies) for damages arising from the default of the other party(ies).

2.4 Termination for Convenience. This Agreement may be terminated at any time for convenience by either party on not less than sixty (60) days written notice. Upon receipt of notice of termination for convenience, the parties shall take all reasonable steps to wind down and/or transfer the Ferry Services. Ferry Services and funding therefrom shall continue until the termination date. If the termination occurs during the Ferry Service Transition Period, DOTD will pay to RTA a Termination Expense as provided in Article 8.3.

2.5 Responsibilities upon Termination. If this Agreement is terminated:

a. The parties shall cooperate to take all necessary steps to effectuate the termination and to preserve all Vessels, equipment and facilities;

b. The Blanket Bareboat Charter Agreement, Blanket Bareboat Sub-Charter Agreement and all individual Charter Orders shall terminate at midnight on the termination date;

c. All DOTD equipment and facilities shall be returned to DOTD as soon as practicable following the termination date;

d. Except for the Termination Expense, all unpaid sums due and owing for services performed and expenses incurred previously from any party to another party shall be paid within thirty (30) days;

e. All subsidy payments from DOTD to RTA shall be reconciled on a prorated basis to the termination date. Over or under payments shall be remitted by the appropriate party to the other party;

f. RTA or its assignee shall continue to operate Ferry Services until the last sailing prior to midnight on the termination date; and

g. Any unexpended and uncommitted grant proceeds shall be remitted to DOTD.

ARTICLE III EQUIPMENT AND FACILITIES

3.1 Equipment Inventory. Exhibit "D," sets forth an inventory of all DOTD vessels, barges, inventory and equipment currently available for use in operation of the Ferry Services. RTA, or its assignee, shall, by written designation, specify the DOTD assets it will use to operate the Ferry Services. DOTD and RTA shall enter into a Blanket Bareboat Charter Agreement and shall execute separate Charter Orders, each in substantially the present form attached as Exhibit "A," for each vessel and barge to be used in active ferry operations ("Chartered Vessels"). All other equipment, inventories and other assets, as attached in Exhibit "D," shall be transferred by DOTD to RTA. Initial ferry service shall utilize the Capt. Neville Levy, Sen. Alvin T. Stumpf, Louis B. Porterie and Col. Frank X. Armiger vessels. Upon return to service of the Thomas Jefferson, the St. John and Louis B. Porterie will be returned to DOTD possession for disposition as determined appropriate by DOTD. RTA or its assignee shall have the right to cease the use of any one or more of the vessels, barges, inventory and/or equipment and return them to DOTD at any time for any reason without consent of any party. Upon cessation of use of any Chartered Vessel, no charter hire shall be payable from RTA to DOTD for that vessel. At no time will RTA be responsible for charter hire, operations, maintenance, insurance or indemnity regarding more than the Chartered Vessels for active Ferry Services, which shall not exceed four (4) ferry vessels at any moment in time.

3.2 Facility Inventory. Exhibit "E," sets forth a list of all real property used by DOTD in the Ferry Services, including terminals and maintenance facilities. RTA or its assignee shall, by written designation, specify the DOTD real property assets it will use to provide the Ferry Services. Consideration for use of the terminals and maintenance facilities is satisfied by obligations assumed by the RTA pursuant to this Agreement and no additional cash consideration shall be required. The terminals and maintenance facilities shall be utilized for a public purpose consistent with Article VII, Section 14 of the Louisiana State Constitution.

3.3 Vessel Improvement Funds. DOTD shall request the use of one-time capital funds for the RTA or its assignee, which are designated in Exhibit "F," which RTA or its assignee shall use for the purchase of new or used Vessels and/or to fund upgrades and/or grant-authorized vessel maintenance to existing ferry vessels used for the operation of the Ferry Services ("Vessel Improvements"). DOTD, with the assistance of RTA, further agrees to apply for and otherwise make reasonable efforts to pursue all future United States Department of Transportation and/or Federal Transit Administration grants and, where applicable, local match funding, to improve safety, ferry operations and/or enhance the physical capital infrastructure. The availability of these funds for Vessel Improvements is a material condition upon which RTA has agreed to enter into this Agreement. If these funds for Vessel Improvements are not available within a reasonable period after the Effective Date of this Agreement, then RTA may terminate this Agreement and all related agreements without any further obligation to DOTD.

3.4 Facility Improvement Funds. DOTD shall request the use of one-time capital funds for RTA or its assignee, which are designated in Exhibit "G," which RTA or its assignee shall request for the use to upgrade ferry terminals and/or maintenance facilities identified in Section 3.2 and/or any grant-authorized facility maintenance ("Facility Improvements"). The parties recognize and agree that the funds identified in this Section 3.4 for Facility Improvements are derived from certain grant monies available to DOTD

and that the grant monies must be appropriately reprogrammed. DOTD agrees to make timely application to the Regional Planning Commission for the reprogramming of grant funds for this purpose no later than December 31, 2014. DOTD, with the assistance of RTA, further agrees to apply for and otherwise make reasonable efforts to pursue all future United States Department of Transportation and/or Federal Transit Administration grants and, where applicable, local match funding, to improve safety, ferry operations and/or enhance the physical capital infrastructure. The availability of these funds for Facility Improvements is a material condition upon which RTA has agreed to enter into this Agreement. If these funds for Facility Improvements are not available within a reasonable period after the Effective Date of this Agreement, then RTA may immediately terminate this Agreement and all related agreements without any further obligation to DOTD.

3.5 Improvement Responsibility. RTA, or its assignee, shall be responsible for the development of all specifications for Vessel Improvements and Facility Improvements, in accordance with FHWA and/or FTA grant requirements. Notwithstanding anything to the contrary in the Blanket Bareboat Charter Agreement and Blanket Bareboat Sub-Charter Agreement, the parties expressly authorize RTA, or its assignee, to make all Vessel Improvements and agree further that RTA, or its assignee, shall have no obligation to return the Vessels to their original condition after the Vessel Improvements are completed.

3.6 Improvement Consent. DOTD shall have the right to review and approve in writing the expenditure of funds in Section 3, which consent cannot be unreasonably withheld.

ARTICLE IV FERRY OPERATIONS

4.1 State Mandated Minimum Service. RTA, or its assignee, shall operate automobile ferry services on the Chalmette-Lower Algiers line from 6:00am to 8:45pm seven days a week operating a minimum of four (4) one-way trips an hour.

4.2 RTA Discretionary Service. RTA, or its assignee, shall have the right, but not the obligation, as determined by RTA, or its assignee, in its sole discretion and conditioned on financial viability and available resources, to:

- a) increase service beyond state mandated levels on the Chalmette-Lower Algiers line;
- b) operate ferry service on the Canal Street-Algiers Point line at a level of service afforded by available funding; with a goal of restoring service to pre-July 1, 2013 levels;
- c) provide Canal Street to Gretna service;
- d) operate surge services (additional ferry services above and beyond the normal weekday and weekend hours of service to serve demand created by special events). Said service may be operated at fares set by the RTA for said surge services; and
- e) reduce services on any ferry line for any reason at any time, subject to the minimum requirements in Section 4.1.

4.3 Services Suspended for Safety Reasons. In addition to being subject to the Force Majeure provision in this Agreement, the Ferry Services may be reduced or suspended for safety reasons in the sole discretion of the Master of any Vessel at any time.

4.4 Operational Requirements. Ferry Service shall be operated in accordance with the requirements of the following which shall have precedence over all other requirements:

- a. United States Coast Guard (USCG) Operations Requirements, per 46 CFR Subchapter H (Part 71);
- b. United States Coast Guard Maritime Security Requirements: Vessels, per 33 CFR Subchapter H (Part 103);
- c. Environmental Protection Agency (EPA) Vessel General Permit (VGP) Requirements, which can be viewed at <http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm>; and
- d. United States Coast Guard Non Tank Vessel Response Plan (NTVRP), per 33 USC 1321(j)(5).

4.6 Terminal Security. Ferry terminals and landings shall be operated in accordance with the requirements of United States Coast Guard Maritime Security Requirements: Facilities, per 33 CFR Subchapter H (Part 104), which have precedence over all other requirements.

ARTICLE V MAINTENANCE

5.1 Equipment. As required pursuant to the Blanket Bareboat Charter Agreement, Blanket Bareboat Sub-Charter Agreement, and Charter Orders, a Condition and Valuation Survey of each Vessel has been conducted and is attached hereto as Exhibit "H." RTA or its assignee shall maintain all Chartered Vessels and equipment in accordance with the requirements of the Blanket Bareboat Charter Agreement and Charter Orders, including preventative maintenance and repair. RTA, or its assignee, shall be responsible for the cost of all vessel preservation and improvement maintenance and repairs including, but not limited to, major component rebuilds and all vessel maintenance requiring any dry docking or shipyard services for any purpose whatsoever, in accordance with the requirements of the Blanket Bareboat Charter Agreement and Charter Orders. All maintenance shall be conducted in accordance with the requirements of United States Coast Guard Inspection & Certification Requirements, per 46 CFR Subchapter H (Part 78), which shall have precedence over all other requirements.

5.2 Real Property. RTA, or its assignee, shall maintain all real property in as good condition as received, "reasonable wear and tear" excepted. As used herein, the term "reasonable wear and tear" shall include all deterioration reasonably related to use of the real property in ferry service by passengers and vehicles, deterioration due to the passage of time, and deterioration caused by exposure of the real property to the elements; "reasonable wear and tear" shall include all deterioration which is not typically repaired or remedied in routinely administered preventative maintenance or that typically repaired or remedied in routinely administered preventative maintenance but is between scheduled preventative maintenances. RTA or its assignee shall be responsible for providing all janitorial and utility services at terminal and maintenance facilities.

5.3 Warranty of Condition of Real Property. DOTD warrants at the time of delivery to RTA that the terminal, landing and maintenance facility premises are in good operating condition. DOTD agrees to defend, indemnify and hold the RTA, as well as its subcontractors of any tier, designee(s), assignee(s), and/or sub-charterer(s) harmless from any claims or lawsuits asserting that the terminal, landing or maintenance facilities do not meet ADA accessibility requirements from the Effective Date until which time RTA or its assignees commences construction of any Alteration on said facilities,, and such defense, indemnity and hold harmless obligation shall be provided regardless of whether the RTA, its subcontractors of any tier, designee(s), assignee(s), and/or sub-charterer(s) are partially, concurrently, jointly, or solely at fault; DOTD agrees to be solely responsible for the payment of any individual damages or the costs of complying with injunctive relief resulting from any such ADA claim. RTA or its assignee agrees to maintain said assets in good condition and repair necessary for the satisfactory operation of the Ferry Services during the term of the Agreement at their expense. RTA or its assignee shall return the assets to the DOTD at the termination of the Agreement (for any reason) in substantially the same condition and repair as when received, less ordinary decay and "reasonable wear and tear."

5.4 Warranty of Condition of Chartered Vessels. The DOTD warrants at the time of delivery to RTA that the vessels, pontoons and barges, are in the condition recited in the respective Blanket Bareboat Charter Agreements and the respective Charter Orders. RTA, or its assignee, agrees to maintain Vessels in accordance with the respective Blanket Bareboat Charter Agreements and respective Charter Orders. RTA shall return the Vessels to the DOTD at the termination of the Agreement (for any reason) in the condition and repair required by the respective Blanket Bareboat Charter Agreements and respective Charter Orders.

5.5 Acknowledgment of Riverwalk Marketplace (New Orleans), LLC Lease. As evidenced by Exhibit "I," RTA acknowledges Riverwalk Marketplace (New Orleans), LLC's rights and obligations pursuant to its Original Lease dated August 14, 1986, and recorded on October 7, 1988 in the Orleans Parish Conveyance Office under N.A. No. 668101 in COB 808G, folio 310-321, and the Amendment to the Agreement of Lease dated October 21, 2013, and recorded on October 23, 2013 in the Orleans Parish Conveyance office under N.A. No. 2013-39896.

ARTICLE VI PERSONNEL

RTA's assignee shall provide sufficient staff necessary to manage, and operate and maintain the Ferry Services, and the associated equipment and facilities. All staff shall be properly trained in their duties and possess such licenses and certifications as required by state and federal oversight agencies for the performance of their assigned duties. DOTD is not responsible for any staff compensation and or employee benefits, except for the Staffing Period described below. To the extent that any Federal Transit Administration 13(c) liabilities arises in connection with Ferry Services or the transfer of operations from DOTD to RTA, as well as its subcontractors of any tier, designee(s), assignee(s), and/or sub-charterer(s), the DOTD shall remain solely financially responsible for any liability.

All parties hereby acknowledge that although the effective date of this Agreement is February 16, 2014, sound business practices require a Staffing Period after the effective date and all parties hereby commit to coordinate to ensure a smooth transition of the Ferry Service. Recognizing that offering

employment to DOTD's current ferry staff identified in Exhibit "J," may be the most cost effective transition to ensure continued Ferry Service for the public benefit, on February 16, 2014, DOTD will relinquish, and RTA or assignee will accept responsibility for functional supervision and managing DOTD's current ferry staff identified in Exhibit "J." DOTD does not delegate the appointing authority for this ferry staff during the Staffing Period. DOTD and RTA agree to work together to continue the Ferry Service by use of DOTD's current ferry staff not to exceed sixty (60) days from the effective date of this Agreement.

The parties agree that DOTD will withhold \$530,000 from the State Annual Subsidy of Project Year 1 for payment during the Staffing Period. During the Staffing Period, RTA or its assignee will accept responsibility for functional supervision of the identified ferry staff and DOTD agrees to continue to pay all salaries, benefit and cost for the identified ferry staff until notified that RTA or its assignee has employed any ferry staff identified in Exhibit "K." After sixty (60) days or when all identified ferry staff have been hired by RTA or its assignee, whichever occurs first, DOTD agrees to transfer all unexpended, withheld funds for the Staff Period to RTA or its assignee. Copies of all records, budgeting information and documents of any kind related to salary and benefit payments made to the identified ferry staff during the sixty (60) day period will be provided to RTA or its assignee.

ARTICLE VII INSURANCE AND INDEMNIFICATION

7.1 Compliance with Respective Blanket Bareboat Charter Agreements. The parties shall comply with the indemnification and insurance provisions of the applicable respective Blanket Bareboat Charter Agreement and respective Charter Orders. For avoidance of doubt, RTA, or its assignee, shall not be required to insure any vessel or indemnify DOTD regarding claims associated with any vessel not chartered to RTA or its assignee as the case may be, under a current Charter Order for Ferry Services.

7.2 Indemnification Agreement. RTA or its assignee shall fully release, defend, indemnify and hold DOTD harmless from and against all claims, demands, suits, causes of action, losses, liabilities, damages, judgments, awards, and other costs of every kind and character (including, without limitation, court costs and attorney's fees), known or unknown, whether the underlying claim, demand or suit is groundless, false or fraudulent, brought by or on behalf of any party or person, for any and all personal injury, emotional distress, pain and suffering, illness, disease or death of any person (including any survivor's action), any loss of wages, consortium services or support, and for all damage to or loss of use of property, whether real or personal, of any person or entity, and for any and all claims (including, without limitation, any fines, penalties, attorney's fees, court costs, and all costs to respond to, contain, assess, clean up, handle, remediate, remove and dispose of all contaminates, resulting contaminated media, pollutants, resulting polluted media) resulting from pollution, contamination, harm to the environment (including air, water, soil or other media), and any damage to or loss of any natural resources (including, without limitation, the replacement cost and loss of use thereof) arising directly or indirectly out of or in any way involving the Ferry Services or any Equipment Inventory or Facility Inventory described herein that arise after the Effective Date of this Agreement (collectively "Claims"). It is the specific and expressed intent and agreement that RTA's obligation to release, defend, hold harmless and indemnify DOTD as previously set forth herein shall be not apply to any Claims that arise from the sole negligence, gross negligence and/or willful misconduct of DOTD.

DOTD shall fully release, defend, indemnify and hold RTA, as well as its subcontractors of any tier, designee(s), assignee(s) and/or sub-charterer(s) harmless from and against all claims, demands, suits, causes of action, losses, liabilities, damages, judgments, awards, and other costs of every kind and character (including, without limitation, court costs and attorney's fees), known or unknown, whether the underlying claim, demand or suit is groundless, false or fraudulent, brought by or on behalf of any party or person, for any and all personal injury, emotional distress, pain and suffering, illness, disease or death of any person (including any survivor's action), any loss of wages, consortium services or support, and for all damage to or loss of use of property, whether real or personal, of any person or entity, and for any and all claims (including, without limitation, any fines, penalties, attorney's fees, court costs, and all costs to respond to, contain, assess, clean up, handle, remediate, remove and dispose of all contaminants, resulting contaminated media, pollutants, resulting polluted media) resulting from pollution, contamination, harm to the environment (including air, water, soil or other media), and any damage to or loss of any natural resources (including, without limitation, the replacement cost and loss of use thereof) arising directly or indirectly out of or in any way involving the Ferry Services or any Equipment Inventory or Facility Inventory described herein that arise on or before the Effective Date of this Agreement (collectively "Claims"). It is the specific and expressed intent and agreement that DOTD's obligation to release, defend, hold harmless and indemnify RTA, as well as its subcontractors of any tier, designee(s), assignee(s) and/or sub-charterer(s) as previously set forth herein shall apply to any Claims that arise from the partial, concurrent, joint and/or sole negligence of RTA, its subcontractors of any tier, assignee(s) or sub-charterer(s), but shall not apply to any claims that arise solely from the gross negligence and/or willful misconduct of RTA, its subcontractors of any tier, assignee(s), or sub-charterer(s). DOTD recognizes the right of RTA's subcontractors of any tier, assignee(s) or sub-charterer(s) to enforce the provisions of the release, defense, indemnity and hold harmless provisions.

ARTICLE VIII FINANCIAL MATTERS

8.1 Transfer of Funds. DOTD shall deposit all funds as follows:

a) **Operating Subsidy Funds:** All state funds available to fund Ferry Services and any revenues generated by RTA or its assignee from Ferry Services may be deposited to an account identified by RTA for operational purposes.

b) **Ferry Capital Funds:** All state and federal funds available for funding capital improvements to the ferry equipment and facilities may be deposited to an account identified by RTA. Payments for acquisition or improvement of ferry equipment and facilities and other capital expenditures shall be drawn from this account.

8.2 State Annual Subsidy Schedule. DOTD shall provide an annual ferry operating subsidy to the RTA each year in amounts and sources as itemized in Exhibit "K." Annual subsidy payments shall be made in full at the commencement of each Project Year. Any annual subsidy payments due at the commencement of this Agreement shall be made in a pro-rata manner after the execution date of this Agreement. If this annual ferry operating subsidy is not available in whole or in part, then RTA may immediately terminate this Agreement and all related agreements

8.3 Termination Expense. If during the Ferry Service Transition Period RTA or its assignee cancels this Agreement because the Operating Costs to adequately complete the Ferry Services exceeds the State Annual Subsidy and any additional income generated as a result of Ferry Services by RTA or its assignee, DOTD agrees to pay to RTA a Termination Expense as provided herein. RTA, or its assignee, must provide DOTD with a sixty (60) day notice as required under Section 2.4 and provide a written notice and accounting regarding Ferry Service operating costs and revenues. DOTD and RTA agree that the Termination Expense will be the difference between the Operating Costs and the Gross Revenues received from Ferry Services, not to exceed \$500,000.00. The Termination Expense will be paid by DOTD to RTA in twenty-four (24) equal, monthly installment payments commencing on the date of Termination.

8.4 Transfer of Funds upon Termination of Agreement. If this Agreement is terminated for any reason, then RTA shall transfer a pro-rata share of the State Annual Subsidy paid by DOTD for that Project Year at the time of transfer of the Ferry Services back to DOTD.

ARTICLE IX SERVICE QUALITY, MARKETING AND CUSTOMER SERVICE

9.1 RTA or its assignee shall develop a marketing and branding program for Ferry Services. The plan shall propose the means, methods and costs for communicating basic operational information to current and prospective new riders and present initiative for increasing ferry ridership.

9.2 Customer Service. RTA, or its assignee, shall develop a customer service plan which:

- a) establishes a system by which ferry riders may receive information regarding Ferry Services and schedules;
- b) establishes a complaint and commendation process;
- c) develops and manages a lost and found procedure; and
- d) establishes a means for daily announcement of the Ferry Service availability and service alerts.

9.3 RTA, or its assignee, shall coordinate with the New Orleans Regional Planning Commission ("RPC"), which shall serve as an advisor to the RTA in accordance with 2012 La. Sess. LawServ. Act. 866 (S.B.599)(West), as set forth in La. R.S. 48:25.1.

ARTICLE X ASSIGNMENTS

No party to this Agreement will assign any interest in this Agreement by assignment, transfer, or novation, without written notice to and approval of the other parties. Notwithstanding, RTA is expressly permitted to shift any or all obligations to any third party ("assignee") for purposes of providing Ferry Services under this Agreement by any means necessary.

**ARTICLE XI
AUDITS/RECORDS RETENTION**

11.1 It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors may audit all accounts of the parties that relate to this Agreement.

11.2 All parties shall maintain all books and records, reports, and documentation pertaining to the Ferry Services for a period of five (5) years after the date of termination or expiration of this Agreement. Provided, however, RTA or assignee shall have the right to exclude any trade secrets, formulas or processes from such inspection, these records shall be made available in connection with an audit as described in Section 11.1 above and only to the extent necessary to satisfy the requirements of any such audit. Nothing in this Agreement shall be construed as a waiver by any party of any privilege or defense to the production of or admissibility in any judicial proceeding of any document, statement, record, or communication unless such waiver is stated in express and unequivocal terms.

**ARTICLE XII
FISCAL FUNDING AND APPROVAL CONTINGENCIES**

12.1 The obligations of the parties under this Agreement are contingent upon the appropriation of funds to fulfill the requirements of this Agreement by the Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the Ferry Services, or if such appropriation is reduced by veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the Ferry Services, DOTD or RTA may cease operation of the ferry service and terminate this Agreement immediately.

12.2 This Agreement is contingent on the approval of the Division of Administration, Office of Contractual Review ("DOA/OCR"). No transfers may be made or monies paid until such time as the Agreement has been reviewed and approved by the DOA/OCR.

12.3 Survival. The parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding financial obligations or payments, indemnification, compliance with laws, and representations and warranties, shall survive any termination or expiration of this Agreement.

**ARTICLE XIII
DISCRIMINATION CLAUSE**

13.1 The parties hereto agree to abide by the requirements of the following as applicable: Title VI and Title VII of the Civil Rights Act of 1964, as amended; the Equal Opportunity Act of 1972, as amended; Federal Executive Order 11246, as amended; the 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 Discrimination Act of 1975; and the Americans with Disabilities Act of 1990, as amended.

13.2 The parties hereto agree not to discriminate in employment practices, and shall render services under the Agreement without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

13.3 Any act of discrimination committed by any party to this agreement, or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this Agreement.

13.4 Notwithstanding anything to the contrary contained herein, in the event of any conflict between any federal requirements and the other requirements of this Agreement, the federal requirements will prevail, take precedence, and be in force over and against any such conflicting provisions. The Federal Transit Administration's required contract clauses are attached and incorporated into this Agreement as Exhibit "L," – Federal Transit Administration's Required Contract Clauses.

**ARTICLE XIV
SEVERABILITY**

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

**ARTICLE XV
ENTIRE AGREEMENT/MODIFICATIONS**

This Agreement, as defined in Section 1.1, contains the entire agreement between the parties regarding the operation and funding of Ferry Services and supersedes any and all agreements, writings, discussions or contracts previously entered into between the parties regarding said matters. No representations were made or relied upon by either party, other than those that are expressly set forth in this Agreement. Any modification or amendment of this Agreement shall be valid only when it has been reduced to writing, executed by all parties and approved by the DOA/OCR.

**ARTICLE XVI
CONTROLLING LAW**

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

**ARTICLE XVII
LEGAL COMPLIANCE**

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

**ARTICLE XVIII
OWNERSHIP AND CONDITION OF THE ASSETS**

19.1 After the termination or expiration of the Agreement, all immovable improvements shall become the property of the DOTD.

19.2 All records, reports, documents, and other material delivered to the RTA or its assignee by the DOTD shall remain the property of the DOTD, and shall be returned by the RTA, or its assignee, to the DOTD, at their expense, at termination or expiration of this Agreement.

**ARTICLE XIX
CLAIMS FOR LIENS**

RTA, or its assignee, shall hold the DOTD harmless from any and all claims for liens for labor, services, or material furnished to RTA or its assignee in connection with its performance of obligations under this Agreement.

**ARTICLE XX
COMPLIANCE WITH LAW**

All parties to this Agreement shall comply with all applicable federal, state, and local laws, regulations, rules, and ordinances, as shall all others employed in carrying out the provisions of this Agreement.

**ARTICLE XXI
AUTHORIZED REPRESENTATIVES**

Any notice or demand to be given by one party to the other will be given in writing by personal service, FedEx, DHL, United Parcel Services (UPS), the United States Postal Service (USPS), or any other similar form of courier or delivery service addressed to such party as follows:

If to the DOTD:

Louisiana Department of Transportation and Development
ATTN: Kevin Reed
Ferry System Engineers
1201 Capitol Access Road
Baton Rouge, LA 70802-4438

If to New Orleans Regional Transit Authority:

Chairman of the Board
2817 Canal Street
New Orleans, Louisiana 70119

Any party may change the authorized representative to whom and/or address at which such party desires to receive written notice by delivery of written notice of such change to the party as set forth herein. Any notice given under this Article XXI will be deemed to have been given, and will be effective, on delivery to the notice address then applicable for the party to which the notice is directed, provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated will not defeat or delay the giving of a notice.

**ARTICLE XXII
SURVIVAL**

The parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding financial obligations or payments, indemnification, compliance with laws, and representations and warranties, shall survive any termination or expiration of this Agreement.

**ARTICLE XXIII
WAIVER**

The failure of any party to insist upon the performance of any of the options, covenants, agreements, or conditions herein in any one or more instances shall not be a waiver of the right thereafter to exercise said options or to insist upon full and complete performance of same or any other covenant.

**ARTICLE XXIV
FORCE MAJEURE**

Except for the obligation to make payments and the obligation to indemnify all as set forth in this Agreement, a delay in or failure to perform by a party, shall not constitute a default that exposes it to liability for breach if and to the extent the delay or failure to perform is caused by an occurrence beyond the reasonable control of the party, including, but not limited to, failure of a DOTD supplied vessel or equipment, an Act of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or requirement of any governmental authority; act of war, rebellion or sabotage or damage resulting therefrom; fire, flood, hurricane, named storm, explosion or accident; riots or strikes or other concerted acts of workmen, whether direct or indirect; inability after diligent effort to obtain necessary licenses or permits; or any other cause, whether or not of the same class or kind as those specifically above named, which is not within the control of the party and which, by the exercise of reasonable diligence, the party is unable to prevent or remedy.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year first written above.

WITNESSES:

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT
STATE OF LOUISIANA

King, R

By: Sherril H. LaBee

CLP

Title: Secretary

WITNESSES:

REGIONAL TRANSIT AUTHORITY

By: _____

Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year first written above.

WITNESSES:

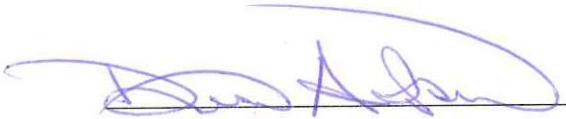
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT
STATE OF LOUISIANA

By: _____

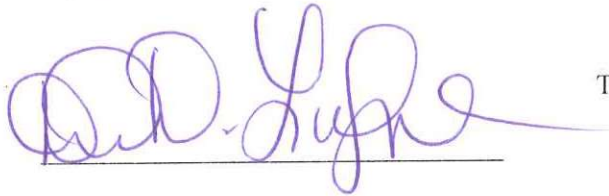
Title: _____

WITNESSES:

REGIONAL TRANSIT AUTHORITY



By: Charles R. Ruff



Title: _____