

Memorandum of Understanding for the University Lakes Project

1. Parties

This Memorandum of Understanding (the “Lakes MOU”) is entered into effective as of the 9th day of December, 2019 (the “Effective Date”), by and between the following (collectively the “Parties” and each, individually, a “Party”):

- a. State of Louisiana (“State”):
 - i. through the Division of Administration, on behalf of the Office of Facility Planning and Control and the Office of Community Development – Disaster Recovery Unit;
 - ii. through the Department of Transportation and Development; and
 - iii. through the Coastal Protection and Restoration Authority
- b. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (“LSU”)
- c. City of Baton Rouge and Parish of East Baton Rouge (“City-Parish”)
- d. Recreation and Parks Commission for the Parish of East Baton Rouge (“BREC”)
- e. Baton Rouge Area Foundation (“BRAAF”)
- f. LSU Real Estate and Facilities Foundation (“REFF”)

2. Purpose / Recitals

The purpose of this Lakes MOU is to agree on a process and funding mechanism to construct vitally needed improvements to the University Lakes system. Because of the complexities of making these essential improvements to many different aspects of the University Lakes system, including its habitat and the drainage, recreation, and transportation systems surrounding the Lakes, the Parties to this Lakes MOU have determined to work collaboratively together to pool their resources to accomplish the needed improvements in the most cost-effective manner possible. In doing so, each Party will receive a benefit commensurate with its financial contribution to the Project (defined herein) and aligning with its interest in the University Lakes system and the purposes of its funding source(s).

The Parties and the Lakes

- a. The State, LSU, the City-Parish, and BREC are each governmental entities formed pursuant to the constitution and laws of the State of Louisiana.
- b. REFF and BRAAF are non-profit corporations formed under the laws of the State of Louisiana for the purpose of promoting the interests of LSU and the people and community of Baton Rouge.

- c. The City-Parish and LSU own a series of lakes (“University Lakes” or the “Lakes”):
 - i. University Lake (LSU)
 - ii. City Park Lake (City-Parish)
 - iii. Campus Lake (LSU)
 - iv. College Lake (LSU)
 - v. Lake Crest (LSU)
 - vi. Lake Erie (City-Parish)

Why the Lakes Are Important

- d. The University Lakes system is used and enjoyed regularly by a substantial portion of the Baton Rouge and the LSU communities for biking, walking, jogging, fishing, kayaking, and other recreational purposes.
- e. The University Lakes system is home to several public parks owned and operated by BREC and widely used by the Baton Rouge community.
- f. The roads over, through, and around the Lakes, including Interstate 10, are key transit paths for both vehicle and pedestrian traffic.
- g. The University Lakes system is a key component of the local watershed, promoting drainage and flood prevention for the area. Modifications and improvements to the University Lakes system can have a positive impact on flood risks of communities downstream of the system.
- h. As an urban watershed, it is subjected to significant pollution from surface drainage, which has a negative impact on the health of the Lakes.
- i. The University Lakes system provides substantial natural habitat for local plants and wildlife, and is a significant stopping area for migratory birds.
- j. The University Lakes system, the adjacent parks and recreational facilities, and the migratory and native wildlife are regularly used by visitors to Baton Rouge and promote tourism to the capital area.
- k. The University Lakes system provides a significant contribution to the aesthetic beauty of Louisiana’s capital city and Louisiana’s flagship university.

Poor Health of the Lakes and the Problems that Causes

- l. The University Lakes system is in poor and declining health. It has very shallow depths and becomes even more shallow every year. Algae blooms promoted by the shallow depths and nutrient run-off kill fish and reduce the capability of the Lakes to support the migratory bird habitat. Bank erosion threatens nearby roads, bike and jogging paths, and other infrastructure. Erosion also threatens many of the cypress, oak, and other trees that are essential components of the Lakes’ ecosystem.
- m. Without action soon, the deterioration of the Lakes will accelerate. They will become more and more shallow, with fewer and fewer fish. This will reduce the

system's capacity to provide drainage and flood mitigation. It will also reduce its ability to support migratory birds and other wildlife.

- n. Because of the complex nature of this ecosystem, the vehicular and pedestrian pathways surrounding it, and the adjacent recreational areas which rely heavily on the Lakes for the benefits they provide to the public, all aspects of the Lakes system must be improved at once as part of an integrated, cohesive project.
- o. At the core of this cohesive project is dredging and excavation of the Lakes. Dredging or excavating the Lakes will provide substantial benefits to all other areas, enhancing their ability to provide drainage and flood protection, to support migratory birds and other wildlife, to protect the surrounding roads and transit pathways from erosion, and to enhance the recreational activities available to the people of Baton Rouge.
- p. At the same time, dredging alone is not sufficient. Without new protections to enhance the quality and amount of water flowing into the Lakes and to reduce erosion along the banks, even newly dredged Lakes would begin to deteriorate rapidly.

What To Do About It – the Project

- q. In December 2016, after 3 years of intense study, BRAF released a Master Plan for the Lakes (the "Lakes Master Plan," available at: <https://www.braf.org/braf-research/2016/2/29/br-lakes-master-plan>). That Master Plan sets forth in great detail the problems faced by the Lakes and provides comprehensive recommendations for improvements that will address all of the issues described above and help transform the Lakes into a robust and scenic natural amenity in the heart of Baton Rouge that uses nature as a catalyst for healthy lifestyles while providing habitat infrastructure for migratory birds and aquatic wildlife and enhancing drainage and flood prevention efforts. Collectively, implementation of the Master Plan is referred to as the "Lakes Project" or simply the "Project."
- r. REFF is an affiliated foundation of LSU pursuant to the provisions of R.S. 17:3390. REFF has substantial experience managing complex projects that leverage public assets or public funding sources through transparent, competitive processes to produce substantial benefits for LSU, the State, and the public.
- s. The Master Plan estimates the cost of the necessary improvements at approximately **\$50 million**. Through the process established by this Lakes MOU, the Parties will ultimately enter into several Cooperative Endeavor Agreements ("CEAs") to provide funding to engage a Project Advisor, a Designer, and a Contractor for the Lakes Project. The ultimate goal is to design and construct the improvements called for in the Lakes Master Plan. The CEAs will provide specific commitments of funding from each of the anticipated funding sources and will include specific protections to insure an open, transparent, and competitive process is followed for the selection of the Project Advisor, Designer, and

Contractor and an open and transparent design process. The CEAs will also provide specific mechanisms for accounting for the project costs and allocating those costs among the various funding sources available. The CEAs will ensure that all expenditures of public funds are (i) fully subject to audit by the Legislative Auditor and other governmental auditors and (ii) expended in compliance with all applicable laws, rules, regulations, restrictions, and limitations applicable to the various sources of funds.

- t. In addition to providing for the design and construction of the improvements to implement the Master Plan, it is expected that the Project will also require a CEA between two or more of the Parties providing for the long-term maintenance of the Lakes and surrounding improvements constructed as part of the Project to ensure the on-going health of the Lakes system.

3. Obligations of REFF

- a. REFF will establish a Project Management Committee (“PMC”) to provide recommendations to REFF regarding the Project. The membership of the PMC shall consist of Voting Members, Non-Voting Members, and Professional Advisors. A majority vote of the Voting Members shall be required for any recommendation made by the PMC. Each member (voting or non-voting) can designate any other person to represent that member at any meeting of the PMC, and any person so designated in writing shall have full authority of membership, including the right to vote on any item before the PMC.
 - i. Voting Members
 1. 3 State members: the Commissioner of Administration, the Director of the Office of Facility Planning and Control, and the Secretary of the Department of Transportation and Development.
 2. 2 LSU members: the Executive Vice President for Finance and Administration and the Director of Athletics
 3. 2 City-Parish members: the Mayor-President and the Director of Transportation and Drainage
 4. 2 BREC members: the Superintendent and the Assistant Superintendent of Planning
 - ii. Non-Voting Members
 1. 2 REFF members, who shall be the Chair and Vice-Chair
 2. 2 members of the public who reside adjacent to the Lakes appointed by REFF
 3. The Executive Vice President of BRAF
 - iii. Advisors

1. LSU Foundation Vice President and General Counsel / REFF Secretary
 2. LSU Assistant Vice President for Real Estate, Public Partnerships, and Compliance
 3. LSU Office of General Counsel
 4. Division of Administration Executive Counsel
 5. Chair of the Louisiana Coastal Protection and Restoration Agency
 6. Office of Community Development, Disaster Recovery Unit
 7. REFF Board Administrator
 8. Outside Counsel for LSU
 9. Other staff and advisors designated by any voting member
 10. Project Advisor engaged pursuant to this MOU
- b. REFF will adopt, implement, and require strict adherence to a Conflicts of Interest Policy designed to avoid actual and perceived conflicts of interest as well as claims or charges of undue influence or favoritism. Such policy will be substantially in accord with the draft policy attached as Exhibit A. The Chair of the PMC may form any additional committees, subcommittees or working groups as may be necessary and appropriate for the efficient completion of their tasks. All members of any such working groups or advisory committees will be subject to the Conflicts of Interest Policy.
- c. REFF will not provide any funding of its own toward the Project but may undertake financing in its name to provide cash-flow toward Project expenses. REFF will only undertake such financing if it is confident that funds are available from the various Project funding sources to repay any funds borrowed for that purpose.
- d. REFF will, through the Project Advisor, provide a comprehensive accounting of all public funds provided to REFF or spent toward the Project, subject to audit by the Louisiana Legislative Auditor and any other governmental auditor engaged by any other Party.
- e. REFF will not use any of the Project funds for its own purposes. It will be reimbursed for all out-of-pocket legal and other expenses required for the Project and will assess an appropriate administrative cost, not to exceed \$300,000 to cover its internal expenses (collectively, "Administrative Costs"), which will be more specifically provided for in subsequent CEAs for the Project. No other funds will be due to REFF beyond these Administrative Costs.
- f. REFF, working with the Project Advisor and the PMC, will draft CEAs, procurement documents, grant applications, and other agreements as necessary

to provide funding and establish the mechanisms for moving the Project forward.

- g. REFF will, upon recommendation of, and through a competitive process conducted by, the PMC, select and engage a Project Advisor with significant experience (i) in management of complex capital projects with multiple stakeholders; (ii) in managing, budgeting, and designing competitive selection processes to select qualified professionals for complex engineering and design projects; and (iii) with the laws, rules, and regulations that will govern each of the various funding sources expected to be used for the Project.
 - i. The Project Advisor will advise and consult with the PMC concerning the formulation of an appropriate competitive process to evaluate potential Designers and Contractors, the evaluation of responses to those competitive processes and the negotiation of proposed agreements between REFF and the Designer and the Contractor.
 - ii. The Project Advisor will also assist the PMC and REFF in overseeing the work of the Designer and the Contractor, in conducting financial analyses on project feasibility, in analyzing the most appropriate way to account for and allocate project costs to different funding sources, in assisting the review and categorization of invoices for the design and construction of the Project, and in assisting with the invoicing of each of the funding sources for their agreed-upon share of the Project costs.
- h. REFF, working with the Project Advisor and the PMC, will select and engage, through a competitive process, a landscape architecture or engineering firm (a “Designer”) with significant experience in similar projects to design the specific work to be done as part of the Project to implement the Master Plan.
- i. REFF, working with the Project Advisor and the PMC, will select and engage, through a competitive process, a construction firm with significant experience in similar projects (a “Contractor”) to conduct the work to be done as part of the Project to implement the Master Plan. To the extent consistent with requirements governing the source of funds used for the construction work, REFF may engage the Contractor through a traditional design-bid-build process, through a construction-manager-at-risk process, or through another appropriate process intended to bring about cost efficiencies and transparent, competitive pricing.
- j. REFF will ensure that all competitive processes to procure and engage the Project Advisor, Designer, Contractor, and any other professionals, goods, or services required by this Project shall:
 - i. Comply with applicable federal and state laws, rules, and regulations governing such procurements for projects relying on Community Development Block Grant (CDBG) funding, and any other laws, rules,

procedures, or agreements required to be followed by any funding source relied upon by the Project;

- ii. Ensure the selection of a Project Advisor, Designer, Contractor, and other professionals who are capable of designing and constructing the Work to be done for the Project within the available budget, within an expeditious schedule, and with the minimum disruption to the adjacent communities as is feasible for a Project of this magnitude; and
- iii. Be subject to approval by the PMC. Staff advisors to the PMC (and the Project Advisor once engaged) shall draft the Request for Proposals or other appropriate document and present it to the PMC for approval prior to release and advertisement thereof. Staff advisors to the PMC (and the Project Advisor once engaged) shall evaluate the received proposals and provide to the PMC a summary of the proposals. The PMC will then score the proposals and recommend the selection to REFF based on that scoring.
- k. REFF will not engage the Project Advisor, Designer, or Contractor without a favorable recommendation from the PMC.
- l. Throughout its work on the Project, REFF will take appropriate, active steps to promote the inclusion and diversity of advisors and vendors to the Project, including efforts to promote use of minority, female-owned, and other historically underutilized or diverse businesses.
- m. REFF may assign its obligations under this MOU to University Lakes, LLC, a special purpose entity created and controlled by REFF. Any reference in this Lakes MOU to REFF shall be construed to also reference University Lakes, LLC.

4. Obligations of LSU

- a. LSU will endeavor to provide at least \$5,000,000 for the Project, subject to all laws, rules, policies, and agreements governing expenditure of such funds.
- b. LSU will provide staff and legal support for the Project.
- c. LSU expects that its funding will come from Athletic Department self-generated revenues. LSU expects that the Project will deliver benefits to the academic, educational, research, and other goals of LSU and its Athletic Department that equal or exceed LSU's funding for the Project.
- d. LSU will authorize the Project to access the Lakes and adjacent properties it owns to allow for construction of the Project.
- e. If the State determines that LSU, as owner of four of the Lakes, must be a grantee of CDBG or other funding for the Project, LSU will take the necessary steps and enter the necessary agreements to apply for, accept, and receive such an award, to be administered consistently with the provisions of this Lakes MOU and the anticipated CEAs.

5. Obligations of the State

- a. The State will endeavor to provide funds towards the Project in the following amounts from the various state agencies shown, all subject to all laws, rules, policies, and agreements governing expenditure of such funds:
 - i. At least \$5 million from the Coastal Protection and Restoration Agency (CPRA). CPRA expects that its funding will come from sources devoted primarily to promote bird habitat, and CPRA expects that the Project will deliver benefits toward that goal that equal or exceed CPRA's funding for the Project;
 - ii. At least \$10 million from funding sources available to or administered by the Office of Community Development, primarily if not exclusively CDBG (DR, MIT, or Program Income) funds to promote resilience and flood protection and to assist with recovery after hurricanes and other presidentially declared disasters. The State anticipates that its funding will come from a variety of funding sources, each with different goals and objectives. The State expects that the Project will deliver benefits toward the goal of each funding source that equal or exceed the funding for the Project provided by that funding source. OCD will provide guidance in identifying eligible elements of the projects, allowable expenses, and the appropriate grant recipients. Any OCD funds provided would be through separate grant agreements that contain the terms and conditions associated with CDBG funding. OCD will also provide guidance regarding obtaining required environmental or other review clearances, or giving of any required notices, where such is required prior to executing contracts or taking other actions which might, if conducted without the required clearances or notices, make all or part of the Project ineligible for CDBG funding.
 - iii. At least \$5 to \$10 million from the Department of Transportation and Development. DOTD's funding is expected to come primarily from its project to widen Interstate 10 in the area adjacent to the Lakes. DOTD expects that the Project will deliver benefits toward the goals of the I-10 widening project that equal or exceed DOTD's funding for the Project.
 - iv. Up to \$20 million from the Capital Outlay process, to be used only as needed for any costs of the Project which cannot be obtained from other funding sources. The State expects that all the benefits to the state and its people provided by the Project will equal or exceed the State Capital Outlay funding for the Project.
- b. The State may provide some portion of its funding through in-kind services performed by the State or through the state capital outlay process, in particular any road work related to the I-10 widening project.

- c. The State will authorize the Project to access I-10 and any other servitudes or rights of way it owns or controls to allow for construction of the Project.

6. Obligations of the City-Parish

- a. The City-Parish will endeavor to provide at least \$5 million for the Project, subject to all laws, rules, policies, and agreements governing expenditure of such funds.
- b. The City-Parish's funding is expected to come primarily from the MoveBR initiative, and the City-Parish expects that the Project will deliver benefits to the goals of the MoveBR initiative that equal or exceed the City-Parish's funding for the Project. This includes the vital goal of improving the safety of the Lakes by providing adequate sidewalks to decrease the risk of pedestrian/vehicular conflict.
- c. The City-Parish will authorize the Project to access the Lakes and adjacent properties it owns to allow for construction of the Project.
- d. If the State determines that the City-Parish, as owner of two of the Lakes, must be a grantee of CDBG or other funding for the Project, the City-Parish will take the necessary steps and enter the necessary agreements to apply for, accept, and receive such an award, to be administered consistently with the provisions of this Lakes MOU and the anticipated CEAs.

7. Obligations of BREC

- a. BREC will endeavor to provide at least \$5 million toward the Project, subject to all laws, rules, policies, and agreements governing expenditure of such funds, primarily for construction of jogging and bike paths and other recreational amenities and greenspaces around the periphery of the Lakes.
- b. BREC expects that the Project will deliver benefits to the goals of its health, recreation and other initiatives that equal or exceed BREC's funding for the Project.
- c. BREC will authorize the Project to access any properties adjacent to the Lakes it owns to allow for construction of the Project.

8. Obligations of BRAF

- a. BRAF has previously contributed approximately \$1 million for completion of the Master Plan on which the Project is based.
- b. BRAF will make available for use by the Project the Master Plan it caused to be created for revitalization of the Lakes.

9. Mutual Obligations and Understandings

- a. This Lakes MOU is not a final and binding commitment to provide any funds for the Project. Any such commitments made by the Parties will be pursuant to CEAs or other agreements mutually agreed upon by the appropriate Parties.
- b. This Lakes MOU will be effective for a term of three (3) years from the Effective Date unless sooner terminated by the Parties. The terms of any binding CEA or other agreement produced as a result of the process set forth in this Lakes MOU will supersede the terms of this MOU.
- c. To the extent any Party provides funding through separate CEA or other agreements for the initial services of the Project Advisor or the Designer, that Party shall receive credit toward its commitments set forth in this Lakes MOU for the full amount of such funding.
- d. REFF, in the performance of any obligations contemplated by this Lakes MOU shall, and shall cause the Project Advisor, Designer, and Contractor to agree to, abide by: (a) the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 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, the Fair Housing Act of 1968 as amended; (b) the requirements of the Americans with Disabilities Act of 1990; and (c) any executive order issued by the governor of the State.
- e. REFF shall additionally, and shall require and cause the Project Advisor, Designer, and Contractor to, agree: (i) not to discriminate in its employment practices; and (ii) to render services under the applicable contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.
- f. Any act of discrimination committed by REFF, the Project Advisor, Designer, or Contractor or failure to comply with these statutory obligations when applicable shall be grounds for termination of the applicable contract.
- g. REFF understands that LSU is committed to promoting the growth and development of minority- and women-owned and small and historically underutilized businesses (collectively, "Diverse Businesses") by providing opportunities to participate in agreements to which LSU is a party. In support of this commitment, and to the extent allowed by law, (a) REFF shall use good faith and commercially reasonable efforts to provide opportunities to Diverse Businesses that are either certified by the State or another certifying entity in a diverse category as a subcontractor or supplier according to LSU policies and procedures and (b) REFF shall provide to LSU a list of Diverse Businesses during each Fiscal Year, which list shall identify, as to each Diversity Business contained thereon, (i) the legal name thereof, (ii) the principal office or address, (iii) ownership and (iv) the services or good that it may provide or supply and the

value of the goods or services procured therefrom. REFF will also use commercially reasonable efforts to comply with any diversity and inclusion goals from other participating governmental entities.

THUS DONE AND SIGNED in Baton Rouge, Louisiana.

**STATE OF LOUISIANA, THROUGH THE
DIVISION OF ADMINISTRATION**

By: _____
Jay Dardenne, Commissioner

**STATE OF LOUISIANA, THROUGH THE
DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT**

By: _____
Dr. Shawn Wilson, Secretary

**STATE OF LOUISIANA, THROUGH THE
COASTAL PROTECTION AND RESTORATION
AGENCY**

By: _____
Kyle R. "Chip" Kline, Jr., Chair

**BOARD OF SUPERVISORS OF LOUISIANA
STATE UNIVERSITY and AGRICULTURAL and
MECHANICAL COLLEGE**

By: _____
F. King Alexander, President of LSU

**CITY OF BATON ROUGE and PARISH OF EAST
BATON ROUGE**

By: _____
Sharon Weston Broome, Mayor-President

**BREC, RECREATION AND PARKS
COMMISSION FOR EAST BATON ROUGE**

By: _____
Corey Wilson, Superintendent

BATON ROUGE AREA FOUNDATION

By: _____
John Spain, Executive Vice President

**LSU REAL ESTATE AND FACILITIES
FOUNDATION**

By: _____
Robert M. Stuart, Jr., Chair