



BOBBY JINDAL  
GOVERNOR

ANGELE DAVIS  
COMMISSIONER OF ADMINISTRATION

**State of Louisiana**  
Division of Administration  
Office of Contractual Review

August 18, 2008

Ms. Fran Gladden  
Undersecretary  
Department of Economic Development  
Post Office Box 94185  
Baton Rouge, LA 70804-9185

Dear Ms. Gladden:

Enclosed are approved copies of the following cooperative endeavor agreement, received in our office on July 29, 2008. This agreement is being approved under the authority of Executive Order KBB 05-14, issued May 27, 2005.

**Department of Economic Development**  
**OCR# 251-800268    CFMS# 669667    LSU System Research & Technology Foundation**

The OCR and CFMS numbers preceding the cooperative party's name has been assigned by this office and are used as identification for this cooperative endeavor. The CFMS number is the system assigned number for the ISIS Contract Financial Management System. Please use these numbers when referring to the cooperative endeavor in any future correspondence or amendment(s).

We appreciate your continued cooperation.

Sincerely,

Susan H. Smith  
Director

SHS/pl

Enclosure

RECEIVED

AUG 20 2008

CONTRACTS/GRANTS REVIEWER

251-800268

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**COOPERATIVE ENDEAVOR AGREEMENT BETWEEN  
THE LOUISIANA DEPARTMENT OF ECONOMIC DEVELOPMENT  
AND  
LOUISIANA STATE UNIVERSITY SYSTEM  
RESEARCH AND TECHNOLOGY FOUNDATION**

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In accordance with Article VII, Section 14 of the Constitution of the State of Louisiana (the "Constitution"), **Louisiana Department of Economic Development, Office of Business Development**, ("DED"), an executive branch department of the State of Louisiana; and **Louisiana State University System Research and Technology Foundation** ("Foundation"), a 501(c)(3) nonprofit corporation organized under the laws of the State of Louisiana; do hereby enter into this Cooperative Endeavor Agreement (the Agreement) to serve the public for the purposes hereinafter declared:

WHEREAS, Act No. 28 of the State Legislature, Regular Session of 2007 ("Act 28") is the comprehensive capital outlay budget which is required by Article VII, Section 6 of the Constitution; and contains an appropriation for Louisiana State University Baton Rouge, entitled **Computer Facility, Planning and Construction ( East Baton Rouge)**", (the "Appropriation") payable from 2004 Overcollections Fund in the amount of **Fifteen Million Dollars (\$15,000,000.00)**; and

WHEREAS, Act No. 29 of the State Legislature, Regular Session of 2008 ("Act 29") transferred the Appropriation from Louisiana State University Baton Rouge to Louisiana Department of Economic Development; and

WHEREAS, the Appropriation was made to the DED for proper expenditure in accordance with Act 29 and the capital outlay request, and Section 2 of Act 29 provides that the Project Appropriation shall be administered by DED under a cooperative endeavor agreement;

NOW, THEREFORE, considering the premises, it is hereby agreed by DED and Foundation that:

**1. PURPOSE.** The purpose of this Agreement is to set forth the terms of administering the Project by DED. La. R.S. 39:121 et seq. shall be applicable to this Agreement, and this Agreement shall be administered in accordance with the Non-State Entity Capital Outlay Administrative Guidelines, July 1999 ed. published by the Office of Facility Planning and Control, Division of Administration, which is hereby made a part of this Agreement, except that (i) determinations of the Commissioner of Administration authorized by Act 29 may authorize alternative procedures, (ii) DED shall not charge an administrative fee; and (iii) the procedures specified in the Non-State Entity Capital Outlay Administrative Guidelines may be modified by written agreement of DED and Foundation.

**2. SCOPE.** As provided in Act 28 of the State Legislature, Regular Session of 2007 and following Act 29 of the State Legislature, Regular Session of 2008, the State funds for this Project are limited to capital improvements for the **Computer Facility, Planning and Construction ( East Baton**

**Rouge)**", (the "Appropriation") payable from 2004 Overcollections Fund in the amount of **Fifteen Million Dollars (\$15,000,000.00)**).

If Foundation enters into a contract prior to receipt of funding, or prior to execution or term of a cooperative endeavor agreement, then payments under such contracts are prohibited from capital outlay appropriation, and are the sole responsibility of Foundation.

**3. ALLOWABLE COSTS.** In accordance with the intent of Act 29, and under this Agreement, Foundation has been authorized to incur costs in connection with the Project, in a total amount not to exceed the Project Appropriation. Such Allowable Costs are limited by the purposes for which the Project Appropriation was made, and as set forth in Exhibit "A" attached as may be amended by the written consent of the parties.

Allowable Costs shall not include the operating and administrative expenses of Foundation even during the period of planning and construction of the Project, but shall include all costs incurred by the Foundation in planning, designing, and construction of the Project including but not limited to professional fees, surveys, testing, laboratory consultants, permits, insurance, equipment design, purchase and installation, audit expenses and other costs incurred by the Foundation and essential to the Project.

**4. USE OF FUNDS.** Foundation hereby agrees that the funds provided by the State from the Project Appropriation shall be used solely for Allowable Costs and for the purposes authorized and permitted in Act 29 and in accordance with all provisions of law affecting the Project, as well as the constitutional and statutory restrictions on the use of State funds for public purposes. Foundation shall provide a Project audit at the end of Foundation's fiscal year coincident with its annual audit and shall maintain appropriate financial records which document all expenditures of the Project Appropriation funds and shall permit the inspection and/or audit of all books, records and activities relative to the Project by DED or its authorized representative or the Legislative Auditor, and DED reserves the right to audit these records at any time. Foundation recognizes, understands, and agrees that it has an affirmative duty to comply with all provisions of Act 29, including all of the conditions following the description of the Project. Foundation agrees that it will reimburse the State for any funds from the Project Appropriation which are not used in accordance with this Agreement and applicable State law, and shall be responsible for the payment of all costs which are not considered to be Allowable Costs.

Foundation shall not execute any contract or agreement in connection with the Project that would expend or commit State funds in excess of the amount for which lines of credit were granted pursuant to Act 29 without the written approval of DED. Foundation shall request such approval in writing and acknowledge in writing that Foundation shall be solely responsible for any amount that exceeds the amount appropriated by the State.

Foundation shall take no action which would have the effect of impairing the tax exempt status of the Bonds. Foundation shall make no changes in its charter which would allow use of the Project for any purpose other than a public purpose.

**5. PUBLIC BID LAWS.** The Commissioner of Administration may exempt the Project from statutes relative to public bidding and contractual review as provided in Section 8 of Act 28 & Act 29 and the Foundation may use such alternative competitive contracting arrangements authorized by the Commissioner of Administration.

**6. REPORTING.** Foundation shall comply with all requests by DED, the Legislative Auditor, and their representatives for reports on the status of the Project, but shall, without being asked, provide such status reports to DED monthly with the submission of invoices from the time this Agreement is executed through the completion of construction of the Project, and shall, at the completion of the Project, provide DED an audit of its expenditures on the Project, including the funds from the Project Appropriation as well as any other funds from any other source.

Foundation represents and warrants to DED that no resolution, by-law, or provision in the charter of Foundation is in effect, nor has there been any other action taken by Foundation, which would prevent the completion of and/or utilization of the Project and property upon which it is to be located for and in accordance with the intended use of the Project.

**7. COORDINATION.** It is the responsibility of Foundation to administer the Project according to all applicable laws, rules and regulations and to ensure that the work is the best obtainable within established trade practice.

Submission of documentation to DED as requested or required by this Agreement or by law shall be for the purpose of providing information to DED for use in administering the expenditure of funds under this Agreement, verifying that the funds are spent in accordance with this Agreement as required by Act 29, providing evidence of the progress of the Project, and verifying that such documentation is being produced. DED's receipt of such documentation and any review, revision, or suggestion by DED based thereon or in connection with any part of the Project, does not create or imply any responsibility on the part of DED to Foundation to insure compliance by Foundation its architects, engineers, contractors, subcontractors, vendors or laborers, with any of its obligations under this Agreement or applicable law. The duty on the part of DED to administer the Project is a ministerial duty, and does not imply or suggest any oversight of the actual planning, design or construction of the Project, nor does DED accept any responsibility for such oversight. DED will not provide extensive document review for the Project or take the responsibility for determining whether or not this documentation is complete and accurate. Foundation assumes and acknowledges full responsibility and liability for the planning, design and construction of the Project, and proper authorized use of the Project Appropriation.

The participation by DED in the Project shall in no way be construed to make DED a party to any contract between Foundation and its architects, engineers, contractors, subcontractors, vendors or laborers.

**8. CONSTRUCTION OF PROJECT.** Foundation has selected, with the concurrence of DED, a design professional & Construction Team in accordance with the provisions of Section 8 of Act 29. The design professional was selected from a list of a minimum of three design firms or joint ventures with the appropriate specialized facility design experience submitted to and acceptable to the Commissioner of Administration. Foundation shall execute a contract with the selected design professional for any necessary design services, which may include the preparation of complete plans, specifications and estimates, including but not limited to surveys, environmental processing, preliminary and final plans, assistance in preparation of the construction proposal and advertisements for the Project and for construction contract administration and for construction inspection.

Construction contracts and any other contract, purchase order, certificate or permit necessary to construction, performance and completions of the Project, will be prepared by Foundation after the award of contract and a copy will be transmitted to DED after execution. Foundation will be responsible for recordation of the construction contract in accordance with law. Foundation will supervise, and assumes all liability and responsibility for, all aspects of the Project construction.

A change order for the Project shall be subject to the approval of DED. Foundation shall submit change orders to DED. DED shall approve or disapprove change orders within seventy two (72) hours (weekends and holidays excluded) of receipt. Should DED fail to respond within seventy two (72) hours (weekends and holidays excluded) the change orders will be deemed approved. However, as per R.S. 39:126, a change order for the Project in excess of *Fifty Thousand Dollars (\$50,000)*, increase or decrease, shall also require the approval of the Joint Legislative Committee on the Budget.

**9. DISBURSEMENT OF FUNDS.** After execution of this Agreement, in accordance with the terms hereof and Act 29, DED shall provide Foundation with funds on an As-needed basis in order to conform with provisions for payments under construction contracts, and /or for purchase orders, certificates or permits necessary for construction, performance and completion of the Project, as approved by DED.

It is understood that Foundation will construct this Project in accordance with all applicable federal, state and local law, and the policies, procedures, and provisions hereunder and in accordance with Act 29, and that payments by DED will be only for those costs which are the responsibility of Foundation for this Project. Foundation shall render invoices monthly to DED for payment to the Foundation, which invoices shall indicate the total value of the work performed and which portion of the cost of that work is the responsibility of Foundation. Prior to submission for payment, Foundation must review and approve each invoice and shall not approve any invoice unless the invoices are signed and certified as correct by the architect for the Project and, for construction invoices, also signed and certified as correct by the construction contractor. All such charges shall be subject to verification, adjustment, and/or settlement by DED in accordance with the terms and conditions of this Agreement. DED's Contract Monitor shall approve for payment only such invoices reviewed, approved and submitted by Foundation. The DED Contract Monitor shall not approve any invoice which is not accompanied by the required certification of the Project architect,

and if applicable, of the construction contractor. Foundation shall not be entitled to reimbursement of any expenditures made prior to the issuance of a cash line of credit.

Foundation agrees to use its best efforts to complete the Project at a total of Allowable Cost which does not exceed the amount of the Project Appropriation, and to pay all Allowable Costs using the funds subject to this Agreement within two (2) years from the date of the issuance of the Bonds. Foundation agrees that if the funds subject to this Agreement are not totally expended within two (2) years from the issuance of the Bonds, DED may, but is not required to, close the Project and any unexpended proceeds may be reallocated to another project.

DED may, at its discretion, require Foundation to submit full written documentation and justification of any cost which Foundation maintains is an Allowable Cost. DED may also require Foundation to verify any calculations or the index or basis upon which any cost submitted as an Allowable Cost hereunder is determined, and may disallow, discount, or reduce any such cost if Foundation is unable to provide such verification or basis for approval to the satisfaction of DED. If a cost is disallowed, Foundation shall be solely responsible for such non-Allowable Costs.

**10. OWNERSHIP OF PROPERTY.** Foundation hereby covenants that it owns, will acquire title to, or obtain leasehold interests or permanent easements from the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College for the property on the Louisiana State University Campus in Baton Rouge, Louisiana upon which the Project is to be located.

**11. TAX LIABILITY.** Foundation agrees that the responsibility for payment of taxes from the funds thus received under this agreement shall be the obligation of Foundation and identified under Foundation's Federal Tax ID Number: 46-0512010.

**12. ASSIGNMENT OF INTEREST.** Foundation 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 DED.

**13. TERM.** This Agreement shall be effective as of January 1, 2008, and shall terminate June 30, 2011, or when the project is completed and accepted and all payments by DED have been made, whichever occurs earlier. The termination date may be extended by written amendment to this Agreement, which must be signed by the parties and approved by the Director of the Office of Contractual Review or the Commissioner of Administration.

**14. HOLD HARMLESS AND INDEMNITY.** Foundation hereby agrees to protect, defend, indemnify, save and hold harmless the State of Louisiana, all State Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees, including volunteers, from and against any and all claims, demands, expenses and liability arising out of injury or death to any person or the damage, loss or destruction of any property that may occur, or in any way grow out of any act or omission of Foundation, its agents, servants, and employees or any and all costs, expenses and/or causes of action except for those claims, demands, and/or causes of action arising out of the negligence of the State of Louisiana, all State Departments, Agencies, Boards, Commissions, its

agents, representatives, and/or employees. Foundation agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent, provided, however, that the Division of Administration, Office of Risk Management may provide the commercial or self-insurance coverage and necessary assistance to the Foundation to enable it to comply with this provision.

**15. AUDITS OF ACCOUNTS.** It is hereby agreed that the legislative auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of Foundation which relate to this contract. Within one hundred twenty (120) days after the end of Foundation's budget year, Foundation must provide DED with a copy of Foundation's single audit. The single audit shall be performed in accordance with R.S. 24:513 and the Single Audit Act of 1984, P.L., or other Federal legislation. Foundation may have a Contract Compliance Audit performed in lieu of the single audit. The Contract Compliance Audit must be in accordance with the requirements of the Regulations for the Procurement of Personal, Professional, Consulting and Social Services as promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review.

**16. DISCRIMINATION CLAUSE.** Foundation agrees to abide by 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, and Foundation agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Foundation agrees not to discriminate in its employment practices, and not to discriminate against participants due to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

Foundation agrees to ensure that all services will be delivered without discrimination due to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

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

**17. AMENDMENT OF AGREEMENT.** The parties hereto agree that, in order to be effective, any amendment hereto shall be in writing, signed by all parties and approved by the Director of the Office of Contractual Review or the Commissioner of Administration.

**18. NOTICES.** All notices and documentation with respect to this Agreement shall be deemed received the day after such are sent, when sent either by overnight courier, or by first-class mail, postage prepaid and simultaneous facsimile transmission, to the parties at the addresses given below:

If to DED:

Robert Fudickar  
LA. Department of Economic Development  
P.O. Box 94185  
Baton Rouge, LA 70804-9185

Capitol Annex Building  
1051 N. Third Street  
Baton Rouge, LA 70802

FAX (225) 342-6820

If to Foundation:

Arthur R. Cooper  
P.O. Box 25128  
Baton Rouge, LA 70894

FAX (225) 615-8904

**19. AVAILABILITY OF FUNDS AND APPROVAL BY CONTRACT REVIEW.** The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Louisiana legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the 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 contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

This contract is not effective until it has been approved by the Director of the Office of Contractual Review or the Commissioner of Administration.

**20. TERMINATION FOR CONVENIENCE**

Either party may terminate this agreement at any time by giving thirty (30) days written notice. The State may amend this agreement due to budgetary reductions or changes in funding priorities by the State upon giving thirty (30) days written notice.

**21. TERMINATION FOR CAUSE**

The State may terminate this agreement for cause based upon the failure of the Contractor to comply with the terms and/or conditions of this agreement, provided that the State shall give Contractor written notice specifying Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have either corrected such failure or, in a case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the State may, at its option, place the Contractor in default and this agreement shall terminate on the date specified in such notice. The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this agreement; provided that the Contractor shall give the

State written notice specifying the State's failure and a reasonable opportunity for the State to cure the defect.

**22. REMEDIES FOR DEFAULT**

Any claim or controversy arising out of this agreement shall be resolved under the provisions of LSA – R.S. 39:1524 through 1526.

In the event the Contractor defaults on this agreement, breaches the terms of this agreement, ceases to do business or ceases to do business in Louisiana during the term of this agreement, this agreement shall be terminated as provided in Section XII above, and within thirty (30) days of such termination the Contractor shall repay to the State the amount of all funds disbursed to the Contractor under this agreement for all work not yet performed or completed or not satisfactorily performed or completed.



[ The remainder of this page is intentionally left blank ]



IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective duly authorized and undersigned officers, in the presence of the undersigned competent witnesses, as of the day and year written below, after a due reading of the whole document.

THUS DONE AND SIGNED, this \_\_\_\_\_ day of June, 2008, at Baton Rouge, Louisiana.

WITNESSES:

STATE OF LOUISIANA, DEPARTMENT OF ECONOMIC DEVELOPMENT

Chris Stewart  
Witness

By: Fran Gladden  
Fran Gladden, Undersecretary

7/21/08

Nancy Blankenship  
Witness

THUS DONE AND SIGNED, this 24<sup>th</sup> day of June, 2008, at Baton Rouge, Louisiana.

WITNESSES:

LOUISIANA STATE UNIVERSITY SYSTEM RESEARCH AND TECHNOLOGY FOUNDATION

Charlotte Smith  
Witness

By: Arthur R. Cooper  
Arthur R. Cooper, CEO

Steve Stein  
Witness

**APPROVED**  
Office of the Governor  
Office of Contractual Review

AUG 18 2008

Susan Smith  
DIRECTOR

Cooperative Endeavor Agreement: DED/LSU Foundation

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## EXHIBIT "A"

COOPERATIVE ENDEAVOR AGREEMENT BETWEEN  
THE LOUISIANA DEPARTMENT OF ECONOMIC DEVELOPMENT  
AND  
LOUISIANA STATE UNIVERSITY SYSTEM  
RESEARCH AND TECHNOLOGY FOUNDATION  
*Computer Facility, Planning and Construction*

## COSTS AND FUNDS THIS AGREEMENT (\$):

COST CATEGORIES	CAPITAL OUTLAY CASH	NON-CASH LINE OF CREDIT	OTHER	TOTAL
REAL ESTATE	_____	_____	_____	_____
PLANNING	<u>\$1,900,000</u>	_____	_____	<u>\$1,900,000</u>
CONSTRUCTION	<u>\$13,100,000</u>	_____	_____	<u>\$13,100,000</u>
Hazardous Material	_____	_____	_____	_____
MISC.	_____	_____	_____	_____
EQUIPMENT	_____	_____	_____	_____
FDA Validation	_____	_____	_____	_____
TOTAL COSTS AND FUNDS	<u>15,000,000</u>	_____	_____	<u>\$15,000,000</u>

Capital Outlay Cash includes General Funds, NRP Bonds, Cash Line of Credit and/or Bonds sold.

JA

8/8/08

APC  
8/8/08