

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

REGIONAL TRANSIT AUTHORITY

WEST BANK FERRY TERMINAL

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Regional Transit Authority, represented by _____, Chairman of the Board of Commissioners of the Regional Transit Authority (the “**RTA**”). The City and the RTA may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS the City is a political subdivision of the State of Louisiana;

WHEREAS the RTA is a political subdivision of the State of Louisiana;

WHEREAS, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

WHEREAS, on July 23, 2019, the State of Louisiana, Division of Administration, Office of Facility Planning and Control (“**FP&C**”), notified the City of funding (attached as Exhibit A) for the application prepared and submitted by the City to renovate the West Bank Ferry Terminal at Morgan Street (attached as Exhibit B) and referred to in this Agreement as the “**Project**,” bearing FP&C Project No. 50-ML3-15-05;

WHEREAS, the City, as grantee, entered into a Cooperative Endeavor Agreement with the FP&C to facilitate the funding of FP&C Project No. 50-ML3-15-05 (the “**FP&C CEA**,” attached as Exhibit C);

WHEREAS the City and the RTA desire to enter into a cooperative endeavor agreement for the purpose of establishing the funding to the RTA to facilitate the construction of the Project;

WHEREAS, following completion of the Project, the Project will be owned by the State of Louisiana and operated by the RTA, subject to its existing agreements for the operations of the West Bank Ferry Terminal.;

WHEREAS, the City and the RTA agree that their mutual goals and objectives satisfy a legitimate and valid public purpose, and that these goals and objectives will provide intangible benefits to the betterment and improvement of the City’s infrastructure and the public at-large, and enable the RTA to satisfy its mission; and

WHEREAS, the City and the RTA, as set forth below, and in furtherance of their respective goals, seek to set forth their agreement regarding the Projects and the funding for same.

NOW THEREFORE, the City and the RTA, each having the authority to do so, agree as follows:

ARTICLE I - THE RTA’S OBLIGATIONS

A. Work Plan. The RTA shall develop a work schedule, list of deliverables, and action items for submission to the City for review identifying work activities, project milestones, deliverables, and timeline for each work activity concerning or relating to the Project. The project milestones shall include commencement and completion of the schematic design; conceptual design; design development; pre-construction services; construction documents; permits; commencement of construction on the Project; completion of construction of the Project; and commencement of use of the Project.

B. RTA Obligations. The RTA shall, in addition to the above, perform or cause to be performed the following:

1. Has retained Studio West and Batture LLC in connection with the design of the Project.
2. Present the Project concept at key stages (*e.g.*, schematic design and design development) to the City and the public-at-large and design documents at each stage, including final design documents (collectively, the “Final Plans”) submit to the City for review. The RTA shall accommodate all reasonable comments from the City on said documents only as required based on existing laws.
3. Develop a written budget for the Project (the “Project Budget”) which shall be submitted to the City’s Director of Capital Projects Administration for review.
4. Work with the architect, contractor, and any other retained consultants to develop appropriate performance milestones to ensure timely completion of the Project.
5. Obtain all required governmental regulatory reviews and approvals required in connection with the construction of the Project.
6. Provide all plans and specifications to the City’s Capital Projects Administration department for transmittal to FP&C for review;
7. Incorporate any reasonable review comments from City or FP&C into the design and construction of the Project;
8. Comply with pertinent state laws concerning the bidding of the work and the expenditure of public funds by FP&C and the City, including, but not limited to, La. Rev. Stat. § 38:2212, *et seq.*, award the Project to the lowest responsive and responsible

- bidder (the “Contractor”) in accordance with the Louisiana Public Bid Law, and provide City with documentation of the process used in obtaining design or construction bids;
9. Hire any and all other necessary consultants to manage the construction of the Project and to perform any required site civil surveying, geotechnical, mechanical, electrical, and other engineering services.
 10. Assume day-to-day management and oversight authority and responsibilities with respect to the design and construction of the Project;
 11. Execute a construction contract utilizing standard contract forms, such as American Institute of Architects (AIA), with the contractor for the construction of the Project, which contract shall be in accordance with the provisions of this Agreement, the Louisiana Public Bid Law, and the Louisiana Public Works Act.
 12. Report to the City’s Director of Capital Projects Administration every three (3) months during the term of this Agreement and as reasonably requested by the City regarding: 1) status of the bidding process and execution of the construction contracts; 2) status of any and all performance milestones (performance data will be specific and measurable); 3) the dollar value expended on the Project; and 4) any other information reasonably requested by the City as it relates to the Project.
 13. Provide all documentation reasonably required by FP&C or the City to show funds sought to be reimbursed were expended in compliance with this Agreement, the Project Budget, and any applicable local, state, and federal regulations and statutes, notwithstanding any approved waivers, that are applicable to the use of said funds.
 14. Complete construction of the Project in substantial conformance with the Final Plans, free of any statements of claim or privilege pursuant to the Louisiana Public Works Act, in accordance with the approved project documents, on or before a mutually agreed upon date to be determined.
 15. Assume responsibility for the reporting and compliance obligations that the funds carry;
 16. Comply with the duties, obligations, responsibilities, and limitations imposed on the City and the City Project Funds as stated in the FP&C CEA. Should there be any conflict in the terms of this Agreement and the FP&C CEA, the more restrictive provision will apply.
 17. Allow periodic access during normal business hours to the site by City representatives to review progress of the construction.
 18. Pursuant to La. Rev. Stat. 39:112(E)(2), the RTA agrees to provide a match of not less than twenty-five percent (25%) of the total City Project Funds, except as provided in La. Rev. Stat. 39:112(E)(2)(a) or (b). The RTA’s match may consist of a combination of past or future funding or in-kind contributions.

C. RTA Representations & Warranties. The RTA shall represent and warrant that:

1. The RTA has not employed or retained any entity or person, other than a bona fide employee or professional working solely for the RTA, to solicit or secure this Agreement nor has the RTA paid or agreed to pay any entity or person, other than a bona fide employee, any gift, commission, percentage, brokerage or any other such fee for the purpose of assisting the RTA in securing this Agreement. The RTA acknowledges its understanding that any gifts made, or fees paid in contravention of this representation and warranty shall be considered bribery pursuant to City Code Section 70-509 and shall subject the offender to criminal penalties in addition to suspension from participation in the City contracting for a period of not less than three years. The execution of this Agreement by the RTA's duly authorized representative shall be deemed a sworn statement by the RTA of its compliance with this representation and warranty, as required by City Code Section 46-51;
2. The RTA, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding and enforceable against the RTA in accordance with its terms;
3. The RTA is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit, or impair in any way its performance of any obligations hereunder;
4. The RTA has the requisite expertise, qualifications, and staff to enable it to fully perform its obligations under this Agreement;
5. As of the Effective Date of this Agreement, the RTA has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations, or its ability to fulfill its obligations under this Agreement;
6. The RTA is not in breach of any federal, state, or local statute or regulation applicable to the RTA or its operations that would materially affect the RTA's obligations under this Agreement;
7. The RTA shall complete, or cause to be completed, the construction of the Project in accordance with the Final Plans; and
8. The RTA has read and fully understands the terms, covenants, and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

D. Reliance on Representations, Warranties, and Covenants. All representations, warranties, covenants, and agreements made in this Agreement are intended to be material and shall be conclusively deemed to have been relied upon by the received party.

ARTICLE II - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Department of Capital Projects Administration;

2. Administer funds for the Project as specified in Article III; and
3. Within a reasonable time after receipt from the RTA, submit the RTA's requests for reimbursement, along with any supporting documentation, to FP&C.

ARTICLE III – FUNDING

A. Funding Overview. The RTA shall undertake the Project and expend such funds as it deems appropriate, all in compliance with applicable state and local law and FP&C requirements. The RTA will submit reimbursement requests and supporting documentation to the City, who will then submit such reimbursement requests to FP&C within 30 days. Once FP&C reviews and approves each request, it will provide payment to City. Within 30 days after receipt of payment, City will provide those funds to the RTA. Payment from the City to the RTA will only be made out of the funds received by the City from FP&C for this Project.

B. Requirements and Limits on Funding:

1. The RTA shall only be entitled to receive payments for eligible work. Eligible means those services, tasks, or materials needed for the Project that are eligible for reimbursement by FP&C.
2. No City funds are obligated for the Project as a result of this Agreement. The Parties agree that payment from FP&C under the FP&C CEA shall be a suspensive condition to any payments, partial or full, from City to the RTA. All payments from the City to the RTA are subject to availability of funds from FP&C. All risk of non-payment, for any reason, shall be exclusively borne by the RTA.
3. If payments or total payments available under the FP&C CEA shall be withheld for any reason, including but not limited to any adverse determination with respect to whether the RTA's work constitutes eligible work, then City shall have the right to proportionally (by percentage) reduce the amount of its payment to the RTA for the work or line item reduced or withheld by FP&C.
4. The RTA acknowledges that no part of this Agreement will constitute a warranty to the RTA of any eligibility or right to reimbursement for funds spent on the Project. The RTA further acknowledges that the City will have no obligation, aside from that expressly provided in Article II, to aid or assist in the RTA's compliance with FP&C rules and regulations.

C. Detailed Monthly Invoices. In addition to those requirements contained in Article III(B), as a prerequisite to payment, the RTA will:

1. Provide one (1) electronic copy of the budget tracking statement, payment/general ledger, invoice and supporting documentation. All costs charged to the Project, including any approved services performed by the RTA or others, shall be supported by properly executed payrolls, time records, invoices, contracts, etc., evidencing in detail the nature and propriety of the charges;
2. Submit electronically through the City's BRASS system the detailed monthly invoices, with all required supporting documentation and proof of payment, required by FP&C

or required in Article III(C)(1) above; and

3. Any additional documentation requested by FP&C or City.

D. Reimbursement Funding Available. Subject to the terms and conditions set forth in this Agreement, the City's portion of the Project funding shall be used for reimbursement of construction costs and shall not exceed funds appropriated by State funding (the "City Project Funding"). The City will not be liable for any costs or expenses paid or incurred by the RTA in excess of the City Project Funding in the performance of the RTA's obligations under this Agreement, except as may be specifically set forth in a duly authorized amendment. The RTA agrees to provide or obtain all funding for the Project not provided by the City Project Funding.

E. No Payment for Services Beyond Scope of Agreement. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request the RTA to provide additional services that would result in the performance of services beyond the scope of this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such additional services and/or expenditures. The City shall not be required to reimburse the RTA for any services that are provided by the RTA that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto.

F. No Payments in Excess of Maximum Funding. Officers and employees of the City are not authorized to offer or promise to the RTA additional funding for the Project in excess of the maximum amount of the City Project Funding set forth above, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such increase and the Department of Finance has certified the availability of such additional funding. Absent the prior duly authorized amendment of this Agreement and the necessary certification of the Department of Finance, the City shall not be required to honor and will not remit to the RTA any offered or promised additional funding in excess of the maximum amount of City Project Funding set forth above.

ARTICLE IV – MAINTENANCE AND OPERATION

Following completion of construction, the RTA, at its sole cost and expense, shall maintain the renovated West Bank Ferry Terminal at Morgan Street in first class condition, good working order, and free from defects. Following completion of construction, the RTA shall be fully responsible for the condition and operation of the renovated West Bank Ferry Terminal at Morgan Street subject to its existing agreements for the operations of the West Bank Ferry Terminal.

ARTICLE V - DURATION AND TERMINATION

A. Term. This Agreement will be effective until the Project is completed, subject to Art. XII(X) (Survival of Certain Provisions).

B. Termination for Convenience. Either Party may terminate this Agreement at any time during the term of the Agreement by giving written notice of the termination at least 30 calendar days before the intended date of termination.

C. Termination for Cause. Either Party may terminate this Agreement immediately for cause by sending written notice to the breaching party. "Cause" includes without limitation any

failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

D. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

ARTICLE VI - INDEMNITY

A. To the fullest extent permitted by law, each party will protect, defend, indemnify, and hold harmless the other, its agents, elected officials, employees, insurers, self-insurance funds, and assigns (collectively, the “Indemnified Parties”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons are property arising from or relating to any negligent act or omission or the operation of the Party, its agents or employees while engaged in or in connection with

B. Limitation. Each Party’s indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither that party nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. The Parties intend and agree that each Party shall be fully responsible for all liabilities incurred in connection with their respective acts or omissions, regardless of the presence or absence of insurance.

ARTICLE VII – INSURANCE

The RTA shall cause its consultants, contractors and subcontractors performing work pursuant to this Agreement to maintain the following insurance coverages:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - a. \$2,000,000 Aggregate for projects valued under \$5,000,000;
 - b. \$4,000,000 Aggregate for projects valued from \$5,000,000 to \$10,000,000;
 - c. \$5,000,000 Aggregate for projects valued from \$10,000,001 to \$25,000,000;
 - d. \$10,000,000 Aggregate for projects valued over \$25,000,000.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Symbol 1, or Symbols 7, 8, 9), or if contractor has not owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$500,000 Combined Single Limit per accident

for bodily injury and property damage. Higher limits may apply according to the particular project.

3. Workers' Compensation: as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions): with limits no less than \$1,000,000 per claim. Higher limits of coverage may be required for agreements for Architectural, Engineering, Contractor, or other professional services according to specific project needs or contract value.

ARTICLE VIII: RETENTION, ACCESS, AND OWNERSHIP OF RECORDS

A. Retention. The RTA agrees to keep all such business records related to, or arising out of, this Agreement as would be kept by a reasonably prudent practitioner of the RTA's profession for a period of three (3) years after the termination of this Agreement, or such longer period of time required by the FP&C CEA. All accounting records shall be maintained in accordance with generally accepted principles and practices.

B. Right to Audit; Access. At any time during normal business hours, upon receipt of reasonable notice and as often as the City may deem necessary, the RTA shall make all data, records, reports, and all other materials relating to this Agreement available to the City for examination and copying.

C. Ownership. All data collected and all products of work prepared, created, or modified by the RTA in the performance of this Agreement, including, without limitation, any and all plans, notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings, or other such material, regardless of form and whether finished or unfinished, and any related intellectual property, but excluding the RTA's personnel and administrative records and any proprietary tools, systems, and information used by the RTA to perform the services under this Agreement (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title, and interest in any Work Product, including, without limitation, the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the RTA's consent and for no additional consideration to the RTA.

ARTICLE IX - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the RTA (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall

apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the RTA will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the RTA in any of RTA's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The RTA agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The RTA will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the RTA fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE X- FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the RTA stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the RTA must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to RTA and without any further compensation due.
2. Notwithstanding Section C (1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XI - NOTICE

A. *In General.* Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Director
Capital Projects Administration
1300 Perdido Street, Suite 6E15
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the RTA:

Chief Planning and Capital Projects Officer
Regional Transit Authority
2817 Canal Street
New Orleans, LA 70119

&

Chief Legal Officer
Regional Transit Authority
2817 Canal Street
New Orleans, LA 70119

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XII - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of the either Party's interest in it are not assignable or transferable without prior written consent.

C. Voluntary Execution. The parties have read and fully understand the terms, covenants, and conditions set forth in this Agreement and are executing the same willingly and voluntarily of their own volition.

D. Acknowledgment of Exclusion of Workers' Compensation Coverage. The RTA expressly agrees and acknowledges that it is an independent contractor as defined in La. R. S. § 23:1021 and as such, it is expressly agreed and understood between the parties hereto, in entering into this Agreement, that the City shall not be liable to the RTA for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of La. R.S. § 23:1034, any employed by the RTA shall not be considered an employee of the City for the purpose of Workers' Compensation coverage.

E. Waiver of Benefits. The City and the RTA each agree and understand that the RTA, acting as an independent agent, or its respective employees shall not receive any sick or annual leave, health or life insurance, pension, or other benefits from the City.

F. Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement or in connection with any of its provisions, the prevailing party shall be entitled to an award for the attorneys' fees and the costs and expenses incurred therein in addition to any other right of recovery.

G. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

H. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved

in favor of or against the City or the RTA on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

I. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled “Cost recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent permitted by law, the RTA shall reimburse the City or disgorge anything of value or economic benefit received from the City if the RTA fails to meet its contractual obligations.

J. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

K. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit A – FP&C Notice of Project Funding; Exhibit B – Project Application; and Exhibit C – FP&C CEA.

L. Fiscal Funding for the City’s Obligations. The fulfillment of the City’s obligations under this Agreement are contingent upon the availability of funds to fulfill such obligations. If, for any reason, funds are no longer available to provide for the support of this Agreement, the Agreement shall terminate without further penalty to the City. If this Agreement is terminated due to insufficient funds, the RTA shall be notified in writing of the same prior to termination.

M. Jurisdiction. The RTA consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the RTA.

N. Limitations of the City’s Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

O. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

P. Non-Exclusivity. This Agreement is non-exclusive, and the RTA may provide services to other clients, subject to the City’s approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

Q. Non-Solicitation Statement. The RTA has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The RTA has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

R. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any

default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

S. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: Exhibit C; this Agreement; and Exhibits A-B.

T. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the RTA, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the RTA pursuant to this Agreement without regard to the RTA's otherwise satisfactory performance of the Agreement.

U. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

V. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

W. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

X. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

Y. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XIII – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XIV - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

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IN WITNESS WHEREOF, the City and the RTA, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ day of _____, 202__

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

REGIONAL TRANSIT AUTHORITY

BY: _____
**CHAIRMAN OF THE BOARD OF COMMISSIONERS OF THE
REGIONAL TRANSIT AUTHORITY**

[EXHIBIT(S) A- CATTACHED SEPARATELY]