

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

NEW ORLEANS REGIONAL TRANSIT AUTHORITY

NORTA NEW ORLEANS EAST LIBRARY CHARGING STATION

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Helena N. Moreno, Mayor (the “**City**”), and New Orleans Regional Transit Authority, represented by Lona E. Hankins, Chief Executive Officer (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 and RTA are both independent political subdivisions 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, the RTA was awarded a 2021 Low-No grant from the Federal Transit Administration to purchase three battery electric buses and to build associated charging infrastructure;

WHEREAS, the RTA has deemed a number of routes that are serving New Orleans East would be ideally suited for the three new battery electric buses. In order to function optimally, these buses should have access to an “on-route” charger that allows for charging of the vehicle batteries during the day and away from the RTA’s bus operations facilities;

WHEREAS, the RTA currently operates a major transfer and passenger waiting facility in front of the New Orleans East Regional Library at Read and Lake Forest. Due to spatial and bus operations reasons, the RTA has determined that the best location for the on-route charger and associated bus pull out lane is on the south side of Lake Forest Boulevard, east of Read Boulevard, and directly in front of the New Orleans East Public Library;

WHEREAS, the RTA has already had extensive conversations with the City’s Department of Public Works (“**DPW**”), Parks and Parkways Department, New Orleans Public Library, and Sewerage and Water Board about the design of this facility, and all of the entities have been involved to date in discussions, site visits, and reviews of draft design documents.

WHEREAS, the RTA is seeking authorization to build and operate a single on-route charger for an electric bus, along with associated electric infrastructure and a bus pull out area off of Lake Forest Boulevard.

WHEREAS, the City and the RTA desire to accomplish a valuable public purpose of providing a more efficient and environmentally friendly public transportation for the citizens of New Orleans;

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

ARTICLE I – THE RTA’S OBLIGATIONS

A. Obligations.

1. The RTA will be responsible for:

i. And is authorized to undertake the design, construction, ownership, and maintenance of the bus driveway/pull out area, the on-route charger, any signage associated with the bus charger, and the associated electrical infrastructure (the area denoted Improvements in Exhibit A).

ii. RTA is further responsible for, and is authorized to undertake the design and construction of all other aspects of the work completed by RTA for this 2021 Low-No grant funded on-route bus charger project (the area denoted construction area in Exhibit A) (including any incidental or accessory improvements, alterations, or additions) that will be owned and maintained by other parties (*example: minor landscape work, curb and sidewalk modifications, and any paving work done to Lake Forest Boulevard that is appurtenant to the new pull-out area*).

2. A replacement catch basin will be owned and maintained by the Sewage and Water Board. Electrical drops and any transformers on power poles will be owned and maintained by Entergy New Orleans. RTA will not be responsible in any respect for these matters.

3. RTA will continue to coordinate with relevant City departments—DPW, Parks and Parkways, and the New Orleans Public Library —through final design.

4. RTA’s cooperation under this Agreement does not supersede formal permit review by the City or any other public entity, which the RTA must obtain to construct these Improvements along with all other aspects of the work undertaken pursuant to the 2021 Low-No grant funded on-route bus charger project.

ARTICLE II - THE CITY’S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through DPW;

2. Provide the RTA with any and all documents deemed necessary for the RTA’s performance of any work required under this Agreement;

3. Provide access to City department personnel to discuss the required services during normal working hours, as requested by the RTA; and

4. The City of New Orleans will own and maintain a replacement streetlight, trees and all other landscaping, a replacement sidewalk, and new curbs and roadway pavement adjacent to, but excluding, the bus pull-out area;

5. The City grants the RTA, along with its contractors and subcontractors, continuous access to and use of the City's right-of-way and City property in accordance with the Agreement in order for RTA to execute their obligations under this Agreement; and

6. The City acknowledges the RTA's separate ownership of the Improvements for this Agreement at no cost to RTA.

7. The provisions of subsections 5 and 6 above shall survive this Agreement pursuant to Art. XIV(S).

ARTICLE III – FUNDING OR COMPENSATION

RTA will be fully and solely responsible for all cost associated with the Improvements under this Agreement. No funding will be provided to RTA by the City.

ARTICLE IV - DURATION AND TERMINATION

A. Term. The term of this agreement shall be for twenty-five (25) years from the Effective Date or the expiration of any federal or state interest, whichever is later.

B. Extension. The City can extend the term of this Agreement, provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

C. Termination for Convenience. Either Party shall have the right to terminate this Agreement without cause by giving the other Party written notice of its intent to terminate at least one (1) year prior to the date of termination. In the event that the City elects to terminate for convenience before the term has expired, then the City shall pay RTA the remaining value of any federal, state, or local funds or interests remaining in the Project. Should the City terminate early, RTA shall bear no further expenses relating to the Project, including, without limitation, costs to restore the site to its previous condition, demolition, or remediation. If RTA terminates early, the RTA will be solely responsible for returning the site to its previous condition, and the cost of restoration will be solely borne by the RTA.

D. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the RTA. "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. The RTA will be solely responsible for returning the site to its previous condition, and the cost of restoration will be solely borne by the RTA. The RTA would also be solely responsible for any demolition and site remediation activities and would fully bear the costs of those activities. Furthermore, RTA's failure to use the system for regular revenue service for a consecutive period of 1 year or 365 days after the effective date of the Agreement would be cause for termination.

E. Upon Expiration. The City shall not be held liable for any cost upon the expiration of this Agreement. Subject to subsection (C) above, the RTA will be solely responsible for returning the site to its previous condition, and the cost of restoration will be solely borne by the RTA. The RTA would also be solely responsible for any demolition and site remediation activities and would fully bear the costs of those activities.

ARTICLE V - INDEMNITY

A. In General. To the fullest extent permitted by law, the RTA will indemnify, defend, and hold harmless the City, its agents, employees, officials, 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 or property arising from or relating to any act or omission or the operation of the RTA, its agents or employees while engaged in or in connection with the discharge or performance of its ownership and maintenance of the Improvements or for the design and construction of other aspects of the work undertaken pursuant to the 2021 Low-No grant funded on-route bus charger project for which it is responsible; and for any and all claims and/or liens for labor, services, or materials furnished to the RTA in connection with the performance of work under this Agreement.

B. Limitation. The RTA's indemnity does not extend to any loss arising from the negligence, gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the RTA nor any of its agents or employees contributed to such negligence, gross negligence, or willful misconduct. Furthermore, after completion and turnover of those portions of the project owned by City, RTA will have no indemnity obligations for any claims, demands, suits, judgments, and sums of money arising from or relating to those portions.

C. Independent Duty. The RTA has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the RTA is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the RTA shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE VI – INSURANCE

A. Acknowledgment of Self-Insurance/Insurance. For the duration of this Agreement, the Parties acknowledge that RTA maintains self-insurance or umbrella/excess coverage as stated below. The Parties further acknowledge that RTA’s self-insurance or umbrella/excess coverage is solely for RTA’s benefit and shall provide no coverage or benefit to the City.

B. Insurance:

1. Workers' Compensation & Employers Liability Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000. All employers must provide this coverage or be registered as a “Self- Insured” entity with the State.

2. **Commercial General Liability Insurance** includes contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.

3. **Business Automobile Insurance** with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance includes all owned, non-owned and hired vehicles.

ARTICLE VII - PERFORMANCE MEASURES

A. **Factors.** The City will measure the performance of the RTA according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. **Failure to Perform.** If the RTA fails to perform according to the Agreement, the City will notify the RTA. If there is a continued lack of performance after notification, the City may declare the RTA in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE XI - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** The RTA is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to the RTA, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the RTA will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. **Exclusion of Unemployment Compensation Coverage.** The RTA, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E) and neither the RTA nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the RTA has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the RTA are outside the normal course and scope of the City's usual business; and (c) the RTA has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. **Waiver of Benefits.** The RTA, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XIII - 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, Department of Public Works
City of New Orleans
1300 Perdido Street, Suite 6W03
New Orleans, LA 70112

&

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

2. To the RTA:

Lona Hankins, Chief Executive Officer
New Orleans 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 XIV - 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. Federal State, or Local Request. The Parties agree that should any federal, state, or local entity (i.e. FTA or another City department) need any additional documentation, permits, or authorizations signed that are in line with this Agreement, that such are authorized by the CEA and the respective party will act in good faith to execute such document, permit, or authorization.

C. 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.

D.

E. 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.

F. 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.

G. 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.

H. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit A.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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: This Agreement, Exhibit A.

P. 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.

Q. 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.

R. 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.

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

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

ARTICLE XV – 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 XVI - 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 THE NEXT PAGE]

[The remainder of this page is intentionally left blank.]

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

CITY OF NEW ORLEANS

BY: _____
HELENA N. MORENO, MAYOR

Executed on this _____ of _____, 202__.

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

CITY OF NEW ORLEANS, CITY COUNCIL

BY: _____
CITY COUNCIL PRESIDENT

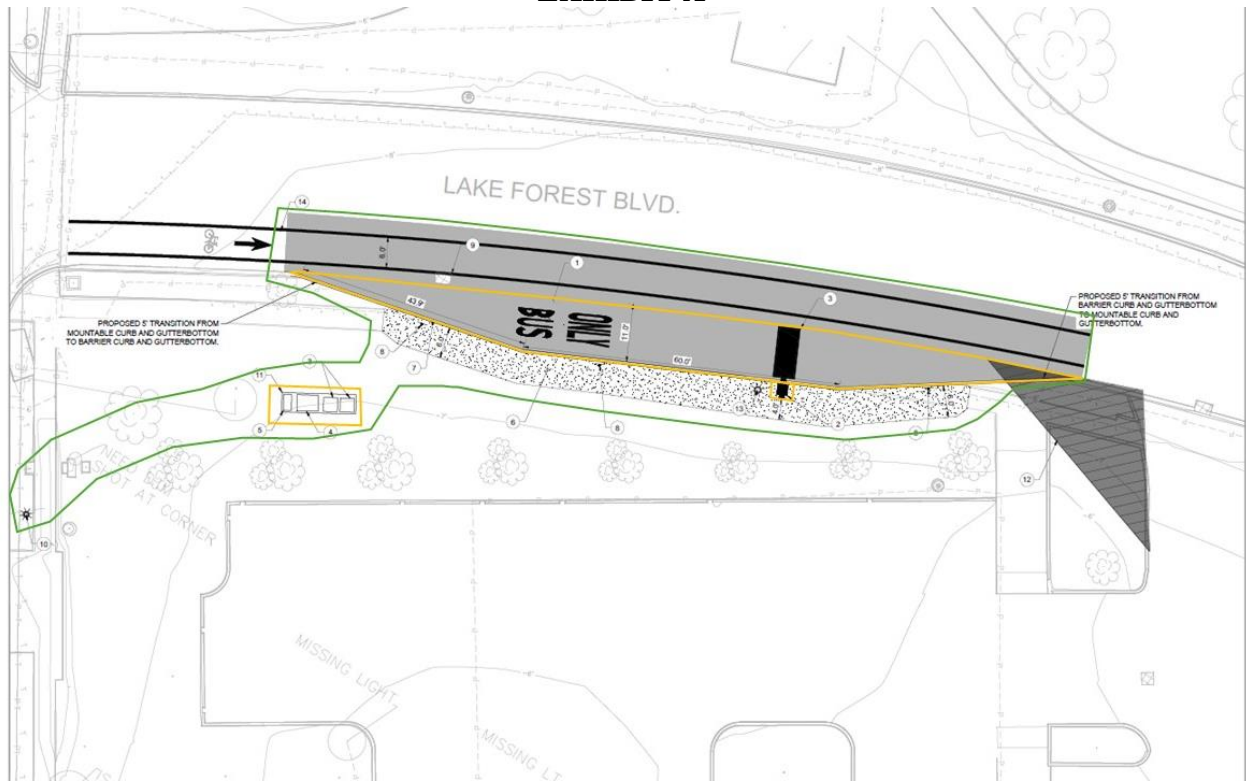
NEW ORLEANS REGIONAL TRANSIT AUTHORITY

BY: _____
LONA E. HANKINS, CHIEF EXECUTIVE OFFICER

FEDERAL TAX I.D.

[EXHIBIT A CONTAINED ON NEXT PAGE]

EXHIBIT A



Note: Improvements are outlined in orange, construction area is outlined in green.