

K23-524

COOPERATIVE ENDEAVOR AGREEMENT
BY AND AMONG
THE CITY OF NEW ORLEANS
AND
THE NEW ORLEANS REGIONAL TRANSIT AUTHORITY
FOR
RELOCATION OF GEORGE WASHINGTON STATUE

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 the New Orleans Regional Transit Authority, represented Lona Hankins, CEO ("**RTA**"). The City and 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, RTA is a political subdivision of the State of Louisiana, created by an Act of the State Legislature in 1979, for purposes of administering a transit system within the metropolitan New Orleans area;

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 has recently undertaken improvements to the public space surrounding the New Orleans Public Library's Main Library to be a more comfortable area for waiting transit riders and more aesthetically pleasing area for general public that better utilizes the space;

WHEREAS, the City's Parks and Parkways Department has an improvement project at Washington Square that includes the relocation of a statue of George Washington from the Main Library public space (the "**Project**");

WHEREAS, the RTA wishes to assist with the Project and provide more space for use in RTA's next phase of improvements to the area surrounding the Main Library which will be enjoyed by RTA riders, Library patrons and the general public;

WHEREAS, the City and RTA desire to accomplish a valuable public purpose of public beautification and betterments to public property, and promoting public recreation, library access

and transportation in the City of New Orleans; and

WHEREAS, the City and RTA want to enter into a cooperative endeavor agreement for construction of the Project;

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

ARTICLE I – RTA’S OBLIGATIONS

RTA will:

1. Be responsible for the payment of the costs of relocating the George Washington statue from its current location adjacent to the Main Library to its new home.
2. Make payment in a timely manner once this Agreement has been executed and the City has provided the necessary supporting documentation.

ARTICLE III – THE CITY’S OBLIGATIONS

The City will:

1. Be responsible for the execution of work for the relocation of the George Washington statue and any damage that may occur as a result of the relocation.
2. Be responsible for all construction costs at Washington Square for the new statue location.
3. Provide the RTA with any documents deemed necessary for the reimbursement of associated costs of statue relocation;
4. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the parties.

ARTICLE IV – JOINT OBLIGATIONS OF THE PARTIES

The Parties agree collaborate in a timely manner to execute payment of funds.

ARTICLE V – FUNDING

RTA will transfer funds in the amount not-to-exceed \$50,000 to the City with the exact amount based on documentation provided to the RTA by the City to RTA. The RTA will not be responsible for the relocation contractor or performance of work.

ARTICLE VI – DURATION AND TERMINATION

A. Term. The term of this Agreement shall be for one year from the Effective Date.

B. Termination for Cause. The RTA may terminate this Agreement immediately for cause by sending written notice to the City. “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.

ARTICLE VII – INDEMNITY

A. In General. To the fullest extent permitted by law, the City will indemnify, defend, and hold harmless the RTA, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the “**Indemnified Party**”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Party: for loss of life or injury or damage to persons or property arising from or relating to any act or omission of the City, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the City 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 gross negligence or willful misconduct of any of the Indemnified Party, provided that neither the RTA nor any of its agents or employees contributed to such gross negligence or willful misconduct.

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

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

ARTICLE VIII – NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the City1) 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 their respective 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 City 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 parties in any of parties’ 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 Audubon or by RTA. The parties agree 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 parties 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 RTA may terminate this Agreement for cause if either of the parties fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE IX – INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The City is independent contractors and shall not be deemed an employee, servant, agent, partner, or joint venture of the RTA and neither party 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 RTA will not be liable to the City, 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 either of the parties will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. Neither the parties nor anyone employed by it will be considered an employee of the RTA 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 Agreement; and (b) the services to be performed by the RTA are outside the normal course and scope of the City's usual business.

D. Waiver of Benefits. The parties, as independent contractors, will not receive from the RTA 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 RTA under this Agreement.

ARTICLE X – 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
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 XI - 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. (i) Neither RTA nor the City may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the RTA, which consent must be approved by a resolution of the RTA Board of Commissioners.

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. 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 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.

E. 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.

F. Jurisdiction. The Parties consent and yield to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waive any pleas or exceptions of jurisdiction on account of the residence of the parties.

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

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

ARTICLE XII – COUNTERPARTS

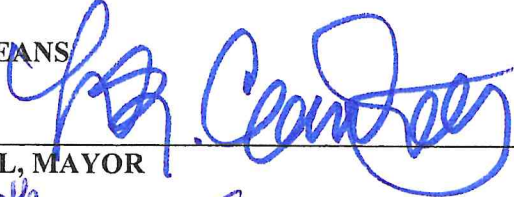
This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XIII– 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.

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

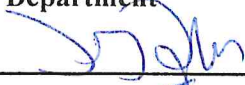
CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

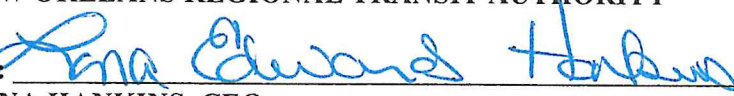
Executed on this 7th day of June, 2023

Form and Legality Approved by:
Law Department

By: 

Printed Name: Tracy Tibo

NEW ORLEANS REGIONAL TRANSIT AUTHORITY

BY: 

LONA HANKINS, CEO

FEDERAL TAX I.D. NO. 