

COOPERATIVE ENDEAVOR AGREEMENT

CITY OF NEW ORLEANS

AND

VENDOR

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “Agreement”) is made and entered into on this ____ day of _____, 201____ (the “Effective Date”), by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “City”), and **VENDOR** represented by _____(the “Consultant”).

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, INSERT TEXT;

WHEREAS, INSERT TEXT; and

WHEREAS, INSERT TEXT.

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

I. OBLIGATIONS OF THE PARTIES.

A. Obligations of the Party Reference. The Consultant will:

1. [Insert specific statements of all things the Contractor will do or give, any time frame for performance, and any incidental responsibilities (except those that are listed elsewhere)]
 - a. _____;
 - i. _____;
 - ii. _____.
 - b. _____;
2. _____.

B. Obligations of the City. The City will:

1. [Insert specific statements of all things the City will do or give, any time frame for performance, and any incidental responsibilities (except those that are listed elsewhere)] _____;
 - a. _____;

- i. _____;
 - ii. _____.
- b. _____;
2. _____.

II. FUNDING/COMPENSATION.

[Insert funding/compensation amounts and any related information and conditions].

III. DURATION.

This Agreement will be effective for [insert length of CEA in days, months, or years] from the Effective Date.

IV. TERMINATION.

A. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Party Reference written notice of its intention to terminate at least thirty (30) days before the intended date of termination.

B. Termination for Cause. Either party may terminate this Agreement immediately for cause. If either party prevails in a challenge to a termination for cause, the termination for cause will be deemed to be a termination for convenience effective thirty (30) days from the date that the original written notice of termination for cause without the requirement of notice.

V. INDEMNITY.

A. Duty to Indemnify the City. To the fullest extent permitted by law, the Party Reference will protect, defend, indemnify, and hold harmless the City, its agents, elected officials, and employees (collectively, the “Indemnified Parties”) from and against all claims, demands, actions, liabilities, losses (including, without limitation, economic losses), and costs, arising out of or related to (a) any actual or alleged act or omission in the performance of this Agreement by the Party Reference, its employees, or any subcontractor or (b) any act outside the scope of this Agreement by the Party Reference, its employees, or any subcontractor.

B. Limit on Duty to Indemnify. Notwithstanding anything in this Agreement to the contrary, the Party Reference is not required to indemnify the Indemnified Parties for any loss that results from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that the Party Reference or any subcontractor did not contribute to such gross negligence or willful misconduct.

C. Independent Duty to Defend. Notwithstanding anything in this Agreement to the contrary, the Party Reference, at its option, will immediately defend the City from, or reimburse the City for the City’s costs incurred in the defense of, any claim that actually or potentially falls within the scope of this indemnity, even if the claim is groundless, false, or fraudulent, or if the Party Reference is absolved of liability.

D. Expenses. The Party Reference will bear all expenses, including without limitation reasonable attorney fees, of the City in enforcing the terms of this article.

VI. INSURANCE.

[Insert any applicable insurance requirements approved by the Department of Risk Management.]

VII. NON-DISCRIMINATION.

A. Non-Discrimination in Employment. With regard to any hiring or employment decision made in connection with the performance of this Agreement, including without limitation employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other compensation, and selection for training including apprenticeship, the **Party Reference**:

1. Will not discriminate or retaliate, in fact or in perception, against any employee or person seeking employment on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;

2. Will take affirmative action to ensure compliance with this section;

3. Will include statements in all solicitations or advertisements for employment that all qualified applicants will receive consideration for employment without regard to race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;

4. Will post notices containing the provisions of this section in conspicuous places available to employees and persons seeking employment.

B. Non-Discrimination. In the performance of this Agreement, the **Party Reference**:

1. Will not discriminate or retaliate, in fact or in perception, on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status against: any employee of the City; any employee of any person working on behalf of the City; or any person seeking accommodation, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the **Party Reference**.

2. Will comply with and abide all federal, state, and local laws relating to non-discrimination, including without limitation Title VII of the Civil Rights Act of 1964, as amended, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

VIII. NOTICES.

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:

Department Head Title, Department

City of New Orleans

Street Address and/or PO Box

New Orleans, LA 70112

&

City Attorney

City of New Orleans

1300 Perdido Street, Suite 5E03

New Orleans, LA 70112

2. To the **Party Reference**:

Party Contact

Party

Street Address and/or PO Box

City, State ZIP

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

IX. INCORPORATED DOCUMENTS.

The following documents are incorporated by reference into this Agreement:

A. The following documents are incorporated by reference into this Agreement:

1. [List any documents that are considered part of the Agreement, using a complete title if available, in numbered paragraphs. Documents not incorporated by reference may not be considered part of the CEA.]

B. If any these documents conflict, in whole or in part, with this Agreement, the terms and conditions of this Agreement will control except as provided by law.

X. MISCELLANEOUS PROVISIONS.

A. Ownership of Documents. All data collected and all products of work prepared, created, or modified by the **Party Reference** in the performance this Agreement, including, without limitation, any and all 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, (collectively, "Work Product") are the exclusive property of **Party Reference** and no reproduction of any portions of such Work Product may be made in any form without the express written consent of **Party Reference**. **Party Reference** shall have all right, title, and interest in all Work Product, including without limitation the right to secure and maintain the copyright, trademark, and/or patent of Work Product in the name of **Party Reference**. The City shall maintain a limited right, title, and interest in all Work Product, including the name and likeness of **Party Reference** for use in marketing brochures, program guides, advertising, etc. **Party Reference** acknowledges that a City photographer will often be on premises taking photos during NORDC events. **Party Reference** agrees that its personnel and participants may be photographed for the above-stated purposes and that the City may use such photographs for the above-stated purposes without the consent of and for no additional consideration owing to **Party Reference**.

B. Prohibition Against Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the **Party Reference**, will 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 **Party Reference** pursuant to this Agreement without regard to the **Party Reference**'s satisfactory performance.

C. Non-Solicitation Statement. The Party Reference swears that it 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 Party Reference 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.

D. Convicted Felon Statement. The Party Reference swears that it complies with City Code § 2-8(c). No principal, member, or officer of the Party Reference has been convicted of or pled guilty to a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records in the past five years.

E. Audit and Other Oversight. The Party Reference will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Party Reference to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, the Party Reference agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

F. Ownership Interest Disclosure. The Party Reference will provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Party Reference and stating that no other person holds an ownership interest in the Party Reference via a counter letter. For the purposes hereof, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Party Reference fails to submit the required affidavits, the City may, after thirty (30) days’ written notice to the Party Reference, suspend or cause the suspension of any further payments until the required affidavits are submitted.

G. Employee Verification. The Party Reference swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it will continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it will require all subcontractors to submit to the Party Reference a sworn affidavit verifying compliance with items (i) and (ii) above. The Party Reference acknowledges and agrees that any violation of this paragraph may subject this Agreement to cancellation and may result in the Party Reference being ineligible for any public contract for a period of three years from the date the violation is discovered. The Party Reference will be liable for any costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Party Reference agrees to provide to the City a sworn affidavit attesting to these provisions if requested by the City to do so; the City may cancel the Agreement if the Party Reference fails to provide the requested affidavit.

H. Restrictions on Subleases. The Party Reference may not enter into any sublease without the prior approval of the Council of the City of New Orleans.

I. Non-Exclusivity for the City. The City shall be free to engage the services of other persons for the performance of some or all of the obligations contemplated this Agreement.

J. Acknowledgment of Exclusion of Worker’s Compensation Coverage. The Party Reference 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 services agreement, that the City shall not be liable to the Party Reference 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, anyone employed by the Party Reference shall not be considered an employee of the City for the purpose of Workers' Compensation coverage.

K. Acknowledgment of Exclusion of Unemployment Compensation Coverage. The Party Reference herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Agreement for hire as noted and defined in La. R.S. 23:1472(E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this services agreement, or agreement for hire, and in connection with unemployment compensation only, that:

1. The Party Reference has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and

2. Services to be performed by the Party Reference are outside the normal course and scope of the City's usual business; and

3. The Party Reference has been independently engaged in performing the services listed herein prior to the date of this agreement.

Consequently, neither the Party Reference nor anyone employed by the Party Reference shall be considered an employee of the City for the purpose of unemployment compensation coverage, which is expressly waived and excluded.

L. Waiver of Benefits. The City and the Party Reference agree and understand that the Party Reference, acting as an independent agent, shall not receive any sick and annual leave, health or life insurance, pension, or other benefits from the City.

M. Jurisdiction. The Party Reference consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas of jurisdiction on account of the residence elsewhere.

N. Governing Law. Any dispute arising from or relating to this Agreement or the performance of any obligations under this Agreement shall be resolved in accordance with the laws of the State of Louisiana.

O. Rules of Construction. This Agreement has been reviewed by all 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 all parties. 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. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against either party on the basis of which party drafted the language.

P. Severability. The parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If a court finds any provision is not subject to reformation, that provision shall be fully severable and the remaining provisions of this Agreement shall remain in full force and effect and shall be construed and enforced as if such illegal, invalid, or unenforceable

provision was never included, and the remaining provisions of this Agreement shall remain in full force and effect.

Q. Survival of Provisions. All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect.

R. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the City and the **Party Reference**, and the parties expressly disclaim any intent to benefit any person that is not a party to this Agreement.

S. 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 shall not affect or be deemed a waiver of any party's right to insist upon compliance with the terms and conditions of the Agreement, to exercise any rights, or to seek any available remedy with respect to any default, breach, or defective performance.

T. Agreement Binding. This Agreement is not assignable by either party unless authorized by a validly executed amendment.

U. Modifications. This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

V. Voluntary Execution. The **Party Reference** 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.

W. Complete Agreement. This Agreement supersedes and replaces any and all prior agreements, negotiations, and discussions between the parties with regard to the terms, obligations, and conditions of this Agreement.

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

CITY OF NEW ORLEANS

BY: _____
MITCHELL J. LANDRIEU, MAYOR

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

PARTY NAME

BY: _____

PARTY REPRESENTATIVE, TITLE

CORPORATE TAX I.D.