

COOPERATIVE ENDEAVOR AGREEMENT

BY AND AMONG

THE CITY OF NEW ORLEANS

AND

THE NEW ORLEANS RECREATION DEVELOPMENT COMMISSION

AND

UNCHAINED REALITIES, INC.

NORD'S PROGRAMMATIC PARTNERSHIPS: E-SPORTS PROGRAM

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and among the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), the New Orleans Recreation Development Commission, represented by Theodore C. Sanders, III, Chairman (“**NORD**”), and Unchained Realities, Inc., represented by Brent DeLarge, President (the “**Contractor**”), which are sometimes each referred to as a “**Party**,” and collectively, as the “**Parties**.” This Agreement is effective as December 1, 2023 (the “**Effective Date**”).

RECITALS

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

WHEREAS, Contractor is a Louisiana non-profit corporation, which principal address in Louisiana is located at 7401 Seven Oaks, New Orleans, LA 70124;

WHEREAS, NORD operates the City-owned parks, playgrounds, recreation centers, and/or facilities (“**NORD Recreation Centers**”);

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, Section 2-318 of the New Orleans City Code authorizes NORD to: plan, supervise, and conduct a comprehensive and coordinated program of cultural and physical recreation; promote cooperative planning with public and private entities concerned with recreation; manage, maintain and operate recreational facilities owned or operated by the City of

New Orleans; and perform other related duties as may be provided by ordinance of the City Council;

WHEREAS, NORD offers programmatic partnerships to individuals, organizations, or other entities interested in providing creative and alternative programs for the City's residents at NORD Recreation Centers at no cost to Contractor;

WHEREAS, Contractor submitted a programmatic partnership application and was selected by the City, through NORD, to become a programmatic partner; and

WHEREAS, the City, NORD, and Contractor desire to accomplish the valuable public purpose of providing quality recreational, academic, cultural, and/or economic opportunities for the City's residents by providing space to Contractor at NORD's Recreation Center for Contractor's e-sports gaming program.

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

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. Obligations of the City. The City shall:

1. Administer this Agreement through NORD.

B. Obligations of Contractor. Contractor shall:

1. Provide curriculum or programming as described herein, and comply with all other details and instructions as outlined in the Program Narrative and Schedule, attached and incorporated herein as an exhibit (**Exhibit A**), including without limitation, program activities, capacity, instructor to participant ratios, fees, and program schedules and adherence to COVID-19 operational guidelines;
2. Submit proposed programming modifications to the NORD Special Programs Department in writing at least 90 calendar days in advance of the initial start date of the proposed modification, so that the Parties shall have adequate time to discuss and mutually-agree upon terms governing the proposed programming modifications;
3. Provide the details of any public announcements or promotions to NORD's Recreation Centers Director at least one week prior to the announcement for NORD's Recreations Centers Department review and approval;
4. Acknowledge and promote the programmatic partnership between NORD and Contractor to increase awareness and registration through placement of the NORD logo on all printed materials produced for the program. Any and all materials with the NORD logo must be approved by NORD to ensure the logo usage is not distorted or used incorrectly;
5. Ensure the safety of all program participants by requiring adherence to all NORD Playgrounds and Recreation Center policies and procedures, while on the premises of the assigned NORD Playgrounds and NORD Recreation Centers.

6. Provide adequate supervision during all programmatic hours for the security of program participants and for the protection and maintenance of NORD property;
7. Immediately report any problem with NORD equipment or maintenance and upkeep issues to NORD's Recreation Centers Director;
8. Adhere to NORD's RecTrac registration and utilization procedures, including, but not limited to, weekly submission of registration forms to NORD staff and utilization of RecTrac generated class rosters;
9. As part of the registration materials, collect release forms from all participants, waiving any claims against NORD and the City for participation in the programmatic partnership pursuant to this Agreement;
10. Provide qualified instructors who have relevant, documented, and proven experience to fulfill the obligations of the programmatic partnership pursuant to this Agreement;
11. Provide adequate instructors to fulfill the obligations of the programmatic partnership and to satisfy the agreed-upon schedule of classes pursuant to this Agreement;
12. Conduct criminal background checks on all on-site instructors, including without limitation, employees, independent contractors, and/or volunteers, and submit the results to the NORD's Recreation Centers and Multi-Programs Departments no later than five business days after execution of this Agreement;
13. Provide set-up and breakdown of all equipment needed to teach each class and ensure all equipment is removed at the end of each class. NORD is not responsible for any equipment or materials left on-site;
14. Submit "Darkness to Light" online class certificates of completion for all on-site staff to NORD no later than 5 business days after execution of this Agreement;
15. Ensure that at least two on-site instructors possess cardiopulmonary resuscitation ("CPR") and First Aid certification from a nationally accredited provider; or one on-site instructors if there is only one on-site staff member, in keeping with the instructor-to-participant ratio required in Exhibit A;
16. Provide all curriculum materials, supplies, and equipment needed to ensure the success of this programmatic partnership;
17. Provide fee waivers or sliding fee scale for any New Orleans resident who is unable to meet the fee for service schedule due to economic hardship;
18. Ensure that all program revenue collected is used for programmatic partnership expenses pursuant to this Agreement;
19. Submit quarterly financial statements and all fiscal documents reflecting all of the programmatic partnership's income, expenses and fee waiver data (number of participants provided fee waivers and total amount waived) pursuant to this Agreement to the NORD

Contracts Supervisor on January 1st, April 1st, July 1st, and October 1st, with the first submission due after the first full quarter following the Effective Date;

20. Ensure that a parent or legal guardian of each participant sign the Assumption of Risk, Liability Waiver & Release (the “Release”) attached hereto as Attachment “B”;

21. Submit to NORD the signed Release, for each program participant within five days of the first programming session conducted; and

22. Participate in one of NORD’s Programmatic Showcases held at the conclusion of the Fall and /or Spring season; and

23. Obtain a signed Release from all programmatic and event participants, including, but not limited to, program participants (or their legal guardians, as appropriate), prior to participation in any and all athletic and recreational programming or events contemplated herein, holding harmless and waiving any potential claims against NORD or the City for participation in Contractor programming or events at NORD playgrounds and recreation centers, including, but not limited to, NORD Assumption of Risk and Liability Release Waiver related to COVID-19 (**Exhibit B**).

C. Obligations of NORD. NORD shall:

1. Waive all of Contractor’s rental fees for the use of NORD’s Recreation Center for the times and purpose set forth in Exhibit A of this Agreement;

2. Compensate the Contractor in accordance with Article II below;

3. Conduct on-site registration;

4. As part of the registration materials, provide release forms to all participants, waiving any claims against NORD and the City for participation in the programmatic partnership pursuant to this Agreement;

5. Enter and maintain all participant data records in NORD’s RecTrac data management system;

6. At NORD’s sole discretion, facilitate publicity to increase awareness and registration by acknowledging and promoting the programmatic partnership between the Parties, through placement of Contractor’s logo on written communications, e-newsletters, websites, social media venues, and brochures;

7. At NORD’s sole discretion, conduct site visits to the NORD Playground or Recreation Center during scheduled programming to evaluate the programmatic partnership;

8. Provide reasonably prompt notice of NORD Recreation Center closures to Contractor, unless closure is due to an emergency;

9. Provide an emergency, administrative, and management contact to Contractor; and

10. Host the NORD’s Programmatic Showcase at the conclusion of the Fall and / or Spring season and coordinate participation from all NORD Programmatic Partners.

ARTICLE II - COMPENSATION

A. **Maximum Amount.** The maximum amount funded or payable by NORD under this Agreement is \$160,000.00.

B. **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 Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

ARTICLE III - DURATION

The term of this Agreement shall be effective for one year, from the Effective Date.

ARTICLE IV - TERMINATION

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

B. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause by sending written notice to the other 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, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. 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 V - INDEMNITY

A. **Duty to Indemnify the City.** To the fullest extent permitted by law, the Contractor 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 Contractor, 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 Contractor in connection with the performance of work under this Agreement.

B. **Limitation.** The Contractor's indemnity does not extend to any loss arising from the sole negligence, gross negligence, or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such negligence, gross negligence, or willful misconduct.

C. **Independent Duty.** The Contractor 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 Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor 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. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

1. Minimum Requirements:

a. Commercial General Liability (CGL). CGL coverage, including contractual liability insurance, personal injury, bodily injury, property damage and advertising injury, with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate. Insurance shall be written on an "occurrence" form.

b. Abuse and Molestation Coverage. Either by endorsement to the CGL Policy or by separate policy with limits no less than \$1,000,000.00 per claim.

c. Workers' Compensation. In compliance with the applicable Workers Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statute. Employers Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease.

d. Umbrella insurance with limits of liability excess of Employer's Liability Insurance, Automobile Liability, and Commercial General Liability Insurance in an amount of not less than \$2,000,000.

e. Professional (E & O) Liability Insurance appropriate to the Contractors professional services with limits of liability of not less than \$2,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement.

f. The Contractor shall ensure that coverage under this policy shall be kept in force and uninterrupted for a period of three (3) years beyond final payment. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full Extended Reporting Period ("ERP") coverage.

2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Additional Insured Status. The Contractor will provide, and maintain current, a Certificate of Insurance including The City of New Orleans, its departments, political subdivisions, officers, Officials and employees, and volunteers as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this Agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence

of all required coverage, should identify the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

b. The Additional Insured Box must be marked “Y” for Commercial General Liability, Umbrella coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property coverage.

c. Primary Coverage. For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor’s coverage.

d. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this Agreement.

e. Waiver of Subrogation. The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.

f. Notice of Cancellation. Each insurance policy required above shall not be canceled, except with prior notice to the City of no less than 30 days.

g. Acceptability of Insurers. Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

B. The Contractor will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: NORD’s Programmatic Partnership, within 10 calendar days of the Effective Date and at any other time at the City’s request the following documents: Proof of coverage for each policy of insurance required by this Agreement by certificate of insurance on an Acord form.

C. Without notice from the City, the Contractor will:

1. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and

2. Notify the City’s Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Contractor 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 Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor 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 VIII - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor 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 Contractor in any of Contractor'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 Contractor 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 Contractor 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. The City may terminate this Agreement for cause if the Contractor 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 Contractor 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 Contractor, 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 Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor 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 Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this Agreement; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, 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 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 Contractor 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

Contractor 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 Contractor 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:
Larry Barabino Jr., CEO
New Orleans Recreation Development Commission
5420 Franklin Avenue
New Orleans, LA 70122

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112
2. To Unchained Realities: Brent Delarge, Director
Unchained Realities, Inc.
7401 Seven Oaks
New Orleans, LA 70124;

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 each Party to this Agreement.

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

C. Audit and Other Oversight. The Contractor will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Contractor 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 Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

D. 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.

E. Compliance with the City's Hiring Requirements – Ban the Box. (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. (iv) The Contractor 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.

F. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

G. Construction of Agreement. None of the Parties 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, NORD, or the Contractor 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.

H. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, 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.

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 Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

J. Employee Verification. The Contractor swears that (i) it 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 shall 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 shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

K. 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.

L. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit “A”; Exhibit “B”

M. Jurisdiction. The Contractor 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 Contractor.

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 Contractor 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 Contractor 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 Contractor 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 any of the Parties 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: the Agreement; Exhibit "B"; Exhibit "A".

T. Ownership Interest Disclosure. The Contractor will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, 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 Contractor fails to submit the required affidavit, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

U. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by the Contractor in the performance of this Agreement not considered protected health information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 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, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (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 Contractor's consent and for no additional consideration to the Contractor.

V. 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 Contractor, 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 Contractor pursuant to this Agreement without regard to the Contractor's otherwise satisfactory performance of the Agreement.

W. 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.

X. 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.

Y. 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.

Z. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

AA. 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.

BB. 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.

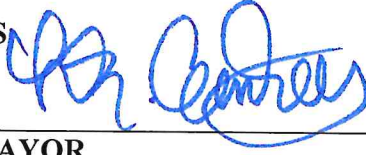
ARTICLE XIV – ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email or other means of electronic transmission 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 and Exhibits A and B contained on the following pages.]

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

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 7th day of November, 2023.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorian

[Contractor and NORD signatures and Exhibits found on the following pages.]

[Remainder of this page intentionally left blank.]

UNCHAINED REALITIES

BY: Brent Delarge
BRENT DELARGE, DIRECTOR

TAX I.D.

[NORD signature and Exhibits A and B found on the following pages]

[Remainder of this page intentionally left blank]

NEW ORLEANS RECREATION DEVELOPMENT COMMISSION

BY: 
THEODORE C. SANDERS, III, CHAIRMAN

[Exhibits A and B found on the following pages.]

[Remainder of this page intentionally left blank.]

EXHIBIT A

PROGRAM NARRATIVE AND SCHEDULE

Unchained Realities
3329 Bell Street
New Orleans, LA 70119

Capacity and Staffing Ratio:

Registration for the afterschool enrichment program will be based on applications received for the program. Capacity is not to exceed a 1:9 Instructor-to-Child ratio, which is required to align with COVID-19 guidelines.

Costs:

NORD will pay Unchained Realities \$160,000.00 in 4 installments for e-Sports programming. All funding must be reviewed and approved by NORD before processing.

Schedule:

The final schedule must be submitted to NORD's Contracts and Revenue Division by the Youth Program Manager before the start of programming. If the schedule changes after submission, NORD's Youth Program Manager must inform the Contracts and Revenue Division of the change in writing.

If Unchained Realities wishes to conduct additional classes at NORD facilities or alter the schedule in any way, they may do so as long as they consult with and gain approval from NORD in writing about an appropriate time and location.

Narrative: Unchained Realities in partnership with NORD will offer an e-Sports program to youth and teens of New Orleans and surrounding areas at various NORD Recreation Centers.

COVID-19 Operational Requirements:

- ⊖ All staff and participants who are eligible to receive a COVID-19 vaccine (individuals 5 years old and older) must provide evidence of having received at least one dose of a COVID-19 vaccine that has received full approval or emergency use authorization from the U.S. Food and Drug Administration or the World Health Organization; or evidence of a negative COVID-19 PCR test taken no more than 72 hours prior to entering the facility;
- All staff and participants are required to wear a face mask at all times, unless actively eating or drinking;
- All bags should remain on the back of the same chair throughout the program, away from others; bags should not come into contact with each other,
- and the Contractors are encouraged to limit the interactions between participants and bags throughout the program;

- The Contractors are encouraged to have individual program supplies so that participants will not share items;
- Sports equipment such as balls should be utilized within groups only and must be sanitized frequently throughout the program;
- Facility restrooms and frequently touch spaces will be sanitized constantly throughout operational hours by NORD staff; and
- Exercise reasonable care and follow best practices, including, but not limited to those outlined by the Center for Disease Control (“**CDC**”).

[Exhibit B found on the following pages.]

[Remainder of this page intentionally left blank.]

EXHIBIT B



ASSUMPTION OF RISK, LIABILITY WAIVER & RELEASE NORD YOUTH PROGRAMS 2023-2024

The City of New Orleans (the “City”) and the New Orleans Recreation Development Commission (“NORD”), welcomes your minor child’s participation in NORD’s Youth Program (“Program”). The City and NORD have endeavored to provide an engaging Program that will accomplish the valuable public purpose of providing educational, recreational, and/or economic opportunities for your youth and/or teens. The City and NORD require all parents or legal guardians to complete the following liability waiver and release form before your minor child(ren) attend any NORD Program.

I, _____, hereby certify that I am the parent or legal guardian of _____, a minor child under the age of eighteen (18) years, and I consent to his/her participation in the Program and accept full responsibility for my minor child to participate and engage in any and all programs, lessons, classes, activities, exhibits, events and/or use of equipment (the “Activities”) throughout the course of the Program. To that end, this Assumption of Risk, Liability Waiver and Release (the “Release”) shall cover all use of the Program facility or site (the “Site”), including any and all Activities at the designated Site. The Release is effective as of the date of execution by the parent or legal guardian (the “Effective Date”).

1. I voluntarily agree to assume all of the foregoing risks and accept sole responsibility for any injury to my child(ren) or myself (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that I or my child(ren) may experience or incur in connection with my child(ren)’s attendance or participation in the Program (“Claims”). On my behalf, and on behalf of my children, I hereby release, covenant not to sue, discharge, and hold harmless the City and/or NORD, their employees, agents, and representatives, of and from the Claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. I understand and agree that this release includes any Claims based on the actions, omissions, or negligence of the City and/or NORD, their employees, agents, and representatives.
2. **Waiver and Release.** To the fullest extent permitted by law, I do hereby agree to waive, release, hold harmless and indemnify the City, as well as any of its departments, boards, commissions, agents, employees, officials, insurers, self-insurance funds, and assigns, including NORD (the “Released Parties”) from and against any and all present or future costs, expenses, disputes, suits, demands, claims, causes of action, losses or liabilities for loss of life or injury to person or property, which may now or hereafter exist, including, but not limited to, Claims which arise out of, are related to, concern, or are suffered by said minor child, Claims for which said minor child may be liable to any other person, or Claims related to said

minor child's participation in the Activities at the Sites during the Program regardless of the cause or fault.

3. **Medical Treatment.** I hereby release and forever discharge the City from any claim whatsoever which arises or may hereafter arise on account of first-aid treatment or other medical services rendered in connection with an emergency during my minor child's time with the City and NORD. I further authorize the City's employee or agent supervising the NORD Program to secure medical care for my minor child in the event of injury. I promise to assume liability for payment and hold harmless the Released Parties.
4. **Assumption of the Risk.** I hereby expressly and specifically assume the risk of injury or harm in my minor child's participation in any and all activities at the Sites. I further understand and agree that any materials supplied to the minor child for the Activities will be "as is", and that the City disclaims all warranties, express or implied, including warranties of merchantability and fitness for a particular purpose. I release the City and/or NORD from all liability for injury, illness, disease, death or property damage resulting from participation in the Program, INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF NEW ORLEANS AND/OR THE PARTIES RESPONSIBLE FOR OPERATING THE VARIOUS PROGRAM(S). IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE PARENT OR LEGAL GUARDIAN OF THE MINOR CHILD TO INDEMNIFY AND PROTECT THE CITY OF NEW ORLEANS AND/OR ITS DEPARTMENTS, BOARDS, COMMISSIONS, AGENTS, EMPLOYEES, OFFICIALS, SELF-INSURANCE FUNDS, AND ASSIGNS FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF NEW ORLEANS AND/OR ITS DEPARTMENTS, BOARDS, COMMISSIONS, AGENTS, EMPLOYEES, OFFICIALS, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, LOSS OF LIFE, AND/OR DAMAGE.
5. **Other.** I expressly agree that this Release is intended to be as broad and inclusive as permitted by the laws of the State of Louisiana. I agree that in the event that any clause or provision of this Release shall be held to be invalid, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Release which shall continue to be enforceable.
6. **Modifications.** I hereby agree that no oral or written representations can or will alter the contents of this Release. This Release constitutes the complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Release and are without effect to vary or alter any terms or conditions of this Release.
7. **Electronic Signature.** I agree that a manually signed copy of this Release delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Release.

To express my understanding of and agreement to this Release, I affix my signature hereto:

Signature of Parent or Legal Guardian

Date

Print Name

Signature of Witness

Date

Print Name

Signature of Witness

Date

Print Name

[END OF AGREEMENT]

CITY OF NEW ORLEANS
LAW DEPARTMENT
ROUTING SHEET

FILE NO.: 23-11-01

DATE: November 2, 2023

TO:* Jose C. Mendez, Assistant City Attorney

XC: _____

FROM: Donesia D. Turner, City Attorney
Kevin C. Hill, Sr. Chief Deputy City Attorney
Tanya L. Irvin, Chief Deputy City Attorney

- ☒ Advice Request
- ☐ Drafting Request
- ☐ Opinion Request
- ☐ Other Request
- ☐ Review Request

REQUEST: Public Notification for Complete Street Work Group Meeting 11/13/2023

What steps need to be taken to fulfill the public notification requirements? Please respond to this request on how to notice a public meeting. Thank you.

DUE DATE: 11/23/2023

REQUESTED BY: Matt Rufo, Transportation Policy and Program Manager, Officer of Resilience & Sustainability

- | | |
|---|---|
| ☐ See marked revisions | ☐ See comments below |
| ☐ xc: _____ | ☐ bc: _____ |
| ☐ Closed File _____ | |

COMMENTS:

*Once you have completed this assignment, please return this file with a copy of the signed response that you prepared for this request in order for the file to be officially closed. Thank you for your cooperation.