

K22-469

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

CITY OF NEW ORLEANS

AND

HOUSING AUTHORITY OF NEW ORLEANS

NEW ORLEANS EMERGENCY RENTAL ASSISTANCE PROGRAM

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 Housing Authority of New Orleans, represented by Evette Hester, Executive Director, (“**HANO**”). The City and HANO may sometimes each be referred to as a “**Party**,” and collectively as the “**Parties**.” The Agreement is effective as of February 15, 2022 (the “**Effective Date**”).

RECITALS

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

WHEREAS, HANO is a political subdivision of the State of Louisiana, with a principal address located at 4100 Touro Street, New Orleans, LA 70122;

WHEREAS, pursuant 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 City has received funds from the United States Department of the Treasury for the COVID-19 relief from the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 which provides fast and direct economic assistance to American workers, families, and small business and preserves jobs for American industries.

WHEREAS, the Emergency Rental Assistance program makes available \$25 billion to assist households that are unable to pay rent and utilities due to the COVID-19 pandemic. The funds are provided directly to States, U.S. Territories, local governments, and Indian tribes (the “**Grantees**”). Grantees can use the funds to provide assistance to eligible households through existing or newly created rental assistance programs.

WHEREAS, it is the mission of HANO to provide affordable housing opportunities for low-income residents of the City of New Orleans, while laying the foundation for economic Cooperative Endeavor Agreement
City of New Orleans and Housing Authority of New Orleans
New Orleans Emergency Rental Assistance Program 2021-2022
BRASS 3711; K22-469

sustainability;

WHEREAS, HANO managed and oversaw the original phase of this program in a partnership with the City from February 15, 2021 to February 14, 2022 (CEA, K21-133 amended by K21-1115). The program oversaw the disbursement of funds to meet the housing needs of the residents of the City of New Orleans;

WHEREAS, the City and HANO wish to continue this successful partnership to disburse additional funds the City has received for this program;

WHEREAS, HANO has demonstrated that it has the experience and expertise to conduct the activity pursuant to this Agreement;

WHEREAS, the City and HANO desire to accomplish a valuable public purpose of providing emergency rental assistance to households impacted by COVID-19;

WHEREAS, HANO will process rental payments to eligible landlords or tenants (as determined by the City) for the New Orleans Emergency Rental Assistance Program (NOERAP); and

WHEREAS, the City will administer the program, identify eligible landlords and tenants, and HANO will process and distribute the payments directly to the landlords and tenants;

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

ARTICLE I – HANO’S OBLIGATIONS

HANO will:

1. Establish a process to enable payments to approved landlords or tenants that have been deemed eligible by the City’s Intake process for the New Orleans Emergency Rental Assistance Program.
2. Distribute rental payments to approved recipients upon payment request from OCD’s Intake Manager.
3. On a monthly basis, reconcile the payment report before submitting to the City.
4. Provide monthly Housing Assistance Payment (HAP) reports signed by HANO’s Chief Financial Officer or his/her designated representative certifying that the requested payment reports were reconciled and are true and accurate.

ARTICLE II – THE CITY’S OBLIGATIONS

The City will:

1. Provide funds for the program activities.
2. Determine eligibility of applying landlords and tenants to verify there is no duplication of benefits.
3. Provide HANO with lists of approved landlords or tenants of the program with the appropriate vendor set-up forms provided by HANO to be completed by City intake staff.
4. Conduct intake process and maintain all eligibility documentation as required by the U.S. Department of Treasury.
5. Provide staff for technical assistance and programmatic support.
6. Reconcile the payment reports submitted by HANO with City records at least monthly.
7. Maintain demographic information and provide quarterly reporting to U.S. Treasury.

ARTICLE III - FUNDING

A. **Rental Payments.** The City Agrees to pay HANO up to Fifty-Three Million Dollars (\$53,000,000) for housing rental payments for NOERAP participants.

B. **Administrative Fee.** From the Effective Date until April 30, 2022, the City will pay two and a half percent (2.5%) of the actual amount issued for housing rental payments to be invoiced for administrative cost associated with the processing of emergency rental payments. From May 1, 2022 until the termination of this Agreement, The City will pay three and a half percent (3.5%) of the actual amount issued for housing and rental payments to be invoiced for administrative cost associated with the processing of emergency rental payments.

C. **Maximum Amount.** The maximum amount funded by the City under this Agreement is up to Fifty-Four Million Eight Hundred Fifty-Five Thousand Dollars (\$54,855,000). (Parties note that the funding in this Agreement is in addition to the funding in the previous CEA from February 15, 2021 to February 14, 2022 (CEA, K21-133 amended by K21-1115))

ARTICLE V – DURATION AND TERMINATION

A. **Term.** The term will be for one year, commencing on the Effective Date and terminating on February 14, 2023.

B. **Extension.** The City can opt to extend the term of this Agreement, if the extension would result in the Agreement having a term of over one year, that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

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

D. **Termination for Cause.** Either party may terminate this Agreement immediately for cause. “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 VI - INDEMNITY

A. **Mutual Indemnification.** To the fullest extent permitted by law, HANO and the City each agree to indemnify, defend, and hold harmless the other, its agents, employees, officials, insurers, self-insurance funds, and assigns from and against any and all claims, demands, suits, and judgments of sums of money for loss of life or injury or damage to persons or property arising from or relating to any act or omission 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 in connection with the performance of work under this Agreement.

B. **Limitation.** The mutual indemnity provided for herein does not extend to any loss arising from the gross negligence or willful misconduct

ARTICLE VII – INSURANCE

- A. **Terms:** 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. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

B. Minimum Requirements:

1. ***Workers' Compensation & Employers Liability Insurance*** in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$500,000.
 2. ***Commercial General Liability Insurance*** including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
 3. ***Automobile Liability Insurance*** with limits of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- C. **Important:** The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractor's obligations and/or Scope of Work.
- D. **Additional Insured Status:** The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability insurance 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).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name 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.

The Additional Insured box shall be marked "Y" or Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation/Employers Liability and Property.

- E. Primary Coverage:** For any claims related to this agreement, the Contractors 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 Contractors coverage.
- F. Claims Made Policies:** If applicable, the retroactive date must be shown and must be before the date of the agreement 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.
- G. 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.
- H. Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
- I. 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.
- J. Notice:** 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.: CEA) the following documents, within 10 calendar days of the City's request:
Copies of all policies of insurance, including all policies, forms, and endorsements:
- K. Miscellaneous:** Without notice from the City, the Contractor will:
Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
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.
- L. Special Risks or Circumstances:** The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

ARTICLE VIII - PERFORMANCE MEASURES

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

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, HANO (1) will not be 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 HANO's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. **Non-Discrimination.** In the performance of this Agreement, HANO 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 HANO in any of HANO'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 HANO. HANO 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.** HANO 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.** The City may terminate this Agreement for cause if the HANO fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE X- FORCE MAJEURE

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

by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the 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:

Mayor's Office of Community Development
City of New Orleans
1340 Poydras Street, Suite 1000
New Orleans, LA 70112

&

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

2. To Housing Authority of New Orleans:

Evette Hester
Executive Director
4100 Touro Street
New Orleans, LA 70122

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

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

ARTICLE XII - ADDITIONAL PROVISIONS

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

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

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 HANO 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. **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.

F. **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.

G. **Jurisdiction**. HANO 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 HANO.

H. **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.

I. **No Third-Party Beneficiaries**. This Agreement is entered into for the exclusive benefit of the City and HANO, and the Parties expressly disclaim any intent to benefit anyone not a party to

this Agreement.

J. 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.

K. Non-Solicitation Statement. HANO 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 HANO 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.

L. 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.

M. Ownership of Documents. All data collected and all products of work prepared, created, or modified by HANO 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, but excluding HANO's personnel and administrative records and any tools, systems, and information used by HANO 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 the City, 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 HANO's consent and for no additional consideration to HANO.

N. 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 HANO, 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 HANO pursuant to this Agreement without regard to HANO's satisfactory performance.

O. 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.

P. 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.

Q. 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.

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

S. Survival of 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 termination of this Agreement and continue in full force and effect.

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

U. Voluntary Execution. HANO 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.

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.

[SIGNATURES CONTAINED ON NEXT PAGE]

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IN WITNESS WHEREOF, the City and HANO, through their duly authorized representatives, execute this Agreement to be effective as of the Effective Date.

CITY OF NEW ORLEANS

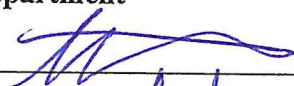
BY: 

LATOYA CANTRELL, MAYOR

Executed on this 31st of May, 2022

FORM AND LEGALITY APPROVED:

Law Department

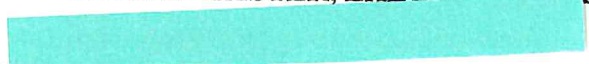
By: 

Printed Name: Andrew Gregorian

HOUSING AUTHORITY OF NEW ORLEANS

BY: 

EVETTE HESTER, EXECUTIVE DIRECTOR


FEDERAL TAX I.D.