

K23-598

COOPERATIVE ENDEAVOR AGREEMENT  
BY AND BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
THE NEW ORLEANS REDEVELOPMENT AUTHORITY  
FOR  
SIX FLAGS/JAZZLAND SITE REDEVELOPMENT

**THIS COOPERATIVE ENDEAVOR AGREEMENT** (the "Agreement") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and the New Orleans Redevelopment Authority, represented by Brenda M. Breaux, Executive Director ("NORA"). The City and NORA may sometimes each be referred to as a "Party," and collectively, as the "Parties." The Agreement is effective as of the date of execution by the City (the "Effective Date").

**RECITALS**

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

**WHEREAS**, 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**, NORA is a public body corporate and political, created pursuant to La. R.S. 33:4720.55, and the resolution of the Council of the City evidenced by a certificate signed by the Mayor and Council and registered with the Secretary of State of Louisiana;

**WHEREAS**, NORA has a principal address located at 1409 Oretha Castle Haley Boulevard, New Orleans, Louisiana 70113;

**WHEREAS**, NORA exists and operates as generally provided for in La. R.S. 33:4720, *et seq.*, for public purposes which include the prevention and elimination of blighted areas, the development of vibrant neighborhoods and establishment of economically and socially sound communities through a broad range of redevelopment activities;

**WHEREAS**, NORA has certain powers necessary or suitable to carry out the purposes and provisions of La. R.S. 33:4720, *et seq.*, including without limitation redevelopment, renewal, rehabilitation, housing development, conservation, urban beautification, or comprehensive programs for the development of entire city areas or neighborhoods;

**WHEREAS**, NORA is charged with revitalization of underinvested areas in the City of New Orleans and desires to develop and construct properties for housing and economic

development to benefit poor and needy populations;

**WHEREAS**, NORA has demonstrated that it has the experience and expertise to conduct the activities described in this Agreement;

**WHEREAS**, pursuant to La. R.S. 33:4720.56, NORA is authorized to enter into agreements and contracts with the City in pursuance of the intent of the New Orleans Community Improvement Act, including activities to encourage the provision of healthful homes, housing for families and persons of low income, a decent living environment, and adequate places of employment within the City;

**WHEREAS**, in accordance with the provisions of Chapter 7 of Title 51 of the Louisiana Revised Statutes of 1950 as amended (La. R.S. 51:1151 *et seq.*) (the “**IDB Act**”), the IDB is the owner of a total of approximately 227.36 acres of property (“**the Site**”) in New Orleans East that includes: (i) the site of the former Jazzland/Six Flags amusement park, plus (ii) an adjacent undeveloped 65.25-acre tract, having acquired same from SFL Management Inc. pursuant to an Act of Transfer dated November 13, 2009, recorded in the Notarial Archives of Orleans Parish under entry No. 2009-45319. (and together with all buildings, structures, and other improvements located thereon, “**Subject Property**”);

**WHEREAS**, the City and the IDB entered into a one-year cooperative endeavor agreement (CEA) with an effective date of September 1, 2021, through August 31, 2022, with respect to the Subject Property (the “**IDB CEA**”);

**WHEREAS**, in accordance with the IDB CEA, the City issued that certain Request for Qualifications No. 961, dated December 16, 2020, and Request for Proposals No. 1479, dated August 13, 2021, with respect to the development of the Subject Property (“**RFP No. 1479**”) and selected Bayou Phoenix LLC (“**BP**”) to redevelop the Subject Property in accordance with its Request for Proposals No. 1479 Response (the “**BP Proposal**”) and RFP No. 1479;

**WHEREAS**, the City has informed NORA that all activities relative to RFP No. 1479 have concluded following the final selection of Bayou Phoenix and the City’s subsequent denial of TPC-NOLA, Inc’s protest;

**WHEREAS**, the IDB CEA is no longer in effect, and the City has requested that the IDB to transfer the Subject Property to NORA to facilitate its redevelopment;

**WHEREAS**, at the City’s request, based upon NORA’s unique qualifications, capacity, and experience in the redevelopment of commercial and residential properties in New Orleans, NORA has agreed to take title to the Subject Property;

**WHEREAS**, to that end, NORA has agreed to take title to the Subject Property to facilitate the long-term ground lease and development of the Subject Property by BP, provided, however, that in the event BP no longer has the authorization to acquire and develop the Subject Property, NORA has agreed to make an additional good faith effort to competitively procure such other private entity to lease and redevelop the Subject Property (or a portion thereof) pursuant to the New Solicitation (defined below) as set forth below;

**WHEREAS**, the City and NORA desire to accomplish the redevelopment of blighted property and to foster economic development (collectively, the “**Public Benefit**”) by providing for the acquisition and administration by NORA of the Subject Property in order to facilitate its redevelopment for public purposes and benefits as agreed by the Parties herein (the “**Project**”);



WHEREAS, NORA and the City will work together to facilitate the development of the Project, including, without limitation, through a potential Cooperative Endeavor Agreement and related Ground Lease between NORA and BP, if applicable;

WHEREAS, the City hereby declares and acknowledges that the execution of this Agreement and the construction and implementation of the Project will enhance the Public Benefit and welfare and therefore constitute a public purpose in that they prevent and combat community deterioration; increase and promote redevelopment of blighted property in the City of New Orleans, Louisiana; increase employment opportunities in the City of New Orleans, Louisiana; and preserve and improve the aesthetic quality inuring to the economic health of the neighborhoods within the City of New Orleans, Louisiana. These items constitute important public benefits to the City;

WHEREAS, NORA [is negotiating/has entered into] a Cooperative Endeavor Agreement with BP (the "BP Development Agreement") setting forth the obligations of BP to progress the development described in the BP Proposal and to engage with NORA to facilitate the administration of a master plan for the Project and the development of the Subject Property; and

WHEREAS, the foregoing recitals are a description of the current intentions of the Parties with regard to development, operation, and construction of the Subject Property. They are intended to be an aid to the understanding of this Agreement, but they are not intended to limit or restrict the rights and obligations of the Parties, except to the extent that they contain defined terms which are used elsewhere in this Agreement.

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

#### ARTICLE I - NORA'S OBLIGATIONS

**A. Administration.** NORA will:

1. Facilitate the long-term ground lease and development of the Subject Property by BP or such other private entity selected to redevelop the Subject Property or any portion thereof pursuant to a New Solicitation (defined below);

2. Administer the Project for the development of the Subject Property. If [(i) NORA does not enter into a cooperative endeavor agreement with BP, or (ii)] in accordance with the BP Development Agreement, BP no longer has the authorization to acquire and develop the Subject Property, or any portion thereof, then, within 12 months after the termination [of negotiations with BP or termination] of the BP Development Agreement, or any portion thereof with respect the Subject Property, NORA will develop and administer a solicitation process involving one or more requests for proposals for the redevelopment of the Subject Property or a portion thereof not subject to the BP Development Agreement (which portion shall not be immaterial) for the Public Benefit in accordance with the following (each, a "New Solicitation"):

- (i) In order to facilitate the New Solicitation(s), the Parties will comply with the procedures set forth in Article III of this Agreement;
- (ii) Any New Solicitation may be for the development of either the entirety of the Subject Property or only a portion of the Subject Property, determined in NORA's sole discretion;
- (iii) The Parties will cooperate and work in good faith to issue each New Solicitation by the date established by NORA with respect thereto; and

- (iv) If one or more New Solicitations are developed for a portion, and not the entirety, of the Subject Property, then, NORA shall be permitted to (1) dispose of any portion of the Subject Property that is not included in the New Solicitation at any time after the date on which the New Solicitation is issued, subject to Article VII of this Agreement, or (2) issue one or more additional solicitations for the development of any portion of the Subject Property that is not a part of the New Solicitation, subject to Article III of this Agreement.

3. Administer this Agreement through its Department of Real Estate Development and Planning;

4. Designate in writing one or more NORA personnel as the designated representative of NORA for purposes of communicating with NORA, coordinating all activities with NORA, and otherwise handling all matters under this Agreement as the representative(s) of NORA. All communications regarding this Agreement from the City shall be directed to NORA's designated representative(s) and the City shall be permitted to rely on its communications with such designated representative(s) in connection with the performance under and administration of this Agreement. The initial designated representative(s) of NORA are as follows: Brenda M. Breaux, Executive Director, and Seth Knudsen, Director of Real Estate Development & Planning. NORA may change its designated representative(s) at any time during the term of this Agreement by providing advance written notice to the City; and

5. Maintain records and provide quarterly project progress reports, as well as a more detailed annual report, to the City on a schedule and in a format agreed to by the Parties. If requested by the City in writing, NORA shall be responsible for providing the City with any additional project progress and beneficiary data as required by federal and state law. Reporting requirements may require NORA to obtain data from lessees or other users of the Subject Property. It shall be NORA's obligation to implement any contractual arrangements it may need for use of, and access to, such data.

***B. Maintenance and Operation.*** NORA will keep or cause the Subject Property to be kept in good condition, reasonable wear and tear and damage by fire or other unavoidable casualties excepted.

***C. Invoices.*** Submit invoice(s) to the City electronically, via the City's supplier portal, no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices. At a minimum, each invoice must include the following information:

- a. Name of Entity Requesting Payment (*i.e.*, NORA);
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or Purchase Order Number issued by the City (*i.e.*, K#);
- e. Name of the City Department to be invoiced (*i.e.*, Office of Economic Development);



- f. Brief description of the services or deliverables NORA will be providing, provided, however, NORA will provide the City with additional details regarding the services and deliverable performed in NORA's quarterly progress reports (see Article I Section A.5), which shall also include detailed cost information outlining the use of the above referenced funds.
- g. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.

## **ARTICLE II - THE CITY'S OBLIGATIONS**

***A. Existing CEA and RFP.*** The Parties acknowledge that NORA is not assuming any obligations or liabilities with respect to the IDB CEA and that such IDB CEA is no longer in effect. Other than to administer the [BP Development Agreement/RFP No. 1479] in a good faith manner, NORA shall not have any obligations or liabilities with respect to RFP No. 1479 or the selection of BP in connection therewith. In the event that the City determines to withdraw the selection of BP for the development of the Subject Property, the City shall notify BP and NORA in writing and NORA shall not have any liability with respect thereto. The City hereby agrees to indemnify, hold harmless and defend, at the City's sole expense, NORA and its agents, employees, officials, insurers, self-insurance funds, successors, and assigns (collectively, the "**NORA Indemnified Parties**") from and against any and all losses, claims, demands, suits, and judgments of sums of money (each, an "**RFP Claim**") accruing against the NORA Indemnified Parties for and any all claims resulting from or in connection with the IDB CEA, RFP No. 1479, the BP Proposal and the selection of BP thereunder or any withdrawal of such selection, regardless of whether such RFP claim is filed by, caused by or resulting from the fault, negligence, action or omission of any third party or of the City or any of its agents, employees, officials, insurers, self-insurance funds, successors, or assigns, but provided NORA shall not be indemnified for their own actions or inactions taken after the Effective Date with respect to the BP Development Agreement.

***B. Administration.*** The City will:

1. Administer this Agreement through the Offices of Economic Development;
2. Provide NORA with any documents reasonably deemed necessary for NORA's performance of any work required under this Agreement;
3. Designate in writing one or more City personnel as the designated representative of the City for purposes of communicating with NORA, coordinating all activities with NORA and otherwise handling all matters under this Agreement as the representative(s) of the City. All communications regarding this Agreement from NORA shall be directed to the City's designated representative(s) and NORA shall be permitted to rely on its communications with such designated representative(s) in connection with the performance under and administration of this Agreement. The initial designated representative(s) of the City are as follows: Jeffrey Schwartz, Director of Economic Development. The City may change its designated representative(s) at any time during the term of this Agreement by providing advance written notice to NORA;
4. In connection with NORA's agreement to administer the BP Development Agreement, upon execution of this Agreement, transfer to NORA the certified checks for the

“Proposal Deposit” described in RFP No. 1479 and in no event shall the amount of the certified check be deemed payment owed from the City;

5. Only communicate with BP, or any other person, on any matter concerning RFP No. 1479, a New Solicitation, or the development of the Subject Property in consultation with NORA, and not issue any press release or other statement without coordinating with NORA and first obtaining NORA’s approval; and

6. Cooperate with NORA on communications with the public about RFP No. 1479, any New Solicitation and otherwise in connection with the development of the Subject Property. Upon NORA’s request, the City, through the Mayor and/or the Director of Economic Development, will participate and join NORA in issuing public statements in support of the development of the Subject Property and NORA’s administration of RFP No. 1479 or any New Solicitations.

7. Through the City’s designated representative(s), provide technical assistance, programmatic support and timely communication on all matters for navigating through and expediting any City or other municipal process needed for the development of the Subject Property, including but not limited to permitting, zoning-change approvals, BP funding requests to the City for the development of the Site and any related infrastructure requests, and City Council approval;

### C. Funding & Support.

1. NORA will use the funds provided to NORA by the IDB pursuant to the NORA/IDB CEA or BP pursuant to the BP Development Agreement, if any, to pay the cost of maintenance, security, and operation of the Subject Property until such funds have been fully spent.

2. No later than forty-five days after the date hereof, provided NORA properly submits its invoice electronically through the City’s ERP system, as set forth hereinunder, the City will provide a lump sum payment of \$1,000,000.00 to NORA to be used by NORA in connection with the ownership, leasing, and development of the Subject Property or any portion thereof, determined in NORA’s sole discretion, and which may include, without limitation, (i) administration and program delivery costs with respect to the Subject Property, (ii) costs of maintenance, security and operation of the Subject Property, (iii) costs in connection with any New Solicitation, (iv) NORA legal and other professional service costs, and (v) incentive funding for the development to be disbursed to the developer or any other party by NORA, in its sole discretion, to pay development costs, including, without limitation, site preparation of the Subject Property. Such funding has been and/or will be allocated by the City to NORA to be used solely for its funding obligations under this Agreement and may be sourced from Community Development Block Grant funds or any other source available to the City for such purpose. Notwithstanding anything to the contrary in this Agreement, if the City fails to make the payment required by this Section as set forth above, NORA may immediately terminate this Agreement after sending ten (10) days advance written notice of the failure to pay, unless the City provides the required payment within such ten days of the date of the NORA notice.

3. If NORA enters into a lease or sale of the Subject Property or any portion thereof, after deduction for any costs, expenses or reimbursements incurred by NORA with respect to the development, sale, disposition, maintenance, security, and operation of the Subject Property, NORA will use the remaining proceeds from such sale or lease, if any, to reimburse the City for funding provided by the City to NORA under this Article II.C.

4. The City will also provide technical assistance and programmatic support to ensure redevelopment timelines and objectives are met with respect to the [RFP No. 1479, any] BP



Development Agreement or otherwise in connection with the redevelopment of the Subject Property.

5. Maximum Amount. The maximum amount awarded by the City to NORA under this Agreement is \$1,000,000.00.

6. Payment. Unless otherwise agreed to by the City, the payment terms are NET 30 days upon NORA's delivery and upon the City's receipt of the properly submitted, complete, and accurate invoice via the City's supplier portal, except:

- a The City's obligation to pay is contingent upon NORA's: submission of a complete and accurate invoice;
- b All compensation owed to NORA under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City; and

The City is not obligated under any circumstances to pay for any work performed or costs incurred by NORA that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change within the scope of the Agreement; arise from or relate to the correction of errors or omissions of NORA; or the City is not expressly obligated to pay under this Agreement.

### ARTICLE III – PREDEVELOPMENT COMMITTEE

In the event of a New Solicitation for the Subject Property or any portion thereof, the Parties will jointly form a Predevelopment Committee that will provide input with respect to identifying funding opportunities and potential uses for such Subject Property and drafting and promoting the appropriate solicitation advertisement. The City shall appoint up to three representatives for the Predevelopment Committee. NORA shall appoint up to four representatives for the Predevelopment Committee. The Predevelopment Committee shall establish a process for conducting meetings of and communication between the committee members. The Predevelopment Committee shall set a solicitation advertisement deadline based upon the particular needs of the Subject Property and the funding opportunities available for the Subject Property. Following development of a solicitation advertisement for the Subject Property, NORA shall solicit, evaluate and select the prospective lessee/developer to sublease and redevelop the applicable Subject Property.

### ARTICLE IV - TERM

The term of this Agreement shall be for five (5) years from the Effective Date; provided, however, that the term of this Agreement shall terminate sooner upon the date that NORA sells the entirety of Subject Property in accordance with Article VII of this Agreement, if applicable. Notwithstanding the foregoing, the following provisions of this Agreement, and the obligations of the Parties thereunder, shall survive the termination of this Agreement: Article II.A (*Existing CEA and RFP*) and Article V (*Indemnity*).

### ARTICLE V - INDEMNITY

#### A. In General.

1. Subject to Paragraph B below, to the fullest extent permitted by law, NORA will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "City Indemnified Parties") from and against any

and all losses, claims, demands, suits, and judgments of sums of money accruing against the City 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 NORA, its agents or employees while engaged in or in connection with the discharge or performance of any obligations under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to NORA in connection with the performance of work under this Agreement.

2. Subject to Paragraph B below, to the fullest extent permitted by law, the City will indemnify, defend, and hold harmless NORA, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the “**NORA Indemnified Parties**”) from and against any and all losses, claims, demands, suits, and judgments of sums of money accruing against the NORA 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 City, its agents or employees while engaged in or in connection with the discharge or performance of any obligations under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the City in connection with the performance of work under this Agreement. The indemnity provided in this Article V shall be in addition to and in no way limit the indemnity provided in Article II.A of this Agreement.

***B. Limitation.*** An indemnifying Party’s indemnity to any of the City Indemnified Parties or NORA Indemnified Parties, as applicable, under this Article V does not extend to any losses, claims, demands, suits, and judgments of sums of money accruing against arising from the gross negligence or willful misconduct of any of the City Indemnified Parties, if NORA is the indemnifying Party, or any of the NORA Indemnified Parties, if the City is the indemnifying Party.

***C. Independent Duty.***

1. NORA 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) NORA is ultimately absolved from liability.

2. The City has an immediate and independent obligation to, at NORA's option: (a) defend NORA from or (b) reimburse NORA 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 City is ultimately absolved from liability.

***D. Expenses.*** Notwithstanding any provision to the contrary, the indemnifying Party shall bear the expenses of the defense of any indemnified claim or loss, including, but not limited to, reasonable attorney fees and expenses, incurred by the indemnified parties, as applicable, in enforcing this Article V.

**ARTICLE VI – RESERVED**

**ARTICLE VII – NORA SALE RIGHTS**

***A. Right to lease the Subject Property pursuant to the Existing RFP or New Solicitation.*** In accordance with RFP No. 1479 or a New Solicitation, as applicable, without any notice to or consent of the City or any other person, NORA shall have the right to enter into a long-term ground lease of the Subject Property or any portion thereof to BP or any other developer awarded the right to develop all or any portion of the Subject Property pursuant to RFP No. 1479 or a New



Solicitation, as applicable. Such lease shall be on terms satisfactory to NORA in its sole discretion.

**B. Right to sell or lease the Subject Property.** At any time when NORA is permitted to dispose of the Subject Property or any portion thereof pursuant to Article I.A.2 of this Agreement, NORA shall have the right, in its sole discretion, without any notice to or consent of the City or any other person, to sell or lease all or any portion of the Subject Property in accordance with a process and upon terms satisfactory to NORA, in its sole discretion. In addition to the foregoing, in the event that this Agreement terminates for any reason whatsoever, or in the event that the City is not performing its obligations under Article II.C of this Agreement, whether due to a Force Majeure, non-appropriation or for any other reason, NORA shall have the right to sell or lease the Subject Property or any portion thereof and to terminate this Agreement upon the date of such sale or lease, in accordance with a process and upon terms satisfactory to NORA, in its sole discretion.

**C. Proceeds of a Sale.** Subject to Article II.C of this Agreement, all proceeds of any sale or lease of the Subject Property shall be the sole asset of NORA. Except as otherwise set forth in this Agreement, NORA shall not have any obligation to pay any funds of any nature whatsoever to the City pursuant to this Agreement, other than with respect to the indemnity obligations set forth in this Agreement.

## **ARTICLE VIII - NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, NORA will, and will require each sublessee to (1) not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, take affirmative action to ensure that such entity'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, NORA will not, and will require each sublessee to 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 NORA or any sublessee in any of NORA's or such sublessee'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 NORA or any sublessee. NORA agrees to, and shall require each sublessee 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 Subleases.** NORA will incorporate the terms and conditions of this Article into all subleases, by reference or otherwise, and will require all sublessees to comply with

those provisions.

**D. Termination for Breach.** If NORA or a sublessee fails to comply with the requirements of this Article during the term of such this Agreement or a sublease, said failure may result in the City causing NORA to terminate such sublease or pursuit of other remedies.

#### **ARTICLE IX - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. NORA shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance for any services rendered to the City by NORA as an independent contractor under this Agreement.

**B. Waiver of Benefits.** NORA, 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 or NORA 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 or NORA); 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 and/or NORA, provided such event was not caused by the negligence or misconduct of City or NORA, as applicable, by the failure of City or NORA, as applicable, to comply with applicable laws, or by the breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, the City or NORA, as applicable, must provide notice in writing to the other Party 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 or NORA, as applicable, has provided required notice, such Party may, at its sole discretion:
  - a. Suspend this Agreement for a duration to be set by such Party, 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 other Party 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 suspending Party; or

- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the other Party 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, with a copy delivered by electronic mail at the addresses set forth below:

1. To the City:

Jeffrey Schwartz  
Director, Office of Economic Development  
1340 Poydras Street, Suite 1800  
New Orleans, LA 70112

&

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

2. To NORA:

New Orleans Redevelopment Authority  
Attn: Brenda M. Breaux, Executive Director  
1409 Oretha Castle Haley Blvd.  
New Orleans, LA 70113  
Email: bbreaux@nola.gov

With a copy to:

Coats Rose, P.C.  
Attn: Megan C. Riess  
365 Canal Street, Suite 800  
New Orleans, LA 70130  
Email: mriess@coatsrose.com

*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 either Party's interest in it are not assignable or transferable without the other Party's prior written consent in its sole discretion.

*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. *Compliance with City's Hiring Requirements – Ban the Box.***

1. NORA agrees to require all sublessees to comply with the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). NORA will incorporate the terms and conditions of this Article into all subleases, by reference or otherwise. Prior to executing any sublease, such sublessee must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary.

2. Failure to maintain compliance with the City's hiring requirements through the term of such sublease, or to provide sufficient written reasons for deviation, shall constitute a material breach of such sublease. Upon learning of any such breach, the City will provide NORA and such sublessee notice of noncompliance and allow such sublessee thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, such sublessee remains noncompliant, the City may move to cause NORA to void such sublease or take any such legal action permitted by law or this Agreement.

3. 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 remaining provisions of the Agreement will remain in full force and effect.

4. NORA 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.

*E. Construction of Agreement.* Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or NORA on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

*F. Cost Recovery.* In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, NORA shall reimburse the City or disgorge anything of value or economic



benefit received from the City if NORA fails to meet its contractual obligations.

**G. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the Parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**H. Exhibits.** Reserved.

**I. Jurisdiction.** NORA 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 NORA.

**J. Limitations of Obligations.** Neither NORA nor the City has any obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

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

**L. Non-Solicitation Statement.** NORA 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. NORA 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.

**M. 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.

**N. Order of Documents.** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of this Agreement shall control.

**O. 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 NORA, 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 NORA pursuant to this Agreement without regard to NORA's otherwise satisfactory performance of the Agreement.

**P. Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**Q. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be

exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**R. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law. If reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

**S. Survival of Certain Provisions.** Notwithstanding anything in this Agreement to the contrary, the following terms of this Agreement shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect until the end of the term of the Lease: (i) Article I, Paragraph A, Section 4, (ii) Article I, Paragraph B, (iii) Article I, Paragraph C, (iv) Article V, (v) Article VI, (vi) Article VII, (vii) Article VIII, and (viii) Article XII, Paragraphs C, F, I, and P.

**T. 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 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]**

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



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

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 26<sup>th</sup> of June, 2023

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Lifer

NEW ORLEANS REDEVELOPMENT AUTHORITY

BY: 

BRENDA M. BREAU, EXECUTIVE DIRECTOR

Executed on this 20<sup>th</sup> of June, 2023