

COOPERATIVE ENDEAVOR AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
SEWERAGE AND WATER BOARD OF NEW ORLEANS
WEST POWER COMPLEX NEW ELECTRICAL SUBSTATION

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 **SEWERAGE AND WATER BOARD OF NEW ORLEANS**, represented by **Ghassan Korban, Executive Director** (the “Board”). The City and the Board 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, the Board is a political corporation organized under the laws of the State of Louisiana and the City of New Orleans with its principal office located at 625 St. Joseph Street, New Orleans, LA 70165;

WHEREAS, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

WHEREAS, the City and the Board desire to accomplish a valuable public purpose of constructing a new electrical substation at the West Power Complex to establish a stable, reliable power source for the Board, which will allow it to provide potable water, sewerage and drainage services; and

WHEREAS, the Council of the City of New Orleans (the “Council”) approved Ordinance Nos. 33,618 and 33,619 establishing the City Council SWBNO Substation Support Fund and appropriated \$30 million to said fund to finance construction of the new electrical substation at the West Power Complex; and

WHEREAS, the Board will use the aforementioned funds to finance the construction of the new electrical substation; and

WHEREAS, the City has agreed to transfer Thirty Million (\$30,000,000.00) Dollars into a designated Board account titled "Substation Project" which will be used to exclusively finance the construction costs of the new electrical substation.

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

ARTICLE I - THE BOARD'S OBLIGATIONS

A. Reporting.

1. **Finances.** The Board will submit to the Council and the Department of Finance:
 - a. A complete and detailed written accounting of expenditures associated with the new electrical substation made pursuant to this Agreement on a monthly basis or as reasonably requested by the Council or the City;
 - b. A complete and detailed year-end written accounting of expenditures associated with the new electrical substation made pursuant to this Agreement, which is due on or before January 31 of each year. The records must include, at a minimum, sufficient detail to allow for compliance with City Code Section 70-415.310; and
 - c. Any additional documentation reasonably requested by the Council or the City.

B. Board Obligations. The Board will, in addition to the above, perform or cause to be performed the following:

1. Only expend or use the funds in accordance with City Code Section 70-415.308 and applicable law;
2. Comply with any additional restrictions, of whatever nature, imposed or related to specific funding sources for the funds;
3. Confirm that the prospective utility provider obtains all required governmental regulatory reviews and approvals required in connection with the construction of the substation;
4. As reasonably requested by the Council or the City or their representatives, allow periodic access during normal business hours to the sites to review progress of any work;
5. Construct or facilitate the construction of a new electrical substation in accordance with all applicable regulations, including but not limited to the Customer Installation Standards described in the Service Regulations Applicable to Electric and Gas Service by Entergy New Orleans, LLC;

6. Establish a reasonably detailed construction schedule that sets forth quarterly milestones so the Board may report and facilitate the timely payment for each milestone.
7. Submit to the Council and City any agreements related to the construction, operation, and/or maintenance of the substation.

C. Board Representations & Warranties. The Board represents and warrants that:

1. The Board, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding and enforceable against the Board in accordance with its terms.
2. The Board is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit, or impair in any way its performance of any obligations hereunder.
3. The Board has the requisite expertise, qualifications, and staff to enable it to fully perform its obligations under this Agreement.
4. As of the Effective Date of the Agreement, the Board has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations, or its ability to fulfill its obligations under this Agreement.
5. The Board is not in breach of any federal, state, or local statute or regulation applicable to the Board or its operations that would materially affect the Board's obligations under this Agreement; and
6. The Board, to the best of its ability, will complete, or cause to be completed, the construction of the substation;
7. The Board will submit copies of any agreements related to the construction of the substation to the City and Council.

D. Reliance on Representation, Warranties, and Covenants. All representations, warranties, covenants, and agreements made in this Agreement are intended to be material and shall be conclusively deemed to have been relied upon by the City.

ARTICLE II - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Chief Administrative Office;
2. Provide the Board with any documents reasonably deemed necessary for the Board's performance of any work required under this Agreement;
3. Provide access to City personnel to discuss the required services during normal working hours, as requested by the Board; and

4. Transfer funds to the Board to finance construction of the new electrical substation in accordance with the quarterly reporting schedule established pursuant to Article I(B)(7), provided that the requirements of Article I are met and the expenditures do not exceed the amount appropriated to the City Council SWBNO Substation Support Fund.

ARTICLE III – FUNDING

A. **Maximum Amount.** The maximum amount payable by the City under this Agreement is **\$30,000,000**. The first \$15,000,000.00 of funding will be paid by the City as soon as possible following execution of this Agreement. The Parties shall coordinate and come to agreement on when the remaining \$15,000,000.00 will be paid to the Board.

ARTICLE IV - DURATION AND TERMINATION

A. **Term.** The term of this agreement shall be for 3 years from the Effective Date.

B. **Extension.** The City can opt to extend the term of this Agreement provided 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 the Board written notice of the termination at least 60 calendar days before the intended date of termination.

D. **Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to the Board. "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 60 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.

E. **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement with the requirement of a 90 day notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

ARTICLE V - INDEMNITY

A. **In General.** To the fullest extent permitted by law, the Board 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 Board, 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 Board in connection with the performance of work under this Agreement.

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

C. Independent Duty. The Board 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 Board is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Board 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 - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Board 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 Board fails to perform according to the Agreement, the City will notify the Board. If there is a continued lack of performance after notification, the City may declare the Board 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 Board for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Board.

ARTICLE VII – LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Board agrees, to the extent applicable, to ensure compliance with City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. **Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Board, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“Article”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. **Reporting.** On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development
Living Wage - Compliance
1340 Poydras Street – Suite 1800
New Orleans, Louisiana 70112

G. **Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Board will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Board agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Board, payroll records and employee paychecks; and (ii) that the City may audit such records of the Board as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. **Remedies.** If the Board fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE VIII – HIRENOLA PROGRAM

The Board agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Board fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

ARTICLE IX - NON-DISCRIMINATION

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

D. **Termination for Breach.** The City may terminate this Agreement for cause if the **Board** 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 Board 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 Board 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 Board 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:

Chief Administrative Officer
City of New Orleans
1300 Perdido Street, 9th Floor
New Orleans, LA 70112

&

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

2. To the Council:

Paul Harang
Chief of Staff
New Orleans City Council
1300 Perdido Street, Suite 1E06
New Orleans, LA 70112

&

Yulbritton Shy
Chief Fiscal Officer
New Orleans City Council
1300 Perdido Street, Suite 1E06
New Orleans, LA 70112

3. To the Board:

Ghassan Korban
Executive Director
Sewerage and Water Board of New Orleans
625 St. Joseph Street
New Orleans, LA 70165

&

Special Counsel
Sewerage and Water Board of New Orleans
625 St. Joseph Street
New Orleans, LA 70165

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

1. The Board agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Board 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 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 Board notice of noncompliance and allow the Board thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Board remains noncompliant, the City may move to suspend payments to the Board, void the Agreement, 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. The Board 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 the Board 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.

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

H. 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.

I. Jurisdiction. The Board 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 Board.

J. 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.

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-Exclusivity. This Agreement is non-exclusive and the Board 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.

M. Non-Solicitation Statement. The Board 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 Board 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.

N. 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.

O. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by the Board in the performance of 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 the Board’s personnel and administrative records and any tools, systems, and information used by the Board 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 Board's consent and for no additional consideration to the Board.

P. 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 Board, 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 Board pursuant to this Agreement without regard to the Board's otherwise satisfactory performance of the Agreement.

Q. 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.

R. 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.

S. 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.

T. Special Conditions for Federal Compliance. The "Federal Contract Clauses" attached as Exhibit "A" to this Agreement are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents to the contrary, upon execution of this Agreement. The Parties further agree that any provisions, clauses, or requirements associated with specific fund sources for funds provided under this Agreement are expressly incorporated into this Agreement, irrespective of whether provided in Exhibit A. For purposes of Exhibit A, the terms contractor or Contractor shall include the Board.

U. 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.

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

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

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

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 13th of May, 2022

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Donesia D. Turner

SEWERAGE AND WATER BOARD OF NEW ORLEANS

BY: _____
GHASSAN KORBAN, EXECUTIVE DIRECTOR

(Exhibit "A" contained on the following pages)

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

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 2022

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

SEWERAGE AND WATER BOARD OF NEW ORLEANS

BY: Ghassan Korbán
GHASSAN KORBAN, EXECUTIVE DIRECTOR

(Exhibit "A" contained on the following pages)

EXHIBIT A: FEDERAL CONTRACT CLAUSES

Since the parties anticipate that federal funding will be applied to this Agreement, the following federal contract clauses must be complied with, where applicable, in addition to the clauses already mentioned.

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon

contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City of New Orleans shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

CLEAN AIR ACT

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*

(2) The Contractor agrees to report each violation to the GOHSEP and understands and agrees that the GOHSEP will, in turn, report each violation as required to assure notification to FEMA, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

ENERGY POLICY AND CONSERVATION ACT

The Contractor hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

CLEAN WATER ACT

The Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

FEDERAL WATER POLLUTION CONTROL ACT

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 7401 *et seq.*

(2) The Contractor agrees to report each violation to the GOHSEP and understands and agrees that the GOHSEP will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

SUSPENSION AND DEBARMENT

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

BYRD ANTI-LOBBYING ACT

The Contractor will be expected to comply with Federal statutes required in the Anti-Lobbying Act.

Contractors who apply or bid for an award shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- ii. Meeting Contract performance requirements; or
- iii. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

(a) Any party to this contract must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These steps are required for the hiring of any subcontractors under this contract.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

Any procurement of telecommunications and video surveillance services or equipment must comply with the provisions of 2. C.F.R. §200.216.

DOMESTIC PREFERENCES FOR PROCUREMENTS.

As appropriate and to the extent consistent with law, the parties should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

ACCESS TO RECORDS

The following access to records requirements apply to this contract:

- (1) The Contractor agrees to provide the State of Louisiana, the City of New Orleans, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City of New Orleans and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

COMPLIANCE WITH FEDERAL EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the Contract only. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Contract.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

CONTRACTS WITH OTHERS

If the Contractor contracts with any other contractor or vendor for performance of any portion of the work required under this Agreement, the Contractor must incorporate into its contract with such contractor or vendor an indemnification clause holding the Federal Government, its employees and/or their contractors; the State of Louisiana, its employees, and/or their contractors; and the City, its employees and/or their contractors, and the Contractor and its employees and/or contractors harmless from liability to third parties for claims asserted under such contract.