

EXHIBIT A

**COOPERATIVE ENDEAVOR AGREEMENT BETWEEN
THE CITY OF NEW ORLEANS AND THE LOUISIANA MUSIC AND HERITAGE
EXPERIENCE, INC.**

[COVER PAGE]

K23-242

**COOPERATIVE ENDEAVOR AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
THE LOUISIANA MUSIC AND HERITAGE EXPERIENCE, INC.**

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 Louisiana Music and Heritage Experience, Inc., represented by Chris Beary, Board Chair ("LMHE" or the "Contractor"). The City and the Contractor may sometimes each be referred to as a "Party" or collectively as the "Parties." The Agreement is effective as of January 1, 2023 (the "Effective Date").

RECITALS

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

WHEREAS, LMHE is a public charity 170(b)(1)(A)(vi) non-profit tax code designation registered effective on September 11, 2021, EIN 87-2248278 and DLN 26053670002581, with its principal address at 330 Carondelet St, New Orleans, Louisiana 70130;

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, LMHE is developing a music and heritage museum in the City of New Orleans with the "purpose of developing and operating a museum, restaurant, bar and music venue; all for the preservation of history and education about same;

WHEREAS, LMHE's mission is to "provide dynamic, multi-dimensional exhibits that tell the story of the city and state's many music forms; to celebrate the legacies of its greatest music innovators; to provide educational resources for teachers, academics, and students; to initiate educational and public programs that seek to enlighten the general public as to the importance and value of Louisiana and New Orleans music; to explore the creative process of those artists whose contributions to American music are significant; and to complement existing music-related institutions, such as the New Orleans Jazz Museum and the Jazz Fest";

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, LMHE will develop music education curricula for in-person and asynchronous learning;

WHEREAS, LMHE will create programs in conjunction with the goals and needs of education institutions throughout the city and state and are planned so that the entire Louisiana story is available for every age group, from elementary school through adult learners; on line and at their convenience;

WHEREAS, LMHE's music club will be training young bands as well as sound, lighting and stage techs with experienced personnel during the live music which will occur all day to insure quality jobs in the music community.

WHEREAS, LMHE's training program will raise the level of music production (i.e., quality) all around Louisiana;

WHEREAS, the City and the Contractor desire to accomplish a valuable public purpose of economic development and the preservation and education of the history of music in the City of New Orleans by developing a music and heritage museum through the City providing initial funding of \$1,000,000; and

WHEREAS, the City will provide funding in the amount of \$1,000,000.00.

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

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. Administration. LMHE's proposal consists of two phases. LMHE has completed its first phase of due diligence for the museum. For LMHE's second phase, LMHE has hired and is providing curatorial, educational, economic, architecture, public impact, operational, and development planning. Deliverables from this process will be provided to the City in the Contractor's written quarterly progress reports ("Exhibit A"), as described more fully hereinunder.

1. LMHE will provide written quarterly progress reports to the City outlining the Contractor's resources, initiatives, activities, services, and performance consistent with the Contractor's obligations under this Agreement, along with quarterly cost reports ("Exhibit B"), which provide detailed cost information outlining the use of the above referenced funds. Exhibit "A" - Progress Report and Exhibit "B" - Cost Report are attached to this Agreement and made part hereof. Adequate supporting documentation (including copies of invoices, checks and other appropriate records reflecting expenses incurred) shall be attached to the reports. All original documentation supporting the reports shall be maintained by the Contractor, and shall be subject to audit, as hereinafter stated. These reports that are to be provided quarterly shall be due and delivered to the City on or before the 31st of October for the quarter ending September 30, the 31st day of January for the quarter ending December 31, the 30th day of April for the quarter ending

March 31, and the 15th day July for the quarter ending June 30.

B. Services. The Contactor will:

1. Cause to be created the following deliverables:
 - a. Fundraising and financing plan;
 - b. Curatorial strategy and plan;
 - c. Educational plan;
 - d. Community engagement, including culture bearers;
 - e. Economic, workforce development and Operations Plan;
 - f. Preliminary Architectural layout and space plan, including drawings;
 - g. Complete Cost Estimates; and
 - h. Exhibit example for public viewing.
2. Contract with Eskew + Dumez + Ripple, A Professional Corporation (an award-winning architecture firm based in New Orleans), Stirling Properties (a real estate development firm), and ConsultEcon, Inc. (a firm hired to evaluate the potential to develop the Louisiana Music and Heritage Experience);
3. Using the plans provided for above, open The Louisiana Music and Heritage Museum by its target date of September 2027, but in any event before December 31, 2028;
4. Employ residents of the City of New Orleans;
5. Employ at least 200 full and part-time workers;
6. Purchase materials and equipment from businesses within the City or New Orleans;
7. Offer inclusive / affordable ticket prices to EBT Card Holders, tickets available through libraries, and discounts for City residents to no less than 21,369 attendees per year;
8. Construct The Louisiana Music and Heritage Museum on public property (the planned site for the museum is Parcel 3 on Convention Center Boulevard opposite the south end of the Ernest N. Morial Convention Center);
9. Develop music education curricula for in-person and asynchronous learning;
10. Train young bands, as well as sound, lighting, and stage technicians;
11. Create programs in conjunction with the goals and needs of education institutions throughout the city and state, which will be planned so that the entire Louisiana story is available for every age group, from elementary school through adult learners; online and at their convenience;
12. Provide a final report to the City at the termination or expiration of this Agreement, detailing the services/deliverables accomplished with the use of funds received in connection with

this Agreement, confirming that all funds were used for the intended purpose(s), and any providing any and all evaluation findings;

13. Submit the final report electronically to Jeff Schwartz (jeschwartz@nola.gov) no later than thirty (30) days following the termination or expiration of this Agreement;

14. Timely comply with all reasonable requests by the City pertaining to this Agreement;

15. Before modifying the scope of services and/or deliverables contemplated in this Agreement, submit any proposed changes to the City in writing in advance of their implementation;

16. Obtain written approval from the City before implementing any changes and/or modifications to the scope of services and/or deliverables hereto

17. Invoices. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for services provided under this Agreement 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, at a minimum, the following information:

- a. Name of Contractor;
- 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 or Office to be invoiced;
- f. Description of the services completed and the individuals who performed the services; and
- g. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.

ARTICLE II - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the City Office of Economic Development (the "Office");
2. Provide the Contractor with documents deemed reasonably necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide access to Office personnel to discuss the required services during normal working hours, as requested by the Contractor; and
4. The City will pay LMHE an initial lump sum payment of \$500,000.00 reasonably promptly following the execution of this Agreement in accordance with Article III Section B.3 – Payment and Article I Section 7 – Invoice. Following the Contractor's proper submission of at

least one complete and accurate Progress and Cost Reports, as set forth in Article I Section A.1 to the City's reasonable satisfaction, but no sooner than May 31, 2023, the Contractor may then invoice the City for the second lump sum payment not to exceed \$500,000.00.

ARTICLE III – FUNDING OR COMPENSATION

A. Maximum Amount. The maximum amount funded or payable by the City under this Agreement is \$1,000,000.

B. Rate of Compensation. The City will pay the Contractor in accordance with the following rate: two lump sum payments of \$500,000.00, as set forth in Article II Section 4.

C. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

D. Payment. Unless otherwise agreed to by the City, the payment terms are NET 30 days upon the Contractor's delivery and the City's acceptance of the services contemplated in this Agreement and/or upon the City's receipt of the properly submitted, complete, and accurate invoice via the City's supplier portal. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice to the City; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and
4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor 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 order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - DURATION AND TERMINATION

A. Term. The term of this agreement shall be for 6 years from the Effective Date through December 31, 2028.

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 Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

D. Termination for Cause. Any Party may terminate this Agreement for cause by sending written notice to the other Parties. The written notice must demand performance of the stated failure within a specified period of time of not less than 10 days. If the demanded performance is not completed within the specified period, the termination is effective immediately at the end of the specified period. "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 any provision of City Code § 2-1120 or requests of the Office of Inspector General.

E. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

ARTICLE V - INDEMNITY

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

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

C. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE VI - INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force

and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement. If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

1. Minimum Requirements:

- a. **Commercial General Liability (CGL):** Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, products/completed operations, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- b. **Workers' Compensation:** as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- c. **Automobile Liability:** Insurance with a combined single limit of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- d. **Professional (Errors & Omission) Liability** (where applicable). As professional services are required under the Agreement, the Contractor shall maintain or cause to be maintained, professional liability coverage specific to the contractors profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement.
- e. **Crime (Fidelity) Insurance.** Insurance coverage to include but not limited to employee dishonesty, computer crime, misappropriation of funds, forgery, or alteration with limits of not less than the maximum amount of City funding made available to the Contractor annually, by the City of New Orleans under the CEA.

Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, the Contractor must procure and evidence full extended reporting period ("ERP") coverage.

Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage

Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood

that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work.

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

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

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Subcontractor liability shall be covered by the Contractor. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to (Office of Economic Development, 1340 Poydras St, Suite 1800, New Orleans, LA 70112), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9B06 – City Hall, New Orleans LA 70112.

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

- b. Primary Coverage: For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage.
- c. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this Agreement.
- d. Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.

- e. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
- f. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

B. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: LOUISIANA MUSIC AND HERITAGE EXPERIENCE INC.) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- a. Copies of all policies of insurance, including all policies, forms, and endorsements;
- b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement;

C. Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII - 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 Contractor agrees to abide by 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 Contractor, 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 Contractor 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 Contractor 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 Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Contractor 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 IX - 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 Consultant stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the Contractor and without any further compensation due.

2. Notwithstanding Section C (1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE X - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee

or applicant for employment because of race, 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 Contractor'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 Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XI - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(7), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal

course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XII - 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:

Jeffrey Schwartz
Office of Community and Economic Development
City of New Orleans
1340 Poydras St, Suite 1800
New Orleans, LA 70112

&

Donesia D. Turner, City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Contractor:

Chris Beary, Developer and Board Chair
The Louisiana Music and Heritage Experience, Inc.
330 Carondelet St New Orleans, LA 70130

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 XIII- 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.

1. Neither a Contractor nor subcontractor may assign or transfer its rights, duties, or obligations under this Agreement without the prior written consent of the City, which consent must be approved by a resolution of the City Council.

2. A transfer requiring the prior written consent of the City, as described in the preceding subsection, shall occur upon a change in ownership of the Contractor or subcontractor. A "change in ownership" shall occur on the date that any one person, or more than one person acting as a group, acquires, directly or indirectly, an aggregate ownership interest in the Contractor or subcontractor that exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the Contractor or subcontractor. The foregoing shall not apply to the acquisition of additional ownership interests by a person whose ownership interest in the Contractor or subcontractor exceeds 50% of the fair market value of the Contractor or subcontractor or 50% of the total voting power of the contractor or subcontractor as of the effective date of the Agreement.

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

D. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

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

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

G. Construction of Agreement. No one 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 Contractor on the basis of which Party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

H. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

I. Employee Verification. The Contractor swears that (i) they are registered and participate in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) they shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) they shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledge and agree to accept liability for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will each provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit(s) or violates any provision of this paragraph.

J. 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.

K. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit A- Progress Report and Exhibit B - Cost Report.

L. Jurisdiction. The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waive any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

M. 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.

N. 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.

O. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision

of some or all of the work to be performed under this Agreement.

P. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

Q. Non-Waiver. The failure of any 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 Parties 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 a 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.

R. Order of Documents. In the event of any conflict between the provisions of this Agreement and any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; Exhibit "A"; and Exhibit "B".

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

T. Ownership of Records. All records, reports, documents, and other materials delivered or transmitted to the Contractor by the City shall remain the property of the City and shall be returned by the Contractor to the City at the City's request and at the Contractor's expense upon the termination or expiration of this Agreement. All other materials prepared by the Contractor in connection with the performance of the services contracted for herein shall remain the property of the Contractor, unless The Louisiana Music and Heritage Museum does not open as planned, in which case the Contractor will refund the City or the City will own the deliverables provided for in Article I Section B(1), as described more fully hereinunder. . In the event the Contractor fulfills its obligation of opening The Louisiana Music and Heritage Museum by its targeted opening date of September 2027, but in any event, no later than December 31, 2028, all deliverables that are created by the Contractor (or the Contractor's subcontractors) pursuant to this Agreement (i.e., the deliverables provided for in Article I Section B(1)) will remain the property of the Contractor. However, in the event the Contractor does not open The Louisiana Music and Heritage Museum by December 31, 2028, the Contractor shall either return all compensation paid to the Contractor within thirty (30) days, or the City shall own all rights to the aforementioned deliverables.

U. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of

the Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City pursuant to this Agreement without regard to the Contractor's otherwise satisfactory performance of the Agreement.

V. 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.

W. 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.

X. 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.

Y. 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.

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

ARTICLE XIV – 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 XV - 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 Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 18th of May, 2023.

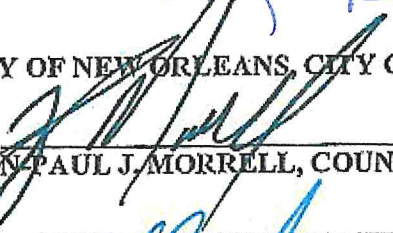
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: 

CITY OF NEW ORLEANS, CITY COUNCIL

BY: 

JEAN-PAUL J. MORRELL, COUNCIL PRESIDENT

THE LOUISIANA MUSIC AND HERITAGE EXPERIENCE, INC.

BY: 

CHRIS BEARY, DEVELOPER AND BOARD CHAIR


TAX I.D.

[EXHIBIT "A" AND EXHIBIT "B" ATTACHED ON THE NEXT PAGE(S)]

EXHIBIT "A"

Progress Report for the Period of _____ to _____

(To be submitted quarterly showing progress achieved. Duplicate pages as needed.)

Contact Name: _____

Telephone: (____) _____ Fax: (____) _____

Goal:	
Objective(s):	
Activity(Activities) Performed:	
Performance Measure(s):	% , \$ amt. or number complete

I hereby certify that I have reviewed the above information, it is true and correct to the best of my knowledge, and I am the duly authorized representative of the organization.

THE LOUISIANA MUSIC AND HERITAGE EXPERIENCE, INC.

BY: _____
CHRIS BEARY, DEVELOPER AND BOARD CHAIR

DATE

EXHIBIT "B"

Cost Report for the Period of _____ to _____

Expense Category	Quarterly Expenditures	Total Cumulative Expenditures	Balance Remaining
Gross Salaries			
Related Benefits (employer share)			
Travel			
Operating Services:			
Advertising			
Printing			
Insurance			
Maintenance of Equipment			
Maintenance of Office and Grounds			
Rentals			
Software licensing			
Dues and Subscriptions			
Telephones and Internet Service			
Postage			
Utilities			
Other			
Office Supplies			
Professional Services			
Other Charges			
Acquisitions & Major Repairs			
Totals	\$	\$	\$

NOTE: Include a copy of the check and invoice/receipt for each expense submitted with this report.
I hereby certify that I have reviewed the above information, it is true and correct to the best of my knowledge, and I am the duly authorized representative of the organization.

THE LOUISIANA MUSIC AND HERITAGE EXPERIENCE, INC.

BY: _____
CHRIS BEARY, DEVELOPER AND BOARD CHAIR

DATE