

K22-575

**INTERGOVERNMENTAL AGENCY AGREEMENT
CITY OF NEW ORLEANS
AND
THE MILITARY DEPARTMENT, STATE OF LOUISIANA

SUBTERRANEAN TERMITE INSPECTION AND
TREATMENT AT JACKSON BARRACKS**

THIS INTERGOVERNMENTAL AGENCY AGREEMENT (the “**Agreement**”) is effective as of August 23, 2022 (the “**Effective Date**”), by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and the Military Department, State of Louisiana, represented by Brigadier General (R) Owen Monconduit (the “**LMD**”).

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

WHEREAS, the State of Louisiana, through its Military Department, owns Jackson Barracks Louisiana National Guard Installation, located at 6400 Saint Claude Avenue, New Orleans, Louisiana 70117 (“**Jackson Barracks**”); and

WHEREAS, the City and the LMD desire to accomplish a valuable public purpose of protecting Jackson Barracks facilities from subterranean termites; and

WHEREAS, the City of New Orleans Mosquito and Termite Control Board (“**MTCB**”) will inspect for and manage termites at Jackson Barracks; and

WHEREAS, the State will compensate MTCB at fair market value for these services.

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

ARTICLE I - OBLIGATIONS OF THE LMD

The LMD will:

- A. Provide the address of the building that will receive treatment.
- B. The LMD shall specify in writing which additional structures to receive treatment. The LMD will prioritize the order in which the additional structures receive treatment.
- C. Provide full access to the facility in order for the building to be inspected and serviced.
- D. Provide architectural plans (if available) to the City in order to assist the City with fully understanding the building construction and subterranean termite vulnerable areas.
- E. The City will provide, in writing, termite-conductive conditions that will need to be remediated. The LMD will acknowledge the recommendations in writing and will make every attempt to fix the termite conductive condition(s). If the condition(s) are not remediated, the LMD acknowledges that the time to control the subterranean termites may be extended or may not be possible without remediation of the issue(s).

F. The LMD will report missing or damaged bait stations to the City. The LMD will notify the City, when feasible, no less than 30 days prior to any construction or landscaping projects at a building with bait stations. Port covers (if installed) for normal wear and tear or regular activity will be replaced by the City. If construction is initiated by the LMD, the City will be given no less than a 10 day written notice, when feasible, so that stations and port covers can be removed. The City acknowledges that 30 or 10 day written notice may not be feasible in the event of emergency, life/safety needs such as a repair of a broken water pipe, electrical line, etc. Any holes needed to be redrilled will be the financial responsibility of the LMD. Given the notification, the City will remove bait stations and port covers for future reinstallation, however, if notification is not given, the LMD is responsible for any lost or missing port covers. The City will provide training to designated State Facility Engineers on the proper removal, handling and storage of stations and port covers at the beginning of the contract, in the event that an emergency arises and removal must be undertaken by LMD.

G. LMD will provide at least 50% of the payment 30 days after the baiting system has been fully installed, with the balance to be paid according to specific payment dates provided by the City. Renewals will be paid in three payments. Fifty percent of the renewal will be paid three months after the renewal date, 25% will be paid six months after the renewal date and the remaining balance paid nine months after the renewal date. The City will provide a detailed invoice.

H. If the Agreement is terminated, the LMD will provide access to the City within two months of contract termination in order to remove any bait stations at the site(s). The State acknowledges that Dow AgroSciences LLC is the owner of the Sentricon Termite Elimination System bait stations.

I. The LMD will meet with the City (2100 Leon C. Simon) at least twice a year to discuss and review treatment results and plans.

ARTICLE II - OBLIGATIONS OF THE CITY

The City will:

A. The City shall perform an initial inspection of the designated buildings. The City shall provide a written report with a site map of the termite infestation and damage, and any evidence of any other wood destroying insect or fungi. The report will detail the conducive conditions in the interior and exterior of the building and the grounds. The City will include recommended solutions to the LMD. The report shall list buildings by building number or address for the term of the contract. The City shall present a treatment summary during the joint meeting with the LMD twice a year.

B. Service records must be archived according to Louisiana Department of Agriculture and Forestry policies to reflect the termite control activities that have been performed. These records will be made available to the LMD upon request and will be submitted with each annual inspection. The original records will be archived at the New Orleans Mosquito and Termite Control Board located at 2100 Leon C. Simon Dr., New Orleans, LA 70122.

C. The City is not liable for any existing or new subterranean termite damage.

D. Subterranean Termites (native and Formosan)

1. The City shall furnish all pesticides and supplies needed. The Sentricon Termite Colony Elimination System (Recruit IV or Recruit HD) shall be utilized at all locations, and installed per manufacturer's recommendations.

2. If Recruit IV is installed, the City shall monitor the stations no less than quarterly. If termite activity is found in the station(s), the stations will be monitored monthly until termite activity ceases at which point quarterly monitoring can resume.

3. If Recruit HD is installed, the bait stations will be monitored no less than once a year (label's instruction). The City shall check the stations for missing top caps, missing stations, and damaged stations no less than two times a year. The LMD shall notify the City if missing caps, missing stations, etc. is observed.

4. For above-ground interior, exterior, trees, stumps, etc., subterranean termite activity, the use of above-ground bait stations (AG) will be the first option for treatment. The product will be used per manufacturer's recommendations. Spot treatments using foam or liquid may be used if needed. Access holes will need to be drilled for this type of application.

5. If trees or other man-made structures are included, linear feet of the structure or tree can be added to the cost of the service. Written authorization must be received from the LMD in order to include these items after the initial installation. Each tree included will be no less than 35 linear feet based on the manufacturer's standards.

6. If concrete coring is required, the City will provide and invoice the itemized price for coring which includes: number of cores and the location on the site map (interior or exterior). The cost for coring and port cover is \$55.00 per hole. Access to a third party shall be granted in order to drill the port cover.

E. The City will make all termite inspection tools and termite experts available at no additional cost, which includes but is not limited to infra-red, resistograph technology, video probes, microwaves, and moisture meters.

F. Drywood termite damage, beetle damage other wood destroying organism are not included in the current Agreement. A separate quote may be provided for those services upon request. If a termite research project is available, the City will notify the LMD to describe the details and site requirements of the project. The LMD must notify the City in writing if they would like to participate in the field trial. There would be no cost of treatment, labor, or materials to the LMD in order to participate during the duration of the trial. The LMD would grant the City access to the facility in order to inspect and provide the treatment. The City and the City's cooperator shall not be responsible for damage caused by termites to the facility. Treatment may be slightly prolonged in order to collect information regarding termite pressure, colony relatedness, and treatment efficacy. At the end of the trial, the City will ensure the termite infestation is remediated. At the end of the field trial, the LMD will be notified and asked if the LMD would like to have the building placed under treatment. Depending on the product tested, the installation fee may be waived and a renewal fee will be charged.

G. NOMTCB reserves the right to use other baiting systems if the efficacy is equivalent to noviflumuron and hexaflumuron.

ARTICLE III - COMPENSATION TO THE CITY

A. **Inspection and Treatment.** The Sentricon Termite Elimination System will be used. The cost includes all termiticides, materials, labor, and supplies needed for the first year of installation.

1. Preventative treatment. The cost of the inspection, treatment, and site management will be \$5.50 per linear foot for the first year of installation of a building without an active infestation of subterranean termites. The roof line of the building is used to calculate the total linear feet of the structure.

2. Active infestation. The cost of the inspection, treatment, and site management will be \$6.50 per linear foot for the first year of installation of a building with an active infestation of subterranean termites. The roof line of the building is used to calculate the total linear feet of the structure.

B. Concrete Coring. The cost of the concrete coring and port cover is \$40.00 per hole regardless of the depth of the hole. This cost includes an aluminum port cover.

C. Buildings four stories or higher. An additional charge of \$0.50 per linear foot will be charged for buildings four stories or higher.

D. Renewals. The renewal (each year after the installation) price for a structure up to three stories is \$1.75 a linear foot each year. The renewal cost for buildings four stories or taller is \$2.00 per linear foot based on the roof line.

ARTICLE IV - DURATION

This Agreement will be effective for one year from the Effective Date.

ARTICLE V - TERMINATION

A. Termination for Convenience. Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of its intention to terminate at least 30 days before the intended date of termination.

B. Termination for Cause. Either party may terminate this Agreement immediately for cause. If either party prevails in a challenge to a termination for cause, the termination for cause will be deemed to be a termination for convenience effective 30 days from the date that the original written notice of termination for cause without the requirement of notice. Any services completed for Jackson Barracks or materials for the treatment by the date of termination must be paid within 60 days of contract termination.

ARTICLE VI - OWNERSHIP

All records, reports, documents and other material delivered or transmitted to City by LMD shall remain the property of State, and shall be returned by the City to State, at City's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by the City in connection with the performance of the services contracted for herein shall become the property of LMD, and shall, upon request, be returned by the City to LMD, at the City's expense, at termination or expiration of this contract.

ARTICLE VIII - NONASSIGNABILITY

The City shall not assign any interest in this contract by assignment, transfer, or novation, without prior written consent of LMD. This provision shall not be construed to prohibit the City from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the LMD.

ARTICLE IX - AUDITORS CLAUSE

It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of the City which relate to this contract.

ARTICLE X - RECORD RETENTION

The City agrees to retain all books, records, and other documents relevant to this contract and the funds expended hereunder for at least three years after final payment, or as required by applicable Federal law if Federal funds are used to fund this contract.

ARTICLE XI - FISCAL FUNDING

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient

monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

ARTICLE XII - DISCRIMINATION CLAUSE

The City agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and the City agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

The City agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disabilities.

Any act of discrimination committed by the City, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

ARTICLE XIII - NOTICES

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:

To the City:

Claudia Riegel, Ph.D.
City of New Orleans Mosquito and Termite Control Board
2100 Leon C. Simon Dr.
New Orleans, LA 70122

&

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

To the LMD:

Brigadier General (R) Owen Monconduit
State of Louisiana Military Department Building 718, E Street
Camp Beauregard
Pineville, LA 71360

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 XIV - MISCELLANEOUS PROVISIONS.

A. Rules of Construction. This Agreement has been reviewed by all 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 all parties. 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. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against either party on the basis of which party drafted the language.

B. Severability. The parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If a court finds any provision is not subject to reformation, that provision shall be fully severable and the remaining provisions of this Agreement shall remain in full force and effect and shall be construed and enforced as if such illegal, invalid, or unenforceable provision was never included, and the remaining provisions of this Agreement shall remain in full force and effect.

C. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the City and the LMD, and the parties expressly disclaim any intent to benefit any person that is not a party to this Agreement.

D. 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 shall not affect or be deemed a waiver of any party's right to insist upon compliance with the terms and conditions of the Agreement, to exercise any rights, or to seek any available remedy with respect to any default, breach, or defective performance.

E. Agreement Binding. This Agreement is not assignable by either party unless authorized by a validly executed amendment.

F. Modifications. This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

G. Voluntary Execution. Each party has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

H. Complete Agreement. This Agreement supersedes and replaces any and all prior agreements, negotiations, and discussions between the parties with regard to the terms, obligations, and conditions of this Agreement.

I. Electronic Signature and Delivery. The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY:  for
LATOYA CANTRELL, MAYOR

DATE: June 7th, 2022

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Trautman

STATE OF LOUISIANA THROUGH THE
LOUISIANA MILITARY DEPARTMENT

BY: _____
BRIGADIER GENERAL (R) OWEN MONCONDUIT