

K21-222

COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

AUDUBON NATURE INSTITUTE

GULF UNITED FOR LASTING FISHERIES CAMPAIGN

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the **City of New Orleans**, represented by LaToya Cantrell, Mayor (the “**City**”), the **Audubon Nature Institute**, represented by Ron Forman, Chief Executive Officer (the “**Audubon Institute**”). The City and the Institute may be collectively referred to herein as the “**Parties**.” This Agreement will be effective as of July 2, 2021 (the “**Effective Date**”).

RECITALS

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

WHEREAS, the Audubon Institute is a non-profit corporation, whose principal address is located at 6500 Magazine St., New Orleans, LA 70118; and

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; and

WHEREAS, the Environmental Disaster Mitigation Fund was created under the provision of section 6-207 of the City Charter in the immediate aftermath of the 2010 BP Deepwater Horizon spill in order to receive and spend funds during the emergency; and

WHEREAS, expenditures from the fund shall be used to purchase materials, compensate personnel, obtain services, or offset expenses that may have resulted from damage caused by the disaster; and

WHEREAS, the City will provide funds to the Audubon Nature Institute;

WHEREAS, the Audubon Nature Institute will coordinate the process to provide creative development, media management, design development, and metrics for an outreach campaign to educate the restaurant community, residents, and tourists on the importance of supporting the local seafood industry; and

WHEREAS, the City and the Audubon Nature Institute will review goals, guide outreach material development, and approve final products.

NOW THEREFORE, the Parties, each having the authority to do so, agree as follows:

ARTICLE I - AUDUBON'S OBLIGATIONS

Audubon Nature Institute Will:

- A. Administer this Agreement through its Audubon GULF Program;
- B. Lead development of all outreach programs and materials related to this campaign;
 - 1. Enhance Audubon's programming on sustainable seafood through the development of educational carts, chats, and exhibit signage (50% of work);
 - 2. Increase engagement with the local restaurant community through Audubon GULF's Restaurant Partnership Program, with emphasis on partner recruitment and trainings on sustainable seafood (25% of work);
 - 3. Engage the local community through events that highlight sustainable seafood and the local fishing industry, such as GULF's Summer of Sustainability dinner series (25% of work).
 - 4. Provide quarterly written progress reports to the designated City representative by the below dates.
 - a. First: Three months after the effective date
 - b. Second: Six months after the effective date
 - c. Third: Nine months after the effective date
 - d. Fourth and Final: Eleven months after the effective date

ARTICLE II - THE CITY'S OBLIGATIONS

The City Will:

- A. Administer this Agreement through its Office of Homeland Security and Emergency Preparedness and Office of Resilience and Sustainability;
- B. Provide \$119,000 to the Audubon Nature Institute for costs associated with the outreach campaign;
- C. Review, approve, or disapprove all outreach materials proposed by the Audubon Nature Institute.

ARTICLE III – FUNDING OR COMPENSATION

- A. **Maximum Amount.** The maximum amount funded or payable by the City under this Agreement is \$0.00.
- B. **Payment.** The City shall release 50% of the funds to Audubon within 30 days of this Agreement being signed, with the remaining funds to be distributed within 30 days of receiving the Second Quarter report.

ARTICLE IV - DURATION AND TERMINATION

- A. **Term.** The term of this agreement shall be for one year from the Effective Date through July 1, 2022.

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, in whole or in part, at any time during the term of the Agreement by giving the Audubon Institute written notice of the termination at least 30 calendar days before the intended date of termination. If the City elects to terminate for convenience, the City agrees to provide payment for deliverables complete or in process at the time of termination. Audubon agrees to provide the City with an accounting of complete or in process deliverables within 10 days of termination.

D. Termination for Cause. Any party may terminate this Agreement immediately for cause by sending written notice to other Parties. "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 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

ARTICLE V - INDEMNITY

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

B. Limitation. The foregoing indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, to the extent that such part or any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Expenses. Notwithstanding any provision to the contrary, each party shall bear its own expenses including, but not limited to, 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.

B. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher

limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

C. Minimum Requirements.

1. Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s) for the State of Louisiana. Statutory and Employers Liability Insurance, with limits of not less than \$500,000.00 per accident for bodily injury or disease.

2. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000.00 each occurrence / \$2,000,000.00 policy aggregate.

3. Professional (Errors & Omission) Liability Insurance appropriate to the Contractors profession with limits of liability of not less than \$500,000.00 per occurrence or claim / \$500,000.00 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.

4. The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. 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, Contractor must procure and evidence full extended reporting period (ERP) coverage.

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

1. 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).

2. ISO Form Endorsement; Owners, Lessees or Contractors—Completed Operations (CG 20 37), or equivalent acceptable to the City, is to be used to provide additional coverage for injury or damage that occurs after the work is completed, within the "products-completed operations hazard." ISO Form Endorsement; Managers or Lessors of Premises (CG 20 11), or equivalent.

3. Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

4. 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.

5. 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

provided by the City shall be deemed subordinate to the Contractor's coverage.

6. **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.

7. **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.

8. **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 60 days.

9. **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.

10. **Notice:** The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 calendar days of the City's request: Copies of all policies of insurance, including all policies, forms, and endorsements.

E. **Miscellaneous.** Without notice from the City, the Contractor will:

1. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement.

2. 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.

ARTICLE VII - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Parties(1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Parties' employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. **Non-Discrimination.** In the performance of this Agreement, the Parties 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 Parties in any of Parties' 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

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 Parties 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 Parties fail to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE VIII - INDEPENDENT CONTRACTOR

A. Independent Audubon Nature Institute Status. The Audubon Nature Institute is an independent contractor and shall not be deemed employees, servants, agents, partners, or joint ventures of the City and will not hold themselves or any of their employees, subcontractors or agents to be employees, partners, or agents of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Audubon Nature Institute, as an independent contractor, as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workers' Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, no person employed by the Audubon Institute will be considered an employee of the City for the purpose of Workers' Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Audubon Nature Institute, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Audubon Nature Institute, nor anyone employed by them 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 Audubon Nature Institute 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 Audubon Nature Institute are outside the normal course and scope of the City's usual business; and (c) the Audubon Nature Institute has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Audubon Nature Institute, as independent contractors, 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 IX - 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:

New Orleans Office of Homeland Security and Emergency Preparedness
City of New Orleans,
1300 Perdido St. Suite 9W03

(New Orleans, LA 70112)

&

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

2. To Audubon Nature Institute:

Executive Director
Audubon Nature Institute
6500 Magazine St.
New Orleans, LA 70118

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 X - 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 any party's interest in it are not assignable or transferable without the prior written consent of all the other parties.

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

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

E. 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.

F. Jurisdiction. The Parties consent and yield to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waive any pleas or exceptions of jurisdiction.

G. Limitations of Obligations. No party has obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

H. **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.

I. **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 another 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 any 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.

J. **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.

K. **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.

L. **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.

M. **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.

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

ARTICLE XI - 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 XII - 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]

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

CITY OF NEW ORLEANS

BY: _____

LATOYA CANTRELL, MAYOR

Executed on this 15TH of April, 2021.

FORM AND LEGALITY APPROVED:

Law Department

By: _____

Printed Name: _____

AUDUBON NATURE INSTITUTE

BY: _____

RON FORMAN, CHIEF EXECUTIVE OFFICER