K22-451

**COOPERATIVE ENDEAVOR AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**THE FRENCH MARKET CORPORATION**

**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 French Market Corporation, represented by Leslie T. Alley, Executive Director ("**FMC**"). The City and the FMC may sometimes each be referred to as a "**Party**," and collectively, as the "**Parties.**" The Agreement is effective as of the date of execution by the City (the "**Effective Date**").

**RECITALS**

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

**WHEREAS**, FMC, represented by Leslie T. Alley, is a public benefit corporation of the City of New Orleans created pursuant to Louisiana Revised Statute 39:1051, subject to the Home Rule Charter provisions of the City of New Orleans, and more specifically franchise Ordinance No. 4745 M.C.S., Ordinance No. 5061 M.C.S., Ordinance No. 5175 M.C.S., Ordinance No. 14,626 M.C.S, Ordinance No. 17,638 M.C.S., Ordinance No. 19,366 M.C.S., and Ordinance No. 25,575 M.C.S., of the City Council of New Orleans;

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

**WHEREAS**, the City and FMC desire to accomplish a valuable public purpose of repairing the Mandeville Street Wharf ("**Mandeville Wharf**") by providing for the repair of damages caused by the allision of the M/V DANI MAYES with the Mandeville Wharf;

**WHEREAS**, the City and FMC have previously agreed on using settlement funds from the M/V DANI MAYES allision, funds available from prior Mandeville Wharf allisions, FMC funds previously dedicated to wharf repairs in Crescent Park, and FMC's 2021 Extraordinary Contribution to the City to fund the repair of damages caused by the allision of the M/V DANI MAYES with the Mandeville Wharf;

**WHEREAS**, the engineer hired by FMC has completed plans for repair of the Mandeville

Wharf, and based on the estimates for these repairs there is an apparent gap in available versus needed funding;

**WHEREAS**, the City has funds from an unrelated allision with the Piety Street Wharf (**"Piety Wharf"**), and desires to provide a portion of those funds to FMC in order to complete repairs to the Mandeville Wharf; and

**WHEREAS**, FMC will use those Piety Wharf funds as the last tier of funding to complete repairs to the Mandeville Wharf, with any remaining funds to be returned to the City.

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

## ARTICLE I - FMC'S OBLIGATIONS

*A.* ***Services.*** FMC will:

**1.** Continue to work with an engineer in connection with the design and repair of the Mandeville Wharf;

**2.** Perform the planning, design, and construction of renovations to the Mandeville Wharf. It is acknowledged that FMC's engineer has completed 95% design drawings for the repairs, which have been approved by the City;

**3.** Work with its engineer and any other retained consultants to develop appropriate performance milestones to ensure timely completion of the Mandeville Wharf repairs;

**4.** Obtain all required governmental regulatory reviews and approvals required in connection with the Mandeville Wharf repairs;

**5.** Comply with pertinent local and state laws concerning the bidding of the work and the expenditure of public funds by the City, including, but not limited to, La. Rev. Stat. § 38:2212, et seq., award the project to the lowest responsive and responsible bidder in accordance with the Louisiana Public Bid Law, and provide City with documentation of the process used in obtaining construction bids;

**6.** Hire or continue to retain any and all other necessary consultants to manage the construction of the repairs and to perform any required site civil surveying, geotechnical, mechanical, electrical, and other engineering services;

**7.** Assume day-to-day management and oversight authority and responsibilities with respect to the construction of the Mandeville Wharf repairs;

**8.** Execute construction contracts with the contractor for the construction of the repairs, which contract shall be in accordance with the provisions of this Agreement, the Louisiana Public Bid Law, and the Louisiana Public Works Act;

**9.** Report to the City's Director of Capital Projects Administration every month during the term of this Agreement, and as reasonably requested by the City, the following:

i. The sum of all previous expenditures;

ii. A detailed breakdown of all expenditures for that month, including the vendor performing the work or service;

iii. The quantity of items delivered or percentage of work completed; and

iv. All supporting invoices and documentation for each expenditure.

**10.** Allow periodic access during normal business hours to the site or sites by City representatives to review progress of the construction. The City will provide FMC notice to any site visit at the earliest reasonable time; notice will be sent to FMC Executive Director Leslie T. Alley at ltalley@frenchmarket.org, (504) 636-6400 or (504) 636-6375, 520 St. Peter St., Ste. A, New Orleans, LA 70116.

**11.** Assure that materials and construction procedures used in the construction process are acceptable to the City;

**12.** Assure that the repairs are constructed in accordance with the approved engineering designs and are in compliance with all local, state, and federal codes, permits, licenses, regulations, and requirements;

**13.** Provide all documentation reasonably required by the City to show the funds provided by the City were expended in compliance with this Agreement and any applicable local, state, and federal regulations and statutes, notwithstanding any approved waivers, that are applicable to the use of said funds;

**14.** Complete construction of the repairs in substantial conformance with the Final Plans, free of any statements of claim or privilege pursuant to the Louisiana Public Works Act, in accordance with the approved project documents;

**15.** To acknowledge and permit the City's continued sole ownership of all structures and improvements covered by this Agreement; and

**16.** To return to the City any funds provided under this Agreement not necessary to completion of the Mandeville Wharf repairs.

## ARTICLE II - THE CITY'S OBLIGATIONS

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

**1.** Administer this Agreement through the Department of Capital Projects Administration;

**2.** Provide FMC with any documents deemed necessary for FMC's performance of any work required under this Agreement;

**3.** Provide reasonable access to Department personnel required for the performance of the repairs; and

**4.** Administer funds for the repairs as specified in Article III.

## ARTICLE III – FUNDING

***A. Funding Overview.*** FMC shall undertake the Mandeville Wharf repairs and expend such funds as it deems appropriate, all in compliance with applicable state and local law and City requirements. FMC shall submit a request for funds and supporting documentation to the City for review and approval. Once reviewed and approved by the City, it will begin processing payment to FMC.

***B. <u>Requirements and Limits on Funding</u>.***

**1.** FMC shall only be entitled to expend funds for eligible work. Eligible work means those services, tasks, or materials needed for the Mandeville Wharf repairs, as solely determined by the City.

**2.** The funds transferred under this Agreement may only be used by FMC to complete construction repairs to the Mandeville Wharf for such damage as was caused by the M/V DANI MAYES allision.

***C. <u>Detailed Monthly Invoices</u>.*** In addition to those requirements contained in Article III(B), as a prerequisite to payment, FMC will:

**1.** Submit electronically through the City's BRASS system an invoice, with all required supporting documentation required by the City; and

**2.** Any additional documentation requested by City.

***D. <u>Maximum Funding Available</u>.*** Subject to the terms and conditions set forth in this Agreement, the City's portion of the Mandeville Wharf repair funding shall be used for construction costs, and shall not exceed $125,000.00 (the "**City Funding**"). The City will not be liable for any costs or expenses paid or incurred by FMC in excess of the City Funding in the performance of FMC's obligations under this Agreement, except as may be specifically set forth in a duly authorized amendment. FMC agrees to provide or obtain all funding for the Mandeville Wharf repair not provided by the City Funding.

***E. <u>Use of and Repayment of Funds</u>.*** FMC may only use funds received under this Agreement for Mandeville Wharf repairs after the other identified means of funding the project have been exhausted. Funds are to be used in the following order, with funds from the first tier having to be exhausted before moving to the next lower tier, as follows:

i. Settlement funds from the M/V DANI MAYES allision;

ii. Funds available to FMC from prior Mandeville Wharf allisions or FMC funds previously dedicated to wharf repairs in Crescent Park;

iii. FMC's 2021 Extraordinary Contribution to the City; and

iv. Funds provided by this Agreement.

**1.** Any funds provided by this Agreement not expended by FMC in repair of the damages to the Mandeville Wharf by the M/V DANI MAYES allision shall be returned to the City. FMC must return the funds within 60 days of issuing final payment to FMC's contractor for the repairs.

***F. <u>No Payment for Services Beyond Scope of Agreement</u>.*** Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request FMC to provide additional services that would result in the performance of services beyond the scope of this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such additional services or expenditures. The City shall not be required to reimburse FMC for any services that are provided by FMC that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto.

*G.* ***No Payments in Excess of Maximum Funding***. Officers and employees of the City are not authorized to offer or promise to FMC additional funding for the Projects in excess of the maximum amount of the City Funding set forth above, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such increase and the Department of Finance has certified the availability of such additional funding. Absent the prior duly authorized amendment of this Agreement and the necessary certification of the Department of Finance, the City shall not be required to honor and will not remit to FMC any offered or promised additional funding in excess of the maximum amount of City Funding set forth above.

## ARTICLE IV - DURATION AND TERMINATION

*A.* ***Term.*** The term of this agreement shall be for 1 year from the Effective Date.

*B.* ***Extension.*** The City can opt to extend the term of this Agreement provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

*C.* ***Termination for Convenience.*** The City may terminate this Agreement at any time during the term of the Agreement by giving FMC written notice of the termination at least 30 calendar days before the intended date of termination.

*D.* ***Termination for Cause.*** The may terminate this Agreement immediately for cause by sending written notice to FMC. "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.

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

***B. Limitation***. FMC'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 FMC nor any of its agents or employees contributed to such gross negligence or willful misconduct.

***C. Independent Duty***. FMC 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) FMC is ultimately absolved from liability.

***D. Expenses***. Notwithstanding any provision to the contrary, FMC 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 Contract or the performance of work required by this Contract, FMC will maintain the following insurance in full force and effect for the duration of the work under this Contract. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with FMC's obligations and/or scope of work under the Contract.

***B.*** If FMC 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 FMC. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

**1.** Minimum Requirements:

i. *Workers' Compensation & Employers Liability*. Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than $1,000,000.

ii. *Commercial General Liability*. 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.

iii. *Automobile Liability*. Insurance with a combined single limit of liability of not less than $1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles. If transporting any pollutants, as defined by the policy, the policy is to include applicable Pollution coverage.

iv. *FMCs' Pollution Liability (Where applicable)*

a. If the project involves environmental hazards and/or pollutants of any kind, FMC shall maintain Contractors' Pollution Liability Insurance (or equivalent coverage) applicable to the work being performed with limits of not less than $1,000,000 per occurrence or claim / $2,000,000 policy aggregate, covering losses caused by pollution conditions that arise from the operations of FMC.

b. Insurance shall apply to bodily injury, property damage, including loss of use of damaged property that has not been physical impacted and defense, including cost and expenses incurred in the investigation, defense or settlement of claims.

c. Coverage shall include but not be limited to Fines, Penalties, Punitive Damages and Clean-up cost.

d. Asbestos Coverage (Where applicable) – Where the project involves contact with and/or removal/abatement of asbestos, FMC shall maintain an Asbestos Liability Insurance policy (or equivalent contractors' pollution coverage) that shall include or be endorsed to include coverage for bodily injury and property damage arising out of asbestos abatement or removal operations by or on behalf of FMC with limits of not less than $5,000,000 per occurrence or claim / $10,000,000 policy aggregate.

v. *Umbrella Liability.* Umbrella/Excess policies must "Follow form" of the underlying policies and scheduling.

2. General Provision and Requirements

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

ii. The obligations for FMC 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 of relieve FMC from any liability incurred as a result of their activities/operations in conjunction with FMCs obligations and/or Scope of Work. FMC shall be responsible for any losses, expenses, damages, claims and/or suits and cost of any kind which exceed FMCs limits of liability that arise from the performance of work under the Contract.

*C.* Certificates of Insurance Additional Insured Status:

**1.** *FMC 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 as "Additional Insureds" on the CGL and AL policies with respect to liability arising out of the performance of this Contract.

2. Additional Insured status can be provided in the form of an endorsement to FMCs 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).

3. FMC shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Subcontractors' liability shall be covered by FMC. 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 (User Department Mailing Address), with a copy forwarded to 1300 Perdido Street, Attn: Risk Management, Suite 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 and Liability.

*D.* General Requirements:

1. *Primary Coverage*:

   i. For any claims, liability, demands and/or suits related to this contract or FMCs performance and furnishing or the work, whether it is performed by FMC, and Sub-contractor, partner, supplier or by anyone directly or indirectly employed by any of them to perform or furnish any of the work. FMCs 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 FMCs coverage. At no time shall FMC allow any Sub-contractor to perform work without the required types and limits of required insurance coverage.

   ii. The carriers/companies issuing the policies of insurance shall not have any recourse against the City for payment of any premiums, deductibles, and retentions or for assessments under any form of policy. These shall be borne by and be the sole responsibility of FMC.

2. *Claims Made Policies*: If applicable, the retroactive date must be shown and must be before the date of the Contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, FMC must purchase "extended reporting" coverage for minimum of 3 years after the termination of this Contract.

3. *Waiver of Subrogation*: FMC 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 Contract.

4. *Notice of Cancellation*: Each insurance policy shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.

5. *Acceptability of Insurers*:

i. 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.

ii. If the City has any objection to the coverage afforded by or any other provisions of the insurance required to be purchased and maintained by FMC in accordance with the insurance requirements , the City shall notify FMC in writing within thirty (30) days after receipt of the Certificates. FMC shall provide a written response to the objection within ten (10) days from the date of the notice.

iii. Upon failure of FMC or their sub-contractor to purchase, furnish, deliver or maintain such insurance as provided herein, the Contract, at the discretion of the City may be forthwith declared suspended, discontinued, or terminated. Failure of FMC to purchase and maintain insurance shall not relieve FMC from any liability under the Contract, nor shall the insurance requirements be constructed to conflict with the obligations of FMC concerning indemnification.

6. *Notice*: FMC 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, FMC will:

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

ii. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Contract is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Contract.

***F.*** Special Risks or Circumstances:

i. 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 FMC 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 FMC fails to perform according to the Agreement, the City will notify FMC. If there is a continued lack of performance after notification, the City may declare FMC 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, FMC 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.

***G. Subcontract Requirements.*** As required by Section 70-804 of the City Code, FMC, 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.

*H. **Reporting.*** On or before January 31st and upon request by the City, FMC 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

*I. **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) FMC 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) FMC 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 FMC, payroll records and employee paychecks; and (ii) that the City may audit such records of FMC as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

*J. **Remedies***. If FMC 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 – HIRENOLA PROGRAM

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

## ARTICLE X - NON-DISCRIMINATION

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

***D. Termination for Breach.*** The City may terminate this Agreement for cause if FMC 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.*** FMC 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 FMC, as an independent contractor as defined in La. R.S. 23:1021(6), 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 FMC will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

***C. Exclusion of Unemployment Compensation Coverage.*** FMC, 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 FMC 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) FMC 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 FMC are outside the normal course and scope of the City's usual business; and (c) FMC has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

*D.* ***Waiver of Benefits***. FMC, 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- 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 FMC 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, FMC 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 FMC 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 XIII - 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:

   Director
   Capital Projects Administration
   City of New Orleans
   1300 Perdido Street, Suite 6E15

   New Orleans, LA 70112&

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

2. To FMC:

   Executive Director
   French Market Corporation
   520 St. Peter Street, Ste. A
   New Orleans, LA 70116

***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 - 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 FMC's interest in it are not assignable or transferable without the City's prior written consent.

***C. Audit and Other Oversight.*** FMC will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires FMC 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, FMC 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 City's Hiring Requirements – Ban the Box.***

1. FMC agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, FMC must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary.

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

3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.

4. FMC 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 FMC's efforts do not conflict with the City's interests, and in recognition of FMC's obligations to the City, FMC 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. FMC will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on FMC's performance of this Agreement. The City will make the final determination whether FMC may accept the other employment.

*G.* ***Construction of Agreement.*** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or FMC 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.*** FMC complies with City Code § 2-8(c) and no principal, member, or officer of FMC 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.* ***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, FMC shall reimburse the City or disgorge anything of value or economic benefit received from the City if FMC fails to meet its contractual obligations.

*J.* ***Employee Verification.*** FMC swears that (i) it is registered and participates 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) it 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) it shall require all subcontractors to submit to FMC 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 FMC being ineligible for any public contract for a period of 3 years from the date the violation is discovered. FMC further acknowledges and agrees that it shall be liable 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. FMCwill 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 FMC fails to provide such the requested affidavit or violates any provision of this paragraph.

*K.* ***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.

*L.* ***Jurisdiction.*** FMC consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of FMC.

*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 FMC 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.*** FMC 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. FMC 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 either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

*R. **Ownership of Records.*** Upon final payment, all data collected and all products of work prepared, created or modified by FMC in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding FMC's personnel and administrative records and any tools, systems, and information used by FMC to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without FMC's consent and for no additional consideration to FMC.

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

*T. **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.

*U. **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.

*V. **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.

*W.* ***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.

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

## ARTICLE XV – 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 XVI - 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 FMC, through their duly authorized representatives, execute this Agreement.

**CITY OF NEW ORLEANS**

**BY:** ______________________________
**LATOYA CANTRELL, MAYOR**

**Executed on this** 10th **of** June, **202**2

**FORM AND LEGALITY APPROVED:**
**Law Department**

**By:** ______________________________

**Printed Name:** ______________________________

**THE FRENCH MARKET CORPORATION**

**BY:** ______________________________
**LESLIE T. ALLEY, EXECUTIVE DIRECTOR**

[redacted]

**FEDERAL TAX I.D.**