

K23-626

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

FUSE CORPS, INC

2023 FUSE FELLOWSHIP

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 FUSE Corps, Inc., represented by James L. Weinberg, CEO (the “**Contractor**” or “**FUSE**”). The City and the Contractor may sometimes each be referred to as a “**Party**” or collectively as the “**Parties.**” The Agreement is effective as of **October 23, 2023** (the “**Effective Date**”).

RECITALS

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

WHEREAS, the Contractor is a nonprofit corporation, which principal address is located at One Embarcadero Center, Unit 26070, San Francisco, CA 94126;

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, FUSE is a nonprofit corporation that operates an executive-level fellowship program with a mission to enable local government to more effectively address the most pressing challenges facing urban communities;

WHEREAS, FUSE recruits, supports, and places individuals (the “**Fellows**” and each, a “**Fellow**”) enrolled in the FUSE Executive Fellowship program (the “**Program**”) for twelve-month fellowships working cooperatively with nonprofits and local government agencies;

WHEREAS, in connection with the Program, the City, through its various departments, may at its discretion accept one or more Fellows during the term of this Agreement to participate in service opportunities with the City;

WHEREAS, it is the intent of the parties that one or more different City departments may participate in the Program by agreeing to place one or more Fellows in accordance with the Scope of Work attached hereto as Exhibit “A” and the terms and conditions of an Individual Placement Agreement in substantially the form attached hereto as Exhibit “B” (“**Placement Agreement**”);

WHEREAS, it is the intent of the Parties that this Agreement shall govern the general terms and conditions between the City, including all of the participating City departments, and FUSE as it relates to the City’s participation in the Program;

WHEREAS, the City and the Contractor agree that their mutual goals and objectives satisfy a legitimate and valid public purpose, and that these goals and objectives will provide intangible benefits to the betterment and improvement of the City’s equity goals;

WHEREAS, the Parties agree and acknowledge that the City has a reasonable, demonstrable expectation of receiving a commensurate anticipated benefit that is equal to or greater than that of the Contractor, as more fully described herein; and

WHEREAS the City and the Contractor desire to accomplish a valuable public purpose of partnering through this Program to support transparent, accessible, and accountable service delivery to residents and companies who do businesses in New Orleans, to support improving resilience of the City’s power grid infrastructure, and to support improved housing outcomes for New Orleans residents.

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

ARTICLE I - THE CONTRACTOR’S OBLIGATIONS

A. Services. The Contractor will provide the services set forth in Exhibit “A” – Scope of Work and Exhibit “B” – The Individual Placement Agreement.

B. Placement. Upon execution of this Agreement by the City and FUSE and the completion of the Placement Agreement for a Fellow, FUSE shall place such Fellow with the City reasonably promptly in accordance with the Placement Agreement.

C. Fellow’s Salary. FUSE shall provide for the full compensation, including all insurance and fringe benefits, to be paid to each Fellow for services rendered in service to this Agreement. The City shall not be required to pay any additional compensation to the Fellow.

D. Fellowship. The Fellow will provide the City with the services described in the Placement Agreement for such Fellow during the Fellow’s twelve-month appointment.

ARTICLE II - THE CITY’S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the City’s Office of Resilience and Sustainability (the “**Department**”);

2. Provide the Contractor with documents deemed reasonably necessary for the Contractor's performance of any work required under this Agreement;

3. Provide the Fellow with an overview of current project progress to date, background information, specific project targets and continuing input related to project progress, as well as guidance and resources necessary to carry out the Program;

4. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. Expenses. During a Fellow's appointment, the City, at its sole discretion, may authorize and pay for all reasonable project-related expenses incurred by such Fellow in connection with the performance of services pursuant to the Placement Agreement for such Fellow including, without limitation, business expenses, and office supplies, all in accordance with the City's applicable policies and procedures.

ARTICLE III – FUNDING OR COMPENSATION

A. Maximum Amount. The maximum amount funded by the City under this Agreement is \$80,000.00.

B. Payment. Unless otherwise agreed to by the City, the payment terms are \$40,000 due upon execution of this agreement, and \$40,000 due 6 months after execution of this Agreement. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice to the City; (b) satisfactory performance of the services and conditions required by this Agreement;

2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

3. The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

C. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent

permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations."

ARTICLE IV - DURATION AND TERMINATION

A. **Term.** The term of this agreement shall be for 1 year from the Effective Date, extending from October 23, 2023 through October 22, 2024.

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

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

D. **Termination for Breach.** Either Party may terminate this Agreement if the other Party materially fails to comply with the terms and/or conditions of the Agreement, provided, however that the non-breaching Party shall first give the other Party written notice and at least thirty (30) calendar days from receipt of written notice to cure. The non-breaching Party's written notice shall expressly specify (i) the alleged breach, and (ii) a description of what would be satisfactory to remedy such asserted breach. If the breaching Party takes the actions described in the written notice to cure, then the breach shall be deemed cured, the thirty (30) day notice shall become null and void and this Agreement will remain in full force and effect. If the breach is not cured, then the non-breaching Party may terminate this Agreement immediately upon the breaching Party's receipt of a second written notice from the non-breaching Party. "Breach" 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.

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

ARTICLE V - INDEMNITY

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; for any breach of the Contractor's obligations (including failure to meet performance/service level standards); for unauthorized use or disclosure by the Contractor of Confidential Information; for any breach of applicable laws by the Contractor, and its and their agents, employees, subcontractors, vendors, and suppliers; and for any

infringement or alleged violation of any United States patent right or copyrights, trade secret, trademark, or service mark or other proprietary or intellectual property rights to any third party.

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

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

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

ARTICLE VI - INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

1. Minimum Requirements:

- a.** 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.
- b.** Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- c.** Professional (Errors & Omission) Liability - As professional services are required under the contract, insurance appropriate to the contractor's profession, with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.

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.

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

Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work.

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

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

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Subcontractor liability shall be covered by the Contractor. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to (1300 Perdido Street, 8E08 – City Hall, New Orleans, LA 70112), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

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

- b. Primary Coverage: For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage.
- c. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-

made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.

- d. Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.
- e. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
- f. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City.

A. 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.: FUSE) within 10 calendar days of the Effective Date and at any other time at the City’s request the following documents:

- 1. Proof of coverage for each policy of insurance required by this Agreement; and
- 2. Copies of all policies of insurance, including all policies, forms, and endorsements.

B. 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;
- 3. Notify the City’s Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement; and
- 4. Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

ARTICLE VII - PERFORMANCE MEASURES

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

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

ARTICLE VIII – LIVING WAGES

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

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

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

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

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

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

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

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

wage during the current term of the Agreement, and provide the identified information to the following:

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

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

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

ARTICLE IX - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor’s employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor’s operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the

Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

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

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

ARTICLE X - INDEPENDENT CONTRACTOR

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

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

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

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, Social Security, disability insurance, group term life insurance, participation in any retirement plan for the City's employees, a salary reduction plan for certain child care and medical care costs, or training programs.

E. Neither Party has the authority to bind the other, and no employee, agent, sponsor, nor other representative of either Party shall at any time be deemed to be under the joint control or authority of the other Party, or under the joint control of both Parties. Neither Party shall have the right to control the other Party; however, FUSE and the City mutually agree as to the objectives set forth in this Agreement. Each Party shall be solely responsible for the payment of its own federal, state, and local income taxes, as well as any Social Security ("FICA") and unemployment ("FUTA") taxes that Party may owe.

ARTICLE XI - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Greg Nichols, Deputy Chief Resilience Officer
Office of Resilience & Sustainability
1300 Perdido Street, Suite 8E08
New Orleans, LA 70112 &

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

2. To the Contractor:

James Weinberg, CEO
FUSE Corps, Inc.
One Embarcadero Center, Unit 26070
San Francisco, CA 94126

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XII - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

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

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

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

F. Confidentiality. With respect to any information supplied in connection with this Program and designated in writing by the delivering party as confidential, the receiving party agrees to: (i) protect the confidential information in a reasonable and appropriate manner; and (ii) use the confidential information only to perform its obligations under the Program. This confidentiality obligation shall not apply to information that is: (i) publicly known, (ii) already known to the recipient, (iii) disclosed to a third-party without restriction, (iv) independently developed, or (v) disclosed pursuant to a legal requirement or order. Notwithstanding anything herein to the contrary, the Contractor acknowledges that it has read and understands the requirements mandated by Louisiana Revised Statute 44:1 (Louisiana's Public Records Law). The Contractor shall clearly mark each instance of information, which is in its opinion, is proprietary or trade secret information.

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

H. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

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

J. Employee Verification. The Contractor 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 the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further 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. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit 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. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit "A"; Exhibit "B".

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

N. 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.

O. 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.

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

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

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

T. Ownership of Records. All products of works prepared, created, or Modified by the contractor in the performance of this agreement including without limitation any and all notes, poles, graphs, reports, files, documents, records, disks, original drawings, and other such material regardless of form and whether finished or unfinished (collectively, "**Work Product**") will be the exclusive property of the City, who hereby grants the contractor a personal, non-exclusive, non-transferable limited license to use said work product for the term of this Agreement. The City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor. FUSE, its Fellows, and its subcontractors shall not provide or disclose any Work Product to any third party without prior written consent of the City. Any subcontract entered into by FUSE relating to this Agreement, to the extent allowed hereunder, shall include a like provision for work to be performed under this Agreement to contractually bind or otherwise oblige its subcontractors performing work under this Agreement such that the City's ownership and license rights of all Work Products are preserved and protected as intended herein.

U. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Agreement without regard to the Contractor's otherwise satisfactory performance of the Agreement.

V. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

W. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon

or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

X. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

Y. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

Z. 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.

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

ARTICLE XIII – 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 XIV - ELECTRONIC SIGNATURE AND DELIVERY

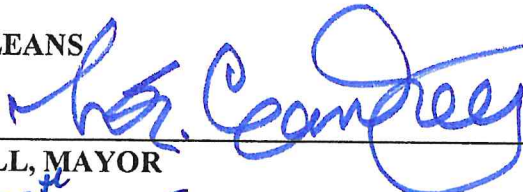
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to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

[SIGNATURES AND EXHIBITS CONTAINED ON THE NEXT PAGES]

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

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

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 29th of June, 2023.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyle

FUSE CORPS, INC.

BY: 
JAMES L. WEINBERG, CEO


TAX I.D.

[EXHIBIT(S) "A" and "B" CONTAINED ON NEXT PAGE(S)]

EXHIBIT “A-1” – CURBING COMMERCIAL ENERGY USE THROUGH EQUITABLE LEGISLATION DESIGN

Office of Resilience and Sustainability
City of New Orleans, LA
Fellowship Dates: October 23, 2023 – October 21, 2024

The City of New Orleans, LA is dedicated to reducing climate change impacts through ambitious policy and equitable municipal legislation. The FUSE Executive Fellow will partner with FUSE Corps to develop and facilitate the approval of new energy use ordinances to benchmark, disclose, and reduce energy use in commercial buildings, thereby reducing greenhouse gas emissions and unlocking energy and cost savings opportunities and health benefits for New Orleans's businesses and residents.

ABOUT THE FUSE EXECUTIVE FELLOWSHIP

FUSE Corps is a national nonprofit working to expand social and economic opportunities, particularly for communities that have been limited by a history of systemic and institutionalized racism. FUSE partners with local governments and communities to more effectively address pressing challenges by placing experienced professionals within city and county agencies. These FUSE Executive Fellows lead strategic projects designed to advance racial equity and accelerate systems change. Since 2012, FUSE has led over 250 projects in 40 governments across 20 states, impacting the lives of 25 million people.

When designing each fellowship project, FUSE works closely with government partners and local stakeholders to define a scope of work that will achieve substantive progress toward regional priorities. FUSE then conducts an individualized search for each project to ensure that the selected candidate has at least 15 years of professional experience, the required competencies for the role, and deep connections to the communities being served. They are data-driven and results-oriented and able to effectively manage complex projects by developing actionable roadmaps and monitoring progress to completion.

Executive Fellows are hired as FUSE employees and embedded in government agencies for at least one year of full-time work. Throughout their fellowships, they receive training, coaching, and professional support from FUSE to help achieve their project goals. FUSE Executive Fellows bring diverse perspectives and new approaches to their projects. They build strong relationships with diverse arrays of stakeholders, foster alignment within and across various layers of government, and build partnerships between governments and communities.

PROJECT CONTEXT

Across America, cities are working to reduce Greenhouse Gas (GHG) emissions to create new, environmentally friendly economic opportunities that reduce climate risk and improve the long-term health and vitality of their residents. Building emissions make up 61% of the City of New Orleans' total GHG emissions, the largest of any sector, representing an enormous opportunity for improvement and investment. In the last 5 years, New Orleans has undertaken actions and policies to improve the energy efficiency of buildings through innovative and practical solutions that cut energy waste, boost local economies, and reduce harmful pollution. While state legislative restrictions prevent the City from taking regulatory actions to reduce use of natural gas and its related emissions in private buildings, the City is committed to leading by example by improving energy use in city-buildings and encouraging others to follow suit by sharing the economic and health benefits of ending fossil fuel use in buildings.

The City's first comprehensive energy efficiency initiative spurred by their 2017 [Climate Action Plan](#) decreased overall energy use in City buildings by 23% from 2018-2021. To broaden the success the City had with its own facilities, the City launched a Downtown Energy Challenge to encourage large buildings to track their energy use, known as “benchmarking,” and take steps to reduce it. In its recently released updated 2022 Climate Action Plan, the City is setting a new goal to achieve an additional 17% reduction (40% cumulative) in overall City building energy use by 2030. To reduce energy use in large buildings not owned by the City, they are currently working with the City Council to approve a benchmarking ordinance for commercial and multi-family building energy use and set building performance standards for those same buildings by 2024.

New Orleans will partner with FUSE Corps to help develop and facilitate the approval of new energy use municipal ordinances to benchmark, disclose, and reduce energy use in commercial buildings and multi-family building. The FUSE Executive Fellow will: conduct a listening tour to assess the current landscape; research successful legislation and program models; draft a new energy use ordinance; and act as a liaison between the city, community stakeholders, consultants, and private partners to gain approval of the ordinance. This work will help support New Orleans to reach its goal of reducing greenhouse gas emissions while unlocking energy and cost savings opportunities and health benefits for its businesses and residents.

PROJECT SUMMARY & POTENTIAL DELIVERABLES

The following provides a general overview of the proposed fellowship project. This project summary and the potential deliverables will be collaboratively revisited by the host agency, the fellow, and FUSE staff during the first few months of the fellowship.

Beginning in April 2023, the FUSE Executive Fellow will work with city, community, and private stakeholders to design, draft, and shepherd legislative approval of administrative ordinances to reduce building energy use in New Orleans. Ultimately, this will help the City reach its goal of carbon neutrality by 2050 through better building energy efficiency, which will also increase housing affordability, lower business operating cost, and make buildings more comfortable, valuable, and healthier for all residents.

The Executive Fellow will begin by conducting a listening tour with relevant stakeholders to collect information about current and past efforts surrounding energy use policies and ordinances, policy dynamics, public-private partnerships, and community and business needs and perceptions. The Executive Fellow will center vulnerable communities in this listening tour to identify strategies that will prioritize high-risk, historically disinvested communities who are most impacted by the negative effects of GHG emissions and climate change to date. The Executive Fellow will also research similar, successful programs, strategies, and legislative models from across the nation.

The Executive Fellow will use the collected information to assist City partners to craft an energy use performance standards, benchmarking, and transparency policy that would benefit local property owners, tenants, and the overall community. The Executive Fellow will then work to gain legislative approval of the new ordinance by the end of 2024, in accordance with goals set forth in the City's 2022 Climate Action Plan. This will involve direct collaboration with city agencies, City Council, and public/private stakeholders, as well as engaging in consensus building with both allies and opponents of the draft ordinance to ensure its ultimate approval.

Once approved, the Executive Fellow will establish clear frameworks and mechanisms for implementing the ordinance, as well as tracking goals, programs, and policies resultant from it. The Executive Fellow will also work to establish clear strategies for long term implementation, including identifying long term funding opportunities and marketing/communication strategies to ensure sustainable implementation.

By April 2024, the Executive Fellow will have overseen the following:

- *Conduct a thorough review of the current landscape-* Conduct a listening tour to become familiar with the city's current and prior energy use policies, needs, and efforts; engage with all relevant stakeholders, including other departments and public agencies, staff members, private business, and community members to better understand their perspectives, priorities, and concerns with regard to energy use benchmarking; review other similar legislative actions to identify successful strategies.
- *Draft a new ordinance and shepherd its approval –* Assist with developing a new energy use ordinance to benchmark, disclose, and reduce energy use in commercial buildings; ensure community needs, perspectives, and equity for historically disinvested communities are centered in all strategies; engage with stakeholders to facilitate approval of the ordinance by the end of 2024; determine overall objectives and methodology for goal setting, evaluating, and reporting; identify funding opportunities and a communications plan for successful implementation.

KEY STAKEHOLDERS

- **Executive Sponsor – Greg Nichols**, *Deputy Chief Resilience Officer, Office of Resilience and Sustainability, City of New Orleans, LA*
- **Project Supervisor – Greg Nichols**, *Deputy Chief Resilience Officer, Office of Resilience and Sustainability, City of New Orleans, LA*

QUALIFICATIONS

In addition to the qualifications listed below, a background in **energy and sustainability policy, drafting and approval of municipal legislation, and stakeholder engagement** is strongly preferred for this project.

- Synthesizes complex information into clear and concise recommendations and action-oriented implementation plans.
- Develops and effectively implements both strategic and operational project management plans.
- Generates innovative, data-driven, and result-oriented solutions to difficult challenges.
- Responds quickly to changing ideas, responsibilities, expectations, trends, strategies, and other processes.
- Communicates effectively both verbally and in writing and excels in both active listening and conversing.
- Fosters collaboration across multiple constituencies in order to support more effective decision making.
- Establishes and maintains strong relationships with a diverse array of stakeholders, both inside and outside of government, and particularly including community-based relationships.
- Embraces differing viewpoints and implements strategies to find common ground.
- Demonstrates confidence and professional diplomacy, while effectively interacting with individuals at all levels of various organizations.

FUSE Corps is an equal opportunity employer with core values of diversity, equity, and inclusion. We encourage candidates from all backgrounds to apply for this position.

[END OF EXHIBIT “A”]

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[EXHIBIT “B” CONTAINED ON THE NEXT PAGE(S)]

EXHIBIT “B-1”

INDIVIDUAL PLACEMENT AGREEMENT

Fellowship Host Agency: Office of Resilience and Sustainability
Fellow Reports to: Greg Nichols, Deputy Chief Resilience Officer
Location of Fellowship: 1300 Perdido Street, Suite 8E08 New Orleans, LA 70112

General Terms and Conditions between the City and FUSE

The City department executing this Individual Placement Agreement and FUSE Corps (FUSE) acknowledge that the terms and conditions of the Standard Placement Agreement, apply to the City department and FUSE as it relates to the performance of this Individual Placement Agreement.

Illustrative Services Provided by FUSE

- **Project Development:** Convene meetings with host agency officials to identify project priorities for year two.
- **On-Boarding:** Place the selected individual under agreement as an employee of FUSE dedicated to the specified project.
- **Coaching:** Pair fellow with an executive coach who will be available to work one-on-one with the fellow during the year.
- **On-Going Support:** Organize and facilitate seminar calls hosted by staff, alumni, industry experts, and others to provide ongoing development and skill building opportunities. Host an online communication platform to allow fellows to regularly ask questions of peers and FUSE staff as they pursue project goals.
- **Project Refinement:** Schedule a call with the fellow, host agency officials, and FUSE staff within the first three months of the project to assess the extent to which any changes may be necessary to the Project Description and designated fellowship project goals.
- **Status Checks:** Check-in with fellows and host agency officials periodically throughout the term of the fellowship to ensure that the fellowship is on track to achieve its stated goals; conduct a formal survey of fellows and host agency officials at both the mid-year point and at the end of the fellowship year to determine progress achieved and lessons learned to date.

Fellowship Project Description: See Exhibit “A-1”

Fellow Support provided by the Placement:

The City Representative and their staff will facilitate introductions and meetings with key staff within the City as well as elected officials as appropriate.

- **Executive Sponsor:** The Executive Sponsor is a high-ranking member of the agency's management team. He or she is the visible champion of the project within the agency and is the ultimate decision maker, with final approval on all phases, deliverables and scope changes. The Executive Sponsor will help ensure that this project achieves its full potential for impact. The designated Executive Sponsors for this project is Gilbert Montano, Chief Administrative Office, City of New Orleans
- **Project Supervisor:** The Project Supervisor is the day-to-day driver of the project and will work directly with the fellow to oversee progress toward goals. He or she will introduce the fellow to key stakeholders, resolve conflicts and remove obstacles that may occur during project work, and will sign off on approvals needed to advance each phase. The designated Project Supervisor for this project is Melissa Schigoda, Director, Department of Performance and Accountability.
- **Onboarding:** Provide the Executive Fellow with an overview of current project progress to date, background information, specific project targets and continuing input related to project progress, as well as guidance and resources necessary to carry out the project.
- **Workspace:** Provide the Executive Fellow with a dedicated workspace, a telephone, a computer, internet access, security access as appropriate, office supplies, and any other physical or technical resources related to performance of services detailed in the project description. In a virtual or hybrid work setting, the City will provide the Fellow with the appropriate technology (e.g. computer).

Financial Considerations Between the City and FUSE Corps regarding the Fellow:

The Office of the City Representative will provide no stipend to the Fellow in addition to that of the salary provided by FUSE.

During a Fellow's appointment, the City, at its sole discretion, may authorize and pay for all reasonable project-related expenses incurred by such Fellow in connection with the performance of services pursuant to the Placement Agreement for such Fellow including, without limitation, business expenses, and office supplies, all in accordance with the City's applicable policies and procedures.

Timeline	Placement Structure
<u>Countersignature Date</u> , 2023	Agreement between FUSE and City to host a fellow in the upcoming program year
October 23, 2023	Fellow's approximate first official day working onsite
October 21, 2024	Final day of work for Fellow

[END OF AGREEMENT]