

COOPERATIVE ENDEAVOR AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
DOWNTOWN DEVELOPMENT DISTRICT OF THE CITY OF NEW ORLEANS
FOR
DEVELOPMENT OF HARMONY CIRCLE

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 Downtown Development District for the City of New Orleans, represented by Davon Barbour, its President & Chief Executive Officer (the “**DDD**”). The City and the DDD 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, the DDD is a special taxing district located in the City, created by an act of the State Legislature in 1974 under the provisions of La. R.S. 33:2740.3, as amended, and has the power and authority to enter into this Agreement and any other documents contemplated herein and to carry out the terms hereof under applicable law, which principal address is located at 201 St. Charles Ave. Suite 3912, New Orleans, LA 70170;

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 Parties desire to accomplish a valuable public purpose of redesigning and redeveloping Harmony Circle, the circular park located within Tivoli Circle, a traffic roundabout in downtown New Orleans situated at the intersections of St. Charles Avenue, Andrew Higgins Boulevard, and Howard Avenue (referred to herein as “**Harmony Circle**”);

WHEREAS, the parties desire to redevelop Harmony Circle for use, among other things, as a venue for public events and for the public display of art or exhibitions created or commissioned by local organizations, and that have significance to the City of New Orleans, including its culture, history, people and economy;

WHEREAS, the parties intend that the redevelopment of Harmony Circle (the “**Redevelopment**”) will be funded through a variety of public sources, including, but not limited

to the Capital Outlay Program of the State of Louisiana (the “State”), philanthropic donations and other sources of private capital (the “Harmony Circle Funding”);

WHEREAS, the parties desire that the DDD manage the redevelopment and subsequent operation of Harmony Circle with the powers necessary to fulfill that role, subject to the terms of this Agreement;

WHEREAS, successful redevelopment of Harmony Circle will produce substantial benefits to downtown residents, workers, visitors, property owners, the City of New Orleans, the State of Louisiana, and all the people who enjoy the downtown area; said benefits to include, at a minimum, beautifying the area surrounding Harmony Circle, improving the quality of life for downtown and city residents and visitors, increasing the values of other properties in the area, and saving scarce City resources through the use of State and private capital; and

WHEREAS, the Parties desire to set forth in this Agreement their respective obligations, responsibilities, and liabilities with respect to this collaborative effort.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the City and the DDD, each having the authority to do so, agree as follows:

ARTICLE I - THE DDD’S OBLIGATIONS

The DDD hereby agrees as follows:

A. Notwithstanding any other provision in this Agreement, the DDD understands that no Redevelopment may begin until the DDD can confirm it has sufficient funding to complete the Redevelopment.

B. The DDD will conduct the Redevelopment utilizing architects, contractors and other professionals procured by the DDD and reasonably acceptable to the City. The City acknowledges and approves the DDD's use of Manning Architects. The DDD agrees to procure all other work in accordance with Louisiana’s Public Bid Law (La. R.S. 38:2211 et seq.).

C. Prior to conducting any on-site Redevelopment work, the DDD will submit schematic plans for the Redevelopment (the “Schematic Plans”) to the City for approval. Within 30 days after receipt thereof, the City shall either approve or disapprove the Schematic Plans by written notice to the DDD.

1. If the City fails to either approve or disapprove within that 30-day period, the City will be deemed to have approved the Schematic Plans.
2. If the City disapproves the Schematic Plans, the City’s notice of disapproval shall specify any revisions the City desires to the Schematic Plans.
3. After receiving such notice of disapproval, the DDD shall cause the project architect to revise the Schematic Plans, taking into account the reasons for the City’s disapproval, and resubmit the Schematic Plans to the City for its approval. Such procedure shall be repeated as necessary until the City has approved the Schematic Plans.
4. After the Schematic Plans are agreed to by both the DDD and the City, the DDD will conduct at least two public meetings to present and receive public comment regarding the Schematic Plans. The DDD and the City will jointly consider the public comments received, and the DDD will cause the project architect to revise the Schematic Plans to

take into account any changes the DDD and the City agree to make based on public comment.

5. Subject to the DDD's receipt of sufficient Harmony Circle Funding, the Redevelopment will be completed in accordance with the approved Schematic Plans.
6. The construction of any buildings or permanent structures on Harmony Circle after completion of the Redevelopment shall require the prior written approval of the City, which will not be unreasonably withheld, delayed or conditioned.

D. Following completion of the Redevelopment, the DDD will manage and operate Harmony Circle primarily as a venue for public events and for the public display of art or exhibitions created or commissioned by local organizations, and that have significance to the City of New Orleans, including its culture, history, people and economy, subject to compliance with any applicable City permitting requirements.

E. The DDD agrees to consult with the City prior to any art displays and to follow any procedures that may be in place for the approval of artwork on public property.

F. The DDD may occasionally allow the use of Harmony Circle for private events that meet the criteria set forth in Article I, Section D above.

G. Following completion of the Redevelopment, and subject to receipt of sufficient Harmony Circle Funding, the DDD will maintain Harmony Circle in good condition and repair, and repair all damage caused by any casualty.

H. Subject to compliance with any applicable City permitting and approval requirements, the DDD shall have the discretion to determine which events and exhibitions are held in Harmony Circle, and to deny any request for use of Harmony Circle, to be decided on a case-by-case basis. Events and exhibitions that are considered obscene or political in nature or would have a detrimental effect on the reputation of the City and/or the DDD (as determined by the DDD) will be denied use of Harmony Circle. As a condition to allowing any use of Harmony Circle, the DDD may require the applicable person or entity to execute a use agreement in form and content satisfactory to the DDD, which may require such person or entity to provide insurance, indemnity, security and undertake such other obligations as the DDD may in its sole discretion determine to be necessary or appropriate.

I. The DDD agrees to use its best efforts to consult with relevant City officials to identify potential conflicts between events scheduled in Harmony Circle and other events scheduled within the City of New Orleans, and to work with the City to avoid or minimize traffic or other disruptions or straining City resources, which could result from such conflicts.

J. The DDD will make good faith efforts to solicit and secure Harmony Circle Funding, and will make every effort to make its staff available on reasonable prior notice to participate in fundraising endeavors sponsored by the City or others in the Greater New Orleans area or Greater Baton Rouge area to raise Harmony Circle Funding. Any fees charged by the DDD for use of Harmony Circle will be included in the term "Harmony Circle Funding" for purposes of this Agreement.

K. All costs and expenses incurred by the DDD in connection with the Redevelopment and the operation of Harmony Circle, including but not limited to urban/architectural design expenses, community engagement expenses, physical site improvement expenses, technology expenses, and operational expenses (including, without limitation, utilities, the cost of landscaping, capital

improvements, maintenance and upkeep, security, promotional expenses, insurance expenses, expenses incurred in connection with fundraising activities or events, and an equitable allocation of the DDD's staff time and overhead expense), shall be paid from the Harmony Circle Funding. The DDD shall not be obligated to undertake any action toward to the Redevelopment unless sufficient Harmony Circle Funding has been received to complete the Redevelopment. Furthermore, the DDD will not be obligated to expend any of its own funds for the operation of Harmony Circle, but may limit its expenditures to the Harmony Circle Funding on hand. If the DDD chooses, in its discretion, to use any of its own funding for Redevelopment or operational expenses, such funding will be reimbursed from subsequently received Harmony Circle Funding.

L. The DDD will maintain books and records in sufficient detail to identify all Harmony Circle Funding received by the DDD, and the use of all Harmony Circle Funding by the DDD. The DDD shall not be required to segregate the Harmony Circle Funding from other funds of the DDD.

M. Promptly following termination of this Agreement, the DDD will deliver to the City all Harmony Circle Funding on hand that is in excess of the amounts payable by the DDD to satisfy obligations relating to the Redevelopment or operation of Harmony Circle.

N. Notwithstanding anything to the contrary contained herein, the DDD acknowledges and agrees that this Agreement does not obligate the City to issue any permits to persons seeking to use Harmony Circle, that anyone seeking to use Harmony Circle must obtain any and all necessary permits from the City and that all exhibitions and events conducted in Harmony Circle will be subject to any applicable City permitting and approval processes.

ARTICLE II - THE CITY'S OBLIGATIONS

The City hereby agrees as follows:

A. Subject to the terms and conditions set forth in this Agreement, the City hereby grants to the DDD exclusive possession and use of Harmony Circle, with the exclusive authority to operate, use and control the use by others of Harmony Circle. Without limiting the generality of the foregoing, the DDD shall have the right to allow others to use Harmony Circle in accordance with the terms and conditions set forth in this Agreement.

B. The City agrees that the DDD may perform the Redevelopment in accordance with the terms and conditions set forth in this Agreement, and in connection therewith may construct and install buildings, structures or other improvements on Harmony Circle in connection with the Redevelopment. All such improvements shall be owned by the DDD during the Term, and, if not removed by the DDD, will become the property of the City upon expiration or termination of this Agreement, without any further action and without any obligation on the part of the City to compensate the DDD therefor.

C. The City further agrees that the DDD and those allowed by the DDD to use Harmony Circle may install movable site furnishings or semi-permanent structures (such as artwork, kiosks, booths, tents, etc.) on or in Harmony Circle, to be used in programming-related activities, subject to the City's special event permitting process, if applicable.

D. The City agrees to promptly review and respond to proposed event scheduling for Harmony Circle submitted by the DDD pursuant to Article I above.

E. The City will, at its own expense, continue to provide the same municipal services that are currently in place at Harmony Circle as of the date of execution of this Agreement, including, as applicable, police and fire response services, public works services and utility services (including sewer and water but excluding electricity); provided, however, that the foregoing shall **not** include secondary employment or detail police officers requested by the DDD or those the DDD allows to use Harmony Circle, through the New Orleans Police Department's Office of Secondary Employment.

F. The City will designate a specific individual within the City's Department of Parks and Parkways to serve as the DDD's direct point of contact with respect to this Agreement and all issues related hereto, as well as a specific individual to serve as the DDD's secondary point of contact in the event the primary point of contact is unavailable for any reason. If the primary or secondary point of contact ceases to be employed by the City during the Term, then within 30 days thereafter the City will designate a replacement. The City may designate a substitute primary or secondary point of contact from time to time, in the City's discretion. All designations pursuant to this section must be made by written notice to the DDD. The primary or secondary point of contact is hereby authorized to act for the City in connection with granting any approval or providing any notice required or permitted under this Agreement.

G. The City will ensure participation and responsiveness from applicable City departments with respect to each department's interests in Harmony Circle.

H. The City will coordinate with public and private utilities to ensure their participation in planning/charrette meetings and their addressing operational issues related to Harmony Circle as promptly as possible.

I. The City will facilitate passage and approval of this Agreement by relevant City officials and City Council in a timely manner in order to expedite the submission and approval of a State Capital Outlay request by which the DDD will request State funding for the Redevelopment, and the City will make good faith efforts to solicit and secure Harmony Circle Funding from other sources for the Redevelopment and subsequent operation of Harmony Circle.

ARTICLE III - EMERGENCY USE

The City shall retain the right to use Harmony Circle at all times in the event of a declared or undeclared emergency to protect public health, safety, and welfare.

ARTICLE IV - DURATION AND TERMINATION

A. **Term.** The term of this Agreement (the "**Term**") shall be for one year from the Effective Date.

B. **Extension.** The City and the DDD can jointly agree to extend the term of this Agreement provided that the City Council approves the Agreement 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 DDD written notice of the termination at least thirty (30) calendar days before the intended date of termination. The DDD may terminate this Agreement

at any time during the Term by giving the City written notice of the termination at least thirty (30) calendar days before the intended date of termination.

D. Termination for Cause. The City may terminate this Agreement for cause by sending written notice to the DDD. "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 thirty (30) days from the date on which the original written notice of termination for cause was sent to the challenging Party, and no further notice will be required.

ARTICLE V - INDEMNITY

A. In General. To the fullest extent permitted by law, the DDD 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 DDD and its agents or employees while engaged in or in connection with the discharge or performance of this Agreement, and for any and all claims and/or liens for labor, services, or materials furnished to the DDD in connection with the performance of work under this Agreement.

B. Limitations. The DDD'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 DDD nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The DDD 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 DDD is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the DDD 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.

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

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

C. Minimum Requirements:

1. Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
2. 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.
3. Automobile Liability Insurance with limits 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.
4. Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage
5. 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.

D. 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).

E. Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor 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 (User Department Mailing Address), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. Notice: The Contractor will provide The City of New Orleans (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:

M. Copies of all policies of insurance, including all policies, forms, and endorsements:

N. Miscellaneous: Without notice from the City, the Contractor will:

1. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
2. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.

O. 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 - NON-DISCRIMINATION

A. ***Equal Employment Opportunity.*** In all hiring or employment made possible by, or resulting from this Agreement, the DDD (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 the DDD'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 DDD 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 DDD in any of the DDD'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 DDD. The DDD 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 DDD 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 the DDD fails to comply with any obligation in this Article VII, which failure is a material breach of this Agreement.

ARTICLE VIII - FORCE MAJEURE

A. **Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable 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 the City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, including threats or incidents involving same; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City or the DDD, provided such event was not caused by the negligence or misconduct, failure to comply with applicable laws, or the breach of this Agreement by the Party claiming Force Majeure.

B. **Notice.** To seek the benefit of this Article VIII, the party claiming Force Majeure must provide notice in writing to the other Party stating: (1) a Force Majeure 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.

C. **Effect.** Upon the occurrence of a Force Majeure event, for which the required notice has been provided, the performance of this Agreement shall be suspended insofar as it is prevented by the Force Majeure event.

ARTICLE IX - NOTICE

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

1. To the City:

City of New Orleans
Parks and Parkways
1 Green Parade Lane
New Orleans, LA 70122
Attn: Director of Parks and Parkways
&

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

2. To the DDD:

Davon Barbour
President & CEO
Downtown Development District
201 St. Charles Avenue, Suite 3912
New Orleans, LA 70170

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

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

ARTICLE X - ADDITIONAL PROVISIONS

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

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

C. Audit and Other Oversight. The DDD will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the DDD 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 DDD 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. 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 DDD 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.

F. Convicted Felon Statement. The DDD complies with City Code § 2-8(c) and no principal, member, or officer of the DDD has, within the preceding five (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.

G. 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.

H. Jurisdiction. The DDD 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 DDD.

I. 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.

J. 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.

K. Non-Solicitation Statement. The DDD 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 DDD 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.

L. 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.

M. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created, or modified by the DDD 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 the DDD's personnel and administrative records and any tools, systems, and information used by the DDD 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 the 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 the DDD's consent and for no additional consideration to the DDD.

N. 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 DDD, shall render this Agreement voidable by the City.

O. 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.

P. 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.

Q. 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 shall remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

R. 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.

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

ARTICLE XI - ELECTRONIC SIGNATURE AND DELIVERY

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

[SIGNATURES CONTAINED ON NEXT PAGE.]

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

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

CITY OF NEW ORLEANS

By: 
LATOYA CANTRELL, MAYOR

Executed on this 22nd of March, 2023

FORM AND LEGALITY APPROVED:

Law Department

By: 
Printed Name: Tanya H

DOWNTOWN DEVELOPMENT DISTRICT

OF THE CITY OF NEW ORLEANS

By: 
DAVON BARBOUR, PRESIDENT & CHIEF EXECUTIVE OFFICER

FEDERAL TAX I.D. 