

K21-926

COOPERATIVE ENDEAVOR AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
ALGIERS DEVELOPMENT DISTRICT
SUBTERRANEAN TERMITE INSPECTION AND TREATMENT

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 Algiers Development District, represented by Mr. Mark Major, Chairman (the “**ADD**” or “**Owner**”). The City and ADD may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of February 23, 2022 (the “**Effective Date**”).

RECITALS

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

WHEREAS, the Owner, Algiers Development District, is a political subdivision of the State of Louisiana, pursuant to Louisiana Revised Statute 33:2740.27;

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

WHEREAS, the City and Owner desire to accomplish a valuable public purpose of protecting the designated Algiers Development District properties from subterranean termites;

WHEREAS, the City of New Orleans Mosquito and Termite Control Board (“**MTCB**”) will inspect for and manage termites in designated Algiers Development District building; and

WHEREAS, Algiers Development District will compensate MTCB at fair market value for these services.

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

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. Obligations of the Owner. The Owner will:

1. Provide the address of the building that will receive treatment.
2. Provide full access to the facility in order for the building to be inspected and serviced.

3. Provide architectural plans (if available) to the City in order to fully understand the building construction and subterranean termite vulnerable areas.
4. The City will provide, in writing, termite-conducive conditions that will need to be remediated. The Owner will acknowledge the recommendations in writing and will make every attempt to fix the termite conducive condition(s). If the condition(s) are not remediated, the Owner acknowledges that the time to control the subterranean termites may be extended or may not be possible without remediation of the issue(s).
5. The Owner will report missing or damaged bait stations to the City. The Owner will notify the City, when feasible, no less than 30 days prior to any construction or landscaping projects at a building with bait stations. Port covers (if installed) for normal wear and tear or regular activity will be replaced by the City. If construction is initiated by the Owner, the City will be given no less than a 10 day written notice, when feasible, so that stations and port covers can be removed. The City acknowledges that 30 or 10 day written notice may not be feasible in the event of emergency, life/safety needs such as a repair of a broken water pipe, electrical line, etc. Any holes needed to be redrilled will be the financial responsibility of the Owner. Given the notification, the City will remove bait stations and port covers for future reinstallation, however, if notification is not given, the Owner is responsible for any lost or missing port covers. The City will provide training to designated State Facility Engineers on the proper removal, handling and storage of stations and port covers at the beginning of the contract, in the event that an emergency arises and removal must be undertaken by Owner.
6. The Owner will provide at least 50% of the payment 30 days after the baiting system has been fully installed and the balance can be paid June 1 of that year. Renewals must be paid each year in full no later than three months after the one year anniversary date of installation. The City will provide a detailed invoice.
7. If the Agreement is terminated, the Owner will provide access to the City within two months of contract termination in order to remove any bait stations at the site(s). The State acknowledges that Dow AgroSciences LLC is the Owner of the Sentricon Termite Elimination System bait stations.
8. The Owner will meet with the City (2100 Leon C. Simon) at least twice a year to discuss and review treatment results and plans.

B. Obligations of the City. The City will:

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

2. Service records must be archived according to Louisiana Department of Agriculture and Forestry policies to reflect the termite control activities that have been performed. These records will be made available to the Owner upon request and will be submitted with each annual inspection. The original records will be archived at the New Orleans Mosquito and Termite Control Board located at 2100 Leon C. Simon Dr., New Orleans, LA 70122.
3. The City is not liable for any existing or new subterranean termite damage.
4. Subterranean Termites (native and Formosan)
 - a. The City shall furnish all pesticides and supplies needed. The Sentricon Termite Colony Elimination System (Recruit IV or Recruit HD) shall be utilized at all locations, and installed per manufacturer's recommendations.
 - b. If Recruit IV is installed, the City shall monitor the stations no less than quarterly. If termite activity is found in the station(s), the stations will be monitored monthly until termite activity ceases at which point quarterly monitoring can resume.
 - c. If Recruit HD is installed, the bait stations will be monitored no less than once a year (label's instruction). The City shall check the stations for missing top caps, missing stations, and damaged stations no less than two times a year. The Owner shall notify the City if missing caps, missing stations, etc. is observed.
 - d. For above-ground interior, exterior, trees, stumps, etc., subterranean termite activity, the use of above-ground bait stations (AG) will be the first option for treatment. The product will be used per manufacturer's recommendations. Spot treatments using foam or liquid may be used if needed. Access holes will need to be drilled for this type of application.
 - e. If trees or other man-made structures are included, linear feet of the structure or tree can be added to the cost of the service. Written authorization must be received from the Owner in order to include these items after the initial installation. Each tree included will be no less than 35 linear feet based on the manufacturer's standards.
 - f. If concrete coring is required, the City will provide and invoice the itemized price for coring which includes: number of cores and the location on the site map (interior or exterior). The cost for coring and port cover is \$40.00 per hole. Access to a third party shall be granted in order to drill the port cover.
5. The City will make all termite inspection tools and termite experts available at no additional cost, which includes but is not limited to infra-red, resistograph technology, video probes, microwaves, and moisture meters.
6. Drywood termite damage, beetle damage, and other wood destroying organisms are not included in the current Agreement. A separate quote may be provided for those services upon request.
7. If a termite research project is available, the City will notify the Owner to describe the details and site requirements of the project. The Owner must notify the City in

writing if they would like to participate in the field trial. There would be no cost of treatment, labor, or materials to the Owner in order to participate during the duration of the trial. The Owner would grant the City access to the facility in order to inspect and provide the treatment. The City and the City's cooperator shall not be responsible for damage caused by termites to the facility. Treatment may be slightly prolonged in order to collect information regarding termite pressure, colony relatedness, and treatment efficacy. At the end of the trial, the City will ensure the termite infestation is remediated. At the end of the field trial, the Owner will be notified and asked if the Owner would like to have the building placed under treatment. Depending on the product tested, the installation fee may be waived and a renewal fee will be charged.

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

ARTICLE II - FUNDING/COMPENSATION

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

1. Preventative treatment. The cost of the inspection, treatment, and site management will be \$5.50 per linear foot for the first year of installation of a building without an active infestation of subterranean termites. The roof line of the building is used to calculate the total linear feet of the structure.
2. Active infestation. The cost of the inspection, treatment, and site management will be \$6.50 per linear foot for the first year of installation of a building with an active infestation of subterranean termites. The roof line of the building is used to calculate the total linear feet of the structure.

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

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

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

ARTICLE III – DURATION AND TERMINATION

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

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

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

D. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

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

ARTICLE IV - INDEMNITY

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

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

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

D. Expenses. Notwithstanding any provision to the contrary, the Owner 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 V - NON-DISCRIMINATION

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

ARTICLE VI - 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:

To the City:

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

&

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

To the Owner:

Mr. Mark Major
Chairman of the Algiers Development District
2500 General Meyer Ave., Bldg 415
New Orleans, LA 70114

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

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

D. Construction of Agreement. 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 Owner on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

E. Convicted Felon. 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.

F. Ownership of Documents. All data collected and all products of work prepared, created, or modified by the Owner 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, (collectively, "Work Product") are the exclusive property of the City, and no reproduction of any portions of such Work

Product may be made in any form without the express written consent of the City. The City shall have all right, title, and interest in all Work Product, including without limitation the right to secure and maintain the copyright, trademark, and/or patent of Work Product in the name of the City. This City may use or distribute all Work Product for any purpose without the consent of and for no additional consideration owing to the Owner.

G. Prohibition Against Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Party Reference, will 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 Party Reference pursuant to this Agreement without regard to the Party Reference's satisfactory performance.

H. Ownership Interest Disclosure (only for contracts exceeding \$100,000). The Party Reference will provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Party Reference and stating that no other person holds an ownership interest in the Party Reference via a counter letter. For the purposes hereof, and "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 Party Reference fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Party Reference, suspend or cause the suspension of any further payments until the required affidavits are submitted.

I. Non-Exclusivity. This Agreement is non-exclusive and the Owner may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

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. Jurisdiction. The Owner consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas of jurisdiction on account of the residence elsewhere.

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

M. Survival of Provisions. All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector

General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect.

N. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other party shall not affect or be deemed a waiver of any party's right to insist upon compliance with the terms and conditions of the Agreement, to exercise any rights, or to seek any available remedy with respect to any default, breach, or defective performance.

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

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

Q. 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.

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]

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

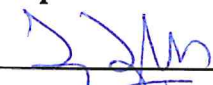
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 18th of August, 2021

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

ALGIERS DEVELOPMENT DISTRICT

BY: 
MARK MAJOR, CHAIRMAN