

K20-792

**COOPERATIVE ENDEAVOR AGREEMENT
CITY OF NEW ORLEANS
AND
ALGIERS DEVELOPMENT DISTRICT**

SUBTERRANEAN TERMITE INSPECTION AND TREATMENT

THIS AGREEMENT (the "**Agreement**") is made and entered into on this 24th day of February, 2020 (the "**Effective Date**"), by and between the City of New Orleans, represented by Latoya Cantrell, Mayor (the "**City**"), and the Algiers Development District, represented by Senator Troy Carter, Chairman (the "**ADD**" or "**Owner**"). The agreement is effective for two consecutive years.

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

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

WHEREAS, to that end, the City of New Orleans Mosquito and Termite Control Board ("**MTCB**") will inspect for and manage termites in designated Algiers Development District buildings; 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:

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 50% of the payment 30 (days) after the baiting system has been fully installed and the balance can be paid by June 1 of that year. Renewels 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 30 linear feet based on the manufacturer's standards.
 - f. If concrete coring is required, the City will provide 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 forty (\$40) dollars 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. Included but not limited to infra red, resistograph technology, video probes, microwaves, and moisture meters.
6. Drywood termite damage, beetle damage other wood destroying organism are not included in the current Inter-governmental Agreement. A separate quote under the scope of this Agreement can be given.
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.

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.
3. Treatment of trees will be \$5.50 per linear foot regardless of termite infestation. A minimum of 35 linear feet will be charged per tree as per manufacturer's requirements.

B. **Concrete Coring.** The cost of the concrete coring and port cover is forty (40) dollars 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 fifty (50) cents 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 one dollar seventy five cents (\$1.75) a linear foot each year. The renewal cost for buildings four stories or taller is two dollars (\$2.00) per linear foot based on the roof line.

III. **DURATION.** This Agreement will be effective for one (1) year from the Effective Date.

IV. TERMINATION.

A. **Termination for Convenience.** Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of its intention to terminate at least thirty (30) days before the intended date of termination.

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B. Termination for Cause. Either party may terminate this Agreement immediately for cause. If either party prevails in a challenge to a termination for cause, the termination for cause will be deemed to be a termination for convenience effective thirty (30) days from the date that the original written notice of termination for cause without the requirement of notice. Any services completed for the Owner or materials for the treatment by the date of termination must be paid within 60 days of contract termination.

V. INDEMNITY

A. Duty to Indemnify the City. To the fullest extent permitted by law, the Owner will protect, defend, indemnify, and hold harmless the City, its agents, elected officials, and employees (collectively, the "Indemnified Parties") from and against all claims, demands, actions, liabilities, losses (including, without limitation, economic losses), and costs, arising out of or related to (a) any actual or alleged act or omission in the performance of this Agreement by the Owner, its employees, or any subcontractor or (b) any act outside the scope of this Agreement by the Owner, its employees, or any subcontractor.

B. Limit on Duty to Indemnify. Notwithstanding anything in this Agreement to the contrary, the Owner is not required to indemnify the Indemnified Parties for any loss that results from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that the Owner or any subcontractor did not contribute to such gross negligence or willful misconduct.

C. Independent Duty to Defend. Notwithstanding anything in this Agreement to the contrary, the Owner, at its option, will immediately defend the City from, or reimburse the City for the City's costs incurred in the defense of, any claim that actually or potentially falls within the scope of this indemnity, even if the claim is groundless, false, or fraudulent, or if the Owner is absolved of liability.

D. Expenses. The Owner will bear all expenses, including without limitation reasonable attorney fees, of the City in enforcing the terms of this article.

VI. NON-DISCRIMINATION.

A. Non-Discrimination in Employment. With regard to any hiring or employment decision made in connection with the performance of this Agreement, including without limitation employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other compensation, and selection for training including apprenticeship, the Owner:

1. Will not discriminate or retaliate, in fact or in perception, against any employee or person seeking employment on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;
2. Will take affirmative action to ensure compliance with this section;
3. Will include statements in all solicitations or advertisements for employment that

all qualified applicants will receive consideration for employment without regard to race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;

4. Will post notices containing the provisions of this section in conspicuous places available to employees and persons seeking employment.

B. Non-Discrimination. In the performance of this Agreement, the Owner:

1. Will not discriminate or retaliate, in fact or in perception, on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status against: any employee of the City; any employee of any person working on behalf of the City; or any person seeking accommodation, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Owner.

2. Will comply with and abide all federal, state, and local laws relating to non-discrimination, including without limitation Title VII of the Civil Rights Act of 1964, as amended, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

VII. NOTICES.

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:

Claudia Riegel, Ph.D., City of New Orleans Mosquito and Termite Control Board
City of New Orleans
2100 Leon C. Simon Dr.
New Orleans, LA 70122
&
City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Owner:

Senator Troy Carter
Chairman of the Algiers Development District
2300 General Meyer Ave., Bldg. 415
New Orleans, LA 70114

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

VIII. MISCELLANEOUS PROVISIONS

A. Ownership of Documents. All data collected and all products of work prepared, created, or modified by the Owner in the performance 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.

B. 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.

C. 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, 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 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.

D. Non-Exclusivity for the City. The City shall be free to engage the services of other persons for the performance of some or all of the obligations contemplated this Agreement.

E. Acknowledgment of Exclusion of Worker's Compensation Coverage. The Party Reference expressly agrees and acknowledges that it is an independent contractor as defined in La. R .S. 23:1021 and as such, it is expressly agreed and understood between the parties hereto, in entering into this services agreement, that the City shall not be liable to the Party Reference for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of La. R.S. 23: 1034, anyone employed by the Party Reference shall not be considered an employee of the City for the purpose of Workers' Compensation coverage.

F. Acknowledgment of Exclusion of Unemployment Compensation Coverage. The Cooperative Endeavor Agreement
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Party Reference herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Agreement for hire as noted and defined in La. R.S. 23:1472(E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this services agreement, or agreement for hire, and in connection with unemployment compensation only, that:

1. The Party Reference has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and

2. Services to be performed by the Party Reference are outside the normal course and scope of the City's usual business; and

3. The Party Reference has been independently engaged in performing the services listed herein prior to the date of this agreement.

Consequently, neither the Party Reference nor anyone employed by the Party Reference shall be considered an employee of the City for the purpose of unemployment compensation coverage, which is expressly waived and excluded.

G. Waiver of Benefits. The City and the Party Reference agree and understand that the Party Reference, acting as an independent agent, shall not receive any sick and annual leave, health or life insurance, pension, or other benefits from the City.

H. Jurisdiction. The Party Reference 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.

I. Governing Law. Any dispute arising from or relating to this Agreement or the performance of any obligations under this Agreement shall be resolved in accordance with the laws of the State of Louisiana.

J. Rules of Construction. This Agreement has been reviewed by all 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 all parties. 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. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of nor against either party on the basis of which party drafted the language.

K. Severability. The parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If a court finds any provision is not subject to reformation, that provision shall be fully severable and the remaining provisions of this Agreement shall remain in full force and effect and shall be construed and enforced as if such illegal, invalid, or unenforceable provision was never included, and the remaining provisions of this Agreement shall remain in full force and effect.

L. 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.

M. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the City and the Party Reference, and the parties expressly disclaim any intent to benefit any person that is not a party to this Agreement.

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. Voluntary Execution. The Party Reference has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

R. Complete Agreement. This Agreement supersedes and replaces any and all prior agreements, negotiations, and discussions between the parties with regard to the terms, obligations, and conditions of this Agreement.

SIGNATURES ON FOLLOWING PAGE

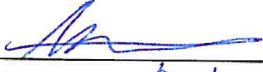
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IN WITNESS WHEREOF, the City and the Party Reference, through their duly authorized representatives, execute this Agreement.

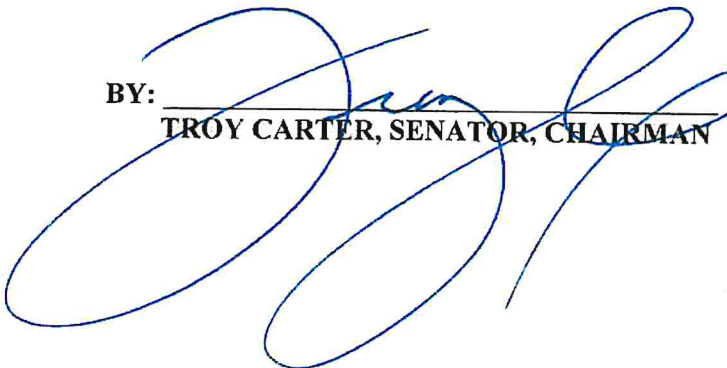
CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

FORM AND LEGALITY APPROVED:
Law Department

By: 
Printed Name: Andrew Gregorian

ALGIERS DEVELOPMENT DISTRICT

BY: 
TROY CARTER, SENATOR, CHAIRMAN