

K21-125

**COOPERATIVE ENDEAVOR AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**FUND 17**

**KIVA HUB FOR SMALL BUSINESS MICROLENDING**

**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 FUND 17, represented by Antonio Alonzo, Executive Director (the “**Contractor**” or “**Fund 17**”). The City and Fund 17 may sometimes each be referred to as a “**Party**” or 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**, Fund 17 is a non-profit corporation, which principal address is located at 2533 Columbus St, #101, New Orleans, Louisiana 70119;

**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**, over thirty (30) percent of households in New Orleans are supported in part or in full by business income generated by an entrepreneur in the household;

**WHEREAS**, the City and Fund 17 desire to accomplish a valuable public purpose of supporting low-income entrepreneurs and entrepreneurs of color in the City by providing interest-free microloans;

**WHEREAS**, Fund 17 will expand their Capital Access Program and partner with Kiva to build a Kiva Hub that will provide access to capital and technical assistance to entrepreneurs in New Orleans; and

**WHEREAS**, the City will provide capital that will be leveraged by other sources of capital to expand Fund 17’s Capital Access Program.

**NOW THEREFORE**, the City and Fund 17, each having the authority to do so, agree as follows:

**ARTICLE I - FUND 17’S OBLIGATIONS**

- A. **Services.** The Contactor will:
1. Partner and manage relationship with Kiva to create a Kiva Hub, including:
    - a. Connecting New Orleans entrepreneurs who do not qualify for traditional loans to crowd-funded, interest-free microloans through Kiva; and
    - b. Ensuring that Kiva provides underwriting and other relevant financial services for the Kiva Hub; and
    - c. Responsibly using of Fund 17's Capital Access Fund;
  2. Hire and/or designate a full-time staff member to manage Fund 17's Capital Access Fund and to manage Fund 17's relationship with Kiva;
  3. Provide technical assistance to entrepreneurs, including support to:
    - a. Complete the Kiva application;
    - b. Conduct crowd-funding efforts through Kiva's platform;
    - c. Provide financial management, budgeting support, and loan management; and
    - d. Repayment of Kiva loan;
  4. Conduct outreach to raise awareness about the program to entrepreneurs throughout New Orleans, especially entrepreneurs without access to traditional loans; and
  5. Provide quarterly updates to the City of New Orleans via the Office of Economic Development on relevant program metrics.

## **ARTICLE II - THE CITY'S OBLIGATIONS**

- A. **Administration.** The City will:
1. Administer this Agreement through the Office of Economic Development (the "Department");
  2. Provide Fund 17 with documents deemed reasonably necessary for Fund 17's performance of any work required under this Agreement;
  3. Raise awareness about Fund 17's Capital Access Program at the City's discretion through press releases or other forms of communication; and
  4. Provide access to Department personnel to discuss the required services during normal working hours, as requested by Fund 17.

## **ARTICLE III – FUNDING OR COMPENSATION**

A. **Maximum Amount.** The maximum amount funded by the City under this Agreement is \$50,000.00.

B. **Rate of Compensation.** The City will pay Fund 17 in accordance with the following rate: quarterly payments not to exceed \$12,500.00.

1. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

2. The stated compensation is inclusive, and includes no additional amounts for costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse Fund 17 any other charges or fees and Fund 17 will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

3. Fund 17 immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

**C. Payment.** Unless otherwise agreed to by the City, the payment terms are NET 30 days upon Fund 17's delivery and the City's acceptance of the services contemplated in this Agreement and/or upon the City's receipt of the properly submitted, complete, and accurate invoice via the City's supplier portal. The City will make payments to Fund 17 at the rate of compensation established in this Agreement based upon Fund 17's certified invoices, except:

1. The City's obligation to pay is contingent upon Fund 17'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 Fund 17 against any amounts deemed by the City to be owed to the City by Fund 17 pursuant this Agreement; and

4. All compensation owed to Fund 17 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 Fund 17 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 Fund 17 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 Fund 17 only for the work requested by the City and satisfactorily performed by Fund 17 through the date of termination, except as otherwise provided in this Agreement.

**D. 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, Fund 17 shall reimburse the City or disgorge anything of value or economic benefit received from the City if Fund 17 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.
- 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 Fund 17 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 Fund 17. "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.

#### **ARTICLE V - INDEMNITY**

- A. To the fullest extent permitted by law, Fund 17 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 Fund 17, 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 Fund 17 in connection with the performance of work under this Agreement.
- B. **Limitation.** Fund 17'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 Fund 17 nor any of its agents or employees contributed to such gross negligence or willful misconduct.
- C. **Independent Duty.** Fund 17 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) Fund 17 is ultimately absolved from liability.
- D. **Expenses.** Notwithstanding any provision to the contrary, Fund 17 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, Fund 17 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 Fund 17's scope of work under the Agreement.

If Fund 17 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 Fund 17. 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 applicable 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, abuse and molestation 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. Automobile Liability Insurance with limits of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- d. Professional (Errors & Omission) Liability Insurance appropriate to Fund 17'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.

Important: The obligations for Fund 17 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 Fund 17 from any liability incurred as a result of their activities/operations in conjunction with Fund 17's obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits and cost of such of any kind which exceed the Contractor's limits of liability that arise from the performance of work under the Contract.

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

- a. Additional Insured Status: Fund 17 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 Fund 17s 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).

Fund 17 shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

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

- b. Primary Coverage: For any claims related to this agreement, Fund 17s 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 Fund 17s 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: Fund 17 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. Fund 17 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.: Name of Contractor; Project Name) 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, Fund 17 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

C. **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 Fund 17 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 Fund 17 fails to perform according to the Agreement, the City will notify Fund 17 in writing. If Fund 17 does not remedy the failure within thirty (30) days of receiving written notice, the City may declare Fund 17 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, Fund 17 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. **Current Living Wage.** In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. Fund 17 shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, Fund 17 acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1<sup>st</sup> using the Consumer Price Index figures provided for the calendar year ended December 31<sup>st</sup> of the preceding year, and thereafter on an annual basis.

E. **Subcontract Requirements.** As required by Section 70-804 of the City Code, Fund 17, 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 31<sup>st</sup> and upon request by the City, Fund 17 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) Fund 17 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) Fund 17 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 Fund 17, payroll records and employee paychecks; and (ii) that the City may audit such records of Fund 17 as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. **Remedies.** If Fund 17 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, Fund 17 (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 Fund 17'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, Fund 17 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 Fund 17 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 Fund 17. Fund 17 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.** Fund 17 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 Fund 17 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.** Fund 17 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 Fund 17, 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 Fund 17 will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** Fund 17, 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 Fund 17 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) Fund 17 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 Fund 17 are outside the normal course and scope of the City's usual business; and (c) Fund 17 has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** Fund 17, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

#### **ARTICLE 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:**

Jeffrey Schwartz, Director of Economic Development  
City of New Orleans  
1340 Poydras St, Suite 1800  
New Orleans, LA 70112

&

Sunni J. LeBeouf, City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

**2. To Fund 17:**

Antonio Alonzo, Executive Director  
Fund 17  
2533 Columbus St, #101  
New Orleans, LA 70119

**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 Fund 17's interest in it are not assignable or transferable without the City's prior written consent.

**C. Audit and Other Oversight.** Fund 17 will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires Fund 17 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, Fund 17 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) Fund 17 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 Fund 17 notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, Fund 17 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) Fund 17 will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**F. Conflicting Employment.** To ensure that Fund 17's efforts do not conflict with the City's interests, and in recognition of Fund 17's obligations to the City, Fund 17 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. Fund 17 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 Fund 17's performance of this Agreement. The City will make the final determination whether Fund 17 may accept the other employment.

**G. Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or Fund 17 on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

**H. Convicted Felon Statement.** Fund 17 complies with City Code § 2-8(c) and no principal, member, or officer of Fund 17 has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**I. Employee Verification.** Fund 17 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 Fund 17 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 Fund 17 being ineligible for any public contract for a period of 3 years from the date the violation is discovered. Fund 17 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. Fund 17 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 Fund 17 fails to provide such the requested affidavit or violates any provision of this paragraph.

**J. 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.

**K. Jurisdiction.** Fund 17 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 Fund 17.

**L. 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.

**M. 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.

**N. Non-Exclusivity.** This Agreement is non-exclusive and Fund 17 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.

**O. Non-Solicitation Statement.** Fund 17 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. Fund 17 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.

**P. 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.

**Q. 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.

**R. Ownership Interest Disclosure.** Fund 17 will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in Fund 17 and stating that no other person holds an ownership interest in Fund 17 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 Fund 17 fails to submit the required affidavit, the City may, after 30 days’ written notice to Fund 17, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**S. Ownership of Records.** Upon final payment, all data collected and all products of work prepared, created or modified by Fund 17 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 Fund 17’s personnel and administrative records and any tools, systems, and information used by Fund 17 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 Fund 17. Fund 17 hereby grants to the City a personal, non-exclusive, limited right to access and to use Fund 17’s Work Product for the City’s public purposes.

**T. 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 Fund 17, 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 Fund 17 pursuant to this Agreement without regard to Fund 17’s otherwise satisfactory performance of the Agreement.

**U. 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.

**V. 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.

**W. 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.

**X. Subcontractor Reporting.** Fund 17 will provide a list of all natural or artificial

persons who are retained by Fund 17 at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with Fund 17's work for the City. For any subcontractor proposed to be retained by Fund 17 to perform work on the Agreement with the City, Fund 17 must provide notice to the City within 30 days of retaining that subcontractor. If Fund 17 fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to Fund 17, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**Y. 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.

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

### **ARTICLE XIII - 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 Fund 17, through their duly authorized representatives, execute this Agreement.

**CITY OF NEW ORLEANS**

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



Executed on this                      of                      January 22 , 2021.

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

By:   
Printed Name: 

**FUND 17**

**BY:**   
**ANTONIO ALONZO, EXECUTIVE DIRECTOR**

**TAX I.D.**

**[END OF AGREEMENT]**