



LEGISLATIVE SUMMARY

TO ACCOMPANY ORDINANCES BEFORE SUBMISSION TO CLERK OF COUNCIL

Requesting Department or Agency: Department of Public Works

Name of Contact Person: Evan Quintero

Telephone Number: 504-444-3544

Email Address: evan.quintero@nola.gov

Initials of Sponsoring Councilmember(s): _____

DETAILED SYNOPSIS OF THE ORDINANCE

Please generally describe the purpose, intent, and effect of the proposed ordinance.

This ordinance results from the Fair Share Initiative, and authorizes the Mayor to enter

the City into a Cooperative Endeavor Agreement ("CEA") with the Sewerage and Water Board

of New Orleans (the "Board") to establish roles, obligations, procedures, and requirements

for the transfer and use of funds from the City Infrastructure Maintenance Fund ("IMF").

Of the revenue deposited into the IMF, 75% will be made available to the Board, and 25%

will be made available to the City Department of Public Works. Recommendations on the receipt

and expenditure of funds will be provided by the Infrastructure Advisory Board.



LEGISLATIVE SUMMARY

If the Ordinance is to effectuate a contract, CEA, or other similar agreement (hereafter contract), please provide the following additional information.

☐

If this section is not applicable, please check this box.

The parties involved:

City of New Orleans, Sewerage and Water Board of New Orleans, and Infrastructure Advisory Board

The obligations, expectations, and deliverables of the parties involved:

The Board is to expend IMF funds in accordance with the CEA as well as City and State authorizing legislation. The Board is to report on its use of IMF funds to the Infrastructure Advisory Board and the City. The City is to provide 75% of designated IMF funds to the Board on a monthly basis. Additional obligations/responsibilities are further delineated in the CEA.

Any fiscal implications for the City with the contract:

The City is to transfer 75% of designated IMF Funds to the Board (exact amount determined as available).

The City will not be liable for Board expenses beyond funds properly transferred, and can seek return of funds in event of non-compliance by the Board.

The public purpose and need for the contract:

The CEA enables public spending on infrastructure maintenance efforts by the Board and by the City Department of Public Works.

The duration of the contract:

Five (5) years from its Effective Date, subject to survival of certain provisions.



LEGISLATIVE SUMMARY

If the Ordinance is to effectuate an amendment to the Codes of the City of New Orleans, please provide the following additional information.



If this section is not applicable, please check this box.

The existing provision(s) of the Code being proposed for amendment:

The general content/requirements of the existing Code provision:

How the proposed ordinance will alter the existing Code provision(s):

Why these changes are needed:

REQUESTED ADOPTION DATE: _____

Reference: Council Rule 41 & City Code Section 2-813

Denise M. Russ

From: M. Tyler Russell
Sent: Thursday, June 4, 2020 10:49 AM
To: Denise M. Russ
Cc: Tara G. Richard; Jarvis A. Lewis
Subject: Re: Infrastructure Maintenance Fund CEA with S&WB
Attachments: Ordinance-IMF CEA Draft, 5.8.2020 (1) (1).docx; Final - IMF - CEA - SWB - 6.1.2020 (1) (1).docx; Council-By-Request-Ordinance-Form - IMF Ordinance (1) (1).pdf

Good Morning Russ,

Could we get a calendar number for this ordinance and introduce for first reading today please? CM Banks has agreed to sponsor. Also attaching the CEA and the legislative summary.

Thank you,

Tyler

From: Jarvis A. Lewis <Jarvis.Lewis@nola.gov>
Sent: Thursday, June 4, 2020 10:44 AM
To: M. Tyler Russell <mrussell@nola.gov>
Cc: Tara G. Richard <Tgrichard@nola.gov>
Subject: Re: Infrastructure Maintenance Fund CEA with S&WB

Yes, File this for first reads.



Jarvis Lewis | Chief Of Staff
City Council District B
1300 Perdido St Suite 2w10
New Orleans, LA
Tel: 504-658-1028
Email: Jarvis.Lewis@nola.gov
Website: 2020census.nola.gov

From: M. Tyler Russell <mrussell@nola.gov>
Sent: Thursday, June 4, 2020 9:40 AM
To: Jarvis A. Lewis <Jarvis.Lewis@nola.gov>
Cc: Tara G. Richard <Tgrichard@nola.gov>

Subject: Re: Infrastructure Maintenance Fund CEA with S&WB

Good Morning,

Any news on whether the Councilmember is ok introducing this today?

Thank you,

Tyler

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: June 4, 2020

CALENDAR NO. 32,993

NO. _____ MAYOR COUNCIL SERIES

BY: COUNCILMEMBER BANKS (BY REQUEST)

AN ORDINANCE to authorize the Mayor of the City of New Orleans to enter into a Cooperative Endeavor Agreement (“CEA”) between the City of New Orleans (the “City”) and the Sewerage and Water Board of New Orleans (the “Board”) to establish procedures, requirements, and reporting obligations relative to the transfer, use, and oversight of certain funds deposited in the special fund designated as the City of New Orleans Infrastructure Maintenance Fund, as more fully set forth in the Cooperative Endeavor Agreement form attached hereto and made a part hereof; and otherwise with respect thereto.

WHEREAS, pursuant to the authority contained in Article 7, Section 14(C) of the Louisiana Constitution of 1974, and statutory authority supplemental thereto, the State of Louisiana and its political subdivisions, including the City and the Board, may enter into cooperative endeavors with each other, or with any public or private corporation or individual; and further pursuant to section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with any public or private association, corporation, or individual for activities in support of economic growth and other public purposes; and

WHEREAS, the City of New Orleans has created a special fund into which shall be deposited all funds from any special tax authorized and approved by the voters of New Orleans for infrastructure maintenance, and any other funds, including but not limited to a fee, designated by lawful authority for deposit in the fund, the City of New Orleans Infrastructure Maintenance Fund (the “Fund”); and

WHEREAS, it is now necessary to authorize a Cooperative Endeavor Agreement between the City and the Board to provide the Board the means to obtain and expend certain funds deposited into the Fund as authorized pursuant to Chapter 70, Sections 415.278 through 415.282 of the Code of the City of New Orleans and the CEA; **NOW, THEREFORE**

1 **SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY**
2 **ORDAINS**, That the Mayor of the City of New Orleans is hereby authorized to enter into a
3 Cooperative Endeavor Agreement between the City of New Orleans and the Sewerage and Water
4 Board of New Orleans to establish procedures, requirements, and reporting obligations relative to
5 the transfer, use, and oversight of certain funds deposited in the special fund designated as the City
6 of New Orleans Infrastructure Maintenance Fund, as more fully set forth in said Cooperative
7 Endeavor Agreement.

1 **SECTION 2.** That said Cooperative Endeavor Agreement is attached hereto as “Exhibit
2 1” and made a part hereof.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS _____

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON _____

APPROVED:

DISAPPROVED: _____

MAYOR

RETURNED BY THE MAYOR ON _____ **AT** _____

CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS:

NAYS:

ABSENT:

RECUSED:

**COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
SEWERAGE AND WATER BOARD OF NEW ORLEANS
INFRASTRUCTURE MAINTENANCE FUND**

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 Sewerage and Water Board of New Orleans, represented by Ghassan Korban, Executive Director (the “**Board**”), pursuant to the authority granted by Board resolution. The City and the Board may sometimes be collectively referred to as the “**Parties**”. The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

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

WHEREAS, the Board is a political corporation organized under the laws of the State of Louisiana;

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

WHEREAS, the City has created a special fund designated as the City of New Orleans Infrastructure Maintenance Fund, with a sub-account named Sewerage and Water Board (the “**IMF**”), into which is deposited funds from taxes authorized and approved by the voters of New Orleans to be used by the City and the Board for infrastructure maintenance, and other funds, including but not limited to a fee, designated by lawful authority for deposit in the fund;

WHEREAS, effective July 1, 2019, Act 169 of the 2019 Regular Session of the Louisiana Legislature authorized the City to impose an occupancy tax on short-term rentals, not to exceed six and three-quarters percent of the rent or fee charged for such occupancy, provided a proposition authorizing the levy of the tax was approved by a majority of the electors of the city (referred to as the Short-Term Rental or STR Occupancy Tax):

WHEREAS, on November 16, 2019, pursuant to City Council Resolution No. R-19-308, a majority of the electors of the city authorized the levy of the STR Occupancy Tax;

WHEREAS, the City has or will adopt an ordinance to impose the STR Occupancy-Tax, with proceeds to be dedicated to the infrastructure fund of the City pursuant to Act 169;

WHEREAS, the City has or may authorize or provide for additional means of generating revenue, including without limitation, sources of funds commonly referred to as the Local Privilege and Lost Penny, whose proceeds are to be used for the Infrastructure Maintenance Fund as provided in the City Code of New Orleans, Sections 70-415.278 through 70-415.282, as may be amended;

WHEREAS, on August 6, 2019, the Mayor signed Executive Order LC 19-02, creating the Infrastructure Advisory Board ("**Advisory Board**") to review the Board's spending of IMF funds and to provide related recommendations;

WHEREAS, the City and the Board desire to enter into a cooperative endeavor agreement for the purpose of establishing the procedures, requirements, and reporting obligations for transfers and use of IMF funds by the Board;

WHEREAS, the City and the Board agree that their mutual goals and objectives satisfy a legitimate and objective public purpose as the transfer and use of IMF funds by the Board will serve to improve and maintain the water, sewer, and drainage infrastructure for the City of New Orleans, and in turn improve the health, welfare, and safety of the citizens of New Orleans;

WHEREAS, the Board will use IMF funds in accordance with applicable requirements and restrictions to build and maintain water, sewer, and drainage infrastructure; and

WHEREAS, the City will remit authorized IMF funds to the Board for use on allowed activities.

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

ARTICLE I - THE BOARD'S OBLIGATIONS

A. Reporting

1. **Finances**. The Board will submit to the Advisory Board and City:
 - i. A complete and detailed written accounting of revenues and expenditures made pursuant to this Agreement at least five working days before each Advisory Board meeting (or at such other time as reasonably requested by the Advisory Board or City). Each accounting will cover the previous quarter or the period of time since the last accounting was provided to the Advisory Board, whichever is greater.
 - ii. A complete and detailed year-end written accounting of revenues and expenditures made pursuant to this Agreement, which is due on or before June 30 of each year. The records must include, at a minimum, sufficient detail to allow for compliance with City Code Section 70-415.281;
 - iii. Any additional documentation, including supporting documentation, financial information, or project related information requested by the Advisory Board; and
 - iv. Any additional documentation requested by the City.
2. **Completed Work**. At each Advisory Board meeting, the Board will provide a review of the work completed in the previous quarter with the use of IMF funds. The Board and Advisory Board will coordinate so that the Board can provide an adequate level of detail regarding the review of completed work.

3. **Future Work.** At each Advisory Board meeting, the Board will provide a summary of work planned for the upcoming quarter with the use of IMF funds. The Board and Advisory Board will coordinate so that the Board can provide an adequate level of detail regarding the planned work.

B. Board Obligations. The Board will, in addition to the above, perform or cause to be performed the following:

1. Only expend or use IMF funds in accordance with City Code Section 70-415.279, as may be amended from time to time.
2. Only expend or use IMF funds in accordance with any additional restrictions, of whatever nature, imposed or related to specific funding sources for the IMF. When the City becomes aware of any new restrictions, it will promptly notify the Board in writing of such restrictions, when such restrictions will become effective, and the funds so restricted (if less than the entire amount provided to the Board).
3. Obtain all required governmental regulatory reviews and approvals required in connection with the particular project.
4. As applicable, comply with pertinent local and state laws concerning the bidding of work and the expenditure of public funds by the City, including, but not limited to, La Rev. Stat. § 38:2212, *et seq.*, and award projects to the lowest responsive and responsible bidder in accordance with the Louisiana Public Bid Law, and on request provide the City with documentation of the process used in obtaining design or construction bids;
5. Provide all documentation reasonably requested by the Advisory Board or City to show funds were expended in compliance with this Agreement and any applicable local, state, and federal regulations and statutes, notwithstanding any approved waivers, that are applicable to the use of said funds;
6. As requested by the Advisory Board or the City, allow periodic access during normal business hours to the sites by Advisory Board or City representatives to review progress of any work;

C. Board Representations & Warranties. The Board will represent and warrant that:

1. The Board has not employed or retained any entity or person, other than a bona fide employee or professional working solely for the Board, to solicit or secure this Agreement nor has the Board paid or agreed to pay any entity or person, other than a bona fide employee, any gift, commission, percentage, brokerage or any other such fee for the purpose of assisting the Board in securing this Agreement. The Board acknowledges its understanding that any gifts made or fees paid in contravention of this representation and warranty shall be considered bribery pursuant to City Code Section 70-509 and shall subject the offender to criminal penalties in addition to suspension from participation in the City contracting process for a period of not less than three years. The execution of this Agreement by the Board's duly authorized representative shall be deemed a sworn statement

by the Board of its compliance with this representation and warranty, as required by City Code Section 46-51;

2. The Board, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding and enforceable against the Board in accordance with its terms;
3. The Board is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit, or impair in any way its performance of any obligations hereunder;
4. The Board has the requisite expertise, qualifications, and staff to enable it to fully perform its obligations under this Agreement;
5. As of the Effective Date of this Agreement, the Board has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations, or its ability to fulfill its obligations under this Agreement;
6. The Board is not in breach of any federal, state, or local statute or regulation applicable to the Board or its operations that would materially affect the Board's obligations under this Agreement;
7. The Board, to the best of its ability, will complete, or cause to be completed, delivery of the selected projects in accordance with information presented to the Advisory Board; and
8. The Board 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.

D. Reliance on Representation, Warranties, and Covenants. All representations, warranties, covenants, and agreements made in this Agreement are intended to be material and shall be conclusively deemed to have been relied upon by the received party.

ARTICLE II - ADVISORY BOARD

A. Administration. The Advisory Board will:

1. Review Board overviews of future work.
2. Review Board reports of work completed.
3. Make recommendations to the Board and City regarding the Board's receipt and expenditure of IMF funds.
4. Hold all meetings in accordance with its own rules and by-laws, as well as state law regarding public meetings.

B. Reporting. The Advisory Board will:

1. Provide quarterly reports of its activities to the City and the Board.
2. Provide to the City quarterly and year-end reports on the Board's administration of IMF funds, which shall include at a minimum a complete and detailed written

accounting of revenues and expenditures of IMF funds made pursuant to this Agreement.

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Department of Public Works;
2. Monthly remit IMF funds to the Board, as provided in Article IV – IMF Fund. Such remittance may occur via electronic transfer. Required supporting documentation shall include at least Advisory Board minutes reflecting the Board's proposed plan of work, a monthly invoice submitted electronically via the City's supplier portal, and the anticipated amount of funds approved for use by the Board. The City may request any additional documentation necessary to justify or confirm any past or proposed transfer of funds.

ARTICLE IV- IMF FUND

A. Overview.

1. Of the revenue deposited into the IMF, seventy-five percent will be made available to the Board. The remaining twenty-five percent of revenue deposited into the IMF will remain with the City for use by the City's Department of Public Works.
2. The City may deposit and use other funds in the Infrastructure Maintenance Fund that are not part of the sub-account named Sewerage and Water Board (IMF). Funds not placed in the sub-account named Sewerage and Water Board (IMF) shall not be included in, shall not be considered, and are not part of the funds to be split 75/25 between the Board and City.
3. IMF funds will be provided to the Board on a regularly occurring monthly basis, subject to the requirements of this Article IV. However, only funds received by the City, deposited in the IMF, allocated by the City Council, and properly made available to the Board will be subject to transfer. This Agreement creates no right in the Board to any future funds that may be placed in the IMF or that could be allocated to the Board.

B. Requirements and Limits on Funds:

1. No City funds are obligated to the Board or for Board projects as a result of this Agreement. The Parties agree the following listed conditions shall be suspensive conditions to any payments, partial or full, from City to the Board: allocation of funds by the City Council; compliance with all other notification, reporting, and restrictions on IMF funds; and availability of funds in the IMF. All risk of non-payment, for any reason, shall be exclusively borne by the Board.
2. The Board acknowledges that no part of this Agreement will constitute a warranty to the Board of any eligibility or right to IMF funds.
3. **Limitation on Available Funding.** The City will not be liable for any costs or expenses paid or incurred by the Board in excess of the amounts properly transferred to the Board under this Agreement, except as may be specifically set

forth in a duly authorized amendment. The Board agrees to provide or obtain all funding for its projects not provided by the IMF funds.

4. **No Payment for Services Beyond Scope of Agreement.** Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request the Board to provide services that would result in the performance of services beyond the scope of this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such services and/or expenditures. The City shall not be required to reimburse or compensate the Board for any services that are provided by the Board that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto.

C. **Non-Compliance.** If the City determines the Board's expenditures, in whole or in part, were not in accordance with any restrictions on IMF funds, then the City expressly reserves its rights to any available remedy, including without limitation, the rights to seek return of all or part of the IMF funds provided to the Board and to cease any future transfers of the IMF funds. In the event of the Board's non-compliance, the City will provide the Board written notice of such non-compliance and 30 days to cure the non-compliance, or, if such non-compliance cannot be cured within 30 days, the Board will be permitted 30 days to provide the City a plan to cure such non-compliance. If the non-compliance is such that a plan to cure is required, the Board shall be obligated to proceed with its plan in a commercially expeditious fashion at all times.

ARTICLE V- MAINTENANCE AND OPERATION

Following completion of projects, the Board, at its sole cost and expense, shall maintain the completed projects in first class condition, good working order, and free from defects. Following completion of projects, the Board shall be fully responsible for the condition and operation of the completed projects.

ARTICLE VI- DURATION AND TERMINATION

A. **Term.** The term of this agreement shall be for 5 years from the Effective Date, subject to Art. XII(V) (Survival of Certain Provisions).

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 or Board may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of the termination at least 30 calendar days before the intended date of termination.

D. **Termination for Cause.** The City or Board may terminate this Agreement for cause by providing written notice to the other party of such cause and 30 days to cure the cause, or, if such cause cannot be cured within 30 days, the other party will be permitted 30 days to provide a plan to cure such cause. If the cause is such that a plan to cure is required, the party shall be obligated to proceed with its plan in a commercially expeditious fashion at all times. "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. If a termination for cause is subsequently challenged in a court of law and the City 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 Board or City; no further notice will be required.

E. **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds by the City, 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 VII - INDEMNITY

A. **Board's Duty to Indemnify the City.** To the fullest extent permitted by law, the Board will protect, defend, indemnify, and hold harmless the City, its agents, elected officials, employees, insurers, self-insurance funds, and assigns (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, actions, liabilities, losses, or costs, arising out of or related to: (a) any actual or alleged act or omission in the performance of this Agreement by the Board, its employees, contractors, subcontractors, vendors, agents, or assigns, or (b) any act outside the scope of this Agreement by the Board, its employees, contractors, subcontractors, vendors, agents, or assigns. The Board will also be responsible for, and will protect, defend, indemnify, and hold harmless the Indemnified Parties from any claims, actions, administrative proceedings, penalties, fines, loss of funds, or reimbursements, arising out of or in any way relating to the Board’s receipt or use of funding under this Agreement.

B. **Limitation.** The Board’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 Board nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. **Independent Duty.** The Board 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 Board is ultimately absolved from liability.

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

ARTICLE VIII- INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Board shall maintain or require their contractor to provide the following insurance in full force and effect for the duration of the work under this Agreement. The Board shall retain the right to self-insure for any and/or all of the following required insurance coverages:

1. **Minimum Requirements:**

- i. **Commercial General Liability (CGL):** Including contractual liability insurance, products and completed operations, personal injury, bodily injury, property damage, advertising injury, abuse and molestation, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000

each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form.

- ii. Workers' Compensation: as required by the State of Louisiana, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- iii. Professional (Errors and Omissions) Liability Insurance: Insurance appropriate to the Contractor's profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six months.

- iv. Automobile Liability Insurance: Using Insurance Services Office (ISO) Form Number CA 00 01 or its substantial equivalent including liability coverage for all autos owned, rented, hired or borrowed as well as liability for mobile equipment subject to compulsory insurance or financial liability laws or other motor vehicle insurance laws with limits of not less than \$1,000,000 per accident for bodily injury or property damage. If applicable, policy to include the Broad Form Transportation Pollution Form CA 99 48, or most current form available.
 - v. Umbrella Insurance: Limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance in the amount of not less than \$5,000,000.
 - vi. Crime Insurance: Contractor shall maintain coverage to include but not limited to employee dishonesty, forgery or alteration, on premises, computer crime/fraud with limits of not less than the total of all funds received by S&WB per year.
2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
- i. Additional Insured Status. The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's 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) CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein.

The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06-City Hall, New Orleans, LA 70112.

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

- ii. Primary Coverage. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor's coverage.
 - iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract 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.
 - iv. Waiver of Subrogation. The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
 - v. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except with prior notice to the City of no less than 30 days.
 - vi. 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.
 - vii. The obligations of the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the contract/agreement.
3. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 - Ref.: CEA) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:
- i. Copies of all policies of insurance, including all policies, forms, and endorsements;
4. Without notice from the City, the Contractor will:
- i. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 - ii. 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.

ARTICLE IX - RETENTION, ACCESS, AND OWNERSHIP OF RECORDS

A. **Retention.** The Board agrees to keep all such business records related to, or arising out of, this Agreement as would be kept by a reasonably prudent practitioner of the Board's profession for a period of three (3) years after the termination of this Agreement, or such longer period of time required by the City. All accounting records shall be maintained in accordance with generally accepted principles and practices.

B. **Right to Audit; Access.** At any time during normal business hours, upon receipt of reasonable notice and as often as the City may deem necessary, the Board shall make all data, records, reports, and all other materials relating to this Agreement available to the City for examination and copying.

C. **Ownership.** All data collected and all products of work prepared, created, or modified by the Board in the performance of this Agreement, including, without limitation, any and all plans, 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, and any related intellectual property, but excluding the Board's personnel and administrative records and any proprietary tools, systems, and information used by the Board to perform the services under this Agreement (collectively, "**Work Product**") will be the exclusive property of City and the City will have all right, title, and interest in any Work Product, including, without limitation, the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Board's consent and for no additional consideration to the Board

ARTICLE X – HIRENOLA PROGRAM

The Board agrees to abide by City Code sections 70-496, *et seq.*, to demonstrate good faith efforts to fully carry out the applicable requirements of the HireNOLA Program as defined in the City Code. If the Board fails to comply with the requirements of the HireNOLA Program during the term of the Agreement, said failure may result in termination of the Agreement or pursuit of other remedies.

ARTICLE XI – NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Board (1) will not discriminate against any employee or applicant for employment because of race, color, religion, 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 Board's employees are treated during employment without regard to their race, color, religion, 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, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry,

B. Non-Discrimination. In the performance of this Agreement, the Board 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 Board in any of the Board'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 Board. The Board 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 Board will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

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

ARTICLE XII - 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:

Director
Department of Public Works
City of New Orleans
1300 Perdido Street, Suite 6W03
New Orleans, LA 70112

&

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

2. To the Board:

Ghassan Korban
Executive Director
Sewerage and Water Board of New Orleans
625 St. Joseph Street
New Orleans, LA 70165

&

Special Counsel
Sewerage and Water Board of New Orleans
625 St. Joseph Street
New Orleans, LA 70165

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 XIII - 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 Board's interest in it are not assignable or transferable without a validly executed written amendment hereto. This Agreement shall inure to and be binding upon the parties hereto and their respective successors and permitted assigns.

C. **Voluntary Execution.** The parties have read and fully understand the terms, covenants, and conditions set forth in this Agreement and are executing the same willingly and voluntarily of their own volition.

D. **Acknowledgment of Exclusion of Workers' Compensation Coverage.** The Board 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 Agreement, that the City shall not be liable to the Board 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 Board shall not be considered an employee of the City for the purpose of Workers' Compensation coverage.

E. **Waiver of Benefits.** The City and the Board each agree and understand that the Board, acting as an independent agent, or its respective employees shall not receive any sick or annual leave, health or life insurance, pension, or other benefits from the City.

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

G. **Choice of Law.** Any dispute arising from or relating to this Agreement or the performance of any obligations under 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.

H. **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement or in connection with any of its provisions, the prevailing party shall be entitled to an award for the attorneys' fees and the costs and expenses incurred therein in addition to any other right of recovery.

I. **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 Board 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.

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. Fiscal Funding for the City's Obligations. The fulfillment of the City's obligations under this Agreement are contingent upon the availability of funds to fulfill such obligations. If, for any reason, funds are no longer available to provide for the support of this Agreement, the Agreement shall terminate without further penalty to the City. If this Agreement is terminated due to insufficient funds, the Board shall be notified in writing of the same prior to termination.

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-Solicitation Statement. The Board has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Board 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.

O. 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 constitute a waiver of either party's right to insist upon such compliance, exercise such right, or seek any available remedy with respect to that default, breach, or defective performance, or any prior, contemporaneous, or subsequent default, breach, or defective performance.

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

Q. 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.

R. **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.

S. **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 of the Agreement.

T. **Survival of Certain Provisions**. All representations and warranties and all obligations concerning insurance, records 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.

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

ARTICLE XIV - COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XV- 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.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 20____

FORM AND LEGALITY APPROVED:

Law Department

By: _____
Printed Name: _____

SEWERAGE AND WATER BOARD OF NEW ORLEANS

BY: _____
GHASSAN KORBAN, EXECUTIVE DIRECTOR

Signed on this of _____, 20____

FORM AND LEGALITY APPROVED:

Special Counsel

By: _____
Printed Name: _____