

COOPERATIVE ENDEAVOR AGREEMENT BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND
AGENDA FOR CHILDREN, INC.
AND
THE ORLEANS PARISH SCHOOL BOARD

THIS COOPERATIVE ENDEAVOR AGREEMENT (the "**Agreement**") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), Agenda for Children, Inc., represented by Jennifer Roberts, Chief Executive Officer ("**Agenda**"), and the Orleans Parish School Board, represented by Board President, Olin G. Parker ("**OPSB**"). The City, Agenda, and OPSB may sometimes each be referred to as a "**Party**" or collectively as the "**Parties**." The Agreement is effective as of the April 30, 2022, date of passage of the Early Childhood Education Proposition (the "Proposition") by the voters of Orleans Parish (the "**Effective Date**").

RECITALS

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

WHEREAS, Agenda is a non-profit corporation, which principal address is located at 8300 Earhart Blvd., Suite 201, New Orleans, Louisiana 70118;

WHEREAS, OPSB is a political subdivision of the State of Louisiana, with a principal address located at 2401 Westbend Parkway, Suite 5055, New Orleans, LA, 70114.

WHEREAS, Agenda and OPSB serve as co-lead agencies for the New Orleans Early Education Network ("**NOEEN**"), which serves as the lead agency recognized by the Louisiana Department of Education for the coordination of early care and education services in Orleans Parish;

WHEREAS, NOEEN is a Louisiana non-profit corporation, whose principal address is located at 8300 Earhart Blvd., Suite 201, New Orleans, Louisiana 70118 which is guided by the NOEEN Steering Committee, which includes representation from Agenda, the City, OPSB, and other early childhood education stakeholders and serves as an expert advisory panel for the administration of early childhood education services in Orleans Parish;

WHEREAS, in the New Orleans area, an estimated 70% of low-income children under age four don't have access to high quality early childhood education;

WHEREAS, to address this need, the City of New Orleans, Agenda, OPSB, and members of the early education community have worked together since 2017 to provide access to free, quality care through NOEEN's City Seats Program;

WHEREAS, the NOEEN City Seats Program is driven by three goals, including: increasing access to early learning, improving the overall quality of participating early learning centers, and providing wraparound supports to caregivers and families;

WHEREAS, OPSB will run a coordinated enrollment process, so that families can use a single

online application to apply for most publicly funded seats in an early childhood education program, whether that program is located in a school, early learning center, or Head Start;

WHEREAS, pursuant to the provisions of the Resolution 22-19 passed by the New Orleans City Council on January 6, 2022, subject to the approval of the State Bond Commission and pursuant to the authority conferred by Article VI, Section 26 of the Constitution of the State of Louisiana of 1974, a special election will held on Saturday, April 30, 2022, whereby qualified voters will be asked to approve a special tax of 5 mills on all taxable property within Orleans Parish for a period of twenty years (January 1, 2023 through December 31, 2042), with all tax proceeds dedicated exclusively to programs and capital investments that provide childcare and educational opportunities for Orleans Parish children who have not yet entered kindergarten, and with an estimated collection during the initial year of \$21,274,959 (“**Special Tax**”);

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 and OPSB 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, Agenda, and OPSB desire to accomplish a valuable public purpose of providing young children with access to early childhood education programs;

WHEREAS, the City will fund the enrollment of children into early childhood education programs and the expansion of the coordinated early childhood education system in Orleans Parish with the Special Tax and pay Agenda and OPSB for these services, as described more fully below in Article III Section A and

WHEREAS, Agenda and OPSB will coordinate and facilitate the education of up to 1,000 children beginning with the 2023-2024 school year and no fewer than 1,000 children up through three years of age annually thereafter.

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

ARTICLE I- AGENDA’S OBLIGATIONS

A. Agenda will:

1. Pursuant to this Agreement, work with OPSB to facilitate the enrollment of up to 1,000 students beginning with the 2023-2024 school year and no fewer than 1,000 students annually, thereafter, aged 0-3 years old, who reside in Orleans Parish into City Seats programs across the City that meet the performance and quality requirements as defined annually through NOEEN’s Coordinated Funding Request (“**CFR**”) process;

2. Coordinate and subcontract early learning services in qualified programs for students per enrolled in the City Seats program;

3. Coordinate and subcontract comprehensive services for participating children and families, including social work, infant and early childhood mental health consultation, health screenings, professional development for participating teachers, and ensure privacy of all data;

4. Work in collaboration with the City and the NOEEN Steering Committee to design, develop, and implement programs and partnerships to expand the capacity of early childhood programs to serve more children with quality seats through center startup and expansion grants, and programming to recruit, train, and retain a qualified early childhood teacher workforce, in accordance with an annual spending plan approved first by the City and then by the NOEEN Steering Committee;

5. Seek and secure funding from other sources to cover any and all additional costs, exceeding the maximum amount of compensation payable by the City;

6. Work in collaboration with OPSB to submit an enrollment update including program name, seat allocations, and age distributions to the City at the start of each program year and in each monthly invoice;

7. List the City and OPSB as supporters and collaborators of Agenda and NOEEN in all promotional materials related to the project, including on Agenda's website, and work with the City's and OPSB's communications teams, as needed;

8. Provide monthly progress reporting, and a final report, to the City;

9. Provide an annual report to the City that details all services accomplished hereunder, the use of funds received in connection with this Agreement by both Agenda and OPSB, and confirmation that all funds were used for the intended purpose(s);

10. Continue to collaborate on City initiatives related to this Agreement as directed by the City, including its Office of Youth and Families;

11. Present to the City Council annually during its budget hearings about the accomplishments of the program over the past year and plans for the coming year; and

12. By September 1st of each year, submit a proposed annual plan and budget presentation for the provision of all of Agenda's services under this Agreement, including annual goals and performance measures, for the review and annual approval first by the City and then NOEEN's Steering Committee.

ARTICLE II- THE CITY'S OBLIGATIONS

A. The City will:

1. Designate the Office of Youth and Families (the "**Department**") as the City's official point of contact for the terms and obligations under this agreement;

2. Provide funding as set forth herein;

3. Provide quarterly updates on tax collections and available funds from the Proposition to all parties and the NOEEN Steering Committee; and

4. Provide access to Department personnel and communications resources to discuss, promote, and provide the required services during normal working hours, as requested by Agenda and OPSB.

ARTICLE III- OPSB'S OBLIGATIONS

A. OPSB will:

1. Engage with Agenda to develop and implement a coordinated enrollment plan to enroll up to 1,000 children beginning with the 2023-2024 school year and no fewer than 1,000 students annually, thereafter, aged 0-3 years old, per year who reside in Orleans Parish into early education programs across the City that meet the performance and quality requirements as defined annually through NOEEN's Coordinated Funding Request ("CFR") process;

2. Design and implement an annual coordinated enrollment information campaign, eligibility determination, and application process that matches families based on their preference with available publicly funded early education programs, including City Seats Program partners;

3. Plan and participate in information and enrollment events and outreach campaigns to promote the City Seats program to families that are conducted on behalf of Parties;

4. Be jointly responsible with Agenda for submitting an enrollment update including program name, seat allocations, and age distributions to the City at the start of the program year and in each monthly invoice;

5. Collaborate with Agenda to develop and implement a single preliminary eligibility determination process that informs families of the programs for which they may be eligible to apply;

6. Provide at least three/minimum of 3 FTE or equivalent (unless otherwise agreed to in writing by the Directors of the Parties, whose consent will not be unreasonably withheld, conditioned, or delayed) who are dedicated to assisting families in navigating the early childhood enrollment process, which includes the identification and prioritization of their options; expeditious assembly, production and verification of eligibility verification documents for all families; and the acceptance and transition of families into a specific early care and education program, so long as space is available;

7. Implement and maintain a coordinated application that allows families to indicate/rank their preference for programs and is used year-round by all NOEEN programs;

8. Collaborate with Agenda to design, review, and revise the application on an annual basis, as necessary;

9. Collaborate with all program partners to develop and maintain a waitlist of unserved children who are eligible for the program with family preferences noted and actively manage this waitlist so that as spaces become available, families are notified of their availability and enrolled in the program;

11. Work with Agenda to inform monthly enrollment and progress reports, an annual report to the City that details all services accomplished hereunder, the use of funds received in connection with this Agreement, and confirmation that all funds were used for the intended purpose(s), and a final report, as set forth in Article III of this Agreement;

12. List the City and Agenda as supporters and collaborators of NOEEN in all promotional materials related to the project, and work with the City's and Agenda's communications teams, as needed;

13. Present to the City Council annually during its budget hearings about the accomplishments of the program over the past year and plans for the coming year; and

14. By September 1st of each year, submit a proposed annual plan and budget for the provision of all of OPSB's services under this Agreement for the annual review and approval first by the City and then NOEEN's Steering Committee.

ARTICLE IV- FUNDING OR COMPENSATION

A. Student Enrollment and Programmatic Amount. The City shall pay Agenda to coordinate and subcontract early learning services in qualified programs for students enrolled in the City Seats program at the rate of \$1,000.00 per student per month, or \$12,000.00 per student per annum. The City shall pay Agenda advance payments of \$3,000,000 on April 1, 2023, and July 1, 2023. The City shall pay Agenda a third quarterly payment on October 1, 2023, of \$4,000,000, which will be used to coordinate and subcontract early learning services in qualified programs for students enrolled in the City Seats program for the first four months of 2024. Beginning in 2024 and all subsequent years, the City shall pay Agenda advance payments of \$4,000,000 on April 1, July 1, and October 1 of each year.

B. Comprehensive Services. The City shall pay Agenda to coordinate and subcontract comprehensive services for participating children and families, including social work, infant and early childhood mental health consultation, health screenings, professional development for participating teachers, and ensure privacy of all data at a rate of \$208.33 per student per month for services performed in accordance with the terms and conditions set forth herein. The City shall pay Agenda advance payments of \$624,990 on April 1, 2023, and July 1, 2023. The City shall pay Agenda a third quarterly payment on October 1, 2023, of \$833,320, which will be used to coordinate and subcontract early learning services in qualified programs for students enrolled in the City Seats program for the following calendar year. Beginning in 2024 and all subsequent years, the City shall pay Agenda advance payments of \$833,320 on April 1, July 1, and October 1 of each year.

C. Family Navigation and Engagement Support. The City shall pay OPSB to provide dedicated staffing to assist families in navigating the early childhood enrollment process, which includes the identification and prioritization of their options, assembly and production of eligibility verification documents, and the acceptance and transition into a specific early care and education program at a rate of \$500 per student who receives a seat in the City Seats Program annually.

D. Coordinated Enrollment. The City shall pay OPSB to design and implement an annual coordinated enrollment information campaign, eligibility determination, and application process that matches families with available publicly funded early education programs based on preference at a rate of \$1,000.00 per student who receives a seat in the City Seats Program annually. The City shall pay OPSB a one-time payment of \$500,000 on April 1, 2023 to launch a citywide marketing and outreach campaign to support the enrollment of eligible families in available publicly funded early education programs. OPSB will design and develop the marketing and outreach campaign with the City.

E. Capacity Building to Expand Quality. The City shall pay Agenda to work in collaboration with the NOEEN Steering Committee and the City to design and implement programs and partnerships to expand the capacity of early childhood programs to serve more children with quality seats through center startup

and expansion grants, and programming to recruit, train, and retain a qualified early childhood teacher workforce, in accordance with an annual spending plan approved first by the City and then by NOEEN's Steering Committee. In addition, the City shall pay Agenda a one-time payment of \$1,890,000 on April 1, 2023, to support the services mentioned in Article IV, Section E.

F. Administrative Cost and Evaluation Amount. The City shall pay Agenda a maximum monthly amount of \$85,413.25 for administrative costs to administer the program, manage compliance and reporting, and contract with an external evaluator to evaluate the program.

G. Amendments to Approved Spending Plan. First the NOEEN Steering Committee and then the City shall approve any amendments to the approved spending plan in accordance with available funds as required by Article II.A.3 or based on additional needs as identified by the Parties.

H. Maximum Amount. The maximum amount funded by the City under this Agreement shall be the amount of the Special Tax.

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, Agenda's and OPSB's 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 Agenda or OPSB any other charges or fees and Agenda and OPSB will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

3. Agenda and OPSB 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.

I. Payment. Unless otherwise agreed to by the City, the payment terms are NET 30 days upon Agenda's and OPSB'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, provided however the City is in receipt of property tax revenue from the Special Tax. The City will immediately information all parties once the City is in receipt of property tax collections. If there are any delays with the property tax collection process, the City will promptly inform the parties of the delay. The City will make payments to Agenda and OPSB at the rate of compensation established in this Agreement based upon Agenda's and OPSB's certified invoices, except:

1. The City's obligation to pay is contingent upon Agenda's and OPSB's: (a) submission of a complete and accurate invoice to the City; (b) performance of the services and conditions in accordance with the terms of 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 Agenda or OPSB against any amounts deemed by the City to be owed to the City by Agenda and OPSB pursuant to this Agreement; and

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

J. 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, Agenda and OPSB shall reimburse the City or disgorge anything of value or economic benefit received from the City if Agenda or OPSB fail to meet their contractual obligations.

K. Invoices.

1. Agenda and OPSB shall each submit monthly invoices (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for the work performed and the deliverables accomplished under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. At a minimum, each invoice must include the following supporting documentation:

- a. Contract or Purchase Order number issued by the City;
- b. The name of the city department to be invoiced (i.e., Office of Youth and Families);
- c. A short description of the work performed or the reason of payment, including a reference to the associated deliverable; and
- d. Monthly enrollment reports, progress reports after receiving reasonable advance notice from the City, and the annual report with the December invoice each year.

2. All invoices must be signed by an authorized representative of Agenda or OPSB under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

4. Invoices and any supporting documentation must also be submitted via mail, email, or fax to:

Emily Wolff, Director of the Office of Youth and Families
City of New Orleans
1300 Perdido Street, Suite 4W09 New Orleans, La 70112

Fax: 504-658-8633
Email: Emily.wolff@nola.gov

ARTICLE V - DURATION AND TERMINATION

A. Term. The term of this Agreement shall be for 5 years 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 funding continues to be available through the collection of the Special Tax.

C. Termination for Cause. Any party may terminate this Agreement immediately for cause by sending written notice to the other Parties. "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, or the ballot language from the Proposition which is not cured within 60 days after notice is given by the aggrieved party.

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

E. Termination of NOEEN's Lead Agency Status. In the event of a change in the lead agencies for NOEEN, this Agreement shall be terminated with at least six months' notice to allow for transition of the program to the new state-recognized lead agency.

ARTICLE VI-INDEMNITY

A. To the fullest extent permitted by law, Agenda 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 Agenda, 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 Agenda in connection with the performance of work under this Agreement.

B. To the fullest extent permitted by law, OPSB 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 OPSB, 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 OPSB in connection with the performance of work under this Agreement.

C. Limitation. Agenda's and OPSB's indemnity is not joint, several or in solido, and does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither Agenda, OPSB nor any of its agents or employees contributed to such gross negligence or willful misconduct.

D. Independent Duty. Agenda and/or OPSB, to the extent permitted by Law, as the case may be, 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) Agenda or OPSB is ultimately absolved from liability.

E. Expenses. Notwithstanding any provision to the contrary, Agenda, as the case may be, 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 VII - INSURANCE

A. Except as otherwise noted and as permitted by law, at all times during this Agreement or the performance of work required by this Agreement, Agenda and OPSB shall each 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 Agenda's and OPSB's respective scopes of work under the Agreement.

B. If Agenda and OPSB 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 Agenda and OPSB. 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. Commercial General Liability (CGL).** Insurance Services office Form, covering CGL on an "occurrence" basis, including, products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000.00 per occurrence.
- b. Abuse and Molestation Coverage.** Either by endorsement to the CGL Policy or by separate policy with limits no less than \$1,000,000.00 per claim.
- c. 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 \$1,000,000.00 per accident for bodily injury or disease.

Important: The obligations for Agenda and OPSB 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 Agenda and OPSB from any liability incurred as a result of their activities/operations in conjunction with Agenda's and OPSB's obligations and/or Scope of Work.

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

- a. Additional Insured Status:** Agenda, OPSB, 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 Agenda's and OPSB'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).

Agenda and OPSB 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, Agenda's and OPSB'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 Agenda's and OPSB's 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: Agenda, OPSB and their 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: VU, unless otherwise acceptable to the City.

C. Agenda and OPSB 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.: Agenda for Children, Inc. - City Seats or Ref.: OPSB – City Seats) 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.

D. Without notice from the City, Agenda and OPSB 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

E. 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 VIII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of Agenda and OPSB 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 Agenda or OPSB fail to perform according to the Agreement, the City will notify the respective party. If there is a continued lack of performance after notification, the City may declare Agenda or OPSB 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 IX – 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, Agenda 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. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024, using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

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

H. Remedies. If Agenda 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 X – NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, each of Agenda and OPSB agrees that it (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the employees of Agenda and OPSB 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, each of Agenda and OPSB agrees that it 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 Agenda or OPSB in any of Agenda's or OPSB'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 Agenda or OPSB. Agenda and OPSB agree 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. Each of Agenda and OPSB agrees that it will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. Termination. The City may terminate this Agreement for cause as to the defaulting Party if Agenda or OPSB fail to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XI - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. Agenda and OPSB are independent contractors and shall not be deemed an employee, servant, agent, partner, or joint venture of the City or each other and neither will hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City or each other.

B. 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 Agenda's or OPSB's interest in it are not assignable or transferable without the City's prior written consent.

C. Audit and Other Oversight. To the extent permitted by law, Agenda and OPSB will abide by all provisions of City Code § 2-1120, including City Code§ 2-1120(12), which requires Agenda and OPSB to provide the Office of Inspector General with documents and information as requested, but limited to only such information requested and pursuant to this Agreement. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, Agenda and OPSB agree 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) Agenda 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, Agenda 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 Agenda notice of noncompliance and allow Agenda thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, Agenda remains noncompliant, the City may move to suspend payments to Agenda, 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) Agenda 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 Agenda's efforts do not conflict with the City's interests, and in recognition of Agenda's obligations to the City, Agenda 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. Agenda 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 Agenda's performance of this Agreement. The City will make the final determination whether Agenda 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 Agenda or OPSB 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. Agenda complies with City Code§ 2-8(c) and no principal, member, or officer of Agenda 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. Agenda and OPSB each swear 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 Agenda or OPSB 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 Agenda or OPSB being ineligible for any public contract for a period of 3 years from the date the violation is discovered. Each of Agenda and OPSB further acknowledge and agree 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 by it. Agenda and OPSB will each 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 Agenda or OPSB fail 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. Agenda and OPSB consent and yield 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 Agenda or OPSB.

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 Agenda or OPSB 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. Agenda states that it 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. Agenda 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. OPSB states that it 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. OPSB 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. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by Agenda or OPSB 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 Agenda's and OPSB's personnel and administrative records and any tools, systems, and information used by Agenda or OPSB 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 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 Agenda's or OPSB's consent and for no additional consideration to Agenda or OPSB. This paragraph shall not apply to student records or student Personally Identifiable Information ("PII") which is governed, and protected from disclosure, by the Federal Education Records Protection Act ("FERPA") and La. R.S. 17:3914 et seq.

R. 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 Agenda or OPSB, 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 Agenda or OPSB pursuant to this Agreement without regard to Agenda's or OPSB's otherwise satisfactory performance of the Agreement.

S. 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.

T. 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.

U. 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.

V. Subcontractor Reporting. Agenda and OPSB will provide a list of any natural or artificial persons who are retained by Agenda or OPSB at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with Agenda's or OPSB's work for the City pursuant to this agreement. For any subcontractor proposed to be retained by Agenda or OPSB to perform work on this Agreement with the City, Agenda and OPSB must provide notice to the City within 30 days of retaining that subcontractor. If Agenda or OPSB fail to submit the required lists and notices, the City may, after thirty 30 days' written notice to Agenda or OPSB, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are

submitted.

W. **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.

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

ARTICLE XIII – 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 XIV - 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]

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

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 2022.

FORM AND LEGALITY APPROVED:
Law Department

By: _____

Printed Name: _____

AGENDA FOR CHILDREN

BY: _____
JEN ROBERTS, CEO

FEDERAL TAX I.D.

ORLEANS PARISH SCHOOL BOARD

BY: _____
OLIN G. PARKER, BOARD PRESIDENT

FEDERAL TAX I.D.

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[END OF AGREEMENT]