

**COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN**

THE CITY OF NEW ORLEANS

AND

**THE LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,
PUBLIC SAFETY SERVICES, OFFICE OF STATE POLICE, CRIME LABORATORY
FORENSIC SCIENCE PARTNERSHIP**

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 State of Louisiana, Department of Public Safety and Corrections, Public Safety Services, Office of State Police, Crime Laboratory, represented by Colonel Lamar A. Davis, Superintendent (the “**LSPCL**”). The City and the LSPCL 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; and

WHEREAS, the LSPCL is a state agency whose office is located at 376 E. Airport Drive in Baton Rouge, Louisiana 70802; and

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; and

WHEREAS, the City and the LSPCL desire to accomplish a valuable public purpose of establishing a forensic science partnership by providing funding for the outsourcing of DNA cases submitted by the New Orleans Police Department (“**NOPD**”) to the LSCPL for the purpose of analyzing DNA evidence from crimes that occur in the City of New Orleans; and

WHEREAS, the LSPCL will bid out to a qualified private DNA laboratory or multiple laboratories, known as “**outsourcing**”, to analyze forensic DNA evidence related to cases investigated by the NOPD or by agencies within Orleans Parish; and

WHEREAS, the City will compensate the LSPCL for all costs associated with outsourcing DNA evidence related to cases investigated by the NOPD or by agencies within Orleans Parish, including but not limited to the transportation, storage, and analysis of such DNA evidence; and

NOW THEREFORE, the City and the LSPCL, each having the authority to do so, agree

as follows:

ARTICLE I - THE LSPCL'S OBLIGATIONS

The LSPCL will perform the following obligations:

- A. Provide the NOPD with a plan for outsourcing the DNA cases submitted to the LSPCL by the NOPD or any agency within Orleans Parish. The LSPCL will deliver such plan to the NOPD and New Orleans City Council.
- B. Release an Invitation to Bid (ITB) to outsource the analysis of forensic DNA evidence related to cases, investigated by the NOPD or by agencies within Orleans Parish, that have been or will be submitted to the LSPCL. The ITB for a private laboratory or multiple laboratories to analyze the DNA evidence will be in compliance with the technical specifications provided by the LSPCL.
- C. Upon awarding the contract(s) to the selected laboratory or laboratories:
 - 1. The LSPCL will assign and batch selected submitted DNA samples from cases submitted to the LSPCL by the NOPD or agencies within Orleans Parish and ship to the selected laboratory or laboratories.
 - 2. Upon completion of the analysis by the selected laboratory or laboratories, the LSPCL will perform casefile evaluations and technical and administrative reviews of paperwork associated with each case and submit the final report to the NOPD.
 - 3. The LSPCL will enter any applicable/qualifying profile(s) into CODIS and submit the final report to the NOPD as well as all "Hit" notifications.
- D. Submit monthly invoice copies and supporting documentation, including the total number of casefiles or DNA evidence samples processed to date, to the NOPD and the City's Chief Administrative Officer (CAO) for all costs associated with the outsourcing of selected DNA samples from cases submitted to the LSPCL by the NOPD or any agency within Orleans Parish.
- E. The LSPCL will ensure the initial funds provided for the DNA outsourcing project, three million dollars (\$3,000,000.00), are used as follows:
 - 1. The LSPCL will ensure that \$1,500,000.00 will be directed toward the outsourcing of submitted sexual assault kits.
 - 2. The LSPCL will ensure that \$1,500,000.00 will be directed toward the outsourcing of any other cases at their discretion.
- F. The LSPCL will ensure any subsequent funds provided for the DNA outsourcing project will be directed toward the outsourcing of submitted sexual assault kits and/or the outsourcing of any other cases at their discretion.
- G. The aforementioned funding described in Article I, Section (E) and below in Article III, Section (A) will be utilized for:
 - 1. Invoices due from the outsourced laboratories
 - 2. Shipping costs
 - 3. Overtime costs associated with shipping preparation, evidence screening, casefile evaluations, and technical and administrative case reviews.

H. The LSPCL will retain ownership and responsibility for all DNA records generated and entered into CODIS.

ARTICLE II - THE CITY'S OBLIGATIONS

The City will perform the following obligations:

- A. Administer this Agreement through the NOPD;
- B. Pay the LSPCL an initial sum of one million five hundred dollars (\$1,500,000.00) for outsourcing, as specified in this Agreement, upon its execution;
- C. Pay the LSPCL the remaining balance (\$1,500,000.00) of costs, six months after execution of this Agreement. This balance may be disbursed at an earlier date only if the selected, private laboratory or laboratories have returned to LSPCL completed analyses of fifty percent (50%) of the total casefiles contractually assigned to the private laboratory or laboratories;
- D. The payment structure for additional funding will be mutually agreed upon by the Parties and memorialized in a duly authorized amendment.
- E. Unless specifically authorized by a validly executed amendment, the City is not obligated under any circumstances to pay for any work performed or costs incurred by the LSCPL that:
 - 1. Are beyond the scope or duration of this Agreement;
 - 2. Arise from or relate to any change within the scope of this Agreement that is not memorialized in writing; or
 - 3. The City is not expressly obligated to pay under this Agreement.
- F. Direct all communication to the Director of the LSPCL or his designee regarding the outsourcing of selected DNA cases from the NOPD or any agency within Orleans Parish;
- G. The NOPD shall ensure that all cases selected for outsourcing have not already been adjudicated by the Orleans Parish Courts, unless the case has been specifically requested by the Orleans Parish District Attorney, Orleans Public Defenders, Orleans Parish Criminal District Court, or other similar criminal justice agency for the purpose of possible exoneration, and that all cases are still active, meaning the victims and/or the State is still pursuing prosecution;
- H. Abstain from taking or attempting to take operational control and/or supervision over the outsourcing without first contacting the Director of the LSPCL or his designee; and-
- I. Remit payment in accordance with this Agreement to LA DPS Office of State Police, Financial Services (NOPD CEA), P.O. Box 66909, in Baton Rouge, Louisiana.

ARTICLE III - COMPENSATION

A. **Maximum Amount.** The maximum amount payable by the City under this Agreement is \$3,000,000.00. This amount is based on the sum approved by the City Council of New Orleans. Any additional funds approved by the City Council of New Orleans for this purpose will be used pursuant to this Agreement.

ARTICLE IV - DURATION AND TERMINATION

A. **Term.** The term of this Agreement shall commence from the Effective date and shall continue through either the completion of DNA analysis required under Article I or the event of non-appropriation of funds sufficient to maintain this Agreement.

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

C. **Termination for Convenience.** Both Parties 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 thirty (30) calendar days before the intended date of termination.

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

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

ARTICLE V – INSURANCE

A. **Minimum Requirements.** During the term of this Agreement, both Parties acknowledge that the other is self-insured and shall maintain the self-insurance or insurance coverages currently in place.

ARTICLE VI - INDEMNITY

A. To the fullest extent permitted by law, the LSPCL will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the LSPCL, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the LSPCL in connection with the performance of work under this Agreement.

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

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

D. **Expenses.** Notwithstanding any provision to the contrary, the LSPCL 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 - NON-DISCRIMINATION

A. The Parties agree to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and the Parties agree to abide by the requirements of the Americans with Disabilities Act of 1990.

B. The Parties agree not to discriminate in their employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by either of the Parties, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

ARTICLE VIII - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** Both Parties are considered independent contractors in this endeavor and shall not be deemed to be employees, servants, agents, partners, or joint ventures of each other, and neither Party will hold itself nor any of its employees, subcontractors, or agents to be employees, partners, or agents of the other.

B. **Exclusion of Worker's Compensation Coverage.** Neither Party will be liable to the other, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, no person employed by either NOPD or LSPCL will be considered an employee of the other Party for the purpose of Worker's Compensation coverage.

C. **Exclusion of Unemployment Compensation Coverage.** The LSPCL, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the LSPCL nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the Parties, because: (a) the LSPCL has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the LSPCL are outside the normal course and scope of the City's usual business; and (c) the LSPCL has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

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

ARTICLE IX - NOTICE

A. **In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

To the City:

Superintendent of Police
715 S. Broad Street

New Orleans, LA 70119

&

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

To the LSPCL:

Director, Louisiana State Police Crime Lab
Louisiana State Police
P.O. Box 66614, Slot D-3
Baton Rouge, Louisiana, 70896

&

Chief Administrative Officer
Louisiana Department of Public Safety and Corrections, Public Safety Services,
P.O. Box 66614
Baton Rouge, Louisiana, 70896

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. If the intended recipient refuses or avoids delivery, then the date of the first attempted delivery will be deemed as the date of receipt.

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

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

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

E. 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, the LSPCL shall reimburse the City or disgorge anything of value or economic benefit received from the City if the LSPCL fails to meet its contractual obligations.

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F. **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.

G. **Jurisdiction.** Any claim or controversy arising out of this agreement shall be resolved by the provisions of La. R.S. 39:1524-1526. As necessary, the Parties consent and yield to the jurisdiction of the State Civil Courts of the Parish of East Baton Rouge Parish and formally waive any pleas or exceptions of jurisdiction on account of the residence elsewhere.

H. **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.

I. **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.

J. **Non-Exclusivity.** This Agreement is non-exclusive, and the LSPCL 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.

K. **Non-Solicitation Statement.** The LSPCL has not employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The LSPCL has not paid nor 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.

L. **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 nor 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.

M. **Ownership of Records.** All DNA records generated during the course of this Agreement and entered into CODIS are the property of LSPCL, and LSPCL will retain ownership and responsibility for those records. LSPCL will maintain all training documentation, including all written and/practical examinations, competency tests, and moot court evaluations. LSPCL will provide copies of documents upon request from NOPD.

N. **Prohibition of Financial Interest in Agreement.** No elected official nor employee of the LSPCL 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 LSPCL shall be deemed to be a financial interest of such elected official or employee of the LSPCL. Any willful violation of this provision, with the expressed or implied knowledge of the LSPCL, 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 LSPCL pursuant to this Agreement without regard to the LSPCL's otherwise satisfactory performance of the Agreement.

O. **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.

P. **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. If reformation is not possible, the unenforceable provision shall be fully severable, and the remaining provisions of the Agreement shall remain in full force and effect. The remaining provisions of the Agreement shall be construed and enforced as if the unenforceable provision was never a part of the Agreement.

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

R. **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.

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

ARTICLE XI - COUNTERPARTS

A. **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 XII - ELECTRONIC SIGNATURE AND DELIVERY

A. **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 LSPCL, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: [Signature] for
LATOYA CANTRELL, MAYOR

Executed on this 25th of May, 2023.

BY: [Signature]
JEAN PAUL MORRELL, CITY COUNCIL PRESIDENT

Executed on this 16th of May, 2023.

FORM AND LEGALITY APPROVED:
LAW DEPARTMENT

BY: [Signature]

PRINTED NAME: Tracy Lyb

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, PUBLIC SAFETY SERVICES

OFFICE OF STATE POLICE, CRIME LABORATORY

BY: _____
COLONEL LAMAR A. DAVIS, SUPERINTENDENT

FEDERAL TAX I.D.

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

CITY OF NEW ORLEANS

BY: _____
LATOYA CANTRELL, MAYOR

Executed on this _____ of _____, 202__.

BY: _____
JEAN PAUL MORRELL, CITY COUNCIL PRESIDENT

Executed on this _____ of _____, 202__.

**FORM AND LEGALITY APPROVED:
LAW DEPARTMENT**

BY: _____

PRINTED NAME: _____

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, PUBLIC SAFETY SERVICES**

OFFICE OF STATE POLICE, CRIME LABORATORY

BY: Col Lamar A. Davis
COLONEL LAMAR A. DAVIS, SUPERINTENDENT

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