

COOPERATIVE ENDEAVOR AGREEMENT**BETWEEN****THE CITY OF NEW ORLEANS****AND****ORLEANS PUBLIC DEFENDERS****SAFETY AND JUSTICE CHALLENGE ATTORNEYS**

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 Orleans Public Defenders, represented by Derwyn Bunton, Chief District Defender (the “**OPD**” or the “**Department**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of February 1, 2021 (the “**Effective Date**”).

RECITALS

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

WHEREAS, the OPD is a political subdivision of the State of Louisiana and established in compliance with Louisiana Revised Statutes, Title 15, Sections 146 *et seq.*, which provides criminal defense representation to indigent persons accused of committing crimes in Orleans Parish, Louisiana, which principal address is located at 2601 Tulane Avenue, Suite 700, New Orleans, LA 70119;

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

WHEREAS, the City of New Orleans is the recipient of a grant from the John D. and Catherine T. MacArthur Foundation (the “**Grant**”) to participate in the Safety and Justice Challenge (the “**SJC**”), Phase II, the goal of which is to reduce the use of local incarceration by reducing the flow of individuals into jail, shortening lengths of stay in jail, and diminishing racial and ethnic disparities in jail populations without compromising public safety by focusing arrest and release decisions on risk and not financial ability; diverting people with mental health and substance abuse problems toward community-based services; increasing resources at the first appearances including defense advocacy for pretrial arrestees; and improving coordination among all agencies and at all decision points;

WHEREAS, the U.S. Supreme Court in *Rothgery v Gillespie County, Texas*, 554 US 191 (2008) stated “that the right to counsel guaranteed by the Sixth Amendment applies at first appearance before a judge at which a defendant is told of the formal accusations against him and restrictions are imposed on his liberty;”

WHEREAS, research has shown judges are more likely to release defendants on their own

recognizance and are more likely to reduce bonds to an attainable amount when defense counsel is present at first appearance;

WHEREAS, research has shown that for every person given a lawyer at first appearance, 10 bed days may be saved due to earlier release from jail;

WHEREAS, research has shown that defense counsel must be prepared to provide zealous representation and to do so, must be appointed sufficiently in advance of the first bail hearing and given opportunity to verify essential information;

WHEREAS, OPD employs attorneys and client advocates who may interview defendants prior to or at first appearance and prior to bond review hearings to gather information necessary to mounting an argument for release on recognizance or an attainable bail;

WHEREAS, research has shown that lower risk individuals, as scored by risk assessment tools, are neither a flight risk nor threat to public safety and analysis conducted by the City has shown that only 47 percent of lower risk felony defendants are released from the Orleans parish jail within three days of arrest;

WHEREAS, the City and the OPD desire to accomplish a valuable public purpose of reducing the use of local incarceration as part of the Safety and Justice Challenge;

WHEREAS, the OPD will employ two new attorneys and one new client advocate who will be dedicated to providing release advocacy to indigent defendants at first appearances and through case acceptance; and

WHEREAS, the City will provide funds to OPD for the purposes of hiring the two new attorneys and one new client advocate.

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

ARTICLE I – OPD’S OBLIGATIONS

A. OPD. OPD will:

1. Hire two (2) attorneys and one (1) client advocate, and any other additional support staff who will:

i. Provide representation in Magistrate Court to defendants determined to be indigent by a judicial officer “**Clients**”;

ii. Provide representation for Clients at all hearings in Magistrate Court in which a probable cause determination or bail decision will be made for Clients;

iii. Consult within 72 hours of first appearance low to moderate risk Clients who are unable to secure release to ascertain additional information about their employment or disability status, housing, connections to the community, or any mitigating documentation that an attorney may present with Clients’ consent to argue for a lower bond amount at a forthcoming bond review hearing;

iv. Arrange on Clients’ behalf and with Clients’ permission, any admission into housing, substance use, or other needs-based services,

treatment, or programs that the Magistrate Court may order as a condition of release;

v. Request a bond review hearing for Clients who fit the eligibility criteria, as will be defined throughout the course of this work, and advocate for an ROR, where eligible, or a reduced bond;

vi. Exercise discretion to waive a bond review hearing for Clients who are routinely docketed for bond review by the court, as will be established practice throughout the course of this work, given suspicion that a review may harm the Clients' release prospects; and

2. Collaborate with the City each quarter on the following performance measures:

i. If bond review hearings are automatic, the number of bond review hearings withdrawn or waived for low-moderate risk clients. If bond review hearings are not automatic, the number of low to moderate risk clients that do not have bond hearings;

ii. Number of clients at First Appearance, bond review hearing, and other court settings (e.g. probation detention hearings) that received release advocacy from SJC funded staff;

iii. Outcomes of bond review hearings staff by SJC funded staff; and

iv. Reasons provided by court for denial of bond reduction or ROR to extent provided by the Court.

ARTICLE II - THE CITY'S OBLIGATIONS

A. **Administration.** The City will:

1. Administer this Agreement through the Mayor's Office of Criminal Justice Coordination;

2. Assist OPD with ensuring that the attorneys and client advocate funded with this Agreement have the necessary access to their clients during first appearance hearings and for visitation purposes, whether housed in the Orleans Justice Center or in other Parishes. This assistance is limited to coordination with staff at the Orleans Parish Criminal District Court and Orleans Parish Sheriff's Office, and does not include funding for video or phone equipment needed for videoconferencing or transportation;

3. Participate in meetings with criminal justice agency representatives to identify appropriate eligibility criteria for routine bond review hearings;

4. Produce regular reports with data points specific to the performance of this Agreement and others related to the Grant;

i. Number of bond reviews scheduled by court

ii. Number of bond reviews moot because defendant bonded out, case refused or accepted

iii. Number of bond review hearings that proceed as scheduled

iv. Number of days elapsed between First Appearance and bond review hearing

- v. Outcomes of hearings
 - vi. Number of releases following bond review hearings; and
 - vii. Number of days elapsed between arrest and release and bond review hearing and arrest;
 - viii. Eligible population, hearings that proceed as scheduled, successful outcomes of hearings, releases following hearings; and
5. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the OPD.

ARTICLE III – FUNDING

- A. **Maximum Amount.** The maximum amount payable by the City under this Agreement is ONE HUNDRED FORTY-NINE THOUSAND TWO HUNDRED AND TWENTY-EIGHT DOLLARS (\$149,228).
- B. **Reimbursement.** The City will pay OPD through reimbursement for services based on the submission of invoices with supporting documentation at the end of every month during the term of this agreement.
- C. **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.

ARTICLE IV - DURATION AND TERMINATION

- A. **Term.** The term of this agreement shall be for 1 year from the Effective Date.
- B. **Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving the OPD written notice of the termination at least 30 calendar days before the intended date of termination.
- C. **Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. “Cause” includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City’s Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.
- 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.

ARTICLE V - INDEMNITY

- A. **In General.** To the fullest extent permitted by law, the Contractor 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 Contractor, 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 Contractor in connection with the performance of work under this Agreement.

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

C. Independent Duty. The Contractor 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 Contractor is ultimately absolved from liability.

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

ARTICLE VI - INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the OPD will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

a. Minimum Requirements:

- i. Commercial General Liability (“CGL”):
- ii. Worker’s Compensation:
- iii. Professional Liability (Errors and Omissions):

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

- i. Additional Insured Status.
- ii. Primary Coverage.
- iii. Claims Made Policies.
- iv. Waiver of Subrogation.
- v. Notice of Cancellation.
- vi. Acceptability of Insurers.

B. The OPD will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement;
- b. Copy of the fully executed Agreement;
- c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
- d. Statements disclosing any policy aggregate limit.

C. Without notice from the City, the OPD will:

- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- b. 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; and
- c. 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.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the OPD 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 the OPD fails to perform according to the Agreement, the City will notify the OPD. If there is a continued lack of performance after notification, the City may declare the OPD in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII – LIVING WAGES

A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

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

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, 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, the Contractor 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) the Contractor 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) the Contractor 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 (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

H. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE IX – HIRENOLA PROGRAM

The OPD 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 OPD 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 X - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the OPD (1) will not be 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 Contractor'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 OPD 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 OPD in any of OPD'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 Contractor. The OPD 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 OPD 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 OPD fails 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.** The OPD is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to the OPD, 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, any person employed by the OPD will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

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

D. **Waiver of Benefits.** The OPD, 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 XII – FORCE MAJEURE

A. **Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. **Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. **Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
 - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
 - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XIII - 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:

Criminal Justice Commissioner
City of New Orleans
1300 Perdido Street, Suite 8W03
New Orleans, LA 70112

&

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

2. To the Contractor:

Derwyn Bunton
Orleans Public Defenders
2601 Tulane Avenue, Suite 700
New Orleans, LA 70119

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

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

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

E. **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 OPD 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.

F. **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 Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

G. **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.

H. **Jurisdiction.** The OPD consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the OPD.

I. **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.

J. **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.

K. Non-Exclusivity. This Agreement is non-exclusive and the OPD 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.

L. Non-Solicitation Statement. The Contractor 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 Contractor 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.

M. 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.

N. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by the OPD 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 the OPD's personnel and administrative records and any tools, systems, and information used by the OPD 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 with the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the OPD's consent and for no additional consideration to the OPD.

O. 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 OPD, 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 OPD pursuant to this Agreement without regard to the OPD's otherwise satisfactory performance of the Agreement.

P. 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.

Q. 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.

R. **Severability**. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

S. **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.

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

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.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 12th of April, 2021

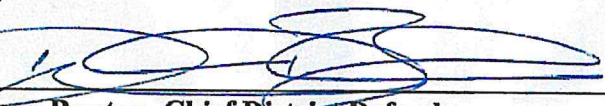
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Turner

OPD

BY: 

Derwyn Bunton, Chief District Defender