

K22-1077

PROFESSIONAL SERVICES AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

THE ORLEANS PARISH SHERIFF'S OFFICE

AND

WELLPATH LLC

RFP 1534

COMPREHENSIVE CORRECTIONAL HEALTH SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (the "**Agreement**") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), the Orleans Parish Sheriff's Office, represented by the Honorable Susan Hutson in her official capacity as Sheriff (the "**OPSO**"), and Wellpath LLC, a Delaware limited liability company authorized to do business in Louisiana, represented by Jorge Dominicus, Chief Executive Officer ("**Wellpath**" or the "**Contractor**"). The City, OPSO and the Contractor may sometimes each be referred to as a "**Party**," and collectively, as the "**Parties**." The Agreement is effective as of June 1, 2022 (the "**Effective Date**").

RECITALS

WHEREAS, on September 29, 2021, the City issued Request for Proposals No. 1534, followed by Addendum No. 1 on October 13, 2021, and Addendum No. 2 on November 18, 2021, seeking a qualified contractor to provide comprehensive correctional health services for the Orleans Parish Sheriff's Office (the "**RFP**"), which is attached separately and fully incorporated herein as Exhibit "A";

WHEREAS, the Contractor submitted a technical proposal ("**Technical Proposal**") dated December 8, 2021, and a cost proposal ("**Cost Proposal**") dated December 8, 2021, both of which are attached separately and fully incorporated herein as **Exhibit "B"** and **Exhibit "C"** respectively; and

WHEREAS, the City selected the Contractor to provide the comprehensive correctional health services described in the RFP.

NOW THEREFORE, the City and the Contractor agree as follows:

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. Services. The Contractor will, in accordance with the schedule approved by the City and the OPSO:

1. Perform all services and obligations as set forth in any the following documents that are attached separately and incorporated fully into this Agreement: a) the RFP; b) Technical Proposal dated December 8, 2021; c) Cost Proposal dated December 8, 2021; and d) Communication and Reporting Requirements, Community Engagement, and Liquidated Damages, which is attached hereto and fully incorporated herein as Exhibit "D", except as otherwise set forth hereinunder relative to Tulane Psychiatry Costs and Staffing Matrix Reconciliations.

2. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement, provided, however that the City shall keep confidential any and all confidential, trade secret, and proprietary information disclosed by the Contractor the City, which complies with the requirements set forth in La. R.S. 44:3.2(D) and which is not otherwise publicly available (other than as a result of a breach hereof). Notwithstanding the foregoing, the City may disclose this information as required by law, subpoena, other court processes, and/or to the extent necessary to enforce this Agreement.;

3. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City or the OPSO, all at no additional compensation;

4. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

5. Perform all requirements set forth in La. R.S. 38:2192, including, without limitation, the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and

6. Cooperate with the City, the OPSO and any person performing work for the City or OPSO.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with any and all applicable professional standards including national, state, and community standards for provision of health care, medical health services, and mental health services.

C. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws, regulations, and ordinances.

D. Schedule.

1. Schedule to Complete and Progress Schedule.

- a. The Contractor will perform all work under this Agreement during the term of this Agreement pursuant to the terms and conditions set forth herein, including, but not limited to the Liquidated Damages provided in Exhibit "D".
- b. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Contractor must submit invoices monthly (unless agreed otherwise between the Parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information:

- a. Name of Contractor;
- b. Date of Invoice;
- c. Invoice Number;

- d. Contract or BRASS Number issued by the City (*i.e.*, K#);
- e. Name of the City Department to be invoiced (*i.e.*, Chief Administrative Office);
- f. Description of the Services completed; and
- g. FEMA or HUD Project Number (*i.e.*, PW#), if applicable.

2. Invoices will be processed in accordance with Article III Section B of the Agreement.

3. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

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

F. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any disputes relating to the Agreement; or (c) 6 years from date of service for medical records. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination, and the Contractor shall implement an orderly return of the City's data in a CSV or another mutually agreeable format at a time agreed to the by the Parties.

2. The Contractor will identify any reporting requirements, including the frequency, methods, and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. Audit and Inspection.

1. The Contractor will submit to any City or OPSO audit, inspection, and review and, at the City's or the OPSO's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors, and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available in Louisiana, the Contractor will make the documents available at a time and location that is convenient for the City or the OPSO.

2. The Contractor will abide by all provisions of City Code Section 2-1120, including, but not limited to, City Code Section 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

2. If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

a. Minimum Requirements:

- i. Commercial General Liability ("CGL"): including products and completed operations, personal & advertising injury, bodily injury, property damage, and abuse and molestation, with limits of liability of not less than \$3,000,000 each occurrence / \$3,000,000 policy aggregate.
- ii. Worker's Compensation & Employers Liability Insurance: in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
- iii. Professional Liability (Medical Malpractice): appropriate to the Contractors profession with limits of liability of not less than \$3,000,000 per occurrence or claim / \$6,000,000 policy aggregate. Coverage shall be sufficiently broad providing coverage against claims which the Contractor becomes legally obligated to pay as damages arising out of the performance of professional services in this agreement.
- iv. Automobile Liability Insurance: with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- v. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.
- vi. Umbrella/Excess Liability: Umbrella/Excess policies must Follow Form of the underlying policies.
- vii. Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.
- viii. The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations.
- ix. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the

Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed the Contractors limits of liability that arise from the performance of work under the Agreement.

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

- i. Additional Insured Status. The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers, as well as OPSO, its departments, political subdivisions, officers, officials, employees, contractors, and volunteers, are to be covered as “Additional Insureds” on the CGL policy and Professional Liability 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 the Contractors 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).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor liability shall be covered by the Contractor. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to (User Department Mailing Address), with a copy forwarded to Risk Management Division, 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.

- ii. Primary Coverage. For any claims caused by the Contractor’s negligent acts or omission, the Contractor’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers, as well as OPSO, its departments, political subdivisions, officers, officials, employees, contractors, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to the Contractor’s coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this

Agreement.

- iv. Waiver of Subrogation. **The Contractor and its insurers agree to waive any right of subrogation** which any insurer may acquire against the City and OPSO by virtue of the payment of any loss under insurance required by this Agreement.
- v. Notice of Cancellation. Each insurance policy required above, except for Professional Liability, shall not be canceled, expire, or altered except without prior notice to the City of no less than 30 days. .
- vi. Acceptability of Insurers. Insurance is to be placed with **insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII**, unless otherwise acceptable to the City.

3. Without notice from the City, the Contractor 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.

4. 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.

I. Indemnity.

1. The Contractor agrees to indemnify and hold harmless the OPSO and the City, their officials, agents, and employees from and against any and all claims, actions, lawsuits, damages, judgments, or liabilities of any kind whatsoever caused by, based upon or arising out of any act, conduct, misconduct or omission of the Contractor, its agents, employees, or independent contractors in connection with the performance or non-performance of its duties under this Agreement. The OPSO and the City agree to indemnify and hold harmless the Contractor, its officials, agents, and employees from and against any and all claims, actions, lawsuits, damages, judgments, or liabilities of any kind whatsoever caused by, based upon or arising out of any act, conduct, misconduct or omission of OPSO or the City, its agents, employees, or independent contractors. The OPSO and the City, as the case may be, agree to promptly notify the Contractor in writing of any incident, claim or lawsuit of which it becomes aware and shall fully cooperate in the defense of such claim. The OPSO and the City agree that the Contractor's indemnification and defense obligations do not apply for any costs or expenses, including attorney's fees or settlements, incurred or effected prior to written notice to the Contractor as set forth above. Upon written notice of claim, the Contractor shall take all steps necessary to promptly defend and protect the City and

OPSO from an indemnified claim, including retention of defense counsel, and the Contractor shall retain sole control of the defense while the action is pending, to the extent allowed by law.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
2. The Contractor has and will maintain the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;
4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement, or that could prevent, limit, or impair the Contractor's performance of this Agreement;
5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;
6. The Contractor is not in breach of any federal, state, or local statute, regulation, or code applicable to the Contractor or its operations;
7. Any rate of compensation charged for the performance of services under this Agreement are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services;
8. The Contractor has read and fully understands this Agreement, and is executing this Agreement willingly and voluntarily; and
9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of execution of this Agreement by the Contractor, and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. Convicted Felon Statement. The Contractor complies with City Code Section 2-8(c) and no principal, member, or officer of the Contractor 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.

C. 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.

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. In addition to the obligations outlined in the RFP, the City will:

1. Administer this Agreement through the Chief Administrative Office (the "Department");
2. Provide the Contractor any documents mutually identified as reasonable and necessary for the Contractor's performance of any work required under this Agreement;
3. Provide reasonable access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and
4. Comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPPA") and any state health information privacy laws, to the extent they are applicable.

B. Payment. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of complete and accurate invoices; and (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set-off any amounts due to the Contractor with any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and
4. All compensation owed to the Contractor 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 the Contractor 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 any unauthorized 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 the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
6. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.
7. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - THE OPSO'S OBLIGATIONS

A. In addition to the obligations outlined in the RFP, the OPSO will:

1. Provide the Contractor any documents mutually identified as reasonable and necessary for the Contractor's performance of any work required under this Agreement;
2. Comply with HIPPA and any state health information privacy laws, to the extent they are applicable;
3. Provide security services sufficient to enable the Contractor, its staff, employees, agents, or subcontractors to safely provide the services required by this Agreement;
4. Provide security as necessary and appropriate in connection with the transportation of detained persons to off-site medical services;
5. Provide the Contractor with copies of any and all policies and procedures which impact the provision of the services required by this Agreement and notify the Contractor in advance of any changes to applicable policies and procedures; and
6. Notify the Contractor in advance of any changes to policies and procedures that may impact the provision of the services.

ARTICLE V - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Contractor in accordance with the rates set forth in Exhibit E and the Cost Proposal dated December 8, 2021, subject to the adjustments and limitations contained in this Article.
2. 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.
3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including, without limitation, all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, records 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 the Contractor any other charges or fees, and the Contractor will not be entitled to any additional compensation or reimbursement, except as otherwise specifically provided in the Agreement.
4. The Contractor will immediately provide written notification to the City of any reduction to the rate of compensation for its most favored customer, and the rate of compensation established by this Agreement will automatically adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is \$19,224,664 for Year 1 (*i.e.*, June 1, 2022, through May 31, 2023). This is a Cost-Plus Management Fee Agreement in which operational costs of the Contractor are passed to the City, up to the Maximum Amount set forth in this Agreement. Exhibit E contains all budgeted costs, including 1) the Management Fee, a fixed cost which is paid to the Contractor for administering the services outlined in this Agreement and 2) Operating Costs, which includes all personnel and other operating costs associated with the delivery of services required under this agreement. For Year 1, the Management Fee is \$2,314,307 and the Operating Costs are a maximum aggregate of \$16,910,357. The Parties acknowledge that Operating Costs may vary based on the needs of detained persons and the actual cost of materials and supplies. However, the Contractor

will not charge above the maximum aggregate for Operating Costs, except as explicitly authorized by provisions within this Article

C. Payment to the Contractor. On the 1st of each month of the term of this Agreement, The Contractor will submit an invoice to the City for the monthly Management Fee (\$192,858.92) and the estimated monthly Operating Costs (\$1,409,196.42). Actual costs will be reconciled every six (6) months per Section 8.2.

D. Pricing Reconciliation. Every six (6) months, the Contractor will complete a pricing reconciliation. For Operating Costs, if the aggregate actual costs are less than the aggregate budgeted costs at the end of the six month period, then the Contractor shall reimburse the City One Hundred Percent (100%) of such savings. If the actual Pharmacy costs exceed the budgeted Pharmacy costs, the City shall pay the Contractor One Hundred Percent (100%) of the amount in excess of the budgeted Pharmacy costs, provided that the Contractor provides sufficient documentation to substantiate their reported pharmaceutical costs, which must also be supported by the Contractor's monthly invoices. If actual Operating Costs exceed budgeted Operating Costs in any category other than Pharmacy, the City shall not be responsible for these costs.

E. Adjustments to Compensation. Sections 17.3.1 – 17.3.4 of the RFP are removed and replaced as follows. The adjustments contemplated herein are in addition to the biannual pricing reconciliation detailed in Article V, Section D.

1. **Monthly Staffing Reconciliation.** Wellpath will provide the City with a monthly itemized accounting of hours worked by position, as identified in the staffing matrix. Wellpath, in conjunction with the City, will, on a monthly basis, review the hours reconciliation with hours re-classed to alternate job category, as requested by Wellpath and deemed appropriate by the City. In all cases, employees not currently working required position hours may be used to cover like positions when their credentials are equal to or exceed the credentials required for such similar position. Unfilled hours include those hours which are not filled due to voluntary or involuntary termination or any other reason or incident resulting in the position being unfilled. However, unfilled hours will not include those hours not filled due to time spent while involved in investigations at the request of Sheriff or designee or as required by law for matters related to the Sheriff, Jail, County, or an Inmate, by subpoena for matters related to the Sheriff, Jail, County or an Inmate, or in accordance with litigation or legal process related to Sheriff, Jail, County, or an Inmate. Wellpath will calculate, reconcile, and report any unfilled hours in a monthly report to the City.

2. **Unfilled Hours Adjustment.** In the event that unfilled hours exceed 10% of contracted hours for any position in any month, the City will be entitled to a credit equal to 100% of the average salary rate for the position, inclusive of benefits, for each unfilled hour exceeding 10%. For example, if Position A has 100 monthly contracted hours and 85 of those hours are filled, the City will be owed a credit for five (5) hours.

3. **Temporary Staffing Adjustment.** The use of temporary and agency staffing to fill permanent positions should be minimized and shall not exceed 20% of filled hours for any position in any monthly period. In the event that Wellpath exceeds this limit, a payback equal to 100% of the average hourly salary rate for each of the positions shall be assessed for each hour Wellpath exceeds the 20% cap. For example, if there are 100 actual hours worked for Position A in a given month and 30 of these hours

were filled by temporary or agency staffing, the City is entitled to a credit for ten (10) hours. Exceptions to the cap may be granted by the City if the cap is exceeded due to natural disaster, FMLA, multiple workers' compensation events occurring in the same month, or other events deemed to be an appropriate exception by CNO. The Contractor must notify the City in writing as soon as it anticipates the need to exceed the 20% cap. The City retains sole discretion in granting an exception to the cap.

ARTICLE VI - DURATION AND TERMINATION

A. Initial Term. The term of this Agreement shall be for 1 year, beginning on the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. Extension. This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for 4 additional one-year terms.

C. Termination for Convenience. The City or the Contractor may terminate this Agreement at any time by giving the other party and OPSO at least 90 calendar days written notice of the termination.

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 Due to Wellpath's Operations. The City reserves the right to terminate this Agreement immediately upon written notification to Wellpath in the event that Wellpath discontinues or abandons operations, is adjudged bankrupt or is reorganized under any bankruptcy law or fails to keep in force any required insurance policies. All Parties agree that termination under this provision will be considered without cause.

F. Termination for Cause. The Agreement may be terminated for cause under the following provisions:

1. Termination for Cause by Wellpath. Failure of the OPSO or the City to comply with any provision of this Agreement shall be considered grounds for termination of this Agreement by Wellpath upon sixty (60) days advance written notice to the OPSO and the City specifying the termination effective date and identifying the basis for termination. The City shall pay for services rendered up to the date of termination of the AGREEMENT. Upon receipt of the written notice, the OPSO or the City, as the case may be, shall have ten (10) days to provide a written response to Wellpath. If the OPSO or the City provides a written response to Wellpath which provides an adequate explanation for its failure to comply with this Agreement and the OPSO or the City, as the case may be, cures such failure to the satisfaction of Wellpath reasonably promptly, but in any event within thirty (30) calendar days of receiving the original notice, the sixty (60) day notice shall become null and void and this Agreement will remain in full force and effect. Termination under this provision shall be without penalty to Wellpath.

2. **Termination for Cause by the City or OPSO.** Failure of Wellpath to comply with any provision of this Agreement when such failure is not caused by any act or omission of OPSO or the City shall be considered grounds for termination of this Agreement by the OPSO or the City who shall provide sixty (60) days advanced written notice specifying the termination effective date and identifying the basis for termination. The City shall pay for services rendered up to the date of termination of the Agreement. Upon receipt of the written notice, Wellpath shall have ten (10) days to provide a written response to the OPSO and the City. If Wellpath provides a written response to the OPSO and the City, which provides an adequate explanation for its failure to comply with this Agreement and Wellpath cures such failure to the satisfaction of the Party who issued the notice, reasonably promptly, but in any event within thirty (30) calendar days of receiving the original notice, the notice shall become null and void and this Agreement will remain in full force and effect. Termination under this provision shall be without penalty to the City and OPSO.

G. **Suspension.** Notwithstanding the article on Force Majeure, the City may suspend this Agreement at any time and for any reason by giving 2 business days' written notice to the Contractor. The Contractor will resume work upon 5 business days' written notice from the City.

ARTICLE VII – DECLARED DISASTER

A. **Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City and OPSO on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours per day/7 days per week) during the declaration of an emergency.

B. **Task Order. Notification and Personnel.** Prior to or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. **Purchase Order.** Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional need for services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. **Timely Documentation.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

ARTICLE VIII - PERFORMANCE MEASURES

A. **Factors.** The City and OPSO will measure the performance of the Contractor 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); adherence to Consent Judgment; quality, effectiveness, and completeness of preventive, medical, and mental health services provided.

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and 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, 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. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$13.25 per hour for any work performed on or before December 31, 2022;
2. \$15.00 per hour for any work performed on or before December 31, 2023;
- and
3. \$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, 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 X - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (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 Contractor’s employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor 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 Contractor in any of Contractor’s operations within Orleans

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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 Contractor 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 Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the Contractor 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 Contractor 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 Contractor, as an independent contractor as defined in La. R.S. 23:1021(7), for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E), and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage is being hereby expressly waived and excluded by the parties, because: (a) the Contractor 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 Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick or 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

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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:

Chief Administrative Office
1300 Perdido Street, Suite 9E06
New Orleans, LA 70119

&

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

2. To the OPSO:

Sheriff Susan Hutson
2800 Perdido Street, 4th Floor
New Orleans, LA 70119

3. To the Contractor:

Jorge Dominicus, Chief Executive Officer
Wellpath LLC
1283 Murfreesboro Road, Suite 500
Nashville, TN 37217

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 XIV - ADDITIONAL PROVISIONS

A. Amendment. The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement. 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 Contractor'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. Compliance with City's Hiring Requirements – Ban the Box.

1. The Contractor 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, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.

2. Failure to maintain compliance with the City's hiring requirements through 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 the Contractor notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. 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 remaining provisions of the Agreement will remain in full force and effect.

4. The Contractor 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.

E. Confidentiality.

1. In performing its obligations under the Agreement, including, but not without limitation, its reporting obligations, the Contractor shall comply with all confidentiality provisions applicable to Detained Person Health Records. The Contractor shall not be required to make any report or keep any record which would either (1) breach a confidentiality requirement or (2) constitute waiver of any privilege that the Contractor may have, such as an attorney-client or peer review privilege. If necessary to protect the confidentiality of Health Records, the Contractor may redact Detained Person Health Records to delete identifying information in connection with submission of such reports, except for submission of reports to the OPSO.

2. The Contractor acknowledges that the City is subject to public records laws and that it has read and understands the requirements mandated by Louisiana Revised Statute 44: 1, *et seq.* The Contractor further warrants and agrees that it will comply with those requirements, specifically including requirements mandated by La. R.S. 44:3.2(D), which states in pertinent part:

- a. All records containing proprietary, or trade secret information submitted by a developer, owner, or manufacturer to a public body pursuant to Subsection A, B, or C of this Section shall contain a cover sheet that provides in bold type "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION". The developer, owner, or manufacturer shall clearly mark each instance of information which is, in his opinion, proprietary or trade secret information. However, the determination of whether such information is in fact proprietary or trade secret information shall be made by the custodian within thirty days of a submission; however, if a custodian receives a public records.

3. The Contractor acknowledges that this document will be published on the internet by the City of New Orleans and consents to said publication.

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

E. Construction of Agreement. None of the Parties will be deemed to have drafted this Agreement. This Agreement has been reviewed by all 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 all Parties. No term of this Agreement shall be construed or resolved in favor of or against the City, OPSO, or the Contractor 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. Exhibits. The following exhibits will be and are incorporated into this Agreement: the RFP (Exhibit “A”), Technical Proposal (Exhibit “B”), Cost Proposal (Exhibit “C”), and Communication and Reporting Requirements, Community Engagement, and Liquidated Damages (Exhibit “D”).

I. Order of Documents. In the event of any conflict between the provisions of this Agreement and any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; Exhibit “D”, Exhibit “E”, Exhibit “A”, Exhibit “B”, and Exhibit “C”.

J. Jurisdiction. The Contractor 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 Contractor.

K. Limitations of the City’s Obligations. The City and OPSO have no obligations not explicitly set forth in this Agreement, any incorporated documents, or expressly imposed by law.

L. 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.

M. Non-Exclusivity. This Agreement is non-exclusive and the Contractor 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.

N. Non-Waiver. The failure of any 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 any 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 a 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.

O. Ownership Interest Disclosure. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after 30 days’ written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.

P. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created, or modified by Contractor 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 Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor 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 the Contractor's consent and for no additional consideration to the Contractor.

Q. 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 Contractor, 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 Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

R. 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.

S. 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.

T. 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.

U. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including,

without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

V. Survival of Certain Provisions. All representations, warranties, and obligations concerning records retention, inspections, audits, ownership, indemnification, payments, remedies, jurisdiction, choice of law, and Confidential Information shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

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

ARTICLE XV – 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 XVI - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

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

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

Executed on this 3rd of November, 2022.

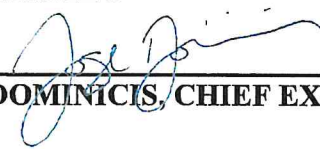
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyle

WELLPATH LLC

BY: 

JORGE DOMINICIS, CHIEF EXECUTIVE OFFICER

ORLEANS PARISH SHERIFF'S OFFICE

BY: 

HONORABLE SUSAN HUTSON, SHERIFF

[EXHIBIT(S) "A", "B", and "C" ATTACHED SEPARATELY. EXHIBITS "D" AND "E"
CONTAINED ON NEXT PAGE(S)]

EXHIBIT “D”
Communication and Reporting Requirements, Community Engagement, and Liquidated Damages

In addition to the duties and responsibilities agreed to in the Agreement for Health Services, the Contractor, OPSO, and the City of New Orleans desire to enhance communication between the parties and community members and strengthen confidence for the care provided to the incarcerated population.

Therefore, the Parties have agreed to the following.

1. Communication

The City, OPSO, and the Contractor will hold regular meetings to discuss the Contractor’s performance under the Agreement, Consent Decree compliance, community engagement activities, and other topics as needed.

a. Meeting Frequency

- i. Monthly meetings shall be held with the Sheriff (or designee), a representative from the City, and regional or executive management of the Contractor for the six (6) months, following the execution of this Agreement by the City.
- ii. The frequency will change to every other month for the next 2 meetings that follow the six (6) initial meetings.
- iii. The frequency will change to quarterly after the first eight (8) meetings and will remain quarterly for the duration of the Agreement.
- iv. If necessary, meeting frequency may be changed or cancelled upon agreement of the Parties in writing, whose consent shall not be unreasonably conditioned, withheld, or delayed, and as otherwise as set forth hereinunder:
 1. A scheduled meeting may be changed or cancelled by any Party upon 5 days’ written notice by the requesting Party and shall be rescheduled promptly at a time proposed and scheduled by the Party who is requesting the change or cancellation.

- b. These meetings shall not be deemed to be the only meetings that may take place between the Parties. As reasonably requested by the OPSO and/or the City, the Contractor shall meet periodically with the OPSO, the City, or their designees, and the Consent Judgment Contract Monitors, concerning health care services within OJC and any proposed changes in health-related procedures or other matters, which all Parties deem necessary.

2. Community Engagement

- a. The Contractor will participate in OPSO-hosted in-person/virtual Town Hall meetings on a quarterly basis.
- b. The Contractor understands that these meetings will focus on programs to support a reduction in recidivism, including veterans’ programs, community-based MAT

programs, work-release programs, housing programs, community clinics and medication assistance programs.

3. Management of external requests/inquiries through “care line”

- a. To the greatest extent permitted by Law and in accordance with Article XIV Section E – *Confidentiality*, the Contractor will establish a care line for patient specific concerns within the first 180 days of the Agreement.
- b. The care line will be operated by a third party who can accept inquiries via telephone, email, and the internet.
- c. The care line will track and report on call volumes and trends, timeliness of response, and resolution rate of concerns.
- d. All requests will receive a response within three (3) business days. If a complete responses cannot be given within this time period, a notification of the delay and a timeline for response must be sent to the requester within three (3) business days. The timeline for response can be extended by up to an additional four (4) business days for a total maximum response time of seven (7) business days.

4. Reporting Requirements

The Contractor acknowledges and agrees to create and provide all other periodic reports, as provided in the RFP and the Consent Judgement, which are fully incorporated herein. Copies of all periodic reports shall be provided to the City and OPSO at time of submission of said reports. As requested by OPSO and the City, but no less than twice annually, the Contractor shall submit to OPSO and the City the Utilization and Administrative Reports covering the administration and overall operation of the Contractor’s comprehensive program of medical, dental, and mental health services for detained persons, as set forth in Section 18.1 of the RFP. Additional periodic reports to be provided to OPSO and the City, include, but are not limited to: Health Care Delivery Reports to determine whether the medication administration protocols and requirements of the Consent Judgment are followed; ER Route Report; Psychiatry Attendance and Disruption Report, Suicide Watch Assessment Report, Psychiatry Attendance and Disruption (Medical) Report, CQI Studies and Data Report, MAC Meeting Minutes, Monthly Mental Health Therapy and Services Report, Corrective Action Plan(s), Confiscated Medicine Report, Semi-Annual Report, Annual Report, Discharge Medicines, and the report to be developed by the Pharmacy and Therapeutics Committee, as set forth in Section 8.6 of the RFP.

5. Liquidated Damages

The Contractor’s failure to perform its obligations causes serious and substantial damage to the City, and its residents, including detained persons. To that end, if the Contractor breaches its designated obligations as set forth herein, (the "Contractor Breach" or “Breach”), the Contractor shall pay to the City an amount equal to the respective amount(s) set forth hereinunder (the "Liquidated Damages"). The Parties intend that the Liquidated Damages constitute compensation, and not a penalty. The Parties acknowledge and agree that the City’s harm caused by a Contractor Breach would be impossible or very difficult to accurately estimate at the time of the Agreement and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Contractor Breach.

The Parties further acknowledge and agree that adequate correctional officer staffing is essential to maintaining the safety and security of the Jail. The Parties acknowledge and agree that this staffing is essential to ensuring that the Contractor is able to deliver quality healthcare services. The City acknowledges that OPSO must provide Contractor with a safe and secure environment to allow the Contractor to deliver quality healthcare services. Accordingly, the assessment of all Liquidated Damages will be suspended until such time as OPSO correctional officer staffing reaches and maintains a 60% or greater productive fill rate for a period of 45 or more consecutive days. Upon commencement of liquidated damage assessments, such assessments will be processed as follows:

Liquidated Damages shall be reconciled on a monthly basis by the City, in consultation with the Contractor, and credited against the following month's invoice. By way of example, for Liquidated Damages assessed by the City in the month of August 2022, any damages assessed will be applied to the September invoice. If the City is unable to assess damages in the following month because the Parties are following the Notifications and Contestation provisions provided for hereinunder, the City will assess damages (if applicable) as soon as reasonably practicable in the next month that follows. In the event the average productive fill rate for OPSO correctional officer staffing drops below 60% for any month in which Liquidated Damages are to be assessed, the City will waive all Liquidated Damages assessments for that month.

Procedures for Notification. The City will first notify the Contractor via email reasonably promptly upon after determining that there may be a Contractor Breach, as set forth herein.

Opportunity to Contest. The Contractor shall have five (5) calendar days from receipt of the City's email notice to contest the City's determination and provide written documentation disputing the breach, or an explanation of a justifiable cause for the breach.

Review and Decision. The City shall take into account all provided documentation and or explanation(s) provided by the Contractor when determining whether to assess liquidated damages, provided, however, that the Parties agree and acknowledge that the City has the right to assess liquidated damages in its sole discretion. The City agrees that any breach attributable to factors beyond the Contractor's control, if supported by the required documentation, will be considered a justifiable cause for breach. The City will provide the Contractor with an official determination and the total amount of assessed liquidated damages within a reasonable amount of time upon receipt of the Contractor's written documentation and or explanation(s). The Parties agree to meet, reassess, and adjust Liquidated Damages, as necessary, if extenuating circumstances create major disruptions or changes in operations, staffing, and/or scope of services or assessments pertaining to medical and mental health areas indicate that there has or may be regression.

Breach	Damages
Failure to provide medication-assisted treatment for detained persons with substance-use disorders as medically appropriate, including continuation of medication for opioid use disorder prescribed prior to detention and initiation of treatment as clinically indicated.	\$250 per occurrence
Failure to ensure that all detained persons are screened by a Qualified Medical Staff upon arrival to OJC but no later than within eight hours, to identify risk for suicide or self-injurious behavior.	\$250 per occurrence
Failure to ensure that a Qualified Mental Health Professional conducts appropriate mental health assessments within the following periods from the initial screen or other identification of need: (1) 14 days, or sooner, if medically necessary, for prisoners with routine mental health needs; (2) 48 hours, or sooner, if medically necessary, for prisoners with urgent mental health needs; and (3) immediately, but no later than two hours, for prisoners with emergent mental health needs.	\$250 per occurrence
Failure to ensure that a Qualified Mental Health Professional performs a mental health assessment no later than the next working day following notification to mental health of any adverse triggering event (i.e., any suicide attempt, any suicide ideation, or any aggression to self, resulting in serious injury), so long as the inmate is located within the facility.	\$250 per occurrence
Failure to ensure that a Qualified Mental Health Professional, as part of the prisoner's interdisciplinary treatment team, maintains a risk profile for each prisoner on the mental health case load based on the Assessment Factors identified in Appendix B of the Consent Decree, and develops and implements a treatment plan to minimize the risk of harm to each of these prisoners.	\$100 per occurrence
Failure to ensure that all prisoners discharged from suicide precautions receive a follow-up assessment within three to eight working days after discharge, as clinically appropriate, in accordance with a treatment plan developed by a Qualified Mental Health Care Professional.	\$200 per occurrence
Failure to offer group or individual therapy services by an appropriately licensed/certified clinician as indicated for prisoners with a mental health treatment plan.	\$200 per occurrence
Failure to ensure that detained persons receive verified psychotropic medications in a timely manner and that prisoners have proper diagnoses and/or indications for each psychotropic medication they receive.	\$250 per occurrence
Failure to ensure that prescriptions for psychotropic medications are reviewed prior to prescription expiration by a psychiatric prescriber on a regular, timely basis.	\$200 per occurrence
Failure to ensure that every suicide or serious suicide attempt is investigated by appropriate health care staff, to be completed within 30 days, including an administrative review, clinical mortality review for completed suicides, and psychological autopsy for completed suicides, and that the results of the investigation are shared with the Sheriff and Monitor.	\$500 per occurrence
Failure to provide medical screenings to determine the degree of risk for potentially life-threatening withdrawal from alcohol, benzodiazepines, and other substances, in accordance with Appendix B of the Consent Decree	\$250 per occurrence

Failure to ensure that the nursing staff complete assessments of persons in detoxification on an individualized schedule, ordered by a Qualified Medical Professional, as clinically appropriate, to include observations and vital signs, including blood pressure.	\$200 per occurrence
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6. Consent Decree Compliance

- a. In order to facilitate achievement of substantial compliance with medical and mental health Consent Decree requirements, the Contractor will:
 - i. Assign its Vice President of Partner Risk Strategies to, in collaboration with the City, OPSO, and Consent Decree monitors, identify clear mechanisms and standards for evaluating and measuring the Contractor's compliance with any applicable Consent Decree Requirements.
 - ii. Develop and submit a plan outlining how the Contractor will meet or exceed the mutually agreed upon standards.
- b. Upon the establishment of evaluation standards and the submission of a compliance plan, the Parties may mutually agree to adjust the Liquidated Damages accordingly. Such adjustments must be approved in writing by duly authorized representatives of the City and the Contractor.

**EXHIBIT “E”
Amended Budget**

Line Item / Category	Year 1	Year 2	Year 3	Year 4	Year 5
Expenses (capped with not-to-exceed amounts)					
Staffing / SWB	\$11,726,966	\$12,110,690	\$12,948,750	\$13,335,668	\$13,734,193
Travel	\$50,798	\$52,068	\$53,369	\$54,704	\$56,071
Insurance	\$408,632	\$420,891	\$433,518	\$446,523	\$459,919
On-site Medical Costs	\$368,981	\$378,206	\$387,661	\$397,352	\$407,286
Off-site Medical Costs	\$49,839	\$52,082	\$54,426	\$56,875	\$59,434
Other Administrative / Operational Costs	\$330,948	\$339,222	\$347,703	\$356,395	\$365,305
Sub-Contract: Tulane Psychiatry	1,929,720	\$1,987,612	\$2,047,240	\$2,108,657	\$2,171,917
Subtotal	\$14,865,884	\$15,340,771	\$16,272,667	\$16,756,174	\$17,254,125
Expenses (capped with excess amounts pass-through)					
Pharmacy	\$2,044,473	\$2,150,777	\$2,277,457	\$2,379,942	\$2,487,039
Subtotal	\$2,044,473	\$2,150,777	\$2,277,457	\$2,379,942	\$2,487,039
Total Operating Costs	\$16,910,357	\$17,491,547	\$18,550,123	\$19,136,116	\$19,741,164
Management Fee	\$2,314,307	\$2,393,847	\$2,538,721	\$2,618,919	\$2,701,724
Total	\$19,224,664	\$19,885,394	\$21,088,844	\$21,755,035	\$22,442,888