

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
CYPRESS BIOSAFETY CONSULTING, LLC

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Cypress Biosafety Consulting, LLC, represented by Dr. Tammy Bavaret (the “**Contractor**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of January 1, 2023 (the “**Effective Date**”).

RECITALS

WHEREAS, the City issued Request for Qualifications No. 2054, seeking to hire a firm or individual to develop, improve, and implement a biosafety, biocontainment, and biosecurity program for the Mosquito Control Genetics Laboratory; and

WHEREAS, the Mosquito, Termite, & Rodent Control Board selected the Contractor to provide biosafety, biocontainment, and biosecurity consulting services; and

WHEREAS, the Contractor has the requisite expertise, qualifications, and certifications in place, and is available for the performance of those professional services; and

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:

1. Provide expert technical consultation to help ensure compliance with appropriate regulatory requirements for laboratory and animal biocontainment levels;
2. Develop, conduct, and facilitate biosafety training;
3. Act as a thought-leader to generate creative ideas and suggestions to improve systems, processes, and services;
4. Develop and implement new policies and procedures;
5. Evaluate established procedures and educational programs for effectiveness;
6. Develop, conduct, and facilitate safety audits, perform hazard assessments, including the interpretation of results, and facilitate implementation of solutions;
7. Assist in the interpretation of root-cause analysis investigations and coordinate external reporting in a manner consistent with regulatory guidelines;
8. Act as primary consultant for BSL2 laboratories using biohazardous materials;
9. Maintain strict confidentiality of information;

10. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the Contractor's proposal, dated November 16, 2022.

11. 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;

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

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

14. 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 thirty (30) days after the approval of the associated plan change or amendment; and

15. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request nor 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.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with OSHA (Occupational Safety and Health Administration), NIH (National Institute of Health), and WHO (World Health Organization) laboratory standards and guidelines.

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

D. Schedule.

1. The Contractor will perform all work under this Agreement according to the following schedule:

- i. First Quarter of 2023 calendar year– Initial assessment of laboratory facilities and protocols and written report, reflecting findings and suggestions, submitted to the City.
- ii. Second Quarter of 2023 calendar year – Training of appropriate staff of policy changes and biosafety training; any new employees hired will require training within thirty (30) days of hire.
- iii. Third Quarter through Fourth Quarter of 2023 calendar year – Follow up evaluation of laboratory facility.

The Contractor will submit a proposed progress schedule to the City within fourteen (14) calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must be arranged so that the actual progress can be shown as work completed: The City has the sole right to approve, reject, or require changes to all schedules, relating to the performance of this Agreement, including, without limitation, any proposed progress schedule, and any requests for modifications.

2. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Contractor will submit quarterly invoices for work performed under this Agreement to the City, no later than ten (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 and supporting documentation:

- 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., Mosquito, Termite, & Rodent Control Board);
- f. Description of the Services completed;
- g. FEMA or HUD Project Number (i.e., PW#), if applicable.
- h. Itemized list of hours worked, and work performed, including written assessments or audits.

2. 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.

3. 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 three (3) years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. 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.

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

3. The Contractor is solely responsible for the relevancy 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 audit, inspection, and review and, at the City'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, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 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 above, 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:

Minimum Requirements:

- a. Workers' Compensation & Employers Liability Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$500,000.00.
- b. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000.00 each occurrence / \$2,000,000.00 policy aggregate.
- c. Automobile Liability Insurance with a combined single limit of liability of not less than \$500,000.00 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned, and hired vehicles.
- d. Professional Liability (Errors and Omission) – Contractor shall maintain Professional Liability (or equivalent) insurance appropriate to the Contractor's profession providing coverage against claims which the Contractor shall become legally obligated to pay as damages arising out of the performance of professional services, with minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 aggregate.
- e. The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. 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.

- f. Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage
- g. Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractor's obligations and/or Scope of Work.

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

- a. Additional Insured Status. **The Contractor 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 "Additional Insureds"** to be covered on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.
- b. Primary Coverage. For any claims related to this contract, **the Contractor's insurance coverage shall be primary insurance** with respect to the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to the Contractor's coverage.
- c. 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 five (5) years after the termination of this agreement
- d. Waiver of Subrogation. **The Contractor and its insurers agree to waive any right of subrogation** which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- e. Notice of Cancellation. Each insurance policy required above shall provide that **coverage shall not be canceled, except with prior notice to the City of no less than sixty (60) days.**
- f. Acceptability of Insurers. Insurance is to be placed with **insurers licensed and**

authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

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

- 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.
5. 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 thirty (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 forty-eight (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.

I. Indemnity.

1. 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, injury, or damage to persons or property, arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees, while engaged in or in connection with the discharge or performance of any work 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.

2. 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, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. 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: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

4. 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 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 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 or regulation applicable to the Contractor or its operations;

7. Any rate of compensation established 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 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 § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five (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 nor 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.

D. The Contractor acknowledges that the City is relying on these representations and warranties, the Contractor's expertise, skill, and knowledge, and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

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

1. Administer this Agreement through the Mosquito, Termite & Rodent Control Board;

2. Provide the Contractor access to the laboratory facility, Safety Data Sheets, laboratory protocols and standard operating procedures, equipment calibration and safety testing logs, and other documents deemed necessary for the Contractor's performance of any work required under this Agreement; and

3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

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 a complete and accurate invoice; (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 against 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 the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement; and

6. 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 - COMPENSATION

A. **Rate of Compensation.**

1. The City will pay the Contractor an annual retainer fee of two thousand, five hundred dollars (\$2,500.00), initially due and payable on January 1, 2023, and thereafter, in accordance with the following hourly rate: \$100.00 per hour.

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, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider nor 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 otherwise specifically provided in the Agreement.

4. The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer, and the rate of compensation, established by this Agreement, automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is \$10,000.00.

ARTICLE V - DURATION AND TERMINATION

A. Term. The term of this agreement shall be for one (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. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least thirty (30) calendar days before the intended date of termination.

C. 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.

D. 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 thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

E. Suspension. The City may suspend this Agreement at any time and for any reason by giving two (2) business days' written notice to the Contractor. The Contractor will resume work upon five (5) business days' written notice from the City.

ARTICLE VI - PERFORMANCE MEASURES

A. **Factors.** The City 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).

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 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 VII - 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, 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 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 the Contractor'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 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 those provisions.

D. 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 VIII - 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(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 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(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 same 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 and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE IX – 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 the 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 the City, provided such event was not caused by the negligence nor misconduct of the City, by the failure of the 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 ninety (90) days. During such time of suspension, the Parties will not be liable nor 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 the 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 X - 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:

Mosquito, Termite & Rodent Control Board
2100 Leon C. Simon Drive
New Orleans, LA 70122

&

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

2. To the Contractor:

Dr. Tammy Bavaret
Cypress Biosafety Consulting, LLC
155 Hidden Lane
Bridge City, LA 70094

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

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

ARTICLE XI - 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 Contractor's interest in it are not assignable nor 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 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 of 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 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 nor resolved in favor of or against the City 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 nor 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 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.

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 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.

L. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect nor constitute a waiver of either party's right to insist upon such compliance, exercise such right, or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

M. Prohibition of Financial Interest in Agreement. No elected official nor 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 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 the Contractor pursuant to this Agreement without regard to the Contractor's otherwise satisfactory performance of the Agreement.

N. 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.

O. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate, and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

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

Q. 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.

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

ARTICLE XII - 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 Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

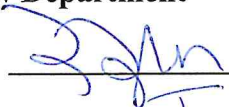
BY: 

LATOYA CANTRELL, MAYOR

Executed on this 16th of December, 2022.

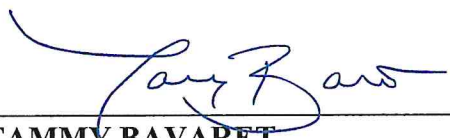
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Miller

CYPRESS BIOSAFETY CONSULTING, LLC

BY: 

DR. TAMMY BAVARET


FEDERAL TAX I.D. OR SOCIAL SECURITY NO.