

AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

THE LAW OFFICES OF JOHN S. WILLIAMS, LLC

THIS SECOND AMENDMENT (the "**Amendment**") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "**City**"), and the Law Offices of John S. Williams, LLC, represented by John S. Williams, Manager (the "**Contractor**"). The City will administer this Amendment through the City's Office of the Independent Police Monitor (the "**OIPM**"). The City and the Contractor are sometimes collectively referred to as the "**Parties**." The Amendment is effective as of July 20, 2019 (the "**Effective Date**").

RECITALS

WHEREAS, on December 13, 2016 the City issued a Request for Proposals No. 7103-02128 seeking qualified persons to provide professional services including serving as outside legal counsel to the OIPM (the "**RFP**");

WHEREAS, the Contractor submitted a proposal dated January 3, 2017, and the City has selected the Contractor to perform the professional services described in the RFP;

WHEREAS, on and effective July 20, 2017, the City and the Contractor entered into a Professional Services Agreement (the "**Agreement**") to provide outside legal counsel to the OIPM ("**Services**");

WHEREAS, on February 8, 2019, effective July 20, 2018, the City and the Contractor entered into a first amendment to extend the Agreement for 1-year, to provide continuity of Services to the OIPM, and to amend the maximum aggregate amount of compensation payable to the Contractor ("**Amendment No. 1**"); and

WHEREAS, the City and the Contractor, each having the authority to do so, desire to enter this second Amendment to extend the Agreement for 1-year, to provide continuity of Services to the OIPM, and to amend the maximum aggregate amount of compensation payable to the Contractor.

NOW THEREFORE, for good and valuable consideration, the City and the Contractor amend the Agreement as follows:

1. **Extension.** In accordance with Article V Section B of the Agreement, the term is extended for an additional 1 year from the Effective Date through July 19, 2020.
2. **Maximum Amount.** Article IV Section B of the Agreement is reaffirmed, as the maximum aggregate amount payable by the City to the Contractor shall remain at \$50,000 per year.
3. **Rate of Compensation.** The hourly rate(s) set forth Article IV Section A and Section B of the Agreement are reaffirmed. The rate(s) payable by the City under this Agreement, as amended, are reaffirmed at \$225.00 for Attorney Services, \$110.00 for Paralegal Services; and

\$45.00 for Legal Secretary Services, which are to be paid in quarterly installments as set forth hereinunder.

4. **Invoices.** Article I Section C of the Agreement shall be deleted in its entirety and replaced as follows:

C. **Invoices.**

1. The Contractor must submit four (4) quarterly invoices for the Services performed under this Agreement to the City no later than ten (10) calendar days following the completion of each quarter (unless otherwise agreed to by the Parties to this Agreement). The invoices submitted to the City shall be sent electronically, via its supplier portal; in addition, the Contractor shall submit a copy of each quarterly invoice to the OIPM, separate and apart, from any invoice submitted to the City via its supplier portal. Untimely submission of invoices may result in delayed payment for which the City/the OIPM is not liable. At a minimum, each invoice must include the following information and supporting documentation:
 - i. Name of Contractor;
 - ii. Date of Invoice;
 - iii. Invoice Number;
 - iv. Contract or Purchase Order Number issued by the City (i.e. K#);
 - v. Name of the City Department to be invoiced (i.e. OIPM);
 - vi. Description of the Services completed and the individuals who performed the Services;
 - vii. Tracked time in six-minute increments (one-tenth of an hour); and
 - viii. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.
2. Invoices will be processed in accordance with Article III Section B of the Agreement, as amended.
3. The OIPM has the sole right to approve or require changes to the form of the invoice. The OIPM may require additional supporting documentation to be submitted with invoices.
4. The OIPM retains the right to cancel this Agreement, as amended, at any time if the OIPM determines that the Services being performed by the Contractor are not of adequate quality, or the Contractor is non-responsive to requests for Services.

5. **Payments.** Article III Section B of the Agreement shall be deleted in its entirety and replaced as follows:

B. **Payment.**

1. Unless otherwise agreed to by the City, payment terms are NET 30 days upon the Contractor providing the Services described under this Agreement have been delivered, installed (if required), rendered, and/or

accepted and upon receipt by the City of properly submitted, complete, and accurate invoice via the City's supplier portal.

2. Unless specifically authorized by a validly executed amendment, the City/OIPM is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that:
 - i. Exceed the maximum aggregate amount payable established by this Agreement;
 - ii. Exceed the scope or duration of this Agreement;
 - iii. Arise from or relate to the any change order within the scope of the Agreement;
 - iv. Arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or
 - v. The City is not expressly obligated to pay under this Agreement.
3. The OIPM, 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.
4. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the OIPM and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

6. **Insurance.** Article I Section G of the Agreement shall be deleted in its entirety and replaced as follows:

A. 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:

a. Minimum Requirements:

- i. Workers Compensation & Employers Liability Insurance with limits of liability of not less than \$100,000 - \$500,000 - \$100,000 (each accident for bodily injury or disease).
- ii. Commercial General Liability ("CGL") with limits of \$1,000,000 per occurrence and general aggregate limits of \$2,000,000.
- iii. Professional (Errors & Omissions) Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence or claim/policy aggregate.
- iv. Automobile Liability Insurance with limits of liability of not less than \$50,000 per accident for bodily injury and property damage.

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

- i. 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 are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability 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.

- ii. **Primary Coverage.** For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor's coverage.
- iii. **Claims Made Policies.** If applicable, the retroactive date must be shown and must be before the date of the Agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 5 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 by virtue of the payment of any loss under insurance required by this Agreement.
- v. **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 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.

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

- a. Proof of coverage for each policy of insurance required by this Agreement; and
- b. Copies of all policies of insurance, including all policies, forms, and endorsements.

C. 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.

7. **Additional Miscellaneous Provisions.** The following terms and conditions are reaffirmed and/or added to the Agreement:

CONFLICT OF INTEREST

The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. Contractor represents that it has performed a conflicts check and affirms that no actual, perceived or potential conflicts exist. Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a conflict waiver must be presented to the City Attorney in writing in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

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.

NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race,

sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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 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.

8. Convicted Felon Statement. The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding five 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.

9. Compliance with the City's Hiring Requirements – Ban the Box. (i) 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, 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. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow 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 Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) This section will not apply to any

agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. (iv) 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.

10. **Living Wages.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code sections 70-801, et seq., which requires payment of a wage to covered employees equal to the amounts defined in the Code ("Living Wage"). If the Contractor fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

11. **Non-Solicitation Statement.** The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Amendment. 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 Amendment.

12. **Prior Terms Binding.** Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

13. **Electronic Signature and Delivery.** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. 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 Amendment.

[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 Amendment.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 20th of May, 2020.

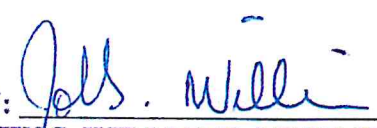
FORM AND LEGALITY APPROVED:

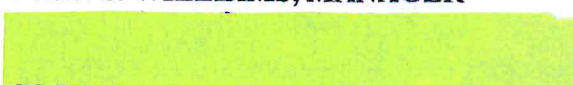
Law Department

By: D. Lance Cardwell

Printed Name: D. Lance Cardwell

THE LAW OFFICES OF JOHN S. WILLIAMS, LLC

BY: 
JOHN S. WILLIAMS, MANAGER


TAX I.D.

[END OF AMENDMENT]