

K20-648

COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

**LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, PUBLIC
SAFETY SERVICES, OFFICE OF STATE POLICE, CRIME LABORATORY**

FORENSIC SCIENCE PARTNERSHIP

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and State of Louisiana, Department of Public Safety and Corrections, Public Safety Services, Office of State Police, Crime Laboratory, represented by LTC Jason Starnes, Chief Administrative Officer (the “**LSPCL**”). The City and the LSPCL may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of August 16, 2019 (the “**Effective Date**”).

RECITALS

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

WHEREAS, the LSPCL is a state agency whose office is located at 7979 Independence Boulevard in Baton Rouge, Louisiana 70802;

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

WHEREAS, the City and the LSPCL desire to accomplish a valuable public purpose of establishing a forensic science partnership by facilitating the selection and training of a DNA analyst who may ultimately serve as New Orleans Police Department (“**NOPD**”) employed DNA analyst for the purpose of analyzing DNA evidence from crimes that occur in the City of New Orleans;

WHEREAS, the LSPCL will select, hire and train four full time DNA analysts for an anticipated one year job appointment with the LSPCL to analyze forensic DNA evidence related to cases investigated by the NOPD; and

WHEREAS, the City will compensate the LSPCL for all costs associated with the trained DNA analysts’ job appointments.

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

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as follows:

ARTICLE I - THE LSPCL'S OBLIGATIONS

The LSPCL will:

A. Select candidates who must meet LSPCL's minimum job qualifications for the particular position which include, but is not limited to, a full field background investigation and a polygraph examination, a pre-employment and random urine drug screens during the job appointment;

B. Hire, supervise, train and equip four individuals to become a full time DNA analysts who will serve pursuant to a one year job appointments (the "**Selected DNA Analysts**");

C. Administer the drug screening requirements;

D. Notify the Selected DNA Analysts:

1. That their respective job appointment is being funded by the NOPD;
2. That the NOPD will have the right of first refusal over the LSPCL to directly hire the Selected DNA Analysts at the end of their respective job appointments; and
3. That they will not directly or indirectly enter into an employment agreement with the LSPCL within a period of six months from the date that the Selected DNA Analysts decline in writing to accept the offer of employment made by the NOPD. This prohibition will apply to the geographical area that includes the East Baton Rouge Parish and West Baton Rouge Parish. This clause will be terminated once the Selected DNA Analysts have provided services under this Agreement for three years.

E. Assign the Selected DNA Analysts to work on forensic DNA evidence related to cases submitted by NOPD after completion of forensic DNA training;

F. Monitor and evaluate the training and work assignments of the Selected DNA Analysts. For this purpose, the DNA Forensic Unit Supervisor will be responsible to maintain documentation of proficiencies and performance including copies of all written and/or practical examinations, competency tests, and moot court evaluations;

G. Encourage professional development of the Selected DNA Analysts through interaction with other experts in the discipline of forensic DNA evidence;

H. Submit monthly invoices and supporting documentation to the NOPD for all costs associated with the Selected DNA Analysts, including but not limited to, salary, overtime pay, payroll benefits (such as all federal and state employment taxes, worker's compensation premiums, pension benefits, deferred compensation benefits and health insurance coverage), and any continuing education requirements;

I. Notify the NOPD 60 days prior to the end of the job appointment;

J. Retain ownership and responsibility for all DNA records generated by the Selected DNA Analysts and entered into CODIS;

K. Have the right to terminate the Selected DNA Analysts if it is necessary or appropriate. In this instance, the LSPCL will notify the NOPD as soon as practical of either its intent to terminate the job appointment or any issues which must be addressed prior to the hiring of a new DNA analyst pursuant to this Agreement; and

L. LSPCL may assign the selected DNA Analysts Forensic DNA work assignments as needed related to non-NOPD forensic cases with NOPD cases to always take priority.

ARTICLE II - THE CITY'S OBLIGATIONS

Administration. The City will:

- A. Administer this Agreement through the NOPD;
- B. Pay the LSPCL all invoiced amounts due under this Agreement within 30 days following the submission of each complete and accurate invoice, up to the maximum amount payable under this Agreement, provided:
- C. Unless specifically authorized by a validly executed amendment, the City is not obligated under any circumstances to pay for any work performed or costs incurred by the LSPCL that:
 - 1. Are beyond the scope or duration of this Agreement;
 - 2. Arise from or relate to any change within the scope of this Agreement that is not memorialized in writing; or
 - 3. The City is not expressly obligated to pay under this Agreement.
- D. Direct all communication to the Director of the LSPCL or his designee regarding the Selected DNA Analysts and their respective responsibilities and/or duties;
- E. Prevent from taking or attempting to take operational control and/or supervision over the Selected DNA Analysts during the job appointment without first contacting the Director of the LSPCL or his designee;
- F. Remit payment to LA DPS Office of State Police, Financial Services (NOPD CEA), P.O. Box 66909, in Baton Rouge, Louisiana 70896, within 30 days of each invoice;
- G. Have the right of first refusal over the LSPCL to directly the Selected DNA Analysts;
- H. Be responsible to contact the Selected DNA Analysts for the purpose of making an offer of employment within 30 days of the LSPCL's notification that the job appointment is coming to an end.
- I. Agrees that for purposes of compliance with the Federal Bureau of Investigation's Quality Assurance Standards, the Selected DNA Analysts shall be considered employees of the LSPCL. Further, the Selected DNA Analysts shall be under the direct operational control and supervision of the Director of LSPCL or his designee during the candidates' time at LSPCL. The City understands and agrees that all communication to the LSPCL regarding the Selected DNA Analysts and their responsibilities and/or duties shall be directed to the Director of the LSPCL or his designee. Under no circumstances shall the City take or attempt to take operational control and/or over supervision over the Selected DNA Analysts during their time at the LSPCL without first making contact with the Director of the LSPCL or his designee. Further, the City agrees that the DNA Forensic Unit Supervisor will be responsible to monitor and evaluate the training and work assignments and work assignments will be made by the LSPCL DNA Forensic Supervisor with a primary emphasis being on case work for the City. The City agrees that in very limited instances, the candidate may be called upon to perform case work or assist in the performance of case work for another agency.

ARTICLE III - COMPENSATION

Maximum Amount. The maximum amount payable by the City under this Agreement is \$387,026.68. This amount is based on the current State Civil Service salaries for the anticipated positions and all benefits, which include, but are not limited to: overtime pay, health insurance, state and federal taxes, state retirement costs, Medicare costs and workers' compensation

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insurance.

ARTICLE IV - DURATION AND TERMINATION

A. **Term.** The term of this agreement shall be for one year from the Effective Date through August 15, 2020.

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

C. **Termination for Convenience.** Both Parties may terminate this Agreement at any time during the term of the Agreement by giving the Other Party written notice of the termination at least 30 calendar days before the intended date of termination.

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

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

ARTICLE V - NON-DISCRIMINATION

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

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

ARTICLE VI - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** Both Parties are considered independent contractors in this endeavor and shall not be deemed to be employees, servants, agents, partners, or joint ventures of each other and neither Party will hold itself or any of its employees, subcontractors or agents to be employees, partners, or agent of the other.

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

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

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

ARTICLE VII - NOTICE

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

To the City:

Shaun Ferguson
Superintendent of Police
715 S. Broad Street
New Orleans, LA 70119

&

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

To the LSPCL:

Director, Louisiana State Police Crime Lab
Louisiana State Police
66614, Slot D-3
Baton Rouge, Louisiana, 70896

&

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

Baton Rouge, Louisiana, 70896

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery 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 VIII – LIVING WAGES

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

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

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

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

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

E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance ("**Article**"). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

F. Reporting. On or before January 31st and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development

Living Wage - Compliance

1340 Poydras Street – Suite 1800

New Orleans, Louisiana 70112

G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “OWD”) and/or the Chief Administrative Office (“CAO”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (iii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

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

ARTICLE IX - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of the LSPCL’s interest in it are not assignable or transferable without the City’s prior written consent.

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

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

E. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled “Cost recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent permitted by law, the 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.

F. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and

contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

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

H. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

I. No Third Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

J. Non-Exclusivity. This Agreement is non-exclusive and the LSPCL may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

K. Non-Solicitation Statement. The LSPCL has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The LSPCL has not paid 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.

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 or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

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

N. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the LSPCL, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the LSPCL pursuant to this Agreement without regard to the LSPCL's otherwise satisfactory performance of the Agreement.

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

P. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if

possible, so that it is enforceable to the maximum extent permitted by law 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.

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

R. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

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

ARTICLE X - ELECTRONIC SIGNATURE AND DELIVERY

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

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: [Signature]
LATOYA CANTRELL, MAYOR

Executed on this 27TH of August, 2020

FORM AND LEGALITY APPROVED:

Law Department

By: [Signature]

Printed Name: Andrew Gregorian

LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS, PUBLIC SAFETY SERVICES, OFFICE OF STATE
POLICE, CRIME LABORATORY

BY: [Signature]
LTC JASON STARNES, CHIEF ADMINISTRATIVE OFFICER

[Redacted]
FEDERAL TAX I.D.