

MOTION

NO. M-19-92

CITY HALL: March 14, 2019

**BY: COUNCILMEMBERS WILLIAMS, MORENO, GIARRUSSO, BANKS,
GISLESON PALMER, BROSSETT AND NGUYEN**

WHEREAS, the Council desires to enter into a cooperative endeavor agreement with the Orleans Parish Sheriff's Office, Civil Division to provide security specialists for the Council, and that this agreement shall be administered through the City Council; and

WHEREAS, pursuant to the authority contained in Article 7, Section 14 (C) of the Louisiana Constitution of 1974, and statutory authority supplemental thereto, the state of Louisiana and its political subdivisions, including the Council, may enter into cooperative endeavor agreements with each other, or with any public or private corporation or individual; the Council may enter into cooperative endeavor agreements with any public or private association corporation or individual for activities in support of economic growth and other public purposes; and

WHEREAS, the Council has set aside funds for security specialists; **NOW THEREFORE**

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the President of the Council is hereby requested and authorized to sign a cooperative endeavor agreement with the Orleans Parish Sheriff's Office for the provision of security services for the City Council, for the period of January 1, 2019 through December 31, 2019, for a maximum compensation amount not to exceed \$46,400 per month or \$556,795.01 for twelve (12) months.

BE IT FURTHER MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the cooperative endeavor agreement, as more fully set forth in the cooperative endeavor agreement attached hereto and made a part hereof, titled Attachment "1", shall be circulated in accordance with the normal process and the City Council Rules.

THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF, AND RESULTED AS FOLLOWS:

YEAS: Banks, Brossett, Giarrusso, Gisleson Palmer, Moreno, Nguyen, Williams - 7

NAYS: 0

ABSENT: 0

AND THE MOTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

Lera W. Johnson
CLERK OF COUNCIL

COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
THE SHERIFF FOR THE PARISH OF ORLEANS

THIS COOPERATIVE ENDEAVOR AGREEMENT ("Agreement") is entered into by and between the City of New Orleans, through the Council of the City of New Orleans ("Council"), represented by its President, Jason R. Williams (the "City"), and the Orleans Parish Sheriff's Office ("OPSO") represented by the Honorable Marlin N. Gusman, each hereunto duly authorized. This Agreement is effective as of January 1st, 2019 (the "Effective Date").

WITNESSETH

WHEREAS, Council desires to engage OPSO to provide Council Security personnel for Council, which is a public purpose; and

WHEREAS, OPSO, existing by the authority of the 1974 Louisiana Constitution, Article V, Section 32, with an office located at 421 Loyola Avenue, New Orleans, Louisiana 70112, is duly authorized to provide security services to Council utilizing Council security personnel employed by OPSO, and

WHEREAS, pursuant to the authority contained in Article 7, Section 14 (C) of the Louisiana Constitution of 1974, and statutory authority supplemental thereto, the State of Louisiana and its political subdivisions may enter into cooperative endeavors with each other, or with any public or private corporation or individual; for activities in support of economic growth and other public purposes; and

WHEREAS, Council has set aside funds for Council security personnel to fulfill this Agreement; and

NOW THEREFORE, City and OPSO make this Agreement in accordance with the following provisions:

I. SCOPE OF SERVICES.

A. OPSO agrees and obligates itself to:

1. Provide seven (7) Council security personnel for the use and direction of Council members whose daily assignment shall begin upon their arrival and end at their departure from the Council member's residence or office ("Assignment Period"), as the Council member may direct, all in accordance with the Council driver's instructions from OPSO as agreed with the Council.

- a. Selection and assignment of Council security personnel by OPSO will be made in coordination with each of the members of the Council, from the existing pool of Council security personnel employed by the OPSO at the time of the selection. OPSO shall not be required to employ an individual for the purpose of serving as a Council security personnel of the OPSO.
- b. If a Council security personnel is not available at any time during the term of this Agreement, OPSO will provide a backup Council security personnel immediately upon request of the Council Member, any such backup Council security personnel to be compensated at not more than at the agreed upon hourly rate set forth in the table annexed to this Agreement under Exhibit A, but subject to the limitation on total compensation for each Council security personnel position set forth in Section VI, Subsection A 1 of this Agreement.
- c. Upon the initial selection of a Council security personnel by a member of Council, OPSO shall provide each Council security personnel with an orientation briefing to be conducted by the OPSO supervisory Council security personnel.
- d. In the event that any Council security personnel, individually, shall be made a party defendant with Council or the City arising from a claim arising during the term of this Agreement when such individual Council security personnel was acting during an Assignment Period under this Agreement, the City, through the Law Department of the City, shall provide a defense to that Council security personnel, individually, but not to the OPSO. OPSO agrees and understands that if OPSO is joined as a party to any such action in addition to such Council security personnel, OPSO shall bear the responsibility for all OPSO's costs of defense in such litigation as well as for any and all amounts that may be assessed against the OPSO by the court in such matters, for whatever reason, including its employment of the Council security personnel.

2. Provide a monthly invoice for payment showing, at a minimum: each Council security personnel by name, fringe benefits for each such Council security personnel, and the administrative expense associated with the management of the Council security personnel team.
3. Coordinate all normal and emergency operational issues with the Council Chief of Staff.

B. Council Agrees and obligates itself to:

1. Provide Agreement administration through the Council Chief of Staff's Office.

2. Council shall have the exclusive authority to approve duties and overall direction of Council security personnel assigned to Council members under this Agreement. Any changes to posts, duties, or direction shall be determined through negotiation with individuals designated in writing by the OPSO. Minimum training and qualification requirements shall be determined jointly by Council and the OPSO supervisory Council security personnel for each post.
3. Council shall provide adequate insurance coverage for the City vehicles driven by the Council security personnel, naming the Council security personnel as additional insureds.

C. OPSO Representations and Warranties. OPSO represents and warrants that:

1. OPSO has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding upon and enforceable against OPSO in accordance with its terms;
2. OPSO is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way its performance of any obligations hereunder;
3. OPSO has the requisite expertise, qualifications, staff, materials and equipment in place and available to enable it to fully perform the Scope of Services set forth in Subsection A of this Section I and OPSO, along with its employees, as required, and all sub-contractors, if any and as required, possess all necessary permits, licenses, consents, registrations, commissions and/or certifications required under federal, state and/or local law to perform the Scope of Services set forth in Subsection A of this Section I.
4. OPSO's work shall be accurate and free from any material errors. OPSO's duties as set forth in this Agreement shall at no time be in any way diminished by reason of any approval by Council or any member or members of City Council unless set forth in a written amendment of this Agreement executed by both parties hereto, nor shall OPSO be released from liability by reason of such approval by the Council or any member or members of the City Council – it being understood that Council, at all times, is ultimately relying upon OPSO's skills and knowledge in performing the Scope of Services set forth in Subsection A of this Section I;
5. The OPSO is fully and adequately insured or self insured for the injury of its employees and any others incurring loss or injury as a result of the actions of the OPSO or its employees or subcontractors in the performance of its obligations under this Agreement; the City, its elected and appointed officials, boards, commissions, agents, directors, servants, employees, and volunteers are named as additional insured and provided a Waiver of Subrogation in their favor on the Sheriff's Liability Insurance Program,

including Police Professional. A copy of the OPSO's Certificate of Insurance evidencing these coverages shall be provided to the City's Risk Manager within ten (10) days after signing this Agreement.

The preceding paragraph notwithstanding, the City acknowledges and accepts the OPSO's self-insurance program(s) as satisfactory evidence of the coverages, limits, terms and conditions required by this Agreement. A writing or attestation from the OPSO regarding the self-insurance plan(s) shall meet the requirements of producing a Certificate of Insurance as provided in this Agreement.

The OPSO's current administrator for property and liability (including automobile liability) claims is Robert W. Martin, Risk Management, 2800 Perdido Street, New Orleans, LA 70119.

The OPSO's current administrator for Worker's Compensation Claims is Hammerman & Gainer, 1010 Common Street, Suite 2600, New Orleans, LA 70112.

6. OPSO has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

II. CONFLICT OF INTEREST.

In the interest of ensuring that efforts of OPSO do not conflict with the interests of Council, and in recognition of OPSO's professional responsibility to Council, OPSO agrees to decline any offer of employment if its independent professional work on behalf of Council is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with OPSO. It is incumbent upon OPSO to notify Council and provide full disclosure of the possible effects of such employment on OPSO's independent, professional work on behalf of Council. Final decision on any disputed offers of other employment for OPSO shall rest with Council.

III. INDEMNIFICATION.

Except as provided in Section I(A)(1)(d) above, OPSO shall indemnify and save harmless Council and City against any and all claims, demands, suits, judgments of sums of money to any party accruing against Council or City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act or omission of the operation of OPSO, its agents, servants or employees while engaged in or about or in connection with the discharge or performance of the services to be done or performed by OPSO hereunder, and shall also hold City harmless from any and all claims and/or liens for labor, services, or materials furnished to OPSO in connection with the performance of his obligation under its Agreement.

IV. ACKNOWLEDGEMENT OF EXCLUSIONS OF WORKER'S COMPENSATION COVERAGE.

OPSO herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (7), and as such, it is expressly agreed and understood between the parties hereto, in entering into this agreement, that the Council shall not be liable to OPSO for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana and further, under the provision of R.S. 23:1034 anyone employed by OPSO shall not be considered an employee of Council for the purpose of Worker's Compensation coverage to the extent that OPSO is subject to such laws.

V. COMPENSATION.

A. Council Security Personnel

1. Compensation for each Council security personnel shall be Fifty-Six Thousand One Hundred Seventy-Five Dollars and zero cents (\$56,175.00) per year, and Fifty-eight Thousand Two Hundred Seventy-Five Dollars and zero cents (\$58,275.00) for the supervisory Council security personnel per year, as set forth in Exhibit "A" annexed to and made part of this Agreement.
2. Council shall also reimburse OPSO for fringe benefits for the Council security personnel to include retirement, FICA, Medicare, hospitalization, life insurance and unemployment compensation. Compensation for fringe benefits will be paid by billing for each Council security personnel by name, to the extent any such items are actually paid by OPSO.

B. Maximum Compensation Under This Agreement.

The maximum base compensation to be paid by Council to OPSO during the term of this Agreement upon invoices prepared in accordance with this Agreement is \$46,399.63 per month or \$556,795.56 for twelve (12) months, exclusive of administrative expenses incurred by OPSO in management of the Council security personnel team as set forth in Exhibit "A" attached hereto.

- C. OPSO shall submit to Council a detailed monthly invoice for payment of services provided. All payments by Council to OPSO pursuant to this Agreement are subject to and conditioned upon the appropriation and allocation of funds by the Council.

VI. EQUAL EMPLOYMENT OPPORTUNITY.

In all hiring or employment made possible, by or resulting from this Agreement, there (1) will not be any discrimination 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, affirmative action will be taken to ensure that OPSO'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.

VII. ASSIGNABILITY.

Sheriff shall neither assign any interest in this Agreement nor transfer any interest in the same without prior written consent of Council.

VIII. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.

It is expressly agreed and understood between the parties that OPSO is acting as an independent agent, and its employees shall not receive any sick and annual leave benefits from City.

IX. JURISDICTION.

The parties hereby consent and yield to the jurisdiction of the State Civil Courts of the Parish of Orleans and do hereby formally waive any pleas of jurisdiction elsewhere.

X. DURATION OF AGREEMENT.

The services to be provided under the terms of this Agreement shall begin on the Effective Date, and shall end no later than December 31, 2019. It is understood and acknowledged by both parties that services described under these terms is to be accomplished during the time period specified herein.

XI. CANCELLATION.

Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party written notice of said intention to terminate at least thirty (30) days before the date of termination. Anything herein to the contrary notwithstanding, if, for any reason, the Council does not appropriate funds needed to maintain the Agreement in full effect beyond the then current fiscal year, the Agreement will expire at the end of that fiscal year without further formality.

XII. RELIANCE.

All representations, warranties, covenants and agreements made in this Agreement are intended to be material and shall be conclusively deemed to have been relied upon by the receiving party.

XIII. APPROPRIATIONS AND/OR EXTENSION.

This Agreement may be extended at the option of the City, with the consent of OPSO, provided that funds are allocated by the Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City on an annual basis for no longer than five one year periods.

XIV. COMPLETE AGREEMENT.

OPSO and City acknowledge that in entering into and accepting this Agreement, OPSO and City rely solely upon the representations and agreements contained in this Agreement and no others. This Agreement supersedes and replaces any and all prior agreements, negotiations and discussions between the parties hereto with regard to the terms, obligations and conditions herein.

XV. AUDIT AND OTHER OVERSIGHT.

OPSO understands and will abide by all provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Section 2-1120, as adopted by City Ordinance No. 22,999 M.C.S., (relative to the operations and authority of the City Inspector General), incorporated herein by reference.

XVI. EFFECT ON CONSENT JUDGMENT.

Notwithstanding any of the foregoing, nothing in this Agreement shall be construed to modify any obligations of the City or the OPSO established by the Stipulation and Consent Judgment between the City and the Criminal Sheriff for the Parish of Orleans entered into on July 18, 1990, as amended.

XVII. 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.

XVIII. AMENDMENT

The terms and conditions of this Agreement may be modified but only by an executed, written amendment to this Agreement.

[The remainder of this page is left intentionally blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Agreement to be effective as of the date first written above.

ATTEST

CITY OF NEW ORLEANS

JASON R. WILLIAMS, PRESIDENT

MARLIN N. GUSMAN, SHERIFF

421 Loyola Avenue
New Orleans, LA 70112
ADDRESS

APPROVED:

Law Department

By: _____

Printed Name: _____

[EXHIBIT A CONTAINED ON NEXT PAGES]

EXHIBIT A TO THE COOPERATIVE ENDEAVOR AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
THE SHERIFF FOR THE PARISH OF ORLEANS

ATTACHMENT 1 – 2019

| EMPLOYEE | MONTHLY SALARY | MONTHLY FRINGE BENEFITS | TOTAL Monthly CHARGES | TOTAL ANNUAL SALARY |
|------------------------|----------------|-------------------------|-----------------------|---------------------|
| Security Specialist #1 | \$4,856.24 | \$1,946.27 | \$6,802.51 | \$58,275 |
| Security Specialist #2 | \$4,681.25 | \$1,918.27 | \$6,599.52 | \$56,175 |
| Security Specialist #3 | \$4,681.25 | \$1,918.27 | \$6,599.52 | \$56,175 |
| Security Specialist #4 | \$4,681.25 | \$1,918.27 | \$6,599.52 | \$56,175 |
| Security Specialist #5 | \$4,681.25 | \$1,918.27 | \$6,599.52 | \$56,175 |
| Security Specialist #6 | \$4,681.25 | \$1,918.27 | \$6,599.52 | \$56,175 |
| Security Specialist #7 | \$4,681.25 | \$1,918.27 | \$6,599.52 | \$56,175 |
| | | | | |
| | | MONTHLY TOTAL | \$46,399.63 | |
| | | | | |
| | | YEARLY TOTAL | \$556,795.56 | |