

K14-800

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

THIS COOPERATIVE ENDEAVOR AGREEMENT ("Agreement") is made and entered into effective the first day of January 1, 2014 by and between the Council of the City of New Orleans ("Council"), herein represented by its President Stacy S. Head and the Orleans Parish Sheriff's Office (OPSO) represented herein by the Honorable Marlin N. Gusman, each hereunto duly authorized.

WITNESSETH

WHEREAS, Council desires to engage OPSO to provide commissioned deputies for Council, and that this Agreement shall be administered through the City 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 deputy sheriffs 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 commissioned deputies to fulfill this Agreement; and

WHEREAS, Louisiana Revised Statute 13:5581 (formerly 33:1500) states that there shall be one Sheriff for the Parish of Orleans, effective the first Monday in May, 2010.

NOW THEREFORE, Council 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) commissioned deputies for the use and direction of City 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 deputy's instructions from OPSO as agreed with the City Council.

- a. Selection and assignment of deputies by OPSO will be made in coordination with each of the members of the City Council, from the existing pool of deputies 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 deputy who is not already a commissioned deputy of the OPSO.
- b. If a deputy is not available at any time during the term of this Agreement, OPSO will provide a backup commissioned deputy immediately upon request of the Council Member, any such backup commissioned deputies to be compensated at not more than at the agreed upon hourly rate set forth in Table 2 annexed to this Agreement, but subject to the limitation on total compensation for each deputy position set forth in Section VI, Subsection B 1 of this Agreement.
- c. Upon the initial selection of a deputy by a member of City Council, OPSO shall provide each deputy with an orientation briefing to be conducted by the OPSO supervisory Council deputy.
- d. In the event that any deputy, individually, shall be made a party defendant with Council or the City of New Orleans arising from a claim arising during the term of this Agreement when such individual deputy was acting during an Assignment Period under this Agreement, then City, through the Law Department of the City of New Orleans, shall provide a defense to that deputy, 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 deputy, 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 deputy.

2. Provide a monthly invoice for payment showing, at a minimum: each deputy by name, fringe benefits for each such deputy, and the administrative expense associated with the management of the deputy 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 deputies 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 deputy for each post. The parties agree, however, that any OPSO deputies first designated as Council deputies after the effective date of this Agreement shall be commissioned deputies, but need not also be certified by the Louisiana Peace Officers Standards and Training Council (a/k/a P.O.S.T.).

3. Council shall provide adequate insurance coverage for the City vehicles driven by the deputies, naming the deputies 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 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 of New Orleans, 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, 2614 Tulane Ave., 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.
7. OPSO shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of Council of the City of New Orleans.

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 of the City of New Orleans and the City of New Orleans 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 professional services agreement, that neither the Council nor the City of New Orleans shall 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. ACKNOWLEDGEMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.

OPSO herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by Council under this Agreement of hire as noted and defined in R.S. 23:1472 12(E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this professional services agreement, or agreement for hire, and in connection with unemployment compensation coverage only, that:

- A. Except as otherwise specifically set forth in this Agreement, OPSO has been and will be free from any control or direction by Council over the performance of the services covered by this Agreement; and
- B. Services to be performed by OPSO are outside the normal course and scope of Council's usual business; and
- C. OPSO has been independently engaged in performing the services listed herein prior to the date of this Agreement.

Consequently, neither the Sheriff nor anyone employed by OPSO shall be considered an employee of Council or the City of New Orleans for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

VI. COMPENSATION.

- A. Commissioned Deputies.

1. Compensation for each deputy shall be Forty-eight Thousand Five Hundred (\$48,500.00) Dollars 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 deputies to include retirement, FICA, Medicare, hospitalization, life insurance and unemployment compensation. Compensation for fringe benefits will be paid by billing for each deputy 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 \$40,286.81 per month or \$483,441.72 for twelve (12) months, exclusive of administrative expenses incurred by OPSO in management of the deputy 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 of City of New Orleans.

VII. 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.

VIII. ASSIGNABILITY.

Sheriff shall not assign any interest in this Agreement nor transfer any interest in the same without prior written consent of Council of the City of New Orleans.

IX. 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 of New Orleans.

X. JURISDICTION.

Both 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.

XI. DURATION OF AGREEMENT.

The services to be provided under the terms of this Agreement shall begin on January 1, 2014, and shall end no later than December 31, 2014. It is understood and acknowledged by both parties that services described under these terms is to be accomplished during the time period specified herein. The terms and conditions of this Agreement may be modified but only by an executed, written amendment to this Agreement.

XII. 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.

XIII. 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.

XIV. APPROPRIATIONS AND/OR EXTENSION.

This Agreement may be extended at the option of the Council, 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 Council on an annual basis for no longer than five one year periods.

XV. COMPLETE AGREEMENT.

OPSO and Council acknowledge that in entering into and accepting this Agreement, OPSO and Council 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.

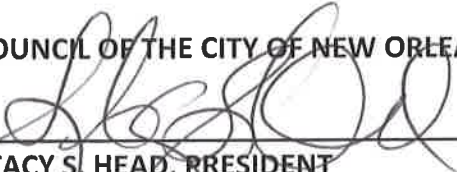
XVI. AUDIT AND OTHER OVERSIGHT.

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.

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

COUNCIL OF THE CITY OF NEW ORLEANS



STACY S. HEAD, PRESIDENT



MARLIN N. GUSMAN, SHERIFF

421 Loyola Avenue
New Orleans, LA 70112
ADDRESS

Approved as to Form and Legality:



Law Department

72-0950773
TAXPAYER