

K24-1102

PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
THROUGH THE COUNCIL OF THE CITY OF NEW ORLEANS
AND
BARRASSO USDIN KUPPERMAN FREEMAN & SARVER, L.L.C.
CITY COUNCIL RFQ NO. CC-24-01
GENERAL LEGAL SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans through the Council of the City of New Orleans, represented by Helena Moreno, Council President (the “**Council**”), and Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., represented by Judy Barrasso, Member (the “**Contractor**”). The Council and the Contractor may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the Council (the “**Effective Date**”).

RECITALS

WHEREAS, on February 16, 2024, the Council issued Request for Qualifications No. CC-24-01 seeking qualified law firms to be employed as special counsel to advise and represent the Council, as directed, on an as-needed basis, excluding any legal matter relating to or arising from the Council’s utility regulatory authority (the “**RFQ**”);

WHEREAS, a selection committee was convened on April 23, 2024 and recommended the selection of Contractor, which was the only vendor to respond to the RFQ; and

WHEREAS, on August 22, 2024, the Council adopted Motion No. M-24-371 selecting Contractor to provide the services described in the RFQ and authorizing the execution of this Agreement;

NOW THEREFORE, the Council and the Contractor agree as follows:

ARTICLE I - THE CONTRACTOR’S OBLIGATIONS

A. Services. The Contractor will:

1. Advise and represent the Council, as directed, on an as-needed basis, excluding any legal matter relating to or arising from the Council’s utility regulatory authority;
2. 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;
3. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the Council, all at no additional compensation;
4. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

5. 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 Council within 30 days after the approval of the associated plan change or amendment; and

6. Cooperate with the Council and any person performing work for the Council.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with the Louisiana Rules of Professional Responsibility and the Outside Counsel Billing Guidelines appended to this Agreement.

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

D. Invoices.

1. The Contractor must submit invoices monthly (unless agreed otherwise between the Parties to this Agreement) to the Council electronically, via its supplier portal, for goods or services provided under this Agreement no later than 30 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the Council is not liable. At a minimum, each invoice must include the following information:

- a. Name of Contractor;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or BRASS Number issued by the Council (*i.e.*, K#);
- e. Name of the City Department to be invoiced (*i.e.*, City Council); and
- f. Description of the Services completed.

2. Invoices will be processed in accordance with Article III Section B of the Agreement.

3. 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.

4. The Council may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

E. 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 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any disputes relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the Council all plans and records of work compiled through the date of termination.

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

3. The Contractor is solely responsible for the relevance 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 Council.

F. Audit and Inspection.

1. The Contractor will submit to any Council audit, inspection, and review and, at the Council'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 in Louisiana, the Contractor will make the documents available at a time and location that is convenient for the Council.

2. The Contractor will abide by all provisions of City Code Section 2-1120, including, but not limited to, City Code Section 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested, subject to attorney-client privilege. 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.

G. Insurance.

1. **Minimum Requirements.** 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 at the Council's request prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

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 \$1,000,000.

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 each occurrence / \$2,000,000 policy aggregate.

c. Professional (Errors & Omission) Liability Insurance appropriate to the Contractors profession with limits of liability of not less than \$2,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad providing coverage against claims which the Contractor becomes legally obligated to pay as damages arising out of the performance of professional services in this agreement.

d. 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.

e. Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.

f. The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations.

g. 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 Contractors obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed the Contractors limits of liability that arise from the performance of work under the Contract.

2. **Primary Coverage.** For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the Council and its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Council shall be non-contributing to the Contractors coverage.

3. **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 3 years after the termination of this agreement.

4. **Waiver of Subrogation.** The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the Council by virtue of the payment of any loss under insurance required by this agreement.

5. **Notice of Cancellation.** Each insurance policy required above shall not be canceled, expire or altered except without prior notice to the Council of no less than 30 days.

6. **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 Council.

7. **Notice.** 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.: CEA) the following documents, within 10 business days of the City's reasonable request:

- a. Copies of all policies of insurance, including all policies, forms, and endorsements:
- b. Substitute insurance coverage acceptable to the Council 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.

8. **Special Risks or Circumstances.** The Council shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

H. Indemnity.

1. **In general.** To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the Council, 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, omission, or the operations 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 negligence, 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 negligence, gross negligence, or willful misconduct.

3. **Independent Duty.** The Contractor has an immediate and independent obligation to, at the Council's option: (a) defend the Council from or (b) reimburse the Council for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity,

even if: (i) the allegations are or may be groundless, false, or fraudulent; or (ii) 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 Council's reasonable attorneys' fees, lay and expert witness fees, court costs, and any similar expenses, incurred by the Council in enforcing this indemnity.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the Council 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 and will maintain 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 Council and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute, regulation, or code applicable to the Contractor or its operations;

7. Any rate of compensation charged 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 execution 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 Section 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 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 or 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. Conflict Of Interest. The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Council. 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 Council's Executive Counsel, in writing, in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, Executive Council is under no obligation to approve conflict waiver requests.

E. Employee Verification. The Contractor swears that: (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the Council occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the Council a sworn affidavit attesting to the above provisions if requested by the Council. The Council may terminate this Agreement for cause if the Contractor fails to provide the requested affidavit or violates any provision of this paragraph.

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

ARTICLE III - THE COUNCIL'S OBLIGATIONS

A. Administration. The Council will:

1. Administer this Agreement through the Office of the Council Chief of Staff;
2. Provide the Contractor any documents necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide reasonable access to Council personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. Payment. The Council 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 Council's obligation to pay is contingent upon the Contractor's: (a) submission of complete and accurate invoices; and (b) satisfactory performance of the services and conditions required by this Agreement;

2. The Council, 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 Council may set-off any amounts due to the Contractor with any amounts deemed by the Council to be owed to the Council 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 Council.
5. The Council 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 any unauthorized 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 Council, 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 Council is not expressly obligated to pay under this Agreement.
6. Unless otherwise agreed by the Council, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the Council of properly submitted invoice via the City's supplier portal.
7. If this Agreement is terminated for any reason, the Council will pay the Contractor only for the work requested by the Council 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 Council will pay the Contractor in accordance with the following rate:

Senior Members\$300/hour

Junior Members\$250/hour

Senior Associates\$225/hour

Junior Associates\$200/hour

Paralegals\$125/hour

All billing will be done in increments of 1/10 hour.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the Council 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, records retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The Council will not consider

or 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 as otherwise specifically provided in the Agreement.

B. Maximum Amount. The maximum aggregate amount payable by the Council under this Agreement is \$15,000.

ARTICLE V - DURATION AND TERMINATION

A. Initial Term. The term of this Agreement shall be for 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 Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. Extension. This Agreement may be extended at the option of the Council, 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 for 4 additional one-year terms.

C. Termination for Convenience. Either Party may terminate this Agreement at any time by giving the other at least 30 calendar days written notice of the termination.

D. 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 Council will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

E. Termination for Cause. The Council may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes, without limitation, any failure to perform any obligation, 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 Council's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code Section 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 the original written notice of termination for cause was sent to the challenging Party; no further notice will be required.

ARTICLE VI - PERFORMANCE MEASURES

A. Factors. The Council 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 Council will notify the Contractor. If there is a continued lack of performance after notification, the Council may declare the Contractor in default and pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the Council will invoice the defaulting Contractor for any increase in costs and other damages sustained by the Council. Further, the Council will seek full recovery from the defaulting Contractor.

ARTICLE VII – 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. Living Wage. In accordance with the Living Wage Ordinance, Living Wage shall be \$15.56 per hour plus any adjustment provided in subsection D below.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for 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”). Council 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 Council, 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 (ii) 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 Council, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

ARTICLE XIII - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

In accordance with City Code Sec. 70-467, the Council Chief of Staff, upon the recommendation of the Office of Supplier Diversity, has agreed to waive equity goal applicable to this Agreement. Notwithstanding the foregoing, the parties agree that Contractor will continue to use good-faith efforts to identify DBE sub-contracting opportunities where practicable, including through the use of DBE court reporters, litigation support providers and expert witnesses.

ARTICLE IX - 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, sex, 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, sex, 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, sex, 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 Council 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 these provisions.

D. Termination for Breach. The Council 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 X - 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 Council and will not hold itself or any of its employees, subcontractors, or agents to be an employee, partner, or agent of the Council.

B. Exclusion of Worker's Compensation Coverage. The Council 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 Worker'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 Council 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 Council under this Agreement for hire and defined in La. R.S. 23:1472(12)(E), and neither the Contractor nor anyone employed by it will be considered an employee of the Council for the purpose of unemployment compensation coverage, which coverage is 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 Council 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 Council'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 Council any sick or annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the Council under this Agreement.

ARTICLE XI – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the Council 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 Council); 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 Council, provided such event was not caused by the negligence or misconduct of Council, by the failure of Council to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the Council 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 Council has provided required notice, the Council may, at its sole discretion:

a. Suspend this Agreement for a duration to be set by the Council, not to exceed 90 days. During such time of suspension, the Parties will not be liable or 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 Council; or

b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to 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 XII - 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 Council:

City Council Chief of Staff
New Orleans City Council
1300 Perdido Street, Suite 1E06
New Orleans, LA 70112

&

Executive Counsel
New Orleans City Council
1300 Perdido Street, Suite 1E06
New Orleans, LA 70112

2. To the Contractor:

Shaun P. McFall
Member
Barrasso Usdin Kupperman
Freeman & Sarver, LLC
909 Poydras Street, Suite 2350
New Orleans, LA 70112

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 XIII - ADDITIONAL PROVISIONS

A. Amendment. The Council's officers and employees are not authorized to request or 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. 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 or transferable without the Council'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. Compliance with City's Hiring Requirements – Ban the Box.

1. 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, the 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.

2. Failure to maintain compliance with the City's hiring requirements through 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 the 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 the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. 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 remaining provisions of the Agreement will remain in full force and effect.

4. 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.

E. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with the Council's interests, and in recognition of the Contractor's obligations to the Council, 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 Council 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 Council will make the final determination whether the Contractor may accept the other employment.

F. 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 or resolved in favor of or against the Council 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 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.

G. 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 Council or disgorge anything of value or economic benefit received from the Council if the Contractor fails to meet its contractual obligations.

H. 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.

I. Exhibits. The following exhibits will be and are incorporated into this Agreement: Council of the City of New Orleans, Outside Counsel Billing Guidelines (Exhibit A).

J. 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.

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

L. 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.

M. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide

services to other clients, subject to the Council's approval of any potential conflicts with the performance of this Agreement, and the Council may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

N. **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.

O. **Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the Council may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.

P. **Ownership of Records.** Upon final payment, all data collected and all products of work prepared, created, or modified by Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings, or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of Council and the Council will have all right, title, and interest in any Work Product, including, without limitation, the right to secure and maintain any copyright, trademark, or patent of Work Product in the Council's name. No Work Product may be reproduced in any form without the Council's express written consent. The Council may use and distribute any Work Product for any purpose the Council deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

Q. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the Council 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 Council shall be deemed to be a financial interest of such elected official or employee of the Council. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the Council and shall entitle the City to recover, in addition to any other rights and remedies available to the Council, all monies paid by the Council to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

R. **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.

S. **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.

T. **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.

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

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

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

ARTICLE XIV – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XV - 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.

[SIGNATURES CONTAINED ON NEXT PAGE]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Council and the Contractor, through their duly authorized representatives, execute this Agreement.


COUNCIL OF THE CITY OF NEW ORLEANS

BY: 
HELENA MORENO, COUNCIL PRESIDENT

Executed on this 16 of October, 2024

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Andrew Gregorich

BARRASSO USDIN KUPPERMAN FREEMAN & SARVER, L.L.C.

BY: 
JUDY Y. BARRASSO, MEMBER

90-0067114
FEDERAL TAX I.D.