

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

CONTRACTOR NAME

CONSENT DECREE COURT MONITOR¹

THIS AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 201____, by and between the City of New Orleans, represented herein by Mitchell J. Landrieu, its Mayor (the “City”), and _____, represented herein by _____, its _____ (the “Contractor”).

WHEREAS, on July 24, 2012, the City and the United States Department of Justice (the “DOJ”) (collectively, the “Consent Decree Parties”) filed a proposed consent decree in the matter of *The United States of America v. The City of New Orleans*, Case No. 12-1924, in the United States District Court for the Eastern District of Louisiana (the “Case”), which has been assigned to the Honorable Susie Morgan (the “Court”); and

WHEREAS, pending approval of the proposed consent decree, on _____, _____, the Consent Decree Parties issued a Request for Proposals (the “RFP”) seeking a firm and/or individual to serve as a “Consent Decree Court Monitor” (“Monitor”) to monitor the New Orleans Police Department (“NOPD”) and the implementation of the Consent Decree consistent with the terms of the Consent Decree; and **WHEREAS**, following all due consideration, the Court approved the consent decree on _____, 2012 (the “Consent Decree”); and

WHEREAS, in response to the RFP, Contractor submitted its proposal (the “Proposal”), which Proposal was selected by the City and DOJ, and approved by the Court in accordance with the terms of the Consent Decree and the RFP; and

WHEREAS, the City and Contractor desire to enter into this agreement for the performance of Consent Decree Court Monitor services in accordance with the Consent Decree, RFP, Proposal, and requisite Court approvals and oversight; and

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

I. THE CONTRACTOR’S OBLIGATIONS.

A. Services. Contractor shall perform the Services as set forth in “Exhibit A” (“Services”), attached hereto and made a part hereof.

B. Consent Decree. The Contractor acknowledges that the Services are being performed pursuant to and that Contractor is subject to the provisions of the Consent Decree, specifically including but not limited to paragraph 484 of the Consent Decree. Consistent with paragraph 445 of the Consent Decree, Contractor shall be subject to the supervision and orders of

¹ All paragraph numbers refer to the proposed consent decree filed in the Case at R. Doc. 2. This Agreement will be revised to reflect the referenced paragraphs in the final consent decree approved by the Court.

the Court. If any discrepancy exists between the provisions of Exhibit A and the Consent Decree, the provisions of the Consent Decree, as determined by the Court, shall prevail.

C.

D. Additional Obligations. Contractor shall also be responsible for the following:

1. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor set forth in this Agreement;

2. Promptly correct any errors or omissions and complete any of the Services deemed unsatisfactory or unacceptable by the City, at no additional compensation;

3. Monitor, supervise, and otherwise control and be solely responsible for all persons performing Services on its behalf;

4. Perform all requirements set forth in La. Rev. Stat. § 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within thirty (30) days after the approval of the associated plan change or amendment; and

5. Cooperate with the Consent Decree Parties and the Court and any person(s) performing services related to the Services set forth in Exhibit A.

The City'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 a duly executed amendment to this Agreement.

E. Personnel and Subcontractors.

1. If the services of [NAME of Primary Monitor] ("Primary Monitor") with Contractor are terminated either by Contractor or the Primary Monitor for any reason whatsoever, with or without cause, or if the Primary Monitor is otherwise unavailable to perform the Services, or any part thereof, under this Agreement, the City and the Court reserve the right to terminate this Agreement. Contractor agrees to provide the City and the Court with ninety days written notice prior to the effective date of the Primary Monitor's termination.

2. Contractor shall maintain a physical presence in New Orleans. The Primary Monitor shall spend a minimum of 70 weekdays in New Orleans during the first year of this Agreement and shall be present in New Orleans at least once a month thereafter for the duration of this Agreement. A senior member of the monitoring team shall be present in New Orleans every weekday of the year, except federal and state holidays.

F. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all Court orders and applicable federal, state, and local laws and ordinances, including, without limitation, the Consent Decree.

G. Invoices.

1. The Contractor will submit invoices for work performed under this Agreement to the City, with a copy to the Court, no later than ten (10) calendar days following the end of the month covered by the invoice. Untimely invoices may result in delayed payment for which delays the City is not liable.

2. The City or the Court may require additional supporting documentation to be submitted with invoices.

H. Records and Reporting.

1. The Contractor will maintain all documents (in any form, whether written or electronic) relating or pertaining to this Agreement, including without limitation all ledgers, books, invoices, receipts, vouchers, canceled checks, wage records, timesheets, subcontracts, reports, correspondence, lists, notes, and memoranda, for the duration of this Agreement or agreement and for at least five (5) years following the completion or termination of this Agreement, including all renewal periods.

2. 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 City or the Court.

I. Audit and Inspection.

1. The Contractor will submit to any City or Court audit, inspection, and review and, at the City's or the Court'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 New Orleans, Louisiana.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of this Agreement.

J. Insurance.

Except as otherwise noted, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

1. Requirements

a. Basic:

(1) The Contractor shall purchase in its name and maintain at its sole cost and expense, insurance as set out below. This insurance will provide primary coverage for claims and/or suits which may arise out of or result from the Contractor's performance and/or furnishing of the Services, whether performed and/or furnished by the Contractor, any sub-contractor, partner, supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the work, goods, products or services, or by anyone for whose acts any of them may be liable. Any insurance carried by the City shall be excess and not contributing insurance. The limits may be met by purchasing an umbrella or excess policy meeting both requirements.

(2) The total limit of insurance must be equal to or greater than the minimum acceptable not less than limits indicated below. If any policies contain a deductible or self-insurance retention, then the evidence of insurance for those policies shall disclose the deductible/retention amount. Additionally, each line of insurance may have its own set of requirements that must be met. "CLAIMS MADE" POLICIES OF INSURANCE ARE NOT ACCEPTABLE for general liability, but are acceptable for professional liability policies.

(3) The City, its elected and appointed Officials, Boards, Commissions, agents, directors, servants, employees and volunteers shall be named as an Additional Insured on the Contractor's liability insurance program.

(4) If the Contractor's liability insurance program does not contain the standard ISO separation of insureds provision, or a substantially similar clause, then the policies shall be endorsed to provide Cross Liability coverage.

(a) The Contractor shall endorse its policies (as applicable) to provide Waiver of Subrogation Endorsement to include written contracts in favor of the City, its elected and appointed Officials, Boards, Commissions, agents, directors, servants, employees and volunteers.

b. Types and Amounts

(1) GENERAL LIABILITY:

(a) Commercial General Liability Form CG 00 01, or pre-approved alternative providing at least as broad coverage, insurance shall be written on an "occurrence" basis; with a minimal acceptable limit of not less than \$500,000 per occurrence; \$1,000,000 aggregate;

(b) The insurance shall cover liability arising from independent contractors and liability assumed under an insured contract.

Note: The General Liability policy shall not exclude any standardized coverage included in the required basic form or limit Contractual Coverages for the Services in any way that would prohibit or limit the reporting of any claim or suit and the subsequent defense and indemnity therefor which would normally be provided by the policy.

(2) PROFESSIONAL LIABILITY, AS APPLICABLE TO THE SERVICES OUTLINED IN THE SPECIFICATIONS:

(a) Minimal acceptable limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;

(b) Cover Contractual Liability and Punitive Damages;

(c) If written on a Claims-Made basis, the retroactive date of coverage shall be no later than the inception date of claims made coverage;

(d) Any retroactive date applicable to coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning when the Agreement is completed;

(e) Sixty (60) days prior written notice shall be provided to the City of cancellation, non-renewal or any reduction in coverages or limits;

(f) Such insurance shall be renewed as to provide continuous coverage during the term of this Agreement and the purchase Extended Reporting Provision for a period of at least three (3) years after the termination of this Agreement;

(g) The City shall have the right to request a copy of loss runs associated with the current in force policy to determine if the policy limits have been impaired to an unacceptable level, and may require their replenishment.

2. General Specifications

a. Contractor's Liability Insurance: If applicable, the Contractor shall require all sub-contractors to maintain, in limits equal to or greater than the Contractor's, the same insurance coverage for Services performed or materials provided for the Services. The Contractor shall insert this requirement in all contracts or agreements, whether written and/or oral, with all entities and/or persons who perform any Services under this Agreement. At no time shall the Contractor allow any sub-contractors to perform Services without the required types and limits of insurance coverage. In the event of a sub-contractor's non-compliance with this requirement, the Contractor shall be responsible for any damages or liabilities arising from the sub-contractors work, actions, or inactions.

b. General Requirements:

(1) Qualifications of Insurers:

(a) All insurance required for the Agreement is to be purchased and maintained by the Contractor from insurance companies that are duly licensed and authorized by the State of Louisiana to issue insurance policies for the limits and coverages so required. Such insurance companies utilized are to have a minimum rating of A- VI (or the current requirements of the State of Louisiana Public Bid Law (La. Rev. Stat. § 38:2211-2296) as of the most current edition of A.M. Best's Key Rating Guide.

(b) If any insurance company providing any insurance coverage furnished by the Contractor is declared bankrupt, becomes insolvent, loses its right to do business in Louisiana, or ceases to meet the requirements of this Agreement, the Contractor shall, within thirty (30) days thereafter, substitute another insurance company acceptable to the City. The City reserves the right to mandate cessation of all work until the receipt of acceptable replacement insurance.

(2) Partnerships: If the Contractor is a partnership then the evidence of all primary and excess liability insurance required to be maintained during the term hereunder shall be furnished in the name of the partnership. Evidence of continuing primary commercial general liability insurance, which shall remain in effect in the name of the partnership shall also be furnished.

(3) Certificates of Insurance: The Contractor shall furnish to the City Certificates of Insurance effecting coverages required in this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms that are to be received and approved by the City. The City reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

(4) Objection by the City: If the City has any objection to the coverage afforded by, or any other provisions of, the insurance required to be purchased and maintained by the Contractor in accordance with the insurance requirements for the work on the basis of non-conformance with the Agreement, City shall notify the Contractor in writing after receipt of the Certificates. The Contractor shall provide a written response to City's objections within ten (10) days from the date of the letter request.

(5) The Contractor's Failure: Upon failure of the Contractor or his subcontractor to purchase, furnish, deliver or maintain such insurance as required herein, at the election of the City, the Agreement may be forthwith declared suspended, discontinued, or terminated. Failure

of the Contractor to purchase and maintain insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements affect the obligations of the Contractor concerning indemnification.

(6) No Waiver of Liability: Acceptance of evidence of the insurance requirements by the City in no way relieves or decreases the liability of the Contractor for the performance of the Services under the Agreement. Additionally, the Contractor is responsible for any losses, expenses, damages, claims and/or suits and costs of any kind which exceed the Contractor's limits of liability or which may be outside the coverage scope of the Contractor's insurance policies. The insurance requirements outlined in this Agreement shall in no way be construed to limit or eliminate the liability of the Contractor that may arise from the performance of Services under the Agreement. The Contractor's coverage is to be primary for any and all claims and/or suits related to or arising from the Services and any insurance coverage maintained by the City is to be deemed as excess of the Contractor's insurance coverage and shall not contribute with or to it in any way.

(7) No Recourse Against the City: The insurance companies issuing the policies shall have no recourse against the City for payment of any premiums, deductibles, retentions or for assessments under any form of policy. These shall be borne by and be the sole responsibility of the Contractor.

(8) The City's Liability Insurance: In addition to the insurance required to be provided by the Contractor above, the City, at its option, may purchase and maintain at City's expense its own liability insurance as will protect the City against claims which may arise from operations under the Agreement.

K. Indemnity.

1. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, 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 or injury or damage to persons or property arising from or relating to any act or omission or the operations of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of Services 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 Services under this Agreement.

2. The Contractor's indemnity does not extend to any loss arising from the 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 gross negligence or willful misconduct.

3. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

II. REPRESENTATIONS AND WARRANTIES.

A. The Contractor represents and warrants to the City 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 the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of Services 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 City and incorporated into this Agreement;
6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;
7. Any rate of compensation established for the performance of Services under this Agreement is 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 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 § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

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

III. THE CITY'S OBLIGATIONS.

A. Administration. The City will:

1. Administer this Agreement through the Law Department, which department will assign or authorize work under this Agreement;

2. Provide the Contractor any other documents deemed necessary for the Contractor's performance of the Services required under this Agreement; and

3. Provide access to Department personnel to discuss the required Services during normal working hours, as requested by the Contractor.

4. **Payment.** City will make payments to the Contractor at the rate of compensation established in this Agreement within thirty (30) days of the receipt of the Contractor's certified invoices. The City's obligation to make any payment is contingent upon the Contractor's: (a) submission of a complete and accurate invoice, including all required information and documents; (b) satisfactory performance of the Services and conditions required by this Agreement, including, without limitation, satisfactory deliverables, reports, affidavits, and insurance;

5. 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 Contractor that:

- (1) Exceed the maximum aggregate amount payable established by this Agreement;
- (2) Are beyond the scope or duration of this Agreement;
- (3) Arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or
- (4) The City is not expressly obligated to pay under this Agreement.

6. The City, 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.

7. If this Agreement is terminated for any reason, the City will pay the Contractor only for the Services requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

IV. COMPENSATION.

A. Rate of Compensation. The Contractor's compensation for the performance of work under this Agreement will be _____.

B. Maximum Amount. Notwithstanding anything herein to the contrary, the maximum aggregate amount payable by the City under this Agreement is \$_____.

C. Contractor shall comply with City Guidelines regarding travel expenses or Contractor's travel and expense policy, whichever is more stringent.

D. Contractor shall maintain records, receipts, and other appropriate documentation of all expenses, costs, fees, services, and any appropriate taxes for the duration of this Agreement. Such records shall be available for inspection by the City, with notice to the Court.

E. Disputes. In the case of disputes regarding payment of Contractor's fees and costs or the performance of Services, the City and the Contractor shall undertake to reach an amicable settlement. If an amicable settlement cannot be reached, the dispute shall be presented to and resolved by the Court.

V. DURATION AND TERMINATION.

A. Term. The term of this Agreement is four (4) years from the Effective Date of the Agreement, unless terminated prior to end of the four-year term as set forth herein or in the Consent Decree.

B. Extension. The City may extend the term of this Agreement only as approved by the Court.

C. Termination. This Agreement may be terminated with the approval of the Court as set forth in paragraph 484 of the Consent Decree or by the Court on its own initiative.

VI. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM.

A. DBE Program Compliance. The Contractor hereby agrees to use its best efforts to fully and completely carry out the applicable requirements of the DBE Program as set forth in Attachment “B” (Required Contract DBE Provisions) of the RFP, including, without limitation, all reporting requirements and specific DBE participation goals. The Contractor’s failure to carry out these requirements, as determined by the Court, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement.

B. DBE Compliance Reporting. The Contractor will provide written reports to the City’s Director of Supplier Diversity, with a copy the Court on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

1. The name and business address of each DBE involved in the contract;
2. A description of the work performed and/or the product or service supplied by each DBE;
3. The date and amount of each expenditure made to a DBE; and
4. Such other information as may assist the DBE Compliance Officer in determining the Contractor’s compliance with the DBE Program and the status of any DBE performing any portion of the contract.

The Contractor and all participating subcontractors awarded contracts as a result of this Agreement may be required to use a secure web-based compliance management system to submit project information on all expenditures made to achieve compliance with the DBE Contract Goal for the RFP and this Agreement. The information regarding the compliance system to be used will be provided to the Contractor if required.

C. Access to Books and Records. The Contractor agrees to grant the City and the Court reasonable access to its books and records for purposes of verifying compliance with this Agreement and the DBE Contract Goal set forth in the RFP.

VII. NON-DISCRIMINATION.

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

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. Termination for Failure to Comply. With approval from the Court, the City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

VIII. 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 City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Contractor, as an independent contractor as defined in La. Rev. Stat. § 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, any person employed by the Contractor will not be considered an employee of the City 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 City under this Agreement for hire as defined in La. Rev. Stat. § 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage 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 City over the performance of the Services covered by this Agreement; (b) the Services to be performed by the Contractor are

outside the normal course and scope of the City'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 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.

IX. NOTICE.

A. Notice Requirements. Any notice, demand, communication or request required or permitted under this Agreement (except for any routine communications) or under the Consent Decree shall be in writing and delivered in person or by certified mail, return receipt requested, as follows:

1. To the City:

City Attorney
City of New Orleans
1300 Perdido St. 5E03
New Orleans, LA 70112

2. To the Contractor:

[Contractor Contact Name] _____
[Contractor Name] _____
[Contractor Contact Address] _____

3. To the DOJ:

U.S. Department of Justice
Attn: Christy Lopez
601 D Street, NW
Fifth Floor
Washington, DC 20004

4. To the Court:

The Honorable Susie Morgan
U.S. District Court for the Eastern District of Louisiana
500 Poydras Street
New Orleans, LA 70130

All changes of address or recipient(s) must be provided to each party in a writing that specifically identifies this Agreement. Nothing contained in this Article shall be construed to

restrict the transmission of routine communications between representatives of City and the Contractor.

B. Receipt of Notices. Notices are effective upon receipt at the address specified above. Any notice sent but not received by or delivered to the intended recipient because of any refusal or evasion of delivery shall be deemed effective on the date of the first attempted delivery.

X. ADDITIONAL PROVISIONS.

A. 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.

B. 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 City 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 such the required affidavits are submitted. All documents submitted in compliance with this subsection shall be attached to this Agreement as "Exhibit ____."

C. 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 City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after 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. All documents submitted in compliance with this subsection shall be attached to this Agreement as "Exhibit ____."

D. 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 Contractor, 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 Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

E. 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.

F. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with

the City's interests, and in recognition of the Contractor's obligations to the City, 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. If the Contractor intends to accept the other employment, the Contractor will promptly notify the City and the Court 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 Contractor acknowledges that it must comply with paragraph 464 of the Consent Decree.

G. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the Consent Decree.

H. Assignment. This Agreement and any part of the Contractor's interest in it are not assignable or transferable without prior written consent and approval from the Court.

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

J. Jurisdiction. The Contractor consents and yields to the jurisdiction of the United States District Court for the Eastern District of Louisiana and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor. The Contractor agrees that any dispute arising under this Agreement shall be decided by the Court either in the Case or as a related matter consolidated with the Case.

K. 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.

L. 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 City 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.

M. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision shall 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.

N. Ownership.

1. Contractor acknowledges and agrees that all written materials, documents, data, data base, data files, reports, records, and other information provided by the City or obtained by the Contractor from the City pursuant to the terms of this Agreement or the Consent Decree, and all copies thereof, shall remain property of the City. Contractor agrees that, at the conclusion or termination of this Agreement, the Contractor shall promptly return any and all written materials, documents, data, data base, data files, reports, records, and other information obtained by the Contractor from the City during the course of work under this Agreement, and copies thereof, to

the City.

2. It is understood and agreed that the City and DOJ shall have the right to use, distribute, copy, disseminate, or otherwise utilize, without restriction or cost, all reports, documents, and information originated and prepared by the Contractor and submitted to the City, Court, or DOJ, pursuant to this Agreement. The Contractor warrants and represents that it has full power and authority to grant the rights set forth in this Agreement with respect to all reports, documents, and information originated and prepared by the Contractor and submitted to the City, DOJ, or Court, without the consent of any person or entity and that the City's or DOJ's use, distribution, or dissemination will not in any manner constitute an infringement or other violation of any copyright, trademark, patent, or any confidential information of a third party.

3. It is understood and agreed that all compliance analyses, studies, notes, information, raw review data, and forms generated by the Contractor as a result of this Agreement or the Consent Decree, and not submitted to the City, DOJ, or Court shall remain the property of the Contractor. However, such compliance analyses, studies, notes, information, raw review data, and forms, or copies thereof, shall be provided by the Contractor to any subsequent consultant engaged as a Monitor by the City, or the City and DOJ, in the event this Agreement terminates prior to the Consent Decree. Moreover, such documents and information shall be maintained in a confidential manner for the duration of the Consent Decree or three years after termination of this Agreement, whichever is longer.

O. Confidentiality.

1. Consistent with the Consent Decree, all documents provided to the Contractor pursuant to the terms of this Agreement, shall be maintained in a confidential manner. Non-public information, whether obtained from the City or DOJ, shall not be disclosed by the Contractor to any person or entity, other than to the City, DOJ, or to the Court under Seal.

2. Contractor recognizes the highly sensitive nature of the information and data to be accessed under this Agreement and the Consent Decree and agrees to conduct background checks, consistent with applicable law, on its employees, agents, and subcontractors who will access City information and data during performance of this Agreement to certify that personnel have backgrounds consistent with the confidentiality mandates of this Agreement and the Consent Decree.

P. Criminal History Information

Contractor may, in the course of work under this Agreement, gain access to criminal history information. Accordingly, Contractor shall comply with all applicable state and federal law with respect to access to and confidentiality of such information.

Q. Survival of Certain Provisions. All representations and warranties and all obligations under this Agreement or the Consent Decree concerning record retention, inspections, audits, ownership, confidentiality, compliance with state and federal laws regarding confidentiality of criminal history information, 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.

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

S. 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 and approved by the Court.

T. 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.

U. Entire Agreement. This Agreement, including all attachments and incorporated documents, such as the RFP, the Proposal and the Consent Decree, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, except as otherwise noted in this Agreement, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

V. Order of Documents. In the event of any conflict between the provisions of the Consent Decree and this Agreement, including the Agreement's attachments and incorporated documents, the provisions of the Consent Decree shall prevail.

IN WITNESS WHEREOF, the City and the Contractor execute this Agreement.

CITY OF NEW ORLEANS

BY: _____
MITCHELL J. LANDRIEU, MAYOR

FORM AND LEGALITY APPROVED:

Law Department

By: _____

Printed Name: _____

CONTRACTOR NAME

BY: _____
REPRESENTATIVE, TITLE

CORPORATE TAX I.D.

APPROVED:

BY:

**Hon. Susie Morgan,
United States District Court for the Eastern District of Louisiana**

**EXHIBIT "A" TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY
OF NEW ORLEANS AND CONTRACTOR NAME**

SCOPE OF SERVICES

Descriptions herein of the Contractor's duties are illustrative and non-exclusive. The fullest description of the Contractor's duties and responsibilities under the Consent Decree is in the Consent Decree itself, and Contractor should closely review the Consent Decree and ensure that its performance of this Agreement is consistent with it. The Consent Decree is subject to Court approval and may be modified by the Court from time to time. The Contractor will be required to modify its activities as required pursuant to any such modifications. Generally, the Contractor shall be responsible for independently and objectively assessing and reporting on whether the requirements of the Consent Decree are being implemented, and whether this implementation is resulting in the constitutional treatment of individuals and increased community trust of NOPD. The Contractor shall report directly to the Court and shall prepare reports to be distributed publicly. The Contractor will be expected to serve at least four years, with extensions as necessary to fulfill the requirements of the Consent Decree. Consistent with the Consent Decree, the Contractor may be removed during the course of the Consent Decree by Court order, either pursuant to a motion for removal by either Party or both Parties, or by a Court-initiated order of removal.

As set out in the Consent Decree, the Contractor's duties include the following:

- Monitor and evaluate NOPD's implementation of the Consent Decree (Consent Decree at ¶ 444);
- Regularly report to the Court on NOPD's progress implementing the Consent Decree and any obstacles to implementation (¶ 457);
- Develop and carry out a plan to conduct compliance audits and reviews to ensure the NOPD's compliance with the requirements and purpose of the Consent Decree (¶¶ 450-453);
- Conduct Outcome Assessments (¶ 448);
- Develop reliable methodologies for completing the audits and reviews necessary to assess compliance with provisions of Agreement and to conduct Outcome Assessments (¶¶ 450-453);
- Review and recommend modifications to Outcome Assessment measurements (¶ 451);
- Review and comment on policies developed pursuant to the Agreement and work with Parties to resolve any disagreements regarding policy development (¶¶ 21-23);
- Review training materials (¶¶ 21-23, 250, 257);
- Review use of force and misconduct investigations (¶ 454);
- Conduct a comprehensive reassessment of the Agreement in two years (¶ 456);
- Recommend strategies to improve NOPD's implementation of the Consent Decree (¶ 455);
- Provide or facilitate the provision of technical assistance to NOPD (¶ 455);

- Issue regular public reports on NOPD's implementation of the Consent Decree (§§ 457-458);
- Regularly communicate with the City, NOPD, and DOJ as necessary to facilitate effective implementation of the Agreement and regarding NOPD's progress implementing the Consent Decree and any obstacles to implementation (§ 460);
- Receive from and provide information to the New Orleans community concerning the Consent Decree (§§ 231, 461);
- Coordinate and confer with the Public Integrity Bureau, the Independent Police Monitor, the Office of the Inspector General ("OIG"), and other civilian oversight entities to facilitate the efficient and effective use of oversight resources (§ 443);
- Maintain all documents related to this project in a confidential manner to the extent required by the Consent Decree (§ 476);
- Testify in litigation or proceedings as provided by the Consent Decree (§ 463);
- Make public statements only as permitted by the terms of the Consent Decree (462); and
- Maintain the highest ethical standards (§ 477).

The substantive requirements of the Consent Decree are grouped into the following general areas:

- Use of force
- Stops, searches and arrests;
- Discriminatory policing (Race, Ethnicity, National Origin, Gender, LGBT Status);
- Recruitment;
- Training (In-Service and Recruit);
- Supervision (including systems for early intervention);
- Secondary employment (currently known as "Paid Details");
- Performance evaluations and promotions;
- Misconduct complaint intake and investigations;
- Community Engagement;
- Officer assistance and support services;
- Transparency and Oversight;
- Interrogation practices; and
- Photographic Lineups.

**EXHIBIT [] TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF
NEW ORLEANS AND CONTRACTOR NAME**

TITLE OF EXHIBIT

[Insert exhibit or use as cover page]

[End of Exhibit []]