

STATE OF LOUISIANA

PO# 2000750388

OFFICE OF COMMUNITY DEVELOPMENT (OCD)

AND

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC

CONTRACT FOR PROFESSIONAL LEGAL SERVICES

**BE IT KNOWN THAT** this agreement is entered into by and between the State of Louisiana, Division of Administration (DOA), Office of Community Development (hereinafter sometimes referred to as "State" or "OCD") and Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (hereinafter sometimes referred to as "Counsel" or "Contractor") and collectively as "Party" or "Parties".

#### **I. SCOPE OF WORK**

Counsel hereby agrees to furnish the following services:

Provide legal services for the Office of Community Development, State of Louisiana and their representatives, including, but not limited to, the Louisiana Housing Corporation, whether as an administrator of Community Development Block Grant (CDBG) funds on behalf of OCD or as a subrecipient of CDBG funds, in support of the Community Development Block Grant-Low Income Housing Tax Credits (CDBG-LIHTC) Program (herein referred to as the "Piggyback Program") and the Affordable Rental Program (herein referred to as the "ARP Program") and/or potentially expand those services to accommodate other similar programs yet to be defined, including programs occurring as a result of past and future disasters. The Piggyback, ARP and other programs are collectively known as the "Program".

The scope of the attorney client relationship in this Agreement includes and continues the relationship arising out of all prior activities of Counsel under contract 715225 between the State and Compass Group Affordable Housing, L.L.C.

The Program award agreements between the Program borrower and the State specify that the State's legal fees in connection with the award shall be paid by the borrower. In connection with such awards, the amount of fees to be paid by the borrower shall be determined by agreement between Counsel and the borrower. For any files on which the law firm of Jones Walker L.L.P. previously performed work on behalf of the State, Counsel is responsible for obtaining an agreement with Jones Walker, prior to or contemporaneously with reaching an agreement with the borrower, regarding Jones Walker's share, if any, of the fees to be paid by the borrower; Counsel is responsible for remitting payment to Jones Walker in accordance with such agreement.

The scope of this Agreement does not include litigation or proceedings arising out of or involving tort or worker's compensation.

There is no guarantee of a minimum level of services which may be requested by the OCD under this Agreement.

## **II. TASK ASSIGNMENT and MONITORING, GOALS AND OBJECTIVES AND PERFORMANCE MEASURES**

Task assignment and monitoring:

These legal services are to be provided under the immediate supervision of the DOA Deputy Executive Counsel and subject to secondary review by the Department of Justice, Office of the Attorney General.

Assignments of tasks under this Agreement shall be by the DOA Deputy Executive Counsel who shall monitor the performance of Counsel and review all written and verbal reports submitted by Counsel. Upon the assignment of a task, Counsel shall work with the appropriate OCD staff related to the task.

The State and Counsel acknowledge and agree that the Louisiana Department of Justice has the right to review all records, reports, worksheets or any other material of either party related to this contract. The State and Counsel further agree that they or either of them will furnish to the Louisiana Department of Justice, upon request, copies of any and all records, reports, worksheets, bills, statements or any other material of Counsel or State related to this contract.

Goals and Objectives:

The State has entered into this contract in order to obtain professional and reliable legal services as referred to in the scope of work.

Performance Measures:

The services provided by Counsel shall be evaluated to determine that the services are provided timely and professionally.

## **III. COMPENSATION**

In consideration of services described hereinabove, State hereby agrees to pay Counsel as follows:

(1) Attorneys having experience in the practice of law of:

Ten years or more	\$225.00/hr.
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	Five to ten years	\$175.00/hr.
	Three to five years	\$150.00/hr.
	Less than three years	\$125.00/hr.
(2)	Paralegals	\$60.00/hr.
(3)	Law Clerks	\$40.00/hr.

The total of all sums payable under this contract including fees and reimbursement of expenses shall not exceed \$20,000. This maximum amount is subject to amendment based on the level of need for services, upon agreement of the parties and duly executed amendment formally approved by the Louisiana Office of State Procurement. It is the responsibility of the Counsel to advise the State in advance if contract funds or contract terms may be insufficient to complete contract objectives.

At the end of each calendar month Counsel shall submit to the State for review and approval, via the Acuity Management System, an itemization of all work performed listing time by date for work performed by hours, down to the tenth of an hour, with specific reference to the nature of the work performed (e.g., drafting of contract, research, client conference, etc.). Travel expenses will be paid in accordance with PPM 49. Invoices for services shall be submitted by Counsel to the DOA Deputy Executive Counsel for review and approval. All billings by Counsel for services rendered shall be submitted in compliance with PPM 50 (Attorney Case Handling Guidelines and Billing OCD Financial Manager or designee).

Counsel shall be reimbursed for out-of-pocket expenses in accordance with the regulations issued by the Division of Administration. Travel time, at the direction and for the convenience of the State, is billable as services in accordance with PPM 50 at one-half the agreed upon pay rate if done during normal working hours and if it does not cause service charges for the day to exceed eight hours. Counsel agrees to comply with LSA-R.S. 39:1618 and the instructions on Attachment #1 when submitting invoices.

Counsel agrees to submit monthly statements. It is understood that should Counsel fail to submit statements within thirty (30) days following the end of each month, State shall not be responsible for payment thereof under this contract or in quantum meruit without the express written authorization of DOA Deputy Executive Counsel. Final billing shall be submitted to the State within ninety (90) days of contract expiration date.

#### **IV. TERM OF CONTRACT**

This contract is in effect for the period commencing August 1, 2022 and ending June 30, 2024. Notwithstanding the foregoing, in no event, shall this Agreement be valid until it has been approved in writing by the Attorney General and the Office of State

Procurement in accordance with La. R.S. 39:1565 and R.S. 39:1595.1. It is the responsibility of the Counsel to advise the State in advance if contract funds or contract terms may be insufficient to complete Agreement objectives.

The effective date of this contract may be extended only if an amendment to that effect is duly executed by the contracting parties and approved by the necessary authorities prior to said termination date. Requests for extensions may be initiated by either party by the mailing of such request to the party, via Certified Mail, return receipt requested, not less than thirty (30) days before the termination date provided for herein or thirty (30) days before the termination of the first extension of this contract. If either party informs the other that an extension of this contract is deemed necessary, an amendment may be prepared by State and forwarded to the other party for appropriate action by the other party, and said amendment is to be returned to State with appropriate information and signatures not less than fifteen (15) days prior to termination date. Upon receipt of the amendment it will be forwarded to the necessary authorities for their approval.

Notwithstanding the foregoing, in no event shall the total term of this contract, including extensions hereto, be for a period of more than three (3) years, unless the laws governing the maximum period of contracts issued by the OCD hereafter are amended to permit a further extension.

The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature or the availability of federal or other funds to fulfill such requirements. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

The State shall have the right to cancel this contract for any reason by giving the other party written notice sent to Counsel's address by certified mail. Counsel shall have the right to cancel this contract for any reason by giving the State thirty (30) days written notice by certified mail.

## **V. ADMINISTRATIVE AND COMPLIANCE PROVISIONS**

### **A. Taxes**

Counsel hereby agrees that the responsibility for payment of taxes from the funds thus received under this agreement and /or legislative appropriation shall be said Counsel's obligation and identified under Federal tax identification number 62-1047356, and State tax identification number 1840248.

In accordance with R.S. 39:1624(A) (10), the Louisiana Department of Revenue (LDR) shall determine that the prospective contractor is current in the filing of all applicable tax returns and reports and in payment of all taxes, interest, penalties, and fees owed to the state and collected by the LDR prior to the approval of this contract by the Office of State Procurement (OSP). The prospective contractor hereby attest to its current and/or prospective compliance, and agrees to provide its seven-digit LDR Account Number to the contracting agency so that the prospective contractor's tax payment compliance may be verified. The prospective contractor further acknowledges understanding that issuance of a tax clearance certificate by LDR is a necessary precondition to the approval and effectiveness of this Contract by OSP. The contracting agency reserves the right to withdraw its consent to this Contract without penalty and proceed with alternate arrangements should the Contractor fail to resolve any identified apparent outstanding tax compliance discrepancies with LDR within seven (7) days of such notification.

**B. State Furnished Resources**

The OCD will provide specific project information to Counsel necessary to complete Services described herein. All records, reports, documents and other material delivered or transmitted to Counsel by the OCD shall remain the property of the OCD and shall be returned by Counsel to the OCD, upon request, at termination, expiration or suspension of this Agreement.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by Counsel, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the services contracted for herein shall become the property of the OCD, and shall, upon request, be returned by Counsel to the OCD at termination or expiration of this Agreement. Cost incurred by Counsel to compile and transfer information for return to the OCD shall be billed on a time and materials basis, subject to the maximum amount of this Agreement. Software and other materials owned by Counsel prior to the date of this Agreement and not related to this Agreement shall be and remain the property of Counsel.

**C. Subcontractors**

With the prior approval of the OCD and the Attorney General, Counsel has the authority to subcontract with and/or associate other attorneys or law firms with the appropriate expertise and experience for this matter ("Subcontractors"), under the same terms and conditions as set forth

herein. Counsel may, with prior written permission from the OCD enter into subcontracts with third parties other than attorneys (also included as "Subcontractors"). In no event shall the existence of a subcontract operate to release or reduce the liability of Counsel to the OCD for any breach in the performance of Counsel's duties. Subcontractors' agreements must meet all contracting, indemnity, insurance and regulatory compliance requirements. The parties hereby agree that any non-compete agreement or similar agreement with any Subcontractors seeking to restrain the ability of the Subcontractors to perform any services for the OCD shall be deemed unenforceable, null and void, to the extent of such non-compete provision, but without invalidating the remaining provisions of the contract with the Subcontractor.

**D. Fund Use**

Counsel agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law or is being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

Counsel and all Subcontractors shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Counsel and each Subcontractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**E. Confidentiality of Data**

All financial, statistical, personal, technical and other data and information relating to the OCD's operation which are designated confidential by the OCD and made available to Counsel in order to carry out this Contract, or which become available to Counsel in carrying out this Contract, shall be protected by Counsel from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the OCD. The identification of all such confidential data and information as well as the OCD's procedural requirements for protection of

such data and information from unauthorized use and disclosure shall be provided by the OCD in writing to Counsel. If the methods and procedures employed by Counsel for the protection of Counsel's data and information are deemed by the OCD to be adequate for the protection of OCD's confidential information, such methods and procedures may be used, with the written consent of the OCD, to carry out the intent of this paragraph. Counsel shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Counsel's possession, is independently developed by Counsel outside the scope of this Contract, is obtained from other public agencies, or is rightfully obtained from third parties.

All of the reports, information, data, et cetera, prepared or assembled by Counsel under this Contract are confidential and Counsel agrees that they shall not be made available to any individual or organization without the prior written approval of the OCD. This does not extend to information that was obtained from the public domain such as public agencies or sources of information available to the general public.

All records, reports, documents and other material delivered or transmitted to Counsel by State shall remain the property of State, and shall be returned by Counsel to State, at Counsel's expense, at termination or expiration of this contract. All records, reports, documents, pleadings, exhibits or other material related to this contract and/or obtained or prepared by Counsel in connection with the performance of the services contracted for herein shall become the property of the State, and shall, upon request, be returned by Counsel to State, at Counsel's expense, at termination or expiration of this contract.

#### **F. Insurance**

Counsel shall obtain at its own cost and expense the following insurance placed with insurance companies authorized to do business in the State of Louisiana with A.M. Best ratings of A-:VI or higher. This rating requirement may be waived for Workers' Compensation coverage only.

Counsel's Insurance. Counsel shall not commence work under this Contract until it has obtained all insurance required herein. Certificates of Insurance shall be filed with the OCD for approval. Counsel shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required for the Subcontractors has been obtained and approved. If so requested, Counsel shall also submit copies of insurance policies for inspection and approval of the OCD before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days notice in advance to the

OCD and consented to by the OCD in writing and the policies shall so provide.

Compensation Insurance. Before any work is commenced, Counsel shall determine and substantiate with OCD whether Compensation Insurance will be required. If determined by the parties to be necessary, Counsel shall maintain during the life of the Contract, Workers' Compensation Insurance for all of Counsel's employees employed at the site of the project. In case any work is sublet, Counsel shall require the Subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by Counsel. In case any class of employees engaged in work under the Contract at the site of the project is not protected under the Workers' Compensation Statute, Counsel shall provide for any such employees, and shall further provide or cause any and all Subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Workers' Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Counsel's headquarters. Employers Liability must be included with a minimum limit of \$1,000,000 per accident/per person/per disease. If work is to be performed over water and involves maritime exposure, applicable U.S. Longshore and Harbor Workers' Compensation Act (LHWCA), Jones Act, or other maritime law coverage shall be included.

Commercial General Liability Insurance. Counsel shall maintain during the life of this Contract such Commercial General Liability Insurance which shall protect him, the OCD, and any Subcontractors during the performance of work covered by the Contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the Contract, whether such operations be by himself or by a Subcontractors, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability to the OCD. Such insurance shall name the OCD as additional insured for claims arising from or as the result of the operations of the Counsel or his Subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000 per occurrence. Claims-made form is unacceptable.

Professional Liability (Errors and Omissions). Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$500,000 per claim. Claims-made coverage is acceptable. The date of the inception of



the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 24 months from the expiration date of the policy, if the policy is not renewed.

Licensed and Non-Licensed Motor Vehicles. Counsel shall maintain during the life of the Contract Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the Contract on the site of the work to be performed there under, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance. Counsel shall require that any and all Subcontractors, which are not protected under Counsel's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of Counsel.

#### **WORKERS COMPENSATION INDEMNITY**

In the event Contractor is not required to provide or elects not to provide workers compensation coverage, the parties hereby agree that Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against, the State of Louisiana, its departments, agencies, agents and employees as an employer, whether pursuant to the Louisiana Workers Compensation Act or otherwise, under any circumstance. The parties also hereby agree that the State of Louisiana, its departments, agencies, agents and employees shall in no circumstance be, or considered as, the employer or statutory employer of Contractor, its owners, agents and employees. The parties further agree that Contractor is a wholly independent contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the State of Louisiana, its departments, agencies, agents and employees harmless from any such assertion or claim that may arise from the performance of this contract.

#### **G. Right to Audit**

The OCD, the State of Louisiana Legislative auditor, federal auditors, State Inspector General and auditors of the Division of Administration ("DOA"), or others so designated by the DOA or the OCD, shall have the option to audit and/or inspect all accounts and records directly pertaining to the Agreement for a period of five (5) years from the date of the closeout of OCD's federal grant providing the funds for this Contract. Counsel shall retain all such accounts and records for the required period.

Counsel will be notified of that grant closeout date by OCD. Records shall be made available during normal working hours for this purpose.

**H. Copyright**

No materials, to include but not limited to reports, maps, or documents produced as a result of this Contract, in whole or in part, shall be available to Counsel for copyright purposes. Any such material produced as a result of this Contract that might be subject to copyright shall be the property of the OCD and all such rights shall belong to the OCD.

**I. Covenant Against Contingent Fees and Conflicts of Interest**

Counsel shall warrant that no person or other organization has been employed or retained to solicit or secure this Agreement upon contract or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant, the OCD shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee, or to seek such other remedies as legally may be available.

No member, officer, or employee of Counsel, or agents, Counsel, member of the governing body of Counsel or the locality in which the program is situated, or other public official who exercises or has exercised any functions or responsibilities with respect to this Agreement during his or her tenure, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Agreement or in any activity or benefit, which is part of this Agreement.

However, upon written request of Counsel, the OCD may agree in writing to grant an exception for a conflict otherwise prohibited by this provision whenever there has been full public disclosure of the conflict of interest, and the OCD determines that undue hardship will result either to Counsel or the person affected by applying the prohibition and that the granting of a waiver is in the public interest. No such request for exception shall be made by Counsel which would, in any way, permit a violation of State or local law or any statutory or regulatory provision.

**J. Section 3 Compliance in Employment and Training**

The work to be performed under this Agreement, including services performed under any related subcontract or subrecipient agreement, is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), 24

CFR §75, and 85 FRN 2020 19183-85, and any directives, benchmarks and programmatic requirements hereafter issued by HUD or OCD in the implementation of Section 3 requirements. Section 3 requires that to the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations—recipients must ensure that within the metropolitan area (or nonmetropolitan county) in which the project is located: (1) employment and training opportunities arising in connection with Section 3 Projects are provided to Section 3 Workers ; and (2) contracts for work awarded in connection with Section 3 Projects are provided to business concerns that provide economic opportunities to Section 3 Workers.

**K. Compliance with Civil Rights Laws**

The Counsel and its Subcontractors shall abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Federal Executive Order 11246 as amended; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Fair Housing Act of 1968 as amended; the Section 109 of the Housing and Community Development Act of 1974; the requirements of the Americans with Disabilities Act of 1990; 41 CFR 60-4 et seq.; 41 CFR 60-1.4; 41 CFR 60-1.8; 24 CFR Part 35; the Flood Disaster Protection Act of 1973; and Federal Labor Standards Provisions (form HUD-4010), as well as all applicable provisions not mentioned are deemed inserted herein.

The Counsel and its Subcontractors shall not discriminate unlawfully in their employment practices, and will perform their obligations under this Agreement without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, age or disabilities. Any act of unlawful discrimination committed by the Counsel or its Subcontractors, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement or other enforcement action.

**L. Code of Ethics**

Counsel acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to Counsel in the performance of Services called for in this Contract. Counsel agrees to immediately notify the OCD if potential violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

**M. Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Section 109 of Title I of the Housing and Community Development Act of 1974. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**N. Clean Air Act, Clean Water Act and Other Requirements**

Counsel agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7401 et seq. (1970)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The OCD recognizes that Counsel is not responsible for environmental or safety compliance that Grant Recipients and their contractors may be subject to that are outside of the Scope of Services to be conducted under this Agreement.

**O. Energy Efficiency**

Counsel shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act to the extent applicable to Counsel and its Subcontractors. The OCD will provide such standards and policies to Counsel as a pre-condition of this stipulation.

**P. Eligibility Status**

Counsel, and each tier of Subcontractors, shall certify that it is not on the List of Parties Excluded from Federal Procurement or Non-procurement

Programs promulgated in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 2 CFR part 2424.

Counsel has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to the General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of the Contract and debarment from future contracts.

**Q. Drug-Free Workplace Requirement**

Counsel and Subcontractors will certify that they have provided a drug-free workplace in compliance with The Drug-Free Workplace Act of 1988 (41 U.S.C. 8102) as amended.

**R. Safety**

Counsel shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of his performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1925, shall be observed and Counsel shall take or cause to be taken such additional safety and health measures as Counsel may determine to be reasonably necessary.

**S. Sovereign Immunity**

Pursuant to La. R.S. 13:5106A, no suit against the state or a state agency or political subdivision shall be instituted in any court other than a Louisiana state court. Furthermore, the Eleventh Amendment to the United States Constitution bars all individuals from suing an unconsenting state in federal court. Accordingly, Counsel shall not waive Louisiana's sovereign immunity under the Eleventh Amendment to the U.S. Constitution by agreement or otherwise, including entering into a consent judgment involving injunctive relief against the State, or a consent judgment permitting or requiring ongoing supervision by the State, without prior written approval by the Louisiana Attorney General's office. Failure to abide by this provision will constitute a breach of this contract and may result in the termination of the contract plus the waiver of all legal fees owed to the Contractor from the date of the breach.

## **VI. MISCELLANEOUS PROVISIONS**

### **A. No Assignment**

No Counsel shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the Counsel from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State and the Office of State Procurement.

### **B. Severability**

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

### **C. Applicable Law, Remedies, and Venue**

This Agreement shall be governed by and construed in accordance with the laws of Louisiana. Any claim or controversy arising out of this Agreement shall be resolved under the processes set forth in La. R.S. 39:1672.2 -1672.4. Exclusive venue and jurisdiction shall be vested in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

### **D. Entire Agreement**

This Agreement constitutes the entire understanding of the undertakings between the Parties with respect to the subject matter hereof and thereof, superseding all negotiations, prior discussions and preliminary agreements related hereto or thereto. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

### **E. No Authorship Presumptions**

Each of the Parties has had an opportunity to negotiate the language of this Agreement in consultation with legal counsel prior to its execution. No

presumption shall arise or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party that (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any Person that becomes a Party by reason of assignment and/or assumption of this Agreement and any successor to a signatory Party.

**F. Amendments, Supplements and Modifications**

This Agreement may not be amended, supplemented or modified except in a writing signed by both Parties in which they expressly state their mutual intention to amend, supplement or modify this Agreement. No oral understanding or agreement not incorporated into the Contract is binding on any of the Parties. No amendment shall be valid until executed by all parties and approved by the Office of State Procurement, Division of Administration.

**G. Delay or Omission**

No delay or omission in the exercise or enforcement of any right or remedy accruing to a Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**H. Legal Authority**

Counsel assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, giving the Counsel legal authority to enter into this Agreement, receive funds, authorized by this Agreement and to perform the services the Counsel is obligated to perform under this Agreement.

**I. Provision Required by Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein,

and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the request of either Party the Agreement shall forthwith be amended to make such insertion or correction.

**J. Prohibited Activity**

Counsel is prohibited from using, and shall be responsible for its subcontractors being prohibited from using, the funds provided herein or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. Counsel will comply with the provision of the Hatch Act (5 U.S.C. 1501 *et seq.*), which limits the political activity of employees.

**K. No Third Party Beneficiaries**

This Agreement does not create, nor is it intended to create, any third party beneficiaries or contain any stipulations pour autrui. The State and the Counsel are and shall remain the only parties to this Agreement and the only parties with the right to enforce any provision thereof and shall have the right, without the necessity of consent of any third party, to modify or rescind this Agreement.

The services under the Contract and all reports and deliverables issued hereunder are for the sole use and reliance of the State, unless expressly agreed in writing by the State and Counsel. This section does not affect any indemnity and insurance obligations under this Contract.

**L. Substitution of Key Personnel**

The Counsel's personnel assigned to this Agreement may not be replaced without the written consent of the OCD. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any personnel of Counsel becomes unavailable due to the resignation, illness, or other factors, excluding assignment to a project outside of this Agreement, outside of the Counsel's reasonable control, as the case may be, the Counsel shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks.



**M. Public Communications**

Counsel shall not issue any public communications regarding the Counsel's activities under this Agreement without the prior consent of the OCD.

**N. Waiver Of Non-Competition Enforcement**

Counsel agrees to waive enforcement of each and every contract provision it may have restraining employees of Counsel, a subcontractor under this Agreement, or one or more subcontractors' employees from employment or contracting with the State.

**O. Hold Harmless/Indemnity Contractors/Subcontractors**

To the extent that Counsel is permitted to and utilizes the services of any third parties in performance of Counsel's duties and obligations under this Agreement, any contract entered into shall contain a provision that the contractor and/or subcontractor shall hold Counsel and the OCD harmless and defend and indemnify Counsel and the OCD from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the contractor and/or subcontractor's performance or nonperformance of the services.

**P. E-verify**

Contractor acknowledges and agrees to comply with the provisions of La. R.S. 38:2212.10 and federal law pertaining to E-Verify in the performance of services under this Contract.

**Q. Notices**

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or delivered by private, commercial carrier, express mail, such as Federal Express, or sent by, telecopy or other similar form of rapid transmission confirmed by written confirmation mailed (postage prepaid by first-class mail, registered or certified, return receipt requested or private, commercial carrier, express mail, such as Federal Express) at substantially the same time as such rapid transmission. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by a Party in written notice to the other Party compliant with this Section:

If to State:

Deputy Executive Counsel  
State of Louisiana  
Division of Administration  
Office of Community Development  
Disaster Recovery Unit  
Mailing Address: P.O. Box 94095  
Baton Rouge, Louisiana 70804-9095  
Phone (225)342.1700 (fax) (225) 219.9330

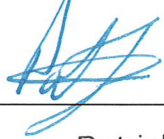
If to Counsel:

Amanda Spain  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
450 Laurel St.  
21st floor  
Baton Rouge, LA 70802  
225-381-7000 office  
225-343-3612 fax  
E-mail: [aspain@bakerdonelson.com](mailto:aspain@bakerdonelson.com)


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DONE AND SIGNED by the Parties on the dates set forth below, but effective as of the dates above.


**OFFICE OF COMMUNITY DEVELOPMENT**

By:   
Name: Patrick W. Forbes  
Title: Executive Director  
Date: 4.3.23

**DIVISION OF ADMINISTRATION**

By:   
Name: Desiree Honoré Thomas  
Title: Assistant Commissioner  
Date: 4/10/2023

**COUNSEL**

By:   
Name: Jennifer P. Keller  
Title: COO & President  
Date: 1/25/2023

## ATTACHMENT #1

### INSTRUCTIONS FOR SUBMITTING INVOICES

At the end of each calendar month, an itemization of all work performed, listing time by date for work performed by hours, down to the tenth of an hour with specific reference to the nature of the work performed (***e.g. drafting of expert reports, research, review of files, etc.***) should be invoiced to the State via Acuity Management System.

Reimbursement for all expenses must have receipts or documentation attached to the invoices or reimbursement will not be made. Some examples of the receipts or documentation that will be accepted are given below:

1. Express Mail - a copy of the invoice from the vendor.
2. Travel expenses - purpose of the trip, miles traveled or airline ticket receipt, parking receipts, taxi receipts, hotel receipts (credit card receipt will not be accepted).
3. Invoices are to be submitted at the end of each calendar month and must indicate the amount of the contract, the amount billed to date and the remaining balance.

If your invoices are billed by each individual case that you have worked on, please include a summary sheet for that month for that invoice. Do not include any previous balances owed on the summary sheet.

LSA - R.S. 39:1618 calls for invoices to be submitted in the form of an affidavit.