

K21-1117

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**ARBOR E&T, LLC**

**D/B/A**

**EQUUS WORKFORCE SOLUTIONS**

**RFP NO. 1025**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Arbor E&T, LLC d/b/a/ Equus Workforce Solutions, represented by Mark Douglass, President (the “**Contractor**”). The City and the Contractor may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of the date of July 1, 2021, execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, on February 10, 2021 the City issued a Request for Proposals, RFP No. 1025, seeking qualified entities to provide professional services including One-Stop Operator and WIOA Service Provider for the JOB1 Business and Career Solutions Center;

**WHEREAS**, the Contractor submitted a proposal for RFP No. 1025, and the City has selected the Contractor to perform the professional services described in the RFP;

**WHEREAS**, the Workforce Innovation and Opportunity Act of 2014 (“WIOA” or the “Act”) was enacted to provide workforce development employment and training services to employers, job seekers, and underemployed workers through a coordinated and integrated network of workforce partners linked with education and economic development;

**WHEREAS**, the Governor of the State of Louisiana has designated the Parish of Orleans, City of New Orleans as a local Workforce Development Area pursuant to the Act;

**WHEREAS**, the Workforce Innovation and Opportunity Act establishes the local Workforce Development Board to set policies for the local workforce system, and in partnership with the City’s Chief elected Official, to manage and oversee the local workforce development system;

**WHEREAS**, the local Workforce Development Board (the New Orleans Workforce Development Board, (“NOWDB” or “WDB”) has established priorities and service elements for a more coordinated and integrated workforce development system among a range of workforce

partners delivering services focused at the JOB1 Business and Career Solutions Center (“American Job Center” or “One-Stop Career Center”);

**WHEREAS**, all partners engaged in the local workforce development system envisioned by the NOWDB are expected to remain flexible, adaptive, innovative, and to collaborate to ensure the system is responsive, comprehensive, and ready to meet the needs of employers, workers, and job seekers in the local economy;

**WHEREAS**, the City, through its Office of Workforce Development and the Workforce Development Board, has been allocated funding for the provision of WIOA Adult, WIOA Dislocated Worker, and WIOA Youth activities and services pursuant to the Act;

**WHEREAS**, the City, through its Office of Workforce Development and the Workforce Development Board, periodically receives additional grant awards from public and private agencies, organizations, foundations, associations, and others to research, design, implement, monitor, or otherwise provide workforce development programs and services to the general public or target populations pursuant to the grant and contractual agreements;

**WHEREAS**, the Contractor, as the Operator and WIOA Service Provider for the JOB1 Business and Career Solutions Center, has demonstrated the necessary expertise to conduct, on the behalf of the City and the New Orleans Workforce Development Board (NOWDB), activities pursuant to this agreement, specifically delivering workforce development services, administrative implementation, monitoring eligibility, and fiscal management, as well as coordination of workforce development partners and service providers selected by the City and the NOWDB; and

**WHEREAS**, the City desires to engage the Contractor as the Operator and WIOA Service Provider for the JOB1 Business and Career Solutions Center adult and youth programs in accordance with the Workforce Innovation and Opportunity Act, CFDA 17.258, 17.259, and 17.278.

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

## **ARTICLE I - THE CONTRACTOR’S OBLIGATIONS**

**A. Services.** The Contractor will, in accordance with the schedule approved by the City:

1. Operate and manage the JOB1 Business and Career Solutions Center and ensure that Workforce Innovation and Opportunity Act (WIOA) Adult, Dislocated Worker, Youth, and Wagner Peysner services, as defined in the WIOA, the state plan, the local plan, and the New Orleans Workforce Development Board’s policies are available, accessible, integrated, and provided to job seeker and business customers;
2. Provide staffing in local facilities where the New Orleans Workforce Development Board/Office of Workforce Development agrees to partner to provide workforce development services;

3. Develop and submit a comprehensive business plan, which shall include, but not be limited to strategies for implementation of Adult, Youth, and Dislocated Worker services;
4. Provide program and fiscal management of WIOA funding and other federal, state, and/or local workforce development initiatives as identified and approved by the local WDB and/or the Office of the Mayor;
5. Manage and oversee services provided by WIOA mandated partners and other partners within the JOB1 Business and Career Solutions Center;
6. Submit a year end progress report to the New Orleans Workforce Development Board/Office of Workforce Development at the end of the program year; and
7. Accomplish the following deliverables:

a. **One-Stop Operator:** The Contractor will:

- i. Coordinate the service delivery of required One-Stop partners and service providers;
- ii. Ensure the availability and appropriate delivery of all WIOA-mandated career services, training, and supportive services;
- iii. Increase the engagement and co-location of WIOA-mandated partners and services within the JOB1 facility;
- iv. Facilitate meetings with One-Stop partners at least quarterly;
- v. Manage the development and the ongoing facilitation of the Infrastructure Funding Agreement between the One-Stop Partners;
- vi. Engage additional workforce partners to strengthen the local workforce system;
- vii. Coordinate the development and manage the upkeep of the resource mapping tool for the one-stop delivery system;

b. **Adult and Dislocated Worker Services:** The Contractor will:

- i. Provide Adult and Dislocated Worker program services as defined in the Workforce Innovation and Opportunity Act (WIOA);
- ii. Ensure that negotiated federal performance requirements (Employment Rate 2<sup>nd</sup> Quarter After Exit, Employment Rate 4<sup>th</sup> Quarter After Exit, Median Earnings, Credential Attainment Rate, and Measurable Skills Gains) are monitored and managed in alignment with the Board's negotiated performance goals for the program year. Specific performance goals for the program year will be provided to Contractor once received from the Louisiana Workforce Commission and the local Workforce Development Board;
- iii. Ensure that negotiated federal performance requirements are monitored, managed, and exceeded in alignment with the negotiated performance goals for subsequent program years;
- iv. Develop and implement innovative strategies to recruit and serve adult and dislocated worker job seekers;
- v. Develop and implement innovative strategies to re-engage adults and dislocated workers with employment that leads to self-sufficient wages;
- vi. Develop and implement innovative and relevant virtual services to increase engagement of job seekers and employers;

- vii. Ensure that technology remains sufficient to provide applicable virtual services as needed for job seekers and employers;
- viii. Ensure that individuals receiving training services obtain employment that will result in a return on investment that is four times the WIOA funds investment as established by the local Workforce Development Board;
- ix. Ensure that job seekers utilizing the JOB1 Business and Career Solutions Center receive value added services that lead to self-sustaining employment;
- x. Ensure that at a minimum 800 participants are placed in unsubsidized employment;
- xi. Target employers with vacant positions that provides livable wages;
- xii. Provide professional development for employees to maintain a skilled workforce with knowledge of best practices in the workforce development, economic development, and business engagement; and
- xiii. Develop partnerships with local and regional workforce development, economic development, and community-based organizations to provide holistic and quality services for business and job seeker customers.

**c. Youth Program:** The Contractor will:

- i. Improve the provision and utilization of all Workforce Innovation and Opportunity Act Youth program services as defined in the Act;
- ii. Ensure that all eligible and interested youth have access to the fourteen youth program elements described in the Workforce Innovation and Opportunity Act within five (5) working days;
- iii. Ensure negotiated federal performance requirements (Education, Training, or Employment Activities 2<sup>nd</sup> Quarter After Exit, Education, Training, or Employment Activities 4<sup>th</sup> Quarter After Exit, Median Earnings, Credential Attainment Rate, and Measurable Skills Gains) are monitored and managed in alignment with the Board's negotiated performance goals for the program year. Specific performance goals for the program year will be provided to Contractor once received from the Louisiana Workforce Commission and the local Workforce Development Board;
- iv. Ensure that negotiated federal performance requirements are monitored, managed, and exceeded in alignment with the City's performance goals for subsequent program years;
- v. Develop and implement an innovative strategy to recruit and serve out-of-school youth and disconnected youth;
- vi. Ensure that youth have access to quality educational services including literacy upgrade and HiSET preparation;
- vii. Develop and implement innovative strategies to ensure that enrolled youth remain engaged;
- viii. Develop and implement innovative and relevant virtual services to increase engagement of youth;
- ix. Ensure that technology remains sufficient to provide applicable virtual services as needed for youth;

- x. Develop partnerships with community-based organizations and educational partners to provide holistic service strategies for youth;
- xi. Provide professional development for employees to maintain a skilled workforce with knowledge of best practices in youth service delivery; and
- xii. Develop and maintain relationships with employers that provide unsubsidized and subsidized employment opportunities for youth;

d. **Business Services:** The Contractor will:

- i. Improve service delivery to employers by increasing the number of new businesses customers in targeted industries and the number of repeat businesses utilizing workforce services;
- ii. Increase the percentage of employers utilizing employers-based training (On-the-Job Training and Customized Training);
- iii. Increase the number of direct job placements that result from staff assisted services;
- iv. Develop and implement strategies to serve employers in high-growth/high demand industries;
- ix. Increase the number of employers that provide employment opportunities for youth, ex-offenders, and individuals with disabilities;
  - x. Increase the number of unsubsidized job placements for youth;
  - xi. Increase the number of on-site hiring events provide at the JOB1 Business and Career Solutions Center; and
  - xii. Conduct a seasonal hiring event for youth.

e. **Other Workforce Development Programs:** At the discretion of the Mayor and the New Orleans Workforce Development Board, the Contractor will:

- 1. Operate and manage any additional Workforce Development Programs where the City receives grants, or other sources of funding to be governed by the New Orleans Workforce Development Board and/or the Mayor's Office of Workforce Development for the provision of workforce development services through the JOB1 Business and Career Solutions Center.
- 2. Collaborate with regional partners for the management, implementation, and monitoring of funding received for regional workforce development activities.

**B. Standards.** The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with any and all applicable professional standards.

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

1. The Contractor will:

- a. Monitor and oversee the JOB1 Business and Career Solutions Centers services in accordance with WIOA Adult, Dislocated Worker, and Youth, as well as other relevant

- federal, state, and local requirements; and
- b. Provide a written response and Corrective Action Plan for all observations and findings within ten (10) working days of receipt of any Draft or Final Monitoring Reports from the City, Louisiana Workforce Commission, or the U.S. Department of Labor. Contractor agrees that delinquent monitoring report responses/corrective actions may negatively impact the program administratively, financially, and programmatically and will make every effort to prioritize all corrective action plans in a way that maximizes monitoring and audit resolution effectiveness. Contractor also agrees that sanctions may be applied as deemed appropriate by the City for failure to address or resolve observations and findings in a timely and efficient manner.

**D. Schedule.**

1. The Contractor will perform all work under this Agreement for the Twelve (12) month term beginning July 1, 2021 and extending through June 30, 2022 with an option to renew for up to three (3) additional years based on the vendor's performance outcomes.
2. The contract is for WIOA Adult, Dislocated Worker and Youth funding and may also include other workforce development funding provided by the United States Department of Labor, the Louisiana Workforce Commission, or the City to address the workforce and educational needs of youth, job seekers and employers.
3. The Contractor will submit programmatic and fiscal reports to the City in accordance with Article I Section F of the Agreement.
4. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.
5. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

**E. Invoices.** The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include, at a minimum, the following information:

- a. Name of Contractor;
  - b. Date of Invoice;
  - c. Invoice Number;
  - d. Contract or BRASS Number issued by the City (i.e. K#);
  - e. Name of the City Department to be invoiced (i.e. JOB1);
  - f. Description of the Services completed;
  - g. FEMA or HUD Project Number (i.e., PW#), if applicable.
2. Invoices will be processed in accordance with Article III Section B of the

Agreement.

3. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

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

**F. Records and Reporting.**

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

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

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

4. The Contractor will provide monthly report to the Office of Workforce Development on or before the 8<sup>th</sup> working day of the month. The Board Report should include number served, number employed, employer outreach activities, recruitment strategy, service delivery strategy, delivery of work readiness seminars, business services plan (e.g., number of employer visits, job fairs, and recruitment strategy), outcomes, corrective actions, etc. Report should address both Adult and Youth services.

5. The Contractor will provide the Office of Workforce Development with quarterly WIOA Performance Review by the 15<sup>th</sup> working day following the release of the Louisiana Workforce Commission's Quarterly Performance Report. Report should include an analysis of performance results and a Corrective Action Plan for any areas where performance is not met or exceeded as required by the City. The Corrective Action Plan shall clearly state the specific performance measures that were not met and insights as to why the performance measures were not met. In addition, the Corrective Action Plan shall include a detailed description of specific action steps that will be undertaken by Contractor to cure the deficiencies, a timeline in which the corrective action will be implemented, and the anticipated result of proposed corrective action.

6. The Contractor will provide timely submission of accurate programmatic and fiscal report as requested by the New Orleans Workforce Development Board, the City of New Orleans, The United States Department of Labor, and the Louisiana Workforce Commission.

7. The Contractor will provide a comprehensive end of the year report that describes all activities, services provided, accomplishments, successes, and challenges thirty (30) days after the end of the program year.

The Office of Workforce Development reserves the right to modify reporting requirements as needed.

### **G. Property and Equipment.**

1. The Contractor will track, manage, tag, and maintain all furniture and equipment purchased with funding provided through this Agreement with a useful life of greater than one (1) year with a per-unit purchase price of \$500 or greater. These items will be maintained on a formal Inventory Record in accordance with 29CFR Part 97.32. Inventory should be reported by the methods prescribed by the Office of Workforce Development.

2. The Contractor will maintain furniture/equipment purchases less than \$500 per-unit cost on an Asset Tracking Record. Items should be maintained separately from the formal inventory record.

3. The Contractor will conduct a formal inventory annually and reconcile with the property records of the City of New Orleans, Louisiana Workforce Commission, United States Department of Labor, or other authorized regulatory agents or auditors.

4. The Contractor will provide notification to the Office of Workforce Development's Compliance Monitor of all furniture and/or equipment scheduled for disposition to ensure local and state policy coordination with the Louisiana Workforce Commission.

5. The Contractor will follow and maintain all grant required procurement procedures and records for all affected purchases.

6. The Contractor will oversee reasonable maintenance of furniture and equipment, and safeguard against abuse, destruction, and theft from the point of purchase to the disposition of items.

7. The Contractor obtain prior written approval from the Louisiana Workforce Commission and the City to purchase equipment. Unless Contractor's existing policy is more stringent, Contractor shall follow appropriate Local, State and/or Federal procurement guidelines in all procurement matters.

8. The Contractor will ensure that CPUs and monitors are tagged and maintained in accordance with section (a) above, regardless of the unit cost. Component items other than CPUs and monitors shall be maintained in accordance with section (b) above. Computer equipment combined components constitute one (1) functioning unit/workstation. Therefore, separate component purchases cannot be made for the expressed purpose of avoiding procurement procedures.

### **H. Audit and Inspection.**

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

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 the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**I. Insurance.**

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

**a. Minimum Requirements:**

- i. Commercial General Liability (CGL):** Including contractual liability insurance, products and completed operations, person injury, bodily injury, property damage, advertising injury, abuse and molestation, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an “occurrence” form.
  - ii. Worker’s Compensation:** as required by the State of Louisiana, with Statutory Limits and Employer’s Liability Insurance with limit of no less than \$500,000 per accident for bodily injury or disease.
  - iii. Professional (Errors and Omissions) Liability Insurance:** Insurance appropriate to the Contractor’s profession with limits of liability of not less than \$1,000,000 per occurrence or claim/\$1,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract. This policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor; The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. The contractor shall ensure that coverage under this policy continues for a period of thirty-six months
  - iv. Cyber Insurance:** Insurance appropriate to the Contractor’s profession, with limits not less than \$1,000,000 per occurrence or claim/ \$1,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this Contract and shall include, but not be limited to , claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations including HIPAA, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security.
- b. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
- i. Additional Insured Status.** **The Contractor will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds”**

on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

- ii. Primary Coverage. For any claims related to this contract, **the Contractor's insurance coverage shall be primary** insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor's coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 5 years after the termination of this agreement
- iv. Waiver of Subrogation. **The Contractor and its insurers agree to waive any right of subrogation** which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- v. Notice of Cancellation. Each insurance policy required above shall provide that **coverage shall not be canceled, except with prior notice to the City of no less than 30 days**.
- vi. Acceptability of Insurers. Insurance is to be placed with **insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII**, unless otherwise acceptable to the City.

2. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: CEA within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement, including policies, forms, and endorsements; and
- b. Copy of the fully executed Agreement.

3. Without notice from the City, the Contractor will:

- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;

- b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
- c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

**J. 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 operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. Limitation. The Contractor's indemnity does not extend to any loss arising from the 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. Independent Duty. 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.

4. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

**ARTICLE 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 all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the 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 are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of 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 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**C. Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

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

**E.** 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.

### **ARTICLE III - THE CITY'S OBLIGATIONS**

**A. Administration.** The City will:

1. Administer this Agreement through the Office of Workforce Development;
2. Provide the Contractor with a copy of the Strategic Plan and Google Doc and other documents deemed necessary for the Contractor's performance of any work required under this Agreement;
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and
4. Provide direction to the Contractor through NOWDB.

**B. Payment.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. 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;
3. The City may set-off any amounts due to the Contractor with any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and
4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to any unauthorized change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
6. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.
7. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

### **ARTICLE IV - COMPENSATION**

**A. Rate of Compensation.**

1. The City will pay the Contractor in accordance with the following rate: Six Million Five Hundred FiftyFour Thousand Eighty Eight and 87/100 Dollars. (\$6,554,088.87) on a monthly cost reimbursement basis. The breakout is as follows: WIOA Adult, Dislocated Worker, Youth and Disaster Dislocated \$6,518,616.27; Non WIOA \$35,472.60 for a total cost not to exceed \$6,554,088.87.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

4. The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

**B. Maximum Amount.** The maximum aggregate amount payable by the City under this Agreement is \$6,554,088.87. This amount may be increased by a validly executed amendment with the City's Department of Finance certification of the availability of funds. Additionally, this amount maybe decreased by a validly executed amendment due to Federal/State recission of funding.

**ARTICLE V - DURATION AND TERMINATION**

**A. Term.** The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**B. Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

**C. Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**D. Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply

with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

**E. Suspension.** Notwithstanding the article on Force Majeure, the City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

#### **ARTICLE VI - PERFORMANCE MEASURES**

**A. Factors.** The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

**B. Failure to Perform.** If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

#### **ARTICLE 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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.** 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.

### **ARTICLE 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. R.S. 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 and defined in La. R.S. 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 same 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 contract; (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.

### **ARTICLE IX – FORCE MAJEURE**

**A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including

tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

**C. Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
  - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
  - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

**ARTICLE X - NOTICE**

**A. In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:  
Sunae Villavaso, Director  
City of New Orleans  
Office of Workforce Development  
3400 Tulane Ave., 2<sup>nd</sup> floor  
New Orleans, LA 70119  
  
&  
  
Sunni J. LeBeouf, City Attorney

1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

2. To the Contractor:  
Mark Douglass, President  
Arbor E&T, LLC d/b/a/ Equus Workforce Solutions  
805 North Whittington Parkway  
Louisville, KY 40222

**B. Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

**C. Notification of Change.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

#### **ARTICLE XI - ADDITIONAL PROVISIONS**

**A. 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.

**B. Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

**C. Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**D. 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. The Contractor will promptly notify the City 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 City will make the final determination whether the Contractor may accept the other employment.

**E. 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.

**F. Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

**G. Compliance with the City's Hiring Requirements – Ban the Box.** (i) The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. (ii) Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. (iii) This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. (iv) 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.

**H. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**I. Exhibits.** No exhibits will be and are incorporated into this Agreement:

**J. Jurisdiction.** The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

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

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

**M. Non-Exclusivity.** This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

**N. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**O. Order of Documents.** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in

this order: the Agreement.

**P. 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.

**Q. 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.

**R. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**S. Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

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

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

## **ARTICLE XII - ELECTRONIC SIGNATURE AND DELIVERY**

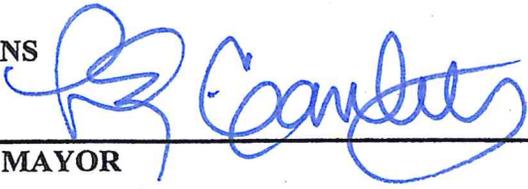
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

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

**[SIGNATURES CONTAINED ON NEXT PAGE]**

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

CITY OF NEW ORLEANS

BY:   
LATOYA CANTRELL, MAYOR

Executed on this 8<sup>th</sup> of November, 2021.

FORM AND LEGALITY APPROVED:  
Law Department

By:   
Printed Name: Tracy Tyler

ARBOR E&T, LLC D/B/A EQUUS WORKFORCE SOLUTIONS

BY:   
MARK DOUGLASS, PRESIDENT

61-0875371 (46-0508470)

TAX I.D.

[END OF AGREEMENT]