

**PROFESSIONAL SERVICES AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**RICE GROUP LLC**

**RFP No. 3658**

**OUTSIDE LEGAL COUNSEL RELATING TO THE MPERS MATTER**

**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 Rice Group LLC, represented by Charles Rice, Jr. (the “**Contractor**”). The City and the Contractor may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, on November 6, 2023, the City issued Request for Proposals No. 3658, seeking qualified firms or persons to provide professional services including legal services to support the City Attorney’s Office with the MPERS matter (the “**RFP**”); and

**WHEREAS**, the Contractor submitted a proposal, dated November 29, 2023, and the City has selected the Contractor to perform the professional services described in the RFP; and

**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. Provide legal services to the City under the direction of the City Attorney.
2. Comply with the City of New Orleans Outside Counsel Billing Guidelines, herein incorporated as Exhibit A.
3. Provide verbal or written legal opinions as requested.
4. Represent the City in any related court appearances as requested.
5. Participate in all meetings, conference calls, and consultations with City departments, boards, agencies, and consultants as requested and furnish meeting notes and internal memoranda, while also following up with correspondence as requested or required.
6. Collaborate with other consultants engaged by the City.
7. Negotiate, draft, review, and/or file any documents in connection with the MPERS matter, including but not limited to any other written agreements or court documents, if any.

8. Perform all other services and obligations as set forth in any of the following documents that are incorporated fully into this Agreement: the RFP, attached separately; the Contractor's proposal, dated November 29, 2023, herein incorporated as Exhibit B.

9. Return the City's phone calls and/or emails communication as soon as practical under emergency circumstances.

10. Provide other related legal services as requested, which may be performed by a subconsultant.

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

12. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, all at no additional compensation.

13. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf.

14. Cooperate with the City and any person performing work for the City.

**B. Standards.** The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with all professional standards promulgated by the Louisiana State Supreme Court and with the Louisiana Rules of Professional Conduct, regarding client communication obligations and all other obligations to the City.

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

**D. Schedule.**

1. The City and the Contractor will develop mutually agreed upon deadlines for specific deliverables or technical assistance as appropriate.

2. 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.

3. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

**E. Invoices.**

1. 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 ten (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 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.*, K24-0028)

- e. Name of the City Department to be invoiced (*i.e.*, Law/Finance)
- 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 three (3) years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any disputes relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

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

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

**G. 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 in Louisiana, 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 Section 2-1120*, including, but not limited to *City Code Section 2-1120(12)*, which requires the Contractor to provide the Office of Inspector General with documents and information as requested, subject to attorney-client privilege. Failure to comply with such requests shall constitute a material breach of the Agreement. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**H. 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. Evidence of coverage shall be

provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

2. If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

3. **Minimum Requirements:**

- a. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal and advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability no less than \$1,000,000.00 each occurrence / \$2,000,000.00 policy aggregate.
- b. Professional (Errors & Omission) Liability – As professional services are required under the Agreement, insurance appropriate to the Contractor's profession, with limits of liability no less than \$1,000,000.00 per occurrence/claim / \$1,000,000.00 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this Agreement.
- c. The policies shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, the Contractor must procure and evidence full extended reporting period (ERP) coverage.
- d. The Contractor shall be able to meet the above referenced, specific policy limits of liability through a combination of primary and umbrella/excess coverage.

4. **Important:** The obligations for the Contractor to procure and maintain insurance shall not be construed to waive nor restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractor's obligations and/or scope of work.

5. **Additional Insured Status:** The Contractor and all subcontractors, where applicable, will provide and maintain current a Certificate of Insurance, naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as "Additional Insureds," covered on the CGL policy with respect to liability arising out of the performance of this Agreement. General liability insurance 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 are used).

6. The Contractor shall require and verify that all subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the subcontractors' liability shall be covered by the Contractor. 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 the City Attorney's Office, 1300 Perdido Street, Suite 5E03, New Orleans, LA, 70112, with a copy forwarded to the Risk Management Division, 1300 Perdido Street, Suite 9E06-City

Hall, New Orleans, LA 70112. The Additional Insured box shall be marked “Y” for Commercial General Liability coverage.

7. **Primary Coverage**: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance with respect to 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.

8. **Claims Made Policies**: If applicable, the retroactive date must be shown and must be before the date of the Agreement or the beginning of work. If the coverage is cancelled, non-renewed, and not replaced with another claims-made policy, the Contractor must purchase “extended reporting” coverage for a minimum of three (3) years after the termination of this Agreement.

9. **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 Agreement.

10. **Notice of Cancellation**: Each insurance policy required above shall not be cancelled, allowed to expire, nor altered except without prior notice to the City no less than thirty (30) days.

11. **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.

12. **Notice**: The Contractor will provide the City’s Risk Manager with the following documents, within ten (10) calendar days of the City’s request, at (City of New Orleans, Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref: Rice Group LLC):

- a. Copies of all policies of insurance, including all policies, forms, and endorsements.
- b. Substitute insurance coverage acceptable to the City within thirty (30) calendar days if any insurance company providing 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.

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

#### I. **Indemnity**.

1. **In general**. 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, injury, or damage to persons or property arising from or relating to any act, omission, or the operations of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. **Limitation.** The Contractor's indemnity does not extend to any loss arising from the negligence, gross negligence, or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such negligence, gross negligence, or willful misconduct.

3. **Independent Duty.** The Contractor has an immediate and independent obligation to, at the 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: (i) the allegations are or may be groundless, false, or fraudulent; or (ii) the Contractor is ultimately absolved from liability.

4. **Expenses.** Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorneys' fees, lay and expert witness fees, court costs, and any similar 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 and will maintain the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement.

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

4. The Contractor is not under any obligation to any other person that is inconsistent with 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, regulation, or code applicable to the Contractor or its operations.

7. Any rate of compensation charged for the performance of services under this Agreement are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services.

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

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of execution of this Agreement by the Contractor, and the execution of this Agreement by the Contractor's representative constitutes a sworn

statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

**B. Convicted Felon Statement.** The Contractor complies with *City Code Section 2-8(c)* and no principal, member, or officer of the Contractor has, within the preceding five (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 nor 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 nor agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

**D. Conflict Of Interest.** The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, the Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. The Contractor represents that it has performed a conflicts check and affirms that no actual, perceived, or potential conflicts exist. The Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a conflict waiver must be presented to the City Attorney, in writing, in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

**E. Legal Services Contracts.** Notwithstanding and in addition to any other duties and ethical obligations, the Contractor acknowledges and agrees that the New Orleans City Council (“**Council**”) shall be included within the definition “client” for purposes of compliance with *Rule 1.4 of the Louisiana Rules of Professional Conduct*. The Contractor agrees to keep the Council informed regarding the status of the contract representation and to respond promptly and fully to requests for briefings and information, including without limitation through participation in executive sessions and to reasonable requests for advance notice of legal filings. To the extent the performance of any obligations under this section gives rise, or may give rise, to a conflict of interest such that the Contractor cannot ethically comply with its duties to the Council under *Rule 1.4*, the Contractor shall promptly notify the City Attorney and the Council President of the conflict or potential conflict.

**F. 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 three (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 the requested affidavit or violates any provision of this paragraph.

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

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

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

1. Administer this Agreement through the City Attorney's Office and the City's Finance Department (the "**Departments**").

2. Provide the Contractor with any and all documents necessary for the Contractor's performance of any work required under this Agreement.

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

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 complete and accurate invoices; and (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 to this Agreement.

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 rendition of the services described under this Agreement and upon the City's receipt of a 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 rates outlined in the table below and in accordance with the City of New Orleans Outside Counsel Billing Guidelines, attached as Exhibit A:

\$225.00 per hour	Rate for attorneys having experience of ten years or more in the practice of law
\$175.00 per hour	Rate for attorneys having experience of five years or more in the practice of law
\$150.00 per hour	Rate for attorneys having experience of three to five years in the practice of law
\$125.00 per hour	Rate for attorneys having experience of less than three years in the practice of law
\$60.00 per hour	Rate for paralegal services
\$40.00 per hour	Rate for law clerk services

2. The City will reimburse the Contractor for reasonable, documented, and itemized out-of-pocket disbursement and charges incurred on behalf of the City within the exceptions and limitations set forth in the City of New Orleans Outside Counsel Billing Guidelines.

3. 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.

4. The stated compensation is inclusive, and includes no additional amounts for, the Contractor’s costs, including, without limitation, all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, records retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The 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 as otherwise specifically provided in the Agreement.

5. The Contractor will immediately provide written notification to the City of any reduction to the rate of compensation for its most favored customer, and the rate of compensation established by this Agreement will automatically 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 \$75,000.00.

**ARTICLE V - DURATION AND TERMINATION**

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

B. **Extension.** This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for four (4) additional one-year terms.

C. **Termination for Convenience.** The City may terminate this Agreement at any time by giving the Contractor at least thirty (30) calendar days written notice of the termination.

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

E. **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, 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 Section 2-1120* or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging Party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date the original written notice of termination for cause was sent to the challenging Party; no further notice will be required.

F. **Suspension.** Notwithstanding the article on Force Majeure, the City may suspend this Agreement at any time and for any reason by giving two (2) business days' written notice to the Contractor. The Contractor will resume work upon five (5) business days' 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 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 – LIVING WAGES

**A. Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in *Article VIII, Section 70-802 of the City Code*.

**B. Compliance.** To the fullest extent permitted by law, the Contractor agrees to abide by *City Code Sections 70-801, et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”).
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by *Section 70-807 of the City Code*.
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by *Section 70-810 of the City Code*.

**C. Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in Subsection (D) below for any work performed during calendar year 2024 or thereafter.

**D. Adjusted Living Wage.** In accordance with *Section 70-806(2) of the City Code*, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024, using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

**E. Subcontract Requirements.** As required by *Section 70-804 of the City Code*, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

**F. Reporting.** On or before January 31<sup>st</sup> and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development  
Living Wage - Compliance

1340 Poydras Street – Suite 1800  
New Orleans, Louisiana 70112

**G. Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

**H. Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in *Section 70-811 of the City Code*.

#### **ARTICLE VIII - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM**

**A. In General.** The Contractor agrees to abide by *City Code Sections 70-456, et seq.*, to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City’s Office of Supplier Diversity (“**OSD**”) oversees the DBE Program and assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

**B. Monitoring.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor’s use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD
3. Routine audits of contract payments to all subcontractors
4. Reviewing of records and reports
5. Interviews of selected personnel
6. The DBECO may schedule inspections and on-site visits with or without prior notice to the Contractor or DBE Entities.

**C. Cooperation.** The Contractor shall:

- 1.** Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
- 2.** Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a.** The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.
  - b.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with the law.
- 3.** Establish and maintain the following records for review upon request by the OSD:
  - a.** Copies of written contracts with DBE Entities and purchase orders.
  - b.** Documentation of payments and other transactions with DBE Entities.
  - c.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission.
  - d.** Any other records required by the OSD.
  - e.** The Contractor is required to maintain such records for three (3) years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.
- 4.** Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
  - a.** The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
  - b.** Reports are required even when no activity has occurred in a monthly period.
  - c.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - d.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee, and amount of transfer to verify payment information as indicated on the form.
- 5.** Conform to the established percentage as approved by the OSD.
  - a.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
  - b.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

c. The City will not adjust the Agreement for any increase in cost due to replacement of DBE Entities.

**D. Post-Award Modification.** The OSD may grant a post-award modification request if:

1. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

2. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

## **ARTICLE IX - NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of the 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 VII of the Civil Rights Act of 1964*, *Section (V) of the Rehabilitation Act of 1973*, and the *Americans with Disabilities Act of 1990*.

**C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and

conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

**D. Termination for Breach.** The 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 X - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the 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 Worker's Compensation Law of the State of Louisiana. Under the provisions of *La. R.S. 23:1034*, any person employed by the Contractor will not be considered an employee of the 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(12)(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 is being hereby expressly waived and excluded by the Parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this Agreement; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** The Contractor, as an independent contractor, will not receive from the City any sick or 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 XI – 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 the 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 the City, provided such event was not caused by the negligence nor misconduct of the City, by the failure of the 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 ninety (90) days. During such time of suspension, the Parties will not be liable nor 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 the Contractor and without any further compensation due.

**2.** Notwithstanding Section (C)(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

## **ARTICLE XII - NOTICE**

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

**1.** To the City:

Donesia D. Turner  
City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

**2.** To the Contractor:

Charles L. Rice, Jr.  
3501 Tulane Avenue  
New Orleans, LA 70131  
[crice@ricegrp LLC](mailto:crice@ricegrp LLC)  
(504) 909-3404



**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. If the intended recipient refuses or avoids delivery, then the date of the first attempted delivery shall be deemed the date of receipt.

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

### **ARTICLE XIII - ADDITIONAL PROVISIONS**

**A. Amendment.** The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both Parties to this Agreement.

**B. Assignment.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the City.

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

**D. Compliance with City's Hiring Requirements – Ban the Box.**

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

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

**F. Construction of Agreement.** Neither Party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all Parties. No term of this Agreement shall be construed or resolved in favor of or against the 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.

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

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

**I. Attachments/Exhibits.** The following documents will be and are incorporated into this Agreement: the RFP, attached separately; Exhibit A: City of New Orleans Outside Counsel Billing Guidelines, attached herein; and Exhibit B: Contractor's Proposal, dated November 29, 2023, attached herein.

**J. Order of Documents.** In the event of any conflict between the provisions of this Agreement and any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; RFP; City of New Orleans Outside Counsel Billing Guidelines; Contractor's Proposal, dated November 29, 2023.

**K. 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.

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

**M. 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.

**N. 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.

**O. 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 nor 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.

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

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

**R. 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 the 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 the Contractor pursuant to this Agreement without regard to the Contractor's otherwise satisfactory performance of the Agreement.

**S. 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.

**T. 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.

U. **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. If reformation is not possible, then the unenforceable provision shall be fully severable. The remaining provisions of the Agreement shall remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part of the Agreement.

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

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

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

#### **ARTICLE XIV – COUNTERPARTS**

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

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

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

**[SIGNATURES CONTAINED ON THE NEXT PAGE]**

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

**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** \_\_\_\_\_ **of** \_\_\_\_\_, **2024.**

**BY:** \_\_\_\_\_  
**PRESIDENT OF THE COUNCIL**

**FORM AND LEGALITY APPROVED:**  
**LAW DEPARTMENT**

**BY:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**RICE GROUP LLC**

**BY:** \_\_\_\_\_  
**CHARLES RICE, JR.**

\_\_\_\_\_  
**FEDERAL TAX I.D.**

**[EXHIBIT “A” AND EXHIBIT “B” ARE ATTACHED ON THE FOLLOWING PAGES]  
[THE RFP IS ATTACHED SEPARATELY]**

**CITY OF NEW ORLEANS**  
**OUTSIDE COUNSEL BILLING GUIDELINES**

**INTRODUCTION**

These Guidelines set forth further the terms of engagement between Outside Counsel and the City of New Orleans (the "City") and are designed to assist Outside Counsel in providing high quality legal service to the City of New Orleans, in the most efficient and cost-effective manner possible.

Law firms and attorneys retained by the City should ensure that a copy of these Guidelines is provided to all attorneys, paralegals, administrative, clerical or other assistants assigned to the City of New Orleans matters, as failure to comply herewith may result in the termination of the City's relationship with a particular law firm or attorney.

**GUIDELINES FOR OUTSIDE COUNSEL**

The City's engagement of your firm is subject to, but not limited to, the following requirements:

**I. STAFFING MATTERS**

The City Attorney should agree with Outside Counsel on which attorney(s) within the firm will have primary responsibility for the matter, and on the number and names of the partners, associates and legal assistants who will be assigned to the matter. Any request for changes to the staffing plan must be discussed and approved in advance. While it is important to have an adequate number of personnel at the right levels involved, the City Attorney expects Outside Counsel to exercise care to avoid overstaffing. Outside Counsel should limit the number of attorneys attending routine meetings, hearings and court proceedings to those essential to the performance of the task.

**Unless otherwise approved in advance, the City will not pay for more than one attorney to attend a trial, motion hearing, meeting or deposition.**

Unless otherwise approved in advance, the City will not pay for internal firm conferences or the inclusion of associates at meetings or hearings for the purpose of "associate development."

The City Attorney expects staffing to be efficient. Attorneys should not be performing work more appropriately assigned to a paralegal. Similarly, paralegals should not be assigned secretarial or other clerical tasks such as photocopying, filing or delivering materials, arranging travel or scheduling depositions or meetings. Routine file maintenance, calendaring, and data entry is Outside Counsel's responsibility and shall not be billed to the City of New Orleans.

The City Attorney believes that it is most efficient for a single attorney or group of attorneys to handle a matter from beginning to end, and we expect Outside Counsel to strive for continuity in staffing. The City will not pay for downtime or learning time that may result from staffing

changes. In addition, the City will not reimburse Outside Counsel for any routine training time, and will not ordinarily pay for summer associates time unless such time has been identified as part of the approved staffing plan for appropriate work such as approved research or drafting projects.

## **II. REPORTING SIGNIFICANT DEVELOPMENTS**

Outside Counsel shall notify the City Attorney immediately of all significant developments that may affect the outcome of a case or matter or that may cause a budget to vary significantly.

Outside Counsel must immediately notify the City Attorney via e-mail of the following:

- (a) Filings or threatened filings of a motion to compel discovery, motion for sanctions, or any motion related to alleged spoliation of evidence.
- (b) Notices to depose City of New Orleans representatives.
- (c) All formal and informal offers to compromise litigation.
- (d) All actual or potential conflicts of interest.
- (e) All information related to the matter that may impact the City of New Orleans public relations.
- (f) Significant rulings by a court.
- (g) Assignments of trial, mediation, arbitration, and hearing dates.
- (h) Events that require the appearance or direct involvement of a City of New Orleans representative.
- (i) All verdicts.

The notice to the City Attorney shall be concise but provide sufficient detail to allow the City to make an informed decision, if one is required.

## **III. PLEADINGS, MOTIONS AND OTHER DOCUMENTS**

Decisions to prepare and file substantive pleadings on behalf of the City shall be made jointly by Outside Counsel and the City Attorney.

Unless directed otherwise, Outside Counsel shall forward a draft copy of all pleadings to the City Attorney for review and approval prior to filing. Any pleading to be reviewed prior to filing must be submitted to the City Attorney no less than five (5) business days before the filing deadline. The City Attorney and Outside Counsel shall remain attentive to identifying legal and fact issues where the use of previously conducted research may be helpful and cost-efficient.

Any affidavits prepared by Outside Counsel for signature by a City employee must be reviewed and authorized in advance by the City Attorney. Outside Counsel are encouraged to use declarations in jurisdictions where they are allowed.



Unless otherwise instructed, Outside Counsel shall forward electronic copies of all substantive pleadings and significant correspondence to the City Attorney, including, specifically, all dispositive pre-trial and post-trial motions, supporting memoranda and responses, court orders, settlement correspondence, motions to compel or for sanctions, pre-trial reports, jury instructions, judgments, proposed findings of fact and conclusions of law, appellate briefs and, when requested by the City Attorney, summaries of medical and expert reports, if applicable.

#### **A. Responding to Written Discovery**

All discovery responses and requests, including any supplements, must be approved in advance by the City Attorney.

The City Attorney's Office will provide information to assist Outside Counsel in responding to interrogatories, requests for production of documents, requests for admission of fact, preparing Initial Disclosures and other types of written discovery. Within five (5) days of receipt, Outside Counsel shall email the complete discovery requests to the City Attorney.

#### **IV. INVOICING FOR LEGAL SERVICES**

The City Attorney views every bill from Outside Counsel as a certification by the firm that the legal services and disbursements reflected on the bill are reasonable for the legal matter involved and necessary for the proper provision of legal services. Attorney and paralegal time and disbursements that are not necessary for the cost effective handling of the legal matter should be deleted. We expect Outside Counsel to refrain from billing non-billable time or expenses as outlined in these Guidelines. Compliance with this procedure will avoid delays in processing invoices.

Invoices should be submitted monthly (unless agreed otherwise between the parties). Invoices must be emailed and approved by the City Attorney, or designee, before submitting electronically, via the City's supplier portal.

The City will pay for actual services rendered at rates established and agreed to in advance. Hourly rates will remain fixed for the duration of the representation on a particular matter unless otherwise agreed. Support services (secretaries, word processors, proofreaders, managing clerks, information system technicians, librarians, computer operators, etc.), including overtime, are part of Outside Counsel's normal overhead and will not be reimbursed. Time spent preparing, discussing, or supporting Outside Counsel's invoices will not be reimbursed.

Absent a specific agreement for an alternative fee arrangement, Outside Counsel fees shall be computed by applying the negotiated hourly rate to the time for the services expended. Time should be charged in units no larger than one-tenth of an hour. Hours shown must accurately reflect the time spent on the described activity and must either be the exact amount of time or the exact time rounded up or down, as the case may be, to the nearest one-tenth of an hour.

***Block billing will not be accepted.***

All charges must reflect the work performed within the billing period or a reasonable time before the billing period.

All charges must reflect the work performed within the billing period or a reasonable time before the billing period. The City may question and refuse to pay any charges incurred more than 90 days prior to a statement's listed billing period.

*The City of New Orleans will promptly terminate the services of any Outside Counsel whose billing practices raise questions about the Outside Counsel's integrity, honesty or compliance with the applicable rules of professional conduct.*

**A. Line Item Entry Guidelines**

Outside Counsel should review each invoice to determine that each line item clearly and succinctly describes the task performed and the legal reason for the task if the same is not apparent from the task description itself. The City of New Orleans reserves the right to reduce or reject any invoice or invoice line item because of a failure to comply with these Guidelines because an invoice line item is unclear or unreasonable or for any other valid and reasonable purpose.

Task descriptions should be written in plain English. The purpose for the task should either be plain from the context or should be succinctly described.

**V. INVOICING FOR DISBURSEMENTS AND EXPENSES**

The City will reimburse Outside Counsel for reasonable, documented and itemized out-of-pocket disbursements and charges incurred on behalf of the City, with the exceptions and limitations set forth herein. Outside Counsel's invoices to the City should reflect the actual cost of expenses and should not include any markup.

The City does not pay court filing fees. The City will reimburse Outside Counsel for actual costs incurred for court reporters and transcripts. The City will pay for only one copy (electronic and hard) of a transcript. Outside Counsel should obtain the lowest possible charge for court reporting fees, including any possible volume discounts.

The City discourages the use of express mail and courier services for both cost and environmental reasons. When an alternative electronic means for exchange of documents (*e.g.*, e-mail) is reasonably available, the City will not pay express mail charges. If electronic or facsimile delivery is unavailable, the City will reimburse Outside Counsel only for reasonable and necessary delivery charges. If Outside Counsel has a volume discount arrangement with a vendor, the City should be charged on that basis. Charges for time spent preparing express mail packages are part of Outside Counsel's overhead and are not reimbursable.

The approval of the City must be obtained in writing prior to retaining any third-party services other than legal-process servers and court reporters.

## **VI. NON-BILLABLE TIME**

The following examples are not all-inclusive but represent many items for which the City will not reimburse Outside Counsel:

- (a) Time spent preparing invoices, completing time slips or resolving billing questions.
- (b) Time spent by paralegals performing clerical, secretarial or administrative work.
- (c) Time spent by attorneys performing paralegal work.
- (d) Time training a new staff member, attorney or paralegal or time incurred as a result of staffing changes made by Outside Counsel.
- (e) Time spent on staffing issues.
- (f) File creation, organization and maintenance, including data entry, input of project or matter information in Outside Counsel's financial billing system or litigation support system, labeling, binding, indexing and sorting documents, reorganizing, re-filing and storage preparation, document disposal and retrieval of documents.
- (g) Internal conferences. (Intra-office conferences are considered an internal law firm management tool. However, at the discretion of the City Attorney, conference charges may be paid where the conference adds value to the case, project or matter or results in cost-effective management of the matters assigned to Outside Counsel.)
- (h) Other administrative support services such as those performed by library and computer or information systems.
- (i) Time for more than one attorney to review pleadings, briefs, correspondence, or emails.
- (j) Time for more than one attorney to attend meetings, court, depositions, or other events. If more than one billing attorney or paralegal is needed to attend or handle a billable event or task, Outside Counsel must first receive written authorization from the City Attorney.

## **VII. CONFIDENTIALITY**

In the course of representing the City of New Orleans, Outside Counsel frequently has access to nonpublic and confidential information, including information excluded from Louisiana's Public Records law. Outside Counsel must have in place appropriate procedures to ensure the protection of all such information. Outside Counsel must take appropriate measures to ensure that all legal and non-legal personnel are familiar with this requirement and are effectively supervised in this regard. Outside Counsel must consult with the City Attorney before

disseminating any potentially sensitive information acquired from the City or developed or learned while representing the City.

#### **VIII. FILE RETENTION**

Outside Counsel shall retain pleadings, correspondence, verified discovery responses, deposition transcripts, and similar documents and work product for a period of no less than five (5) years from the date the matter is concluded or for the time period specified by rule of law in the jurisdiction in which the matter was pending, whichever is longer. Outside Counsel shall notify the City Attorney's Office no less than 30 days prior to destroying any file. Along with the notification, Outside Counsel shall submit an inventory of any original City of New Orleans documents contained in the file to be destroyed and a certification that any electronic version of the file also will be destroyed or deleted. The City, in its sole discretion, may request any/all files be turned over to the City at no additional cost.



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504-909-3404

RESPONSE TO RFP NO. 3658, OUTSIDE LEGAL  
SERVICES MPERS MATTERS



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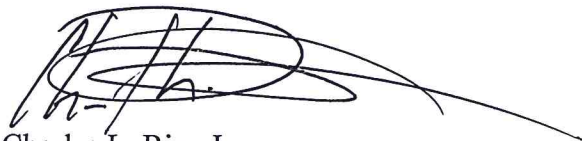
Ms. Slocum:

On behalf of the Rice Group LLC-Kapoor Company team, we extend our sincerest appreciation for the opportunity to compete for the RFP NO. 3658, Outside Legal Services for the MPERS Matter. We believe the unique experiences of our team will allow us to bring both legal and practical solutions with regards to the City of New Orleans issues with MPERS. Our team contains individuals with both legal, public finance, and pension experience. As contained in our response, our team possess both public sector, private sector experience as well as litigation experience that will serve the City of New Orleans well in addressing its issues with MPERS. We have put together a unique approach to address the city's issues with MPERS that proposes legal, legislative, and collaborative solutions.

Rice Group is headquartered in New Orleans Louisiana at 3501 Tulane Avenue, New Orleans Louisiana 70112. The Kapoor company is headquartered in Wallingford Pennsylvania and is located at 205 Pembroke Road, Wallingford PA 19086.

We look forward to demonstrating why the Rice Group-Kapoor Company team is the optimal strategic partner, effectively addressing current and future MPERS challenges. It is our standard to produce the required results of the RFP with the utmost precision, and we thank you again for creating space for us to present our services.

Best Regards,

A handwritten signature in black ink, appearing to read 'Charles L. Rice Jr.', with a long, sweeping horizontal line extending to the right.

Charles L. Rice Jr.  
Team Leader Rice Group LLC-Kapoor Company Team

## **STRATEGIC PARTNERSHIP**

### **Competitive Advantage**

Rice Group LLC (RG) and The Kapoor Company LLC (Kapoor) together bring a unique set of experiences that will allow our team to bring a number of innovative solutions to the City of New Orleans in dealing with its MPRES issues. Our team brings a unique set of public and private experiences that will allow us to work with city, state, and MPERS officials to solve the current pension crisis. Our leadership team possess an intimate understanding of municipal and state governments their issues as well as the financial challenges associated with pension funding. This is an RFP for legal services, both Charles L. Rice, Jr. and Vijay Kapoor are attorneys. Mr. Rice, who will lead any litigation matters has practiced in both Alabama and Louisiana for over 28 years. In his practice, Rice has handled both commercial and governmental matters. Rice will serve as lead attorney and Mr. Kapoor will serve in a consulting capacity given his vast experience with pensions and solving complex financial issues for government entities.

### **RICE GROUP LLC**

Rice Group LLC (RG) is a certified Service-Disabled Veteran-owned, Minority Business Enterprise and Disadvantaged Business Enterprise (DBE) headquarter in New Orleans, Louisiana. Formed in 2005, Rice Group, LLC (RG) provides legal services, strategic consulting, project management, financial management, and technology services to commercial and government organizations. We provide turnkey services to our clients because of the vast operational and management experience of our team. Our management team consists of former senior level fortune 500 and government executives. Our team can mobilize the right people, skills, and technologies to help organizations improve their performance and efficiency and deliver projects on time and within budget. Charles L. Rice, Jr. a principal in RG is the former City Attorney and Chief Administrative Officer for the City of New Orleans. Mr. Rice is licensed to practice in Alabama and Louisiana and his been in practice for 28 years.

### **KAPOOR COMPANY**

Since 2008, The Kapoor Company has provided governments with objective, straightforward advice that solves workforce problems, improves services, and saves money. Having served governments as managers, attorneys, and now as independent advisors, we understand the unique challenges they face and the critical role that they play in their citizens' lives. We believe in the high calling of public service and look for clients who are willing to take the steps necessary to make themselves the most effective at what they do.

As former attorneys and government officials, we have advised Fortune 100 companies, states, counties, municipalities, nonprofits, and small businesses on a host of sensitive and complicated matters. Vijay Kapoor has mediated three nationally recognized pension consensus agreements among cities and their public safety unions that preserved benefits while stabilizing pension funds, including for the City of New Orleans. He also served in the administration of Pennsylvania Governor Edward G. Rendell as the Executive Director of the Governor's Office of Management and Productivity. In this role, he led statewide and agency-specific cost savings and operational improvement projects at the Commonwealth of Pennsylvania. He currently serves as the Chief of Staff to the Receiver for the City of Chester, PA which filed for Chapter 9



bankruptcy in November 2022, in part due to significant unfunded pension and retiree health care liabilities.

The Kapoor Company specializes in workforce-related matters. Our specific services include:

- Pension/Retiree Health Care Mediation and Funding
- Labor Negotiations and Interest Arbitration Support
- Workforce Costing
- Operational Analysis

We believe that these difficult issues must be addressed by realizing that governments and their workforces need each other. Governments need their employees to provide the services that their citizens fund and expect. Public employees need their governmental employers to provide them a fair compensation package. No one benefits from a fiscally distressed municipality, a seriously underfunded pension fund, or a demoralized workforce. While not easy, we have mediated agreements with governments and employee organizations that stabilized finances and maintained very competitive compensation packages.

We focus on the numbers and take into account how changes impact employees and retirees. We know that our credibility is paramount and work to gain the trust of all of those involved. We are under no illusions as to the difficulties these problems present, but we are convinced that they must be addressed or else the eventual outcome will be much worse for all involved.

## **RELEVANT EXPERIENCE**

### New Orleans, Louisiana

In 2014, Mayor Mitchell J. Landrieu of New Orleans, LA, created a task force consisting of City representatives, firefighter leadership, pension board representatives and citizens and charged it with finding a solution to the firefighter pension fund's (the "Fund") severely underfunded status. The Business Council of New Orleans and the River Region ("BCNO"), a non-profit civic group led by the City's business community, agreed to help pay for pension experts to advise the task force. BCNO engaged The Kapoor Company to provide technical assistance and mediation services to the task force members. Additionally, BCNO's Chairman agreed to serve as the task force's chair.

The Fund's financial situation was among the worst in the country of similarly sized public pension funds. As of January 1, 2014, the Fund was approximately 18% funded. Further complicating matters was the fact that the Fund and the City had been engaged in litigation for many years over investments made by pension fund trustees, the City's funding responsibilities, and the benefit interpretation itself.

The task force held three public meetings where Kapoor and The Segal Company, the actuarial consultant, presented the Fund's financial situation, discussed how the Fund became so severely underfunded, benchmarked the pension benefit levels, and provided examples of options for reforms. Kapoor worked with the task force members to try to develop a comprehensive consensus for ensuring the Fund's long-term stability including plan governance, actuarial methods and assumptions, funding mechanisms and benefit levels. The parties arrived at a

comprehensive consensus agreement that not only resolved the pension issue, but also addressed a long-standing backpay litigation judgment.

#### Chattanooga, Tennessee

In 2013, Mayor Andy Berke of Chattanooga, TN, created a task force consisting of City representatives, employees (police and fire), retirees, pension board representatives, and citizens and charged it with finding a consensus agreement to address the City's underfunded police and fire pension plan. Any changes to the pension benefits needed to be approved by the plan's pension board (which consisted of six employees, one member appointed by the city and one member appointed by City Council) and City Council. Despite the City having always made its full actuarial required contributions, the plan's funded status had dropped from 109.9% funded in 1999 to 51.8% funded as of January 1, 2013. Over that same time period, the City's annual contributions grew from \$3,781,998 to \$14,100,000 and were projected to continue to grow to \$20,000,000 by 2019.

The City engaged PFM to mediate among the parties and provide technical assistance to the task force and its members. Vijay Kapoor led the engagement and served as the technical advisor to the task force as well as the mediator among the parties.

In January 2014, the task force reached a unanimous consensus including phasing in increased employee contributions, maintaining a deferred retirement option plan (DROP) benefit, maintaining a defined benefit plan, reforming an automatic COLA to be based on pension amounts, and implementing a minimum age requirement for most employees. The consensus also improved benefits for those killed in the line of duty and for certain long-time beneficiaries receiving small pensions. These changes reduced the unfunded liability by 37% and improved the plan's funded status from 61% to 71% on an actuarial basis.

These changes were unanimously accepted by the pension board and the City Council.

#### Lexington, Kentucky

In 2012, Mayor Jim Gray of Lexington, KY, created a public task force and charged it with finding a consensus solution to Lexington's underfunded police and fire pension plan. In FY2011, the plan had an unfunded liability of \$258 million (89% of the City's annual budget). The plan's funding level stood at 59% despite the City floating pension obligation bonds and in FY2012 the annual required contribution rose to \$38.8 million – 13.4% of the City's annual budget.

In late 2012, the City engaged Public Financial Management (PFM) to provide technical assistance to the task force and its members. Vijay Kapoor led the engagement and helped the parties better understand the changes needed, benchmarked the current pension benefit, provided examples of changes made by other jurisdictions and served as a mediator among the parties. Over several weeks of intensive negotiations mediated by Mr. Kapoor with the City, its police and fire unions, and retiree representatives, the parties reached a consensus that included increasing the City's contribution to a minimum of \$20 million (it had historically been around \$11 million), reforming an automatic COLA to be based on pension amounts retirees received, increasing the active employee contribution, reducing the disability pension, reducing the

pension multiplier for new hires from 2.5% to 2.25%, and introducing a minimum age requirement of 50 to receive the pension.

These changes were projected to reduce the unfunded liability by 45% or \$134.8 million. Of the 1,487 retired and active police officers and firefighters who voted on the proposal, 76 percent supported it. These changes were enacted into law in 2013. As of July 1, 2015, the Fund's funded status had improved to 78.4% and reduced its unfunded liability from \$300 million in 2013 to \$171.1 million.

As City Attorney and Chief Administrative Officer Charles Rice, is intimately familiar with City of New Orleans budgeting, operations, and pension matters. Also, while at Entergy Rice, served on the Human Resources Committee, which dealt with the company's pension funding, healthcare, and 401k matters.

## *CLIENT SERVICES PLAN*

Although this RFP is titled legal services and the statement of needs requests traditional legal services, based on the pre-meeting, it appears that the real task here is to find a way to address the MPERS problem. As such, we believe that the solution to the MPERS problem needs **both** a non-legal and legal approach, with an initial emphasis on the non-legal approach given our understanding of the current situation.

Our recommended approach is informed by the work done by members of our team during the successful 2013 New Orleans Fire Fighter Pension Fund (NOFFPF) mediation where a consensual resolution was reached, major litigation was avoided, and several long-running problems were resolved. As further discussed in the next section, we believe that the City should consider a similar approach here (at least initially) as we think that the City's best chance to positively resolve the MPERS issue is through non-legal means.

Simply put, we do not believe that La. R.S. 11:2225.4 was ever intended to apply to a situation where a municipality does not *intentionally* reduce its police department. However, the plain language of La. R.S. 11:2225.4 will make litigation an uphill battle for the City. At least at the moment, we believe that the City is in a stronger position to make its case in the court of public opinion rather than in a court of law and that the City should use that opportunity to see if a resolution can be reached that avoids litigation.

Before providing our approach, we think it beneficial to restate the problem facing the City as we see it. The MPERS fund, which is a pooled pension fund for Louisiana law enforcement departments of various sizes, has informed the City that, due to the decrease in City police officers from one year to the next, the City has "partially dissolved" its police department as defined in La. R.S. 11:2225.4 and therefore must make 180 monthly payments of \$50,314.10 beginning in July 1, 2023, and another 180 monthly payments of \$163,798.57 beginning July 1, 2024 which represents payment of a pro rata share of the MPERS plan's unfunded accrued actuarial liability (UAAL). The reduction in City police officers has come as a result of not being able to replace police officers at the same rate as attrition, not due to a voluntary reduction by the City through layoffs or furloughs. At all times, the City has been and continues to attempt to recruit and retain City police officers.

We understand that the MPERS issue has attracted a great deal of press coverage and is a significant political issue in the City. As part of preparing our response to this RFP, we have watched recorded sessions of MPERS meetings, analyzed financial and actuarial information on the MPERS website and have read media coverage. We also understand that the relationship between the City and MPERS is strained and that the City and MPERS are involved in other litigation.

### Non-Legal Task Force Approach

During the NOFFPF mediation, we utilized a public task force consisting of members of the Mayor's office, City Council, labor and community members.<sup>1</sup> That task force held meetings where basic information and recommendations were presented in ways that the public could understand. By working through this process, not only was the issue analyzed in an objective, straightforward way, but it also served to inform the public and the media and to create the environment for an agreement to occur.

We understand that with the next penalty beginning in July 1, 2024, time is of the essence, but we believe that a task force concept should be considered. First, currently it appears that the news articles covering this issue have set it up as simply a fight between MPERS and the City where the City is refusing to make a statutorily required payment. It appears to us that La. R.S. 11:2225.4 was never intended to apply to a situation like this one where a municipality is not voluntarily reducing the size of its police department. As will be evident from the next section, the arguments that support this conclusion are better explained publicly through presentations as they are not easily capable of being reduced to soundbites.

Second, bringing in respected community members who understand financial concepts will likely diffuse the current unhelpful "MPERS vs. City" narrative in favor of one where the merits of the situation are analyzed objectively which we think benefits the City. We found community members very helpful in the NOFFPF mediation as they did not have the personal history with the parties, had subject matter expertise, and could focus objectively on what should be done. Their presence also helped to diffuse both the internal and external "politics" of the situation so that a resolution could occur.

Third, at this moment, we do not think that litigation will benefit the City. The statute says what it says and MPERS has a relatively straightforward argument that it is "enforcing the law." The statute includes the payment of attorneys' and actuary fees as well as an enforcement mechanism for direct payment from the state. Even if litigation may be inevitable, we think that the City would benefit by first trying to resolve the issue through a Task Force process. If that is unsuccessful, then the City can truly say that it tried to amicably resolve the matter, but it had no choice to fight the battle in court.

The mechanics of the Task Force process were:

- Publicly announcing the Task Force concept and appointing members
- Having subject matter experts (in this case, our team) make substantive presentations to the Task Force at public meetings. Those presentations generally consisted of the following:<sup>2</sup>

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<sup>1</sup> This concept was borrowed from the two other successful pension mediations (Lexington, KY and Chattanooga, TN) that Vijay Kapoor of The Kapoor Company has conducted.

<sup>2</sup> It is critical that an actuarial firm be part of this process as they have specialized abilities to run quantitative scenarios that our team cannot. In the NOFFPF matter, The Segal Company was utilized and we understand that they are the actuarial firm that is servicing NOMERS. We have not had any discussions with them, but believe that they have the capabilities to assist in this matter.

- An initial meeting that defines the problem including the background history, issues that need to be considered, and relevant data
- A subsequent meeting where options are presented to the Task Force and publicly evaluated
- A final meeting where a recommendation is made to the Task Force
- Throughout the “public” Task Force process, parties had private conversations to try to resolve the situation which were ultimately successful

Should the City invite our team for an interview, we will be happy to further discuss the Task Force experience in more detail.

### Legal Approach/Arguments

In this section, we provide our initial substantive thoughts on arguments supportive of the City. We would expect to present this information as part of the Task Force process described earlier. These arguments are not exhaustive and are subject to change based on new information we may receive. However, they should provide the City with a sense of how we see the MPERS situation and how we may approach it.<sup>3</sup>

Fundamentally, we do not believe that the Louisiana State Legislature ever intended La. R.S. 11:2225.4 to apply to the City’s current situation. As we will explain below, based on the operation of the language in real life, the penalty trigger language appears to have been included to account for situations where municipalities *intentionally* decide to “go out of the police business” which would have a negative actuarial impact on the health of the pension fund since employee and employer contributions would cease.<sup>4</sup> Here, the City is not intentionally reducing the size of its police force nor does it have any intention of going out of the police business.

Unfortunately, the plain language of La. R.S. 11:2225.4 does not distinguish between voluntary or involuntary reductions in police department size.<sup>5</sup> The trigger is simply a mathematical calculation – either the *year over year* reduction of 50 participating employees or a *year over year* 30% reduction in participating employees. The leaders of MPERS would argue that they do not have a choice as to whether they enforce the statute even if the statute was not intended to apply to a particular situation. Therefore, we believe it important for the City to be able to clearly communicate the arguments for why La. R.S. 11:2225.4 was not intended to apply to situations where municipalities did not intend to reduce the size of their police departments.

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<sup>3</sup> Due to concerns about attorney-client privilege, we will not discuss here our legal evaluation of the strengths and weaknesses of the City’s case, but can discuss our initial thoughts at any interview.

<sup>4</sup> A concept that we believe is akin to what La. R.S. 11:2225.4 is seeking to address is partial plan termination in private section pensions where pension vesting for remaining members is accelerated if more than 20% of total plan participants are terminated. In its FAQ section on partial plan termination, the IRS notes that voluntary terminations generally do not count in determining whether a partial termination has occurred. <https://www.irs.gov/retirement-plans/retirement-plan-faqs-regarding-partial-plan-termination>

<sup>5</sup> If retained by the City, we would of course review any legislative history to discern legislative intent of the provision. We have not done so yet.

Though not exhaustive, based on our review of publicly available financial and actuarial information, as well as our experience in the pension world, the following are our initial arguments in support of the proposition that La. R.S. 11:2225.4 was not intended to apply to situations where municipalities did not intend to reduce the size of their police departments.

*A. The “Trigger” for the Penalty is Measured by a One Year-Over-Year Calculation, Not a More Cumulative Calculation*

The most significant piece of evidence that we see for why we believe that La. R.S. 11:2225.4 was only intended to apply to situations where municipalities intentionally reduced their size of their police departments is that the calculation for the trigger is measured only by a one year-over-year reduction of law enforcement participants and not more cumulatively over time. Based on the purported reasons for La. R.S. 11:2225.4, not taking into account a cumulative measurement makes little sense as the impact to the pension fund of a reduction in police officers over time can be as bad or even worse than from just one year to the next.

MPERS states that the purported intent for La. R.S. 11:2225.4 is that if a municipality reduces the size of its department, then the unfunded liabilities of the fund will have to be absorbed by the other members of the fund. As they note on their website, employer contributions to MPERS are determined using a “percentage of payroll.”<sup>6</sup>

MPERSs continues:

“But what happens if an employer like New Orleans goes from having a high payroll in one year to a very low payroll in the following year (because many officers quit or retired)? Well, the annual ‘loan payments’ that are required to pay off the \$788,517,441 don’t go down. However, the amount that New Orleans pays does. So, who pays for the portion of the debt payment that New Orleans otherwise would have paid? Mostly, all of the other employers (Baton Rouge, Gretna, Kenner, etc.)”<sup>7</sup>

However, if this statute really was intended to address the arguably unfair allocation of the UAAL, then the penalty trigger should not be limited to just a twelve-month period. Rather, it should consider cumulative reductions. Under the statute, as long as one year-over-year reduction is not enough to trigger the provision, a municipality can shrink its police department over time which has the same actuarial impact on the fund. Indeed, if we look at MPERS’ own data, that is exactly what has happened.

Page 127 of the MPERS Annual Comprehensive Financial Report for the Fiscal Years Ended June 30, 2022 and 2021 provides the top 10 contributing employers by member count (both number of employees and percentage of total fund members) from 2013 to 2022. As can be seen below, other municipalities have either lost over 50 members and/or seen larger percentage

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<sup>6</sup> From MPERS website FAQs “What are the New Orleans Police Department partial dissolutions all about?” <https://www.lampers.org/faqs>.

<sup>7</sup> *Ibid.*

reductions than New Orleans but have lost their members at a slower pace and therefore did not trigger the partial dissolution penalty.<sup>8</sup>

MPERS Member Count (2013 to 2022, Sorted by % Change)

	2022	2013	# Change	% Change
Monroe	143	195	-52	-26.67%
Alexandria	142	185	-43	-23.24%
Kenner	134	171	-37	-21.64%
New Orleans	980	1221	-241	-19.74%
Shreveport	536	623	-87	-13.96%
Baton Rouge	668	743	-75	-10.09%
Lake Charles	169	184	-15	-8.15%
Bossier City	189	186	3	1.61%
Lafayette	302	271	31	11.44%
Gretna		99		

This pattern also holds true if one measures from 2018 (the year we understand the statutory provision to be enacted).

MPERS Member County (2018 to 2022, Sorted by % Change)

	2022	2018	# Change	% Change
Alexandria	142	175	-33	-18.86%
New Orleans	980	1185	-205	-17.30%
Kenner	134	161	-27	-16.77%
Shreveport	536	611	-75	-12.27%
Baton Rouge	668	729	-61	-8.37%
Monroe	143	155	-12	-7.74%
Lake Charles	169	177	-8	-4.52%
Lafayette	302	309	-7	-2.27%
Bossier City	189	183	6	3.28%
Hammond		107		

We cannot help but note that both Kenner and Baton Rouge, two cities that MPERS specifically references as being disadvantaged in its FAQ section, either would have triggered the penalty or had a higher percentage reduction of police officers than New Orleans if measured from a different period.

To further highlight the absurdity of applying the statutory language to the current situation, New Orleans could have lost the same number of officers over time as it has, but as long as it did so more gradually (as shown below) it would have never triggered the provision.

<sup>8</sup> The document referenced can be found here: [https://www.lampers.org/sites/default/files/fileattachments/general/page/771/municipal\\_employees\\_retirement\\_system\\_acfr\\_for\\_the\\_fiscal\\_year\\_ended\\_june\\_30\\_2022.pdf](https://www.lampers.org/sites/default/files/fileattachments/general/page/771/municipal_employees_retirement_system_acfr_for_the_fiscal_year_ended_june_30_2022.pdf)



### Hypothetical Reduction in City Police Officers 2013 to 2022

Year	# Officers	Change	% Change
2013	1221		
2014	1194	-27	-2.2%
2015	1167	-27	-2.3%
2016	1140	-27	-2.3%
2017	1113	-27	-2.4%
2018	1086	-27	-2.4%
2019	1059	-27	-2.5%
2020	1032	-27	-2.5%
2021	1005	-27	-2.6%
2022	980	-25	-2.5%

If the purpose of the statute is to really to reallocate UAAL liability and not to disincentivize a municipality from intentionally reducing the size of its police department, the measurement of only one year for the trigger makes no sense as the impact on the plan over time is the same.

Interestingly, the MPERS actuary and others have taken notice. At the March 16, 2023, Board meeting, the actuary noted the need to look at a more comprehensive measurement period.<sup>9</sup> He stated:

“I would consider a more cumulative test to be more appropriate...I think that the current law is well meaning. We have tried many things in this law. I think we’ve realized that we even have some smaller or midsize towns that have had cumulative loss of membership that is concerning but we haven’t ... it doesn’t get caught in this annual test. I think we need to look at that possibility and see if the Legislature would agree with us that cumulatively over time, we may have to have a sort of secondary test.”

Additionally, FOP attorney Donovan Livaccari was quoted in a July 18, 2023, 4WWL report stating that while he supported protections for the pension fund, “They put rules like this in place to keep municipalities from purposely reducing their contributions. But the City of New Orleans is not moving employees out of MPERS to reduce its contributions. This is at least partially the fallout from the pandemic.”<sup>10</sup>

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<sup>9</sup> These statements were made at the March 16, 2023, MPERS Board of Trustees meeting and can be found beginning at 1:04:45 at the following:

[https://mpersadmin.sharepoint.com/\\_layouts/15/stream.aspx?id=%2FMeeting%20Recordings%2FBoard%2FMPERS%20Board%20of%20Trustees%20meeting%2D20230315%5F100817%2DMeeting%20Recording%2Emp4&ga=1&referrer=StreamWebApp%2EWeb&referrerScenario=AddressBarCopied%2Eview](https://mpersadmin.sharepoint.com/_layouts/15/stream.aspx?id=%2FMeeting%20Recordings%2FBoard%2FMPERS%20Board%20of%20Trustees%20meeting%2D20230315%5F100817%2DMeeting%20Recording%2Emp4&ga=1&referrer=StreamWebApp%2EWeb&referrerScenario=AddressBarCopied%2Eview).

<sup>10</sup> <https://www.wvltv.com/article/news/investigations/new-orleans-police-pension-fund-fines-state-law/289-0e4cce62-5080-445e-9c85-a1e9f4a39439>

The only rational reason for the trigger calculation to measure from only one year to the next is if a municipality was intentionally reducing its workforce. This trigger is a clear disincentive not to intentionally reduce its workforce.

*B. The Trigger is Based on Number of Members and Not Total Pensionable Compensation*

The second argument for why this provision was not intended to apply to municipality who was not intentionally reducing its police department is that the trigger is a measurement of the reduction of police officers and not total pensionable compensation.

A municipality's contribution amount to MPERS is not based on the number of police officers, but rather on its projected pensionable compensation. Each year, to determine the employer's contribution rate, the MPERS actuary calculates a percentage of salary amount that is then applied to each municipality at the same rate. For example, in March 2023, the actuary calculated that the employer contribution rate for MPERS for fiscal year 2023-2024 (July 1, 2023-June 30, 2024) will be 34.35%. Each employer, regardless of size, will remit to MPERS 34.35% of pensionable compensation over this period.

In MPERS' argument about the purpose of the statute, it assumes that as the number of police officers' decreases, total pensionable salary does as well. Essentially, it is using number of police officers as a proxy for pensionable compensation. However, while headcount would have an impact on total pensionable compensation amounts, that reduction is not one for one. Pensionable compensation is also impacted by raises as well as additional forms of compensation such as overtime. Though we have not reviewed New Orleans budget data, we would expect that as headcount has declined, overtime has increased.

Actuarially speaking, MPERS would be affected in the same way it claims New Orleans has impacted it, if a municipality kept the same number of officers, but did not increase salaries at the assumed rate. Similarly, a municipality could reduce the number of police officers, but increase salaries higher than the assumed rate and not have an impact on the pension fund.

Taking MPERS' argument at face value, the correct data point for the trigger would be to look at the percentage change in the total pensionable compensation, which (depending on the time period) demonstrates that the annual contributions (which are based on a percentage time pensionable salary) for many other municipalities have declined at a far greater rate than New Orleans.

In Appendix A, we provide a comparison of estimated total pensionable salary amounts based on employer contributions to MPERS from 2013 to 2022 from the MPERS GASB 68 reports.<sup>11</sup> This comparison shows that the estimated total pensionable compensation for New Orleans declined by 11.3% from 2013 to 2022. However, fifty-six (56) of the 122 other municipalities

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<sup>11</sup> Those reports can be found here: <https://www.lampers.org/general/page/gasb-68>. Our methodology was to apply the percentage employer contribution rates in 2013 (31%) and 2022 (29.75%) to the respective year employer contribution amounts to develop an estimated total pensionable salary.

had a higher percentage decline in estimated total pensionable compensation over this same time period including the three municipalities that MPERS referenced as being unfairly prejudiced by the decline in the City's police officers: Kenner (33.1%), Baton Rouge (22.2%), and Gretna (17.8%).

Measured from the 2013-2022 time period, those fifty-six other municipalities have actually impacted the MPERS plan more negatively than New Orleans is being accused of relatively speaking, but because of the statutory trigger language (that was never intended to apply to this situation) New Orleans is the one paying the price.<sup>12</sup>

*C. These Penalty Provisions Make it Even More Difficult for New Orleans to Recruit and Retain Officers Because the Money That it Would Need to Use to Pay the Penalties is Money that it Cannot Use to Increase Active Police Officer Compensation or Hire New Police Officers*

The third argument for why we do not believe that this provision was intended to apply to a municipality who was not intentionally reducing its police department is that the penalty actually makes it more difficult for a municipality who is trying to increase the number of police officers to do so because the money that it needs to pay in penalties cannot be used to recruit or retain police officers.

As the City knows, these penalty provisions are very severe and costly. If both are applied, the City will be paying \$2,569,352 in penalties per year for the foreseeable future and that does not take into account likely additional penalties from further police officer declines. That \$2,569,352 is money that the City could use to recruit and retain police officers, but instead it will need to pay it to MPERS *because it cannot recruit and retain police officers at a fast enough rate*. This is completely nonsensical and is similar to a "debtor's prison." If the City is saddled with these penalties, the City will never be able to recruit and retain enough officers which is to the detriment of MPERS, police officers, the FOP, and City residents. Instead, it's likely that the City will lose more police officers, creating a negative feedback loop.

Again, the language in La. R.S. 11:2225.4 serves as a significant deterrent to municipalities who intentionally wish to reduce their police departments as believe it was intended. However, for municipalities who want to increase the number of police officers but are struggling to do so, the language only makes it more difficult for them which runs completely counter to the interests of all involved.

*D. The City Does Not Control the UAAL Amount*

The final argument in this section is less about the intent of the La. R.S. 11:2225.4 and more about the general unfairness of the penalty levied against the City. MPERS argues that by

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<sup>12</sup> Unfortunately, this is not surprising. The statutory provisions are triggered either by a reduction of 50 members or 30% reduction. There are only a few departments that could realistically expect to drop by 50 members because of their size. The same is true for the 30% reduction. Most municipalities, *unless they intentionally decide to partially dissolve*, will statistically never expect to trigger the provision.

reducing the number of police officers, other municipalities are then required to pick up a disproportionate share of the unfunded actuarial accrued liability (UAAL). The penalty is that the municipality must then itself pay a portion of the UAAL amortized over 15 years. However, it is the MPERS Board that is responsible for the UAAL, not the municipality and therefore the municipality is at the mercy of the MPERS Board for the size of the UAAL which directly impacts the penalty.

The unfunded actuarial accrued liability (UAAL) is basically the difference between the cost of promised benefits and the money that the plan has to pay them. This difference occurs when plan experience does not match up with the plan assumptions or if the plan's board takes actions to increase benefit costs without having the current means to pay them.

That is what happened in 2022 where the MPERS Board voted to grant a COLA which was not funded.<sup>13</sup> That decision alone added \$50,408,907 to the \$788,517,441 in unfunded liability in one year.

Once triggered, the City is responsible for a portion of the UAAL and if that amount is increased by the Board, then the City's share goes up. In some respects, this is the price that a municipality must pay for being a part of a pooled plan in that a pooled plan shares risks and gains among all of its members. At the same time, what makes this situation even more unfair from the City's perspective, is that 1) it cannot control the UAAL and 2) many other factors impact the UAAL (including mortality) but those are not being taken into account when determining whether to assess a penalty.

#### Other Ideas

In the RFP document, the City also mentions other approaches including potentially moving individuals from NOMERS to MPERS which we will consider. However, regarding the NOMERS approach, the City needs an actuary to determine the impact on NOMERS.

#### Conclusion

As we have outlined above, we do not believe that La. R.S. 11:2225.4 was ever intended to apply to the situation the City currently finds itself in. That said, we also do not believe that the City's strongest path is the litigation route at this time. We continue to believe that the City should consider a task force process similar to the NOFFPF process in 2013 where what we have outlined here can be publicly discussed in an attempt to reach a consensual resolution. We welcome the opportunity to discuss our response to you in person.

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<sup>13</sup> Note that the City has not been impacted yet by the COLA change since that happened in 2022. Given that the reduction in officers from 2022 to 2023 will likely again trigger the partial dissolution provision, it likely will begining July 1, 2025.

**APPENDIX A TO CLIENT SERVICES PLAN**

**Estimated Pensionable Salary Change 2013 to 2022**

	<b>2013 Adjusted</b>	<b>2022 Adjusted</b>	<b>\$ Change from 2013 to 2022</b>	<b>% Change from 2013 to 2022</b>
Bunkie	\$215,839	\$49,472	-\$166,366	-77.1%
Tallulah	\$335,742	\$87,150	-\$248,592	-74.0%
Coushatta	\$413,406	\$110,904	-\$302,502	-73.2%
Sarepta	\$101,090	\$31,455	-\$69,635	-68.9%
Marksville	\$183,303	\$62,424	-\$120,880	-65.9%
Jackson	\$139,552	\$56,565	-\$82,987	-59.5%
Ville Platte	\$1,195,019	\$513,324	-\$681,695	-57.0%
Patterson	\$641,597	\$278,138	-\$363,459	-56.6%
Bastrop	\$1,242,226	\$592,000	-\$650,226	-52.3%
New Roads	\$909,348	\$439,721	-\$469,627	-51.6%
Tickfaw	\$61,448	\$30,924	-\$30,524	-49.7%
Oakdale	\$521,032	\$273,829	-\$247,204	-47.4%
Jennings	\$1,543,616	\$864,985	-\$678,631	-44.0%
Arnaudville	\$213,361	\$124,141	-\$89,220	-41.8%
Leonville	\$144,684	\$84,756	-\$59,928	-41.4%
Many	\$570,897	\$335,503	-\$235,394	-41.2%
Homer	\$325,971	\$194,739	-\$131,231	-40.3%
Arcadia	\$313,032	\$191,455	-\$121,577	-38.8%
Westlake	\$967,913	\$596,296	-\$371,617	-38.4%
Opelousas	\$3,991,497	\$2,500,914	-\$1,490,582	-37.3%
Alexandria	\$11,164,742	\$7,088,864	-\$4,075,878	-36.5%
Rayville	\$549,229	\$352,790	-\$196,439	-35.8%
Minden	\$1,821,352	\$1,200,565	-\$620,787	-34.1%
Denham Springs	\$2,454,242	\$1,631,324	-\$822,918	-33.5%
Winnsboro	\$416,423	\$277,782	-\$138,641	-33.3%
Kenner	\$11,066,132	\$7,406,373	-\$3,659,759	-33.1%
Monroe	\$11,478,787	\$7,688,850	-\$3,789,937	-33.0%
Thibodaux	\$4,154,355	\$2,794,370	-\$1,359,985	-32.7%
Vidalia	\$756,223	\$515,677	-\$240,545	-31.8%
Eunice	\$1,478,432	\$1,047,580	-\$430,852	-29.1%
Mer Rouge	\$62,716	\$45,284	-\$17,432	-27.8%
Lockport	\$323,900	\$234,000	-\$89,900	-27.8%
Ringgold	\$202,906	\$150,558	-\$52,348	-25.8%

Crowley	\$1,906,129	\$1,421,634	-\$484,495	-25.4%
Natchitoches	\$3,204,110	\$2,402,151	-\$801,958	-25.0%
West Monroe	\$3,914,642	\$2,951,139	-\$963,502	-24.6%
Plaquemine	\$1,232,187	\$943,469	-\$288,718	-23.4%
Baker	\$1,891,258	\$1,449,630	-\$441,628	-23.4%
Ruston	\$2,797,006	\$2,148,494	-\$648,512	-23.2%
Winnfield	\$479,823	\$369,096	-\$110,727	-23.1%
Baton Rouge	\$52,150,532	\$40,580,524	-\$11,570,008	-22.2%
Shreveport	\$38,274,413	\$29,931,170	-\$8,343,243	-21.8%
Parks	\$56,432	\$44,568	-\$11,864	-21.0%
Morgan City	\$2,059,619	\$1,628,598	-\$431,021	-20.9%
Abbeville	\$1,588,535	\$1,259,731	-\$328,804	-20.7%
Farmerville	\$78,806	\$62,881	-\$15,926	-20.2%
Westwego	\$2,374,639	\$1,923,620	-\$451,019	-19.0%
Gretna	\$5,970,248	\$4,905,587	-\$1,064,662	-17.8%
Slaughter	\$102,806	\$86,010	-\$16,796	-16.3%
Franklinton	\$1,198,819	\$1,010,044	-\$188,776	-15.7%
Hammond	\$5,329,258	\$4,536,551	-\$792,707	-14.9%
Breaux Bridge	\$528,713	\$451,314	-\$77,399	-14.6%
Zachary	\$2,614,129	\$2,252,222	-\$361,907	-13.8%
Mansfield	\$792,219	\$691,237	-\$100,982	-12.7%
Jeanerette	\$273,823	\$239,025	-\$34,797	-12.7%
Houma	\$5,376,397	\$4,734,824	-\$641,573	-11.9%
Addis	\$539,516	\$478,417	-\$61,099	-11.3%
New Orleans	\$83,791,484	\$74,307,455	-\$9,484,028	-11.3%
Bossier City	\$11,415,977	\$10,124,101	-\$1,291,877	-11.3%
Lake Charles	\$10,286,319	\$9,144,141	-\$1,142,178	-11.1%
Harahan	\$962,287	\$867,993	-\$94,294	-9.8%
Pineville	\$3,679,003	\$3,359,361	-\$319,642	-8.7%

Estimated Pensionable Salary Change 2013 to 2022

**2013 Adjusted 2022 Adjusted \$ Change from 2013 to 2022 % Change from 2013 to 2022**

Gonzales	\$3,561,171	\$3,254,282	-\$306,889	-8.6%
Bogalusa	\$2,286,094	\$2,096,666	-\$189,428	-8.3%
Dequincy	\$433,681	\$401,543	-\$32,138	-7.4%
Oak Grove	\$233,071	\$217,566	-\$15,505	-6.7%
Sulphur	\$3,290,458	\$3,076,706	-\$213,752	-6.5%
Kinder	\$338,981	\$323,539	-\$15,441	-4.6%
Sunset	\$63,626	\$61,583	-\$2,043	-3.2%
Livonia	\$390,581	\$379,818	-\$10,762	-2.8%
St. Gabriel	\$790,248	\$769,153	-\$21,095	-2.7%
Ball	\$388,281	\$379,718	-\$8,563	-2.2%
Port Allen	\$908,732	\$889,687	-\$19,045	-2.1%
Deridder	\$1,466,884	\$1,483,546	\$16,662	1.1%
Amite	\$536,006	\$550,585	\$14,578	2.7%
Benton	\$332,152	\$342,262	\$10,111	3.0%
Haughton	\$488,974	\$509,734	\$20,760	4.2%
Walker	\$879,013	\$917,802	\$38,789	4.4%
Covington	\$1,948,823	\$2,050,363	\$101,540	5.2%
Olla	\$75,719	\$80,024	\$4,304	5.7%
Lafayette	\$17,320,610	\$18,327,079	\$1,006,469	5.8%
New Llano	\$85,990	\$91,254	\$5,263	6.1%
Dixie Inn	\$79,848	\$84,753	\$4,905	6.1%
Leesville	\$922,539	\$986,269	\$63,730	6.9%
Golden Meadow	\$179,584	\$195,136	\$15,552	8.7%
Slidell	\$5,244,719	\$5,922,158	\$677,439	12.9%
Haynesville	\$224,500	\$254,595	\$30,095	13.4%
Rayne	\$856,961	\$986,437	\$129,476	15.1%
Brusly	\$354,597	\$408,400	\$53,803	15.2%
Mandeville	\$2,863,961	\$3,319,728	\$455,766	15.9%
Folsom	\$130,284	\$151,899	\$21,615	16.6%
Welsh	\$177,313	\$208,746	\$31,433	17.7%
Greenwood	\$398,906	\$472,393	\$73,487	18.4%
Springhill	\$460,277	\$551,398	\$91,121	19.8%
Ponchatoula	\$1,128,165	\$1,355,997	\$227,832	20.2%
Berwick	\$501,774	\$605,425	\$103,651	20.7%
St. Francisville	\$108,197	\$135,139	\$26,943	24.9%
Vinton	\$414,297	\$519,052	\$104,755	25.3%
Oberlin	\$98,019	\$127,146	\$29,127	29.7%
Pollock	\$61,306	\$81,953	\$20,646	33.7%

St. Martinville	\$259,981	\$352,461	\$92,480	35.6%
Franklin	\$383,361	\$528,945	\$145,583	38.0%
Woodworth	\$254,745	\$354,625	\$99,880	39.2%
Jena	\$125,926	\$177,486	\$51,560	40.9%
Scott	\$995,155	\$1,490,104	\$494,949	49.7%
Kaplan	\$47,445	\$71,482	\$24,037	50.7%
Gramercy	\$179,894	\$280,750	\$100,856	56.1%
Livingston	\$163,794	\$263,129	\$99,336	60.6%
Rosepine	\$84,132	\$136,447	\$52,315	62.2%
Grosse Tete	\$29,394	\$48,000	\$18,606	63.3%
Maurice	\$158,210	\$263,220	\$105,010	66.4%
Pine Prairie	\$36,974	\$66,040	\$29,066	78.6%
Baldwin	\$22,158	\$40,131	\$17,973	81.1%
Duson	\$116,390	\$212,185	\$95,795	82.3%
French Settlement	\$44,545	\$93,129	\$48,584	109.1%
Zwolle	\$55,358	\$127,963	\$72,605	131.2%
Carencro	\$685,019	\$1,586,881	\$901,861	131.7%
Kentwood	\$32,858	\$84,541	\$51,683	157.3%
Independence	\$92,703	\$254,339	\$161,636	174.4%
Jonesboro	\$81,652	\$259,647	\$177,995	218.0%
Iowa	\$113,319	\$382,161	\$268,842	237.2%
Blanchard	\$51,958	\$213,943	\$161,985	311.8%
Youngsville	\$152,819	\$1,490,323	\$1,337,503	875.2%

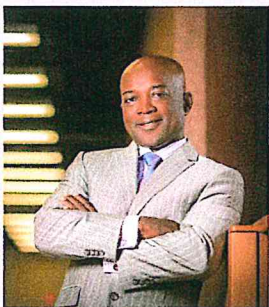


## **STAFFING OF PROJECT**

Charles L. Rice, Jr. will be the attorney responsible for overall supervision of the legal and other services provided to you. Other attorneys, paralegals or clerks may assist us in this engagement, as needed. Rice may be contacted at (504) 909-3404. Vijay Kapoor will serve in a consulting capacity and provide advice as needed.

Where appropriate, we may call upon others within or outside of our group to assist in representing the City of New Orleans when the circumstances of the engagement require or when the talents of a particular individual can be beneficially applied in furtherance of your goals. We make all staffing decisions with an eye toward efficiency. As with all aspects of our relationship, we would be pleased to discuss or revisit these issues with you at any time.

## **BIOS OF PRINCIPALS**



**Charles L. Rice Jr.**  
Principal Rice Law  
Group

Charles Rice is a principal in the Rice Law Group. Rice is also currently a Visiting Professor at the Southern University Law Center, teaching Business Organization, Contracts, Special Problems in Business and Commercial Law, and Legal Negotiations. Rice previously served as president and chief executive officer of Entergy New Orleans, LLC, a \$860 million a year electric and gas utility, from 2010 until 2019.

As president & chief executive officer, Rice took over an electric and gas utility that had been in a growth mode since Hurricane Katrina in 2005, Rice was responsible for the company's financial and operational performance, customer service, regulatory and governmental relations, economic development programs, external and internal communications, charitable contributions and environmental policy. At the core of his operational responsibilities was management of the company's electric and gas distribution systems to New Orleans customers.

Under Rice's leadership, Entergy New Orleans negotiated with the New Orleans City Council through the formula rate plan process resulting in lower rates for electric customers for four straight years. Entergy New Orleans also improved service reliability through hundreds of electric system improvement projects throughout the city. Rice also managed the industry's largest natural gas rebuild effort in history – the replacement of approximately 844 miles of underground pipe damaged after Hurricane Katrina – a project that continued to be ahead of schedule and under budget, while constantly improving reliability to gas customers. During his tenure, Rice also significantly increased the profitability of Entergy New Orleans.

After his first legal private practice position in Louisiana with Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P, Rice joined Entergy in the legal department in 2000, serving as senior counsel in the Entergy Services, Inc. litigation group and then as manager of labor relations litigation support in human resources.

Rice was recruited into New Orleans city government in 2002 as the city attorney and later took the critical role of chief administrative officer for the City of New Orleans, where he managed 6,000 employees and the city's \$600 million budget. In 2005, the law firm of Barrasso, Usdin, Kupperman, Freeman & Sarver, L.L.C. recruited him back to private practice, where he was a partner.

Returning to Entergy in 2009, Rice served as director of utility strategy where he was responsible for coordinating regulatory, legislative, and communications efforts to develop and execute strategies that advanced commercial objectives for the company's regulated service areas. He then served as director of regulatory affairs for Entergy New Orleans.

Rice holds a bachelor's degree in business administration from Howard University, a juris doctorate from Loyola University's School of Law and master's degree in business administration from Tulane University. After graduating from Howard University, he was commissioned as a second lieutenant in the United States Army and served as a military intelligence officer with the 101st Airborne Division (Air Assault) at Fort Campbell, Ky. While in the Army, he earned the Airborne Badge, Air Assault badge and was awarded the Army Commendation and the Army Achievement medals.

At Howard he was inducted into Beta Gamma Sigma Business Honor Society. He is a member of the Alabama and Louisiana State Bar Associations, the American Bar Association, the New Orleans Bar Association, the National Bar Association and the Omega Psi Phi fraternity. In 2018, he was awarded an honorary Doctor of Laws degree from Loyola University New Orleans and received the Loyola University School of Law Distinguished Moot Court Alumni Award in 2004. New Orleans City Business magazine also recognized Rice as a member of the Power Generation in 2003 and as a "Leader in Law" in 2008.

Rice currently serves on the boards and Dillard University, Adhera Therapeutics, and I-3 Partners. He is a former member of the visiting committees of the Loyola University School of Law and the Howard University School of Business, Rice is the former Area 1 President of the Southern Region of the Boy Scouts of America and is the former Chairman of the Board of Trustees of the United Way of Southeast Louisiana and the Boy Scouts of Southeast Louisiana. Rice is the former Civilian Aide to the Secretary of the Army (CASA) for South Louisiana.

*Updated 3/2023*



## **Vijay Kapoor**

215.840.6552

[vkapoor@kapoorco.com](mailto:vkapoor@kapoorco.com)

Vijay Kapoor founded The Kapoor Company in 2008. He has spent his entire professional career working on governmental and public sector workforce issues. Prior to rejoining The Kapoor Company, he served as the Director of Workforce Consulting at Public Financial Management, the nation's top-ranked municipal advisory firm. Mr. Kapoor has also served in state government in positions including Executive Director of the Commonwealth of Pennsylvania's Office of Management and Productivity where he led enterprise-wide and agency-specific cost savings projects towards the goal of reaching \$1.5 billion in annual savings. He previously practiced labor and employment law, specializing in public sector labor relations matters.

In 2013, Mr. Kapoor mediated a comprehensive consensus agreement among the City of Lexington, KY and its police and fire unions to address an underfunded pension fund. He and his team worked with the parties to define the scope of the problem, benchmarked the current benefit levels, and identified possible paths to sustainability. The final agreement included changing the pension COLA, maintaining a defined benefit pension plan for existing employees and new hires, and increasing financial contributions by the City. The agreement was featured in *The Bond Buyer* ("A New Path to Reform of Pensions." *The Bond Buyer*. January 31, 2013) and *Governing Magazine* ("Pension Reform Success Stories." *Governing Magazine*. April 1, 2013). In 2014, he also successfully mediated a consensus agreement among the City of Chattanooga, TN, and its fire and police employees and retirees. In 2015, he assisted a citizen-led task force in New Orleans, LA, charged with finding a sustainable solution to the city's severely underfunded firefighter pension plan which also resulted in a consensus agreement. He currently serves as the Chief of Staff to the Receiver for the City of Chester, PA, which filed for chapter 9 bankruptcy in November 2022, in part due to unfunded pension and retiree health care liabilities.

Mr. Kapoor is a frequent speaker on pension and retiree benefit issues as well as public sector workforce issues. He has made the following presentations:

- “Municipal Finance for Public Sector Interest Arbitration.” National Academy of Arbitrators 2016 Annual Meeting. Pittsburgh, PA. June 22, 2016.
- “Act 111 Strategies and Solutions.” Pennsylvania Public Employer Labor Relations Advisory Service 32<sup>nd</sup> Annual Conference. State College, Pennsylvania. March 20, 2014
- “Municipal Finance Basics for Arbitrators.” American Arbitration Association. Philadelphia, Pennsylvania. October 11, 2013
- “Pension Reform: Doing it Right.” Government Finance Officers Association 107<sup>th</sup> Annual Conference. San Francisco, California. June 4, 2013
- “Local Pension Reform.” Bond Buyer 2<sup>nd</sup> Annual Symposium on Distressed Municipalities. Providence, Rhode Island. March 18, 2013
- “Compensation and Retiree Benefit Issues.” New Hampshire Local Government Center Annual Conference. Manchester, New Hampshire. November 14, 2012
- “Addressing Unfunded Retiree Benefit Liabilities.” Association of Public Treasurers of the U.S. and Canada 47<sup>th</sup> Annual Conference. Williamsburg, Virginia. August 15, 2012
- “Act 111: The Good, the Bad and the Ugly.” Pennsylvania Public Employer Labor Relations Advisory Service 30<sup>th</sup> Annual Conference. State College, Pennsylvania. March 21, 2012
- “Making Your Municipality’s Financial Case in Interest Arbitration.” New Jersey League of Municipalities Annual League Conference. Atlantic City, New Jersey. November 17, 2011
- “What Townships Need to Know to Calculate Personnel Costs.” Pennsylvania State Association of Township Commissioners Annual Conference. Lancaster, Pennsylvania. June 20, 2011
- “Making Your County’s Financial Case in Interest Arbitration.” New Jersey Association of Counties Annual Conference. Atlantic City, New Jersey. June 16, 2011
- “Collective Bargaining Strategies for Employee and Retiree Benefits: What Finance Officers Need to Know.” Government Finance Officers Association 105<sup>th</sup> Annual Conference. San Antonio, Texas. May 23, 2011

Mr. Kapoor has also published articles on public sector collective bargaining including:

- “Bringing Numbers to the Table: What Finance Officers Need to Know About Collective Bargaining,” *Government Finance Review* (August 2011) [Note: The Government Finance Officers Association cited this article in its “Finance Officer’s Role in Collection Bargaining” Best Practice published in January 2015]
- “Public Sector Labor Relations: Why it Should Matter to the Public and Academia”, *5 U. Pa. J. Lab. & Emp.* 401 (2003)

Mr. Kapoor graduated from the University of Chicago with degrees in economics and public policy studies (with honors) and received his J.D. from the University of Pennsylvania Law School, where he received the labor law prize. He also received a certificate in Business and Public Policy from the Wharton School of the University of Pennsylvania. He has been certified as a Senior Professional in Human Resources (SPHR) since 2008.

## References

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## PROPOSED FEES

Our Team agrees to the proposed fees as designated by the RFP

The current approved rates are as follows:

- \$225 Per hour rate for attorneys having experience of 10 years or more in the practice of law.
- \$175 Per hour rate for attorneys having experience of 5 years or more in the practice of law.
- \$150 Per hour rate for attorneys having experience of 3 to 5 years in the practice of law.
- \$125 Per hour rate for attorneys having experience of less than 3 years in the practice of law.
- \$60 Per hour for paralegal services.
- \$40 Per hour for law clerk services.

However, in addition to fees, **the City of New Orleans** will be responsible to pay for disbursements and certain other expenses incurred as a result of our engagement. We know that clients are concerned about reimbursable expenses, and we recognize, and take seriously, our obligation to control these costs.

For some disbursements, **the City of New Orleans** will not be charged. These include costs of normal secretarial assistance and use of conference rooms. You will be charged for expenses we incur on its behalf for such items as filing fees, telephone costs, courier charges, travel expenses of attorneys and other disbursements customarily charged to our clients. You are directly responsible for the cost of experts, consultants, outside copying and imaging services and other vendors. We will ask you to pay substantial third-party expenses directly to the provider of the service.