A-669

THIS AGREEMENT, made and entered by and between the **CITY OF ATLANTIC CITY**, a Municipal Corporation of the State of New Jersey, 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, hereinafter **"CITY"**, and **CARY SHILL, ESQ.**, 11 Homewood Court, Mays Landing, New Jersey 08330 hereinafter **"COUNSEL"**.

WHEREAS, the City requires the services of COUNSEL to represent the City in matters pertaining to the Office of Public Defender;

WHEREAS, COUNSEL has the necessary qualifications and expertise to perform such services for the City;

NOW, THEREFORE, the parties agree as follows:

SECTION ONE
SCOPE OF SERVICES

This City employs COUNSEL as the Assistant Municipal Public Defender to address all matters assigned and as requested by the Office of the Municipal Public Defender. As the Assistant Municipal Public Defender, COUNSEL shall be responsible for handling all phases of the defense of assigned indigent defendants in Atlantic City Municipal Court including but not limited to discovery, de minimis motions, pre-trial and post-trial motions, trials, and other collateral functions reasonably related to the client's defense.

SECTION TWO
AGREEMENT PERIOD

City retains the services of COUNSEL for a period not to exceed one year from October 12, 2022 to October 11, 2023. Services will be rendered as requested and assigned by the Chief Municipal Public Defender during the Agreement period.

SECTION THREE
ATTORNEYS FEES

COUNSEL agrees to provide such legal services at the rate of **THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS ($3,750.00) PER MONTH FOR SIXTEEN (16) HOURS OF SERVICE EACH WEEK. IN THE EVENT THERE ARE LESS THAN SIXTEEN (16) HOURS OF SERVICE IN ANY WEEK, THEN THE RATE SHALL BE PRO-RATED ON AN HOURLY BASIS AT THE RATE OF FIFTY-EIGHT DOLLARS AND SIXTY CENTS ($58.60) PER HOUR.** The aggregate amount of this Agreement shall not exceed **FORTY-FIVE THOUSAND DOLLARS ($45,000.00)** to be drawn upon with invoices

submitted to the office of the Business Administrator, subject to review and approval by the Business Administrator.

SECTION FOUR
COSTS OF ACTION

All costs in connection with the services to be provided by COUNSEL under this Agreement shall be paid by the City. These costs shall include, but are not limited to, out-of-pocket filing fees or investigation costs. Specifically excluded is mileage, travel, parking fees, tolls, telephone and meal reimbursement. Duplication costs (photocopying) will be at a rate of ten cents per page. Prior approval is required for any matter that includes expert testimony.

SECTION FIVE
ASSIGNMENT

COUNSEL cannot assign its rights or obligations under this Agreement without the prior written consent of the City. COUNSEL recognizes and agrees that this Agreement is entered into in reliance upon the personal and professional skills of named COUNSEL and agrees that all services to be rendered in fulfillment of this Agreement shall be provided personally by COUNSEL or by such attorneys associated with COUNSEL as shall be approved by the Business Administrator.

SECTION SIX
BILLING PROCEDURE

COUNSEL shall provide itemized billing on a bi-weekly basis. The billings shall provide such detail as the Business Administrator shall require, including but not limited to the setting forth in detail of the date of the services provided, the nature of the services, the name of the attorney providing the service, and the name of the case or matter under which services were provided. Billings shall be paid by the City on a bi-weekly basis upon the approval of the Business Administrator.

SECTION SEVEN
CONFIDENTIALITY

All matters assigned to COUNSEL shall be handled in accordance with the usual standard of confidentiality under the Code of Professional Conduct. COUNSEL shall make no public comment on cases or matters in COUNSEL'S care.

SECTION EIGHT
CONFLICT OF INTEREST

COUNSEL shall not, while representing the City, file any suit on behalf of anyone against the City, nor represent anyone before the City on any of its boards or agencies.

SECTION NINE
TERMINATION

Either party may terminate this Agreement upon thirty (30) calendar days written notice. In the event of said termination, COUNSEL shall be entitled to the amount due for services rendered up to the date of termination.

SECTION TEN
LAW TO GOVERN CONTRACT

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Jersey and the City of Atlantic City. Any dispute that arises under this Agreement shall be initiated in courts of Atlantic County and no other.

SECTION ELEVEN
ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and any prior understanding or representation of any kind shall be binding only if in writing signed by each party or an authorized representative of each party.

SECTION TWELVE
MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

COUNSEL acknowledges that they cannot commence or continue to represent the City or any named individual or incur any expenses that would cause the Agreement amount to be exceeded without first receiving prior written authorization from the Business Administrator.

Further, the Business Administrator will not accept invoices representing time and expenses that were performed or incurred outside or beyond the Agreement end date.

Any work not specifically authorized may be rejected for payment at the discretion of the Business Administrator.

SECTION THIRTEEN
AGREEMENT TITLES

The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SECTION FOURTEEN
CONTINGENCY

It is understood that this Agreement is contingent upon the availability of funds in the City's 2022 and 2023 budget. In the event said funds are not appropriated for this Agreement, said Agreement shall become null and void.

SECTION FIFTEEN
EFFECT OF ILLEGALITY

If any provision of this Agreement is determined to be illegal or against public policy or to violate any provisions of law or code by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby.

SECTION SIXTEEN
INSURANCE

Before commencing work, and as a condition precedent for payment, the Contractor shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement. This insurance will provide a defense and indemnify the City of Atlantic City (City) against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Contractor's operations under this agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to the Contractor, any of its Contractor's,

officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless, caused by the sole negligence of the City.

Proof of this insurance shall be provided to the City before the work commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of work, be deemed a waiver by the City of the Contractor's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this section deny coverage to the City, the Contractor will defend and indemnify the City at the Contractor's expense.

The Contractor must obtain the required insurance with the carrier rated A-VIII or better by A. M. Best. In the event the Contractor subcontracts any part of this project, these insurance requirements must apply to all subcontractors.

The Contractor shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

$ 1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)

$ 2,000,000.00 General Aggregate

$ 2,000,000.00 Products/Completed Operations Aggregate

$ 1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification shall be included in the policy. The General Liability and Umbrella/Excess Liability policy Aggregate Limits shall apply separately to the project/location as defined in Section Two, Scope of Services. As an alternative, the Contractor may provide Commercial General Liability Insurance with no aggregate.

Comprehensive Automobile Liability Insurance

$ 1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Contractor.

Umbrella Liability Insurance

$ 4,000,000 per Occurrence

$ 4,000,000 Aggregate

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

Workers' Compensation and Employers' Liability Insurance

$ 500,000.00 Each Accident

$ 500,000.00 Each Employee for Injury by Disease

$ 500,000.00 Aggregate for Injury by Disease

If the Contractor is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law.

Other Conditions

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Contractor's Commercial General Liability Policy, Business Auto Liability and Excess Policy all of which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage (s) procured by the Contractor, any of its Contractor's, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to the General Liability, Excess Liability, Automobile Liability and Professional Liability policies in favor of the City and this clause shall apply to the City's elected or appointed officials, officers, agents and employees. It should also apply to the Contractor's Worker's Compensation policy if allowed by state law.

Prior to commencement of work, Contractor shall submit a Certificate of Insurance in favor of the City and as an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.

In any and all claims against the Additional Insureds by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for

whose acts the Contractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Contractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with a carrier(s) rated A-VIII or better by A. M. Best. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Contractor, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.

SECTION SEVENTEEN
INDEMNIFICATION

The COUNSEL shall indemnify, defend and hold harmless the CITY from and against any claim (including any claim brought by employees of COUNSEL), liability, damage or expense (including attorneys' fees) that such CITY may incur relating to, arising out of or existing by reason of (i) COUNSEL'S performance of this Agreement or the conditions created thereby (including the use, misuse or failure of any equipment used by COUNSEL or its SUBCOUNSELS, servants or employees) or (ii) COUNSEL'S breach of this Agreement or the inadequate or improper performance of this Agreement by COUNSEL or its SUBCOUNSELS, servants or employees.

SECTION EIGHTEEN
WAIVER AND RENUNCIATION

No waiver or renunciation by either party to this Agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

SECTION NINETEEN
STATUS OF COUNSEL

It is expressly understood and agreed by and between the parties hereto that the status of the COUNSEL and its employees, officers, and agents shall be that of independent COUNSELS. It is not intended, nor shall it be construed, that the COUNSEL or any of its employees, officers and agents is an employee or officer of the City for any purpose whatsoever.

SECTION TWENTY
POLITICAL CONTRIBUTION DISCLOSURE

This Agreement has been awarded to **CARY SHILL, ESQ.**, based on the merits and abilities of **CARY SHILL, ESQ.**, to provide the goods or services as described herein. This Agreement was not awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. The undersigned does hereby attest that, **CARY SHILL, ESQ.** their subsidiaries, assigns or principals controlling in excess of 10% of the company have not made a reportable contribution pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the contract that would, pursuant to P.L. 2004, c.19, affect its eligibility to perform this contract, nor will it make such a reportable contribution during the term of the contract that will affect it's eligibility to perform this contract.

SECTION TWENTY-ONE
BINDING

This Agreement shall be binding upon the heirs, assigns, and/or successors in right, title or interest of the parties to the Agreement and is subject to the Municipal Stabilization and Recovery Act, ("MSRA"), codified at N.J.S.A. 52:27BBBB-1 et seq.

This Agreement is effective as of the date of the Mayor's signature.

ATTEST:

Paula Geletei

Paula Geletei, City Clerk

CITY OF ATLANTIC CITY

Marty Small, Sr., Mayor

DATE: 10-18-22

WITNESS:

_____

CARY SHILL, ESQ.

Signature: _____

Date: 10/14/22

THE WITHIN AGREEMENT APPROVED AS TO FORM AND EXECUTION.

Date: October 17, 2022

By: _____
Eileen Lindinger
Deputy City Solicitor

STATE OF)
) ss.
COUNTY OF)

I CERTIFY that on 10/14, 2022, Cary Shill, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her voluntary act and deed.

Signed and sworn to before me on

10/14, 2022

Settlers Attorney at Law for the State of New Jersey

Notary Public of New Jersey
(Seal attached)

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms to the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable law and applicable Federal court decisions.

In conforming with the applicable targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Company Name: Law Office of Cary Shill

Name: Cary Shill

Title: Sole Proprietor

Signature: [signature]

Date: 10/14/22