

**CONTRACT FOR ANCILLARY
CRIMINAL DEFENSE SERVICES
ON BEHALF OF INDIGENTS SEEKING
CAPITAL POST-CONVICTION RELIEF
IN THE STATE OF LOUISIANA**

THIS CONTRACT FOR ANCILLARY CRIMINAL DEFENSE SERVICES ON BEHALF OF INDIGENTS SEEKING CAPITAL POST-CONVICTION RELIEF (hereinafter sometimes referred to as the “contract,” “grant” or “agreement”) is entered into by and between the **LOUISIANA PUBLIC DEFENDER BOARD** (hereinafter sometimes referred to as the “LPDB”), a Louisiana state agency created and established within the Office of Governor, whose address is 500 Laurel Street, Suite 300, Baton Rouge, Louisiana 70801, represented herein by James T. Dixon, Jr., State Public Defender; and the **CAPITAL POST-CONVICTION PROJECT OF LOUISIANA** (hereinafter sometimes referred to as the “CPCPL” or “contractor”), a Louisiana non-profit corporation, whose business address is 1340 Poydras Street, Suite 1700, New Orleans, Louisiana 70112, appearing herein through its duly authorized representative, Gary Clements, Director.

PREAMBLE

WHEREAS, Article I, Section 13 of the Louisiana Constitution of 1974 mandates the Louisiana Legislature to “provide for a uniform system for securing and compensating qualified counsel for indigents;”

WHEREAS, in an effort to carry out its constitutional mandate, the Louisiana Legislature enacted Act No. 307 of the 2007 Regular Session of the Louisiana Legislature (hereinafter sometimes referred to as the “Louisiana Public Defender Act”), which is codified at La. R.S. 15:141, et seq., and created the LPDB;

WHEREAS, pursuant to La. R.S. 15:146(A)(l), the LPDB is responsible for providing the supervision, administration, and delivery of a statewide public defender system;

WHEREAS, to help the LPDB discharge its responsibility, the Louisiana Legislature, in La. R.S. 15:147(A), vested the LPDB with “all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana;”

WHEREAS, in accordance with La. R.S. 15:147(C)(l), the LPDB is authorized and desires to enter into contracts with independent public defender organizations qualified with the

United States Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code to provide counsel for indigent defendants; and

WHEREAS, the CPCPL is an independent public defender organization qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code to provide counsel for indigent defendants and, further, desires to provide attorneys who are qualified and certified to provide the services contemplated by this contract.

WHEREAS, the LPDB is mandated by La. R.S. 15:169 and La. R.S. 15:178 to provide counsel for indigents pursuing post-conviction relief of a capital conviction in both state and federal court, in accordance with its rules, policies, and guidelines;

WHEREAS, certain ancillary services such as expert witnesses and specialized scientific testing are required for the effective and ethical representation of indigents pursuing post-conviction relief of a capital conviction; and

WHEREAS, the LPDB and the CPCPL have agreed that a sum of EIGHT HUNDRED THOUSAND AND NO/100 (\$800,000.00) DOLLARS, will be paid to the CPCPL pursuant and subject to the terms and conditions of this contract.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is agreed by and between the parties as follows:

This contract supersedes and terminates all prior agreements for attorney services between the parties.

- I. Amount of Payment:** The amount of this grant shall not exceed the sum of EIGHT HUNDRED THOUSAND AND NO/100 (\$800,000.00) DOLLARS. The grant amount provided to CPCPL includes all fees for services and expenses associated with the fulfillment of its duties enumerated herein.
- II. Time for Delivery of Funds and Funding:** The LPDB shall provide the CPCPL with EIGHT HUNDRED THOUSAND AND NO/100 (\$800,000.00) DOLLARS for the funding of ancillary services necessary to provide effective and ethical representation to indigents in Louisiana seeking post-conviction relief of a capital conviction, beginning July 1, 2015 and ending June 30, 2016. Payment will be made monthly for one-twelfth of the agreement amount, payable upon presentation of an invoice to the LPDB from the CPCPL.

III. Agreement Extensions: The effective dates of this grant may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to the termination date. Request for extensions may be initiated by either party by the mailing of the request to the party, via Certified Mail, return receipt requested, not less than thirty (30) days before the termination date provided for herein or thirty days before the termination of the first extension of this grant. This grant may only be extended by an executed and approved amendment for not more than two times. If either party informs the other than an extension of this grant is deemed necessary, an amendment may be prepared by the LPDB and forwarded to the other party for appropriate action by the other party, and said amendment is to be returned to the LPDB with appropriate information and signatures not less than fifteen (15) days prior to termination date. Upon receipt of the amendment it will be forwarded to the necessary authorities for their approval. Notwithstanding the foregoing, in no event shall the total term of this grant, including extensions hereto, be for a period of more than three years.

IV. Restricted Use of Funds: The grant funds shall be used exclusively by the CPCPL to:

- A.** Review and take action upon applications to the LPDB by indigents not represented by the CPCPL for funding of reasonably necessary ancillary services associated with legal representation of indigents seeking post-conviction relief of a capital conviction in Louisiana. The CPCPL, using the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003) for evaluation, shall take action upon an application for funding within thirty (30) days of receipt of the application either by approval of the application, denial of the application, or by the request of additional information regarding the application. Should the CPCPL request additional information from the applicant, the CPCPL shall take action by approval or denial of the application within thirty (30) days of the receipt of the additional information requested; and
- B.** Provide funding of reasonably necessary services of expert witnesses, cost of specialized scientific testing, and/or other ancillary services associated with legal representation of indigents not represented by the CPCPL seeking post-conviction relief of a capital conviction in Louisiana upon approval of hereinabove mentioned applications.
- C.** Notwithstanding any provision of this contract to the contrary, CPCPL may use the expert witness funds in its own cases up to an aggregate of \$300,000.00 during the contract term. Provided, however, CPCPL may access such funds only if CPCPL:

1. Complies with the same procedure as contract and *pro bono* attorneys using the expert funds in trial cases;
 2. Applies for and receives pre-approval to use expert funds from LPDB's Capital Case Coordinator, Trial-level Compliance Officer, Deputy Public Defender and/or the State Public Defender; and
 3. After expert witness services are rendered, submits a voucher to the LPDB's Capital Case Coordinator, Trial-level Compliance Officer, Deputy Public Defender and/or the State Public Defender and receives the LPDB's Capital Case Coordinator, Trial-level Compliance Officer, Deputy Public Defender or the State Public Defender's approval to disburse such funds.
- V. **Scope of Contract:** The scope of this grant does not include litigation or proceedings arising out of or involving tort or worker's compensation.
- VI. **Duties of the CPCPL:** The following conditions shall be met and maintained by the CPCPL:
- A. The CPCPL shall provide the services described herein for the defense of persons pursuing post-conviction relief of a capital conviction in state and federal court. Further, the CPCPL shall take all such steps as may be reasonable and necessary to assure that such services are provided in a manner that is constitutionally, ethically, and legally appropriate and proper to provide the effective assistance of counsel to said accused persons. However, the CPCPL shall not be responsible for the actions of any attorneys or other persons beyond its means of control.
 - B. The CPCPL shall maintain and account for all funds delivered by the LPDB to the CPCPL pursuant to this agreement separately from any other revenue in a segregated fund account. CPCPL will provide the LPDB with monthly financial reports listing all expenditures made with funds received under this agreement. These reports must include all amounts paid pursuant to this agreement with name of indigent on whose behalf payment was made. Monthly financial reports are due in the office of the LPDB no later than the 10th day of the following month.
 - C. CPCPL must provide the LPDB with any and all financial records upon request of the Capital Case Coordinator or the State Public Defender.
 - D. CPCPL must obtain approval of Capital Case Coordinator or State Public Defender prior to making expenditures in the amount of \$3,000.00 or more with funds received under this agreement from the LPDB. Expenditures shall not be artificially divided so as to constitute an expenditure of less than \$3,000.00.

- E.** Failure of CPCPL to comply with the above mentioned provisions will result in the immediate termination of this agreement. Termination of this agreement for default under the above-mentioned provisions is effective upon receipt of written notice by CPCPL.
 - F.** The CPCPL shall maintain and make available to the LPDB upon request all invoicing submitted in the above referenced cases and payments made and any other record, document or information it may request that might relate to distribution of LPDB funds, provided the request is made within one year of the termination of this agreement;
 - G.** The CPCPL shall maintain and make available to the LPDB upon request all contracts executed by and between the CPCPL and third parties for the delivery of services in the above referenced cases, provided the request is made within one year of the termination of this agreement;
 - H.** The CPCPL shall use funds received from the LPDB pursuant to this contract for indigents seeking post-conviction relief of a capital conviction and represented by the CPCPL only insofar as it is permitted to do so by Paragraph C of Section IV of this contract;
 - I.** The CPCPL shall not use any portion of funds received from the LPDB pursuant to this agreement to defray the expenses of counsel presently under contract with the LPDB for the provision of professional services in the defense of indigent capital clients in post-conviction proceedings in a specific case;
 - J.** The CPCPL shall comply with all federal, state, and local laws, ordinances and regulations, in carrying out the provisions of this agreement;
 - K.** The CPCPL hereby agrees that the responsibility for payment of taxes from the funds thus received under this agreement shall be the CPCPL's obligation and identified under Federal tax identification number provided below; and
 - L.** The CPCPL shall not assign any interest in this grant and shall not transfer any interest in same (whether by assignment or novation).
- VII. Term of Agreement:** The term of this agreement shall commence July 1, 2015 and shall continue in effect until June 30, 2016. In the event the Louisiana Legislature does not provide future funding for the LPDB, this agreement shall be considered null and void

and unenforceable. The continuation of this grant is contingent upon the appropriation of funds to fulfill the requirements of the grant by the Legislature. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the grant, or if such appropriation is reduced by the veto of the governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the grant, the grant shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated. Further, the LPDB may, at its sole discretion, reduce the total amount of this grant at any time during the grant term without the concurrence of CPCPL.

- VIII. Auditor's Clause:** The Legislative Auditor of the State of Louisiana, the Division of Administration, and LPDB staff and/or agents may audit all records of CPCPL which relate to this contract. The CPCPL shall maintain said records for a period of three years after the date of final payment under this contract. Under no circumstances, however, is information to be provided to the Legislative Auditor or the Division of Administration that is subject to the work product privilege or the attorney/client privilege that exists between CPCPL and an indigent client.
- IX. Cancellation:** Either party shall have the right to cancel this grant, with or without cause, by giving the other party thirty (30) days written notice forwarded to their respective address by certified mail. The LPDB has the right to cancel this grant upon less than thirty (30) days due to budgetary reductions and changes in funding priorities by the LPDB. Notice shall be sent certified mail, return receipt requested, to the addresses provided above.
- X. Insurance Agreement:** The CPCPL shall provide all malpractice insurance related to its duties arising under this agreement.
- XI. No Employee or Agency Relationship to LPDB:** The CPCPL and the LPDB expressly agree that no person employed by or contracted by the CPCPL shall be considered to be an employee or Agent of the LPDB for any purpose, including, specifically, for any benefits or coverage as provided by the Civil Service and Worker's Compensation Law of the State of Louisiana or unemployment compensation coverage. Furthermore, it is expressly agreed that no person employed by or contracted by the CPCPL shall be entitled to receive any benefits customarily provided to employees of the LPDB, including, but not limited to, sick or annual leave or retirement benefits, from the LPDB. The CPCPL and any persons or entities with whom it may contract shall be deemed employees or independent contractors of the CPCPL, as the case may be, and shall not be deemed to have any relationship whatsoever to the LPDB.

XII. Discrimination Clause: The CPCPL agrees as follows:

- A.** To abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968, as amended, and CPCPL agrees to abide by the requirements of the Americans with Disabilities Act of 1990; and
- B.** To render services under this agreement without regard to race, color, religion, gender, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by CPCPL, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this contract.

XIII. Acts of Default and Remedies: The LPDB may terminate this Agreement for cause based upon the failure of CPCPL to comply with the terms and/or conditions of the agreement; provided that the LPDB shall give the CPCPL written notice specifying CPCPL's failure. If within thirty (30) days after receipt of such notice, CPCPL shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the LPDB may, at its option, place the CPCPL in default and the agreement shall terminate on the date specified in such notice. The CPCPL may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the LPDB to comply with the terms and conditions of this agreement; provided that the CPCPL shall give the LPDB written notice specifying the LPDB's failure and a reasonable opportunity for the LPDB to cure the defect. However, the parties specifically agree that upon delivery of the funds specified above, the LPDB shall have no further duty or obligation whatsoever to CPCPL under this agreement. Any claims or controversies arising out of this contract shall be resolved by the provisions of LSA-R.S. 39:1524-1526.

XIV. Acts of God, etc.: In the event that the LPDB or the CPCPL shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of acts of God or nature, or any other reason beyond their control, including governmental action, then performance of such act shall be excused for the period of the delay, and the term of

this contract and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

- XV. Entire Agreement:** This writing contains the entire agreement between the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. This agreement may be modified or amended at any time by mutual consent of the parties, provided, that before any modification or amendment shall be operative and valid, it shall be reduced to writing and signed by both parties. Notwithstanding the foregoing, in no event, shall this grant be valid until it has been approved in writing by the Director of the Office of State Procurement, Professional Contracts.
- XVI. Louisiana Law Applies:** The validity, interpretation, and performance of this agreement shall be governed, interpreted, controlled, construed, and regulated in accordance with the laws of the State of Louisiana.

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ATTACHMENT #1

LOUISIANA PUBLIC DEFENDER BOARD

**CONTRACT FOR ANCILLARY
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IN THE STATE OF LOUISIANA**

Purposes and Performance Indicators

GOALS AND PURPOSES:

Review and take action upon applications to the LPDB by indigents for funding of reasonably necessary ancillary services associated with legal representation of indigents seeking post-conviction relief of a capital conviction in Louisiana. The provision of ancillary services to capital post-conviction representation is in performance of one of the programs of the Louisiana Public Defender Board. Professional legal representation may necessitate the hiring and supervision of investigators and expert witnesses, and/or obtaining specialized scientific testing, as determined by the individual facts and circumstances of each case.

OBJECTIVE ONE:

Counsel is to review and take action on applications for services ancillary to providing indigents capital post-conviction representation in a professional manner.

PERFORMANCE INDICATOR:

The professional aspect of approval of ancillary post-conviction services can be quantified by the type and quality of investigators and expert witnesses approved by CPCPL.

MONITORING PLAN:

CPCPL is to provide quarterly reports regarding the status of applications for ancillary services approved and disapproved by CPCPL. From these reports the Louisiana Public Defender Board can monitor the timeliness and appropriateness of CPCPL's handling of applications for ancillary services.

OBJECTIVE TWO:

Counsel shall not exceed the contract maximum in billing, or provide services outside the term of the contract without prior notification and approval by LPDB.

PERFORMANCE INDICATOR:

Submission of billings within the time and manner prescribed in the contract and LPDB Billing Procedures Memorandum in accord with the maximum amount of contract.

MONITORING PLAN:

LPDB will review all billings submitted by Counsel for compliance with the contract maximum and contract term.

OBJECTIVE THREE:

To improve, overall, the quality of representation on behalf of indigent clients seeking post-conviction relief in capital cases.

PERFORMANCE INDICATOR:

The quality of the ancillary service providers approved by CPCPL is a direct indicator of the work being performed on behalf of the indigent clients.

MONITORING PLAN:

Applications for ancillary services over \$3,000 are reviewed by the LPDB to ensure quality of expert witnesses and specialized testing.