

AGREEMENT

This agreement (“Agreement”) is hereby made and entered into this _____ day of _____ 2018, by and between The Research Foundation of the City University of New York on behalf of the National Network for Safe Communities at John Jay College (“NNSC” or “Contractor”), located at 230 W. 41st Street, 7th Floor, New York, NY 10036 and Lexington-Fayette Urban County Government, by and through its Department of Public Safety (“Sponsor”), located at 200 East Main Street, 3rd Floor, Lexington, KY 40507, each individually referred to herein as a “Party” and collectively as the “Parties”. In consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations as set forth herein, the Sponsor and Contractor agree as follows:

1. **Term**. The Agreement shall be for a period of six (6) months beginning on January 1, 2019 (“Term”).
2. **Scope of Services**. The services (“Services”) provided during the term of this Agreement and covered by this Agreement are set forth in Exhibit A, which is attached hereto and incorporated herein by reference. Completed services include the delivery of a final Problem Analysis Report. The Problem Analysis Report will be considered final upon Sponsor’s receipt of the final report, though Contractor agrees to consider in good faith Sponsor’s feedback and requested revisions. The final Problem Analysis Report and all copyrightable works created as a result of the Agreement (“Agreement Work Product”) shall be owned and the copyright shall be held by the Contractor to be used for non-commercial purposes. If Contractor uses any Agreement Work Product for commercial purposes to advertise similar services to other potential clients, all references to the Sponsor shall be removed. Sponsor is granted a non-exclusive, transferable, perpetual, irrevocable royalty-free, paid-up, worldwide license to use, display, perform, reproduce, publish, copy and distribute the Agreement Work Product for research, educational, non-commercial and governmental purposes. .
3. **Compensation Terms**.
 - a. This is a performance-based contract for \$35,000.00 (“Fees”) for the completion of the Services in accord with the terms and conditions of the Agreement.
 - b. All references to “\$” or “dollars” mean the lawful currency of the United States of America (“USD”) and all amounts payable under this Agreement shall be paid in USD. The Sponsor shall support any loss caused by a fluctuation of the exchange rate occurring until the complete performance of the contract.
 - c. The Contractor will submit invoice(s) in accordance with the payment schedule attached hereto as Exhibit B (“Fee Schedule”) and incorporated herein by reference. The Sponsor’s delivered payment terms are payment within thirty (30) days except where the law provides otherwise.

It is understood and agreed that Sponsor will not withhold any amount for payment of taxes from the compensation of the Contractor.

4. **Independent Contractor.** In connection with the Contractor's operations and activities hereunder, Contractor is an Independent Contractor and this Agreement does not create an agency, partnership, or formal business relationship of any kind between Sponsor and Contractor or Sponsor and Contractor's employees. All Contractor personnel providing services under this Agreement shall be deemed employees of Contractor and shall not for any purposes be considered employees or agents of the Sponsor. Contractor assumes full responsibility for the actions and supervision of such personnel while performing services under this Agreement. Sponsor assumes no liability for Contractor personnel. Contractor, as an independent company contractor to Sponsor, shall be responsible for all taxes, fees, license, or other legal or governmental requirements for the Services and its employees performing services under this Agreement unless otherwise noted in Exhibit B.

5. **Supervision of the Work.** Contractor shall supervise and direct the Services described in Exhibit A, using Contractor's best skill and attention. Contractor shall be solely responsible for all methods, techniques, sequences, and procedures, and shall coordinate all portions of the Services provided hereunder. Sponsor will deal only through Contractor, who shall be responsible for the proper execution of the Services. Contractor shall be responsible to Sponsor for the acts and omissions of Contractor's employees.

6. **Access to Data.** Contractor requires access to certain criminal justice information from the Sponsor to implement this Agreement. Sponsor will provide access to and share such information with Contractor. Certain criminal justice information may not be in the possession, care, custody, and/or control of the Sponsor. With regards to such information, the Sponsor will make every reasonable effort to obtain and provide access and share such information, upon receipt. All information provided by Sponsor to the Contractor shall be subject to the conditions of this Agreement, especially the confidentiality provisions.

7. **Confidential Information.**

a. Contractor acknowledges it may receive or have access to data that is confidential and proprietary to Sponsor. "Confidential Information" shall be defined as data or information which is provided to Contractor in connection with this Agreement in writing and marked "proprietary" or "confidential" at the time of disclosure, or information which is transmitted to Contractor in connection with this Agreement orally, provided that Sponsor promptly reduces such information to a writing delivered to Contractor and marked "proprietary" or "confidential". Notwithstanding the foregoing, all raw data provided by Sponsor to Contractor and all information that is either individually-identifiable or could be used to identify an individual shall be deemed to be "Confidential Information" regardless of the circumstances of disclosure. Contractor agrees that unless expressly authorized in writing by Sponsor,

Contractor shall use such information and property only for performance of this Agreement and shall not disclose copy, distribute, or otherwise disseminate the Confidential Information to any third parties except to the Contractor's employees, and associates who require such information to perform the Services specified in this Agreement. The Contractor shall protect the Confidential Information using the same degree of care it uses to protect its own Confidential Information using no less than a reasonable degree of care.

- b. Notwithstanding paragraph a. above, Confidential Information shall not include aggregate results, data or extrapolations (“Research Findings”), provided that no raw data, information that is individually-identifiable or information that could lead to identifying an individual provided by Sponsor is included in such Research Findings. “
- c. However, such obligation shall not apply to information that Contractor can demonstrate by its written records was: (a) previously known to Contractor; (b) acquired by Contractor from a third party having the right to disclose such information; (c) known to the public through no fault of Contractor; or (d) is required by law, judicial order, or subpoena to be disclosed by Contractor. Contractor shall maintain data protection processes and systems sufficient to protect Sponsor provided information and property. Contractor shall promptly report to Sponsor any discovered unauthorized access to or use of information.
- d. The foregoing obligations with respect to Confidential Information shall survive the expiration or termination of this Agreement for a period of three (3) years or such longer period as required by law, regulation, or court order.

8. **Publication**

Contractor retains the right to draw on the information contained in the Final Report and any of its own follow-on research that results from it. Under no circumstances will any Contractor publications contain any Confidential Information. So as to allow Sponsor sufficient time to review, use or publish the results of services performed under this Agreement, including the final Problem Analysis Report, Contractor agrees to refrain, and to require its employees, independent contractors or others performing services hereunder, from drawing on the results of the Problem Analysis Report until thirty (30) days from the date of the Sponsor’s receipt of the report. Before the expiration of this thirty (30) day period, Sponsor has the right to inform Contractor whether it wishes to be acknowledged as the source of funding for this research, or whether it prefers to either disclaim the results or not to be referenced at all. Contractor will abide by Sponsor’s determination regarding attribution for all follow-on publications and presentations.

9. **Delays.**

- a. Neither Sponsor nor Contractor shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming Party. For purposes of this Agreement, such circumstances include abnormal weather

conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any government agency for any of the supplies, materials, information, accesses, or services required to be provided by either Sponsor or Contractor under this Agreement. Should such circumstances occur, the nonconforming Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. If the Contractor is delayed in the performance of the services for more than three hundred sixty-five (365) calendar days, either by the Sponsor or circumstances beyond the Contractor's control, an equitable adjustment to the contract amount can be made to compensate for additional costs incurred.

- b. For delays in performance by Contractor caused by circumstances that are within its control, Contractor shall immediately notify Sponsor of such delays. Such notice shall include the cause, effect, duration, and corrective action proposed by Contractor to address the delay.

10. **Advertising**. The Contractor may not use the Sponsor's name, the Sponsor's representative's names in any website, bulletin, or publication without prior approval from Sponsor.

11. **Notices**. All notices required or permitted to be given to any Party to this Agreement shall be given in writing and shall be delivered personally or sent by United States mail postage prepaid or by a nationally recognized overnight carrier, or sent by e-mail addressed to the Parties as set forth below:

If to Contractor:

Research Foundation of CUNY
Attn: Jeffrey Slonim
Chief Counsel & Secretary of the Board
230 West 41st Street
New York, NY 10036-7207
(212) 417-8360
LegalAffairs@rfcuny.org

If to Sponsor:

Lexington-Fayette Urban County Government
Department of Public Safety
ATTN: Commissioner Ken Armstrong

200 East Main Street
Lexington, KY 40507
(859) 258 – 258-3280
karmstrong@lexingtonky.gov

Either Party may alter the address to which communications or copies are to be sent by giving notice, provided that notice of a change in address shall be effective only upon receipt of such change of address in conformity with the provisions of this paragraph for giving notice

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to conflict of laws principles. The Parties specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of Fayette and Commonwealth of Kentucky with respect to all matters concerning this Agreement and its enforcement. The Parties agree that the execution and performance of this Agreement shall have a Kentucky situs and, accordingly, they each consent to personal jurisdiction in the Commonwealth of Kentucky for all purposes and proceedings arising from this Agreement.

13. **Dispute Resolution.** If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions between the Parties, the Parties agree that, to the extent it does not abridge either party's insurance coverage, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by a competent court having jurisdiction.

14. **Termination for Convenience.** Sponsor and Contractor each reserve the right to terminate this Agreement or any part of this Agreement at its sole convenience with forty-five (45) days written notice. On the effective date of termination, Contractor must immediately stop all work and immediately cause any of its employees to cease any further work. Contractor will be reimbursed for actual, reasonable, substantiated, and allocable costs, including non-cancelable obligations, for Services performed up to and including to date of termination.

15. **Termination for Cause.**

- a. Sponsor may also terminate this Agreement, or any part of this Agreement, with thirty (30) days written notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this Agreement. Late deliveries, deliveries of products which are defective or which do not conform to this Agreement, and failure to provide Sponsor, upon request, with adequate assurances of future performance are all causes allowing Sponsor to cancel this Agreement for cause. In no event shall any delays caused by Sponsor's failure to provide Contractor with the data specified in paragraph 6 allow Sponsor to terminate for cause. In the event of cancellation for cause due to Contractor's default, Sponsor is not liable to Contractor for any amount unless Contractor is able to provide Sponsor with the final

report within thirty (30) days of termination, in which case Contractor shall be paid in full for the services performed hereunder. If it should be determined that Sponsor has improperly cancelled this contract for a default, the cancellation is considered a termination for convenience.

b. Contractor may terminate this agreement for cause if Sponsor does not provide appropriate access to the data referenced in paragraph 6. In such event, Contractor may terminate this Agreement, with thirty (30) days written notice for Cause. In the event of cancellation for cause pursuant to this provision, Contractor shall be entitled to payment for the next applicable milestone to compensate it for its services.

16. **Waiver**. A Party may by written instrument signed on behalf of such Party: (a) extend the time for the performance of any of the obligations or other acts of another Party due to it, (b) waive any inaccuracies in the representations and warranties made to it contained in this Agreement, or (c) waive compliance with any covenants, obligations, or conditions in its favor contained in this Agreement. No claim or right arising out of this Agreement can be waived by a Party, in whole or in part, unless made in writing signed by such Party. Neither any course of conduct or dealing nor failure or delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power or privilege, or the exercises of any other right, power or privilege. A waiver given by a Party will be applicable only to the specific instance for which it is given.

17. **Severability**. The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

18. **Amendment**. This Agreement may be amended, superseded, canceled, renewed, or extended only by a written instrument signed by each of the Parties hereto.

19. **Non-Discrimination**. Contractor agrees to comply with all federal, state, and local non-discrimination laws and regulations. Contractor agrees not to discriminate against any participant in this Agreement on the basis of race, color, religion, sex, age or national origin. Contractor further agrees to

comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

20. **Drug Free Workforce.** Contractor certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.

21. **Compliance with Laws.** The Sponsor has entered into this Agreement with Contractor relying on its knowledge and expertise to provide the Services contracted for. As part of that reliance, Contractor represents that knowledge and understanding of the relevant and applicable federal and state laws that apply to the Services provided through this contract, and agrees to comply with these relevant and applicable federal and state laws.

22. **Entire Agreement.** This Agreement, and the other attachments included as exhibits hereto and thereto constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements, and understandings, representations, and warranties, both written and oral, among the parties with respect to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement, which shall become effective as of the Effective Date stated herein.

SPONSOR:

Signature:

Printed Name: JIM GRAY
Title: MAYOR
Date:

CONTRACTOR: RESEARCH FOUNDATION OF THE CITY UNIVERSITY OF NEW YORK



Signature:

Printed Name: Jeffrey Slonim
Title: Chief Counsel & Secretary of the Board
Date: SEP 25 2018

EXHIBIT A: Scope of Services

Scope of Services

NNSC aims to reduce serious violence in Lexington by working directly with local stakeholders to conduct a Problem Analysis. The scope of services would include:

- Working with Lexington partners to prepare for the Problem Analysis which includes gathering data;
- An onsite visit to conduct the Problem Analysis to be staffed by 3-4 NNSC staff members;
- Cleaning, coding, and analyzing the data to produce a final report which will include the results of the analysis as well as recommendations for strategic intervention.
- A final Problem Analysis Report will be considered final upon agreement of both parties.

EXHIBIT B: Fee Schedule

Sponsor agrees to pay Contractor \$35,000 for the Services described in this Agreement in three (3) payments per the following fee schedule: (1) \$8,750.00 due upon execution of this agreement; (2) \$8,750 due after the completion of the onsite visit to conduct the Problem Analysis; and (3) \$17,500.00 due upon the delivery of a final Problem Analysis report.

NNSC shall directly invoice the Client for the above fees in accordance with the fee schedule. Payment shall be due in full within 30 days of the date of invoice.