

JOINT DEFENSE AGREEMENT

This Joint Defense Agreement (Agreement) reaffirms and amends the agreement previously entered into as of June 21, 2022, to facilitate a joint defense by and between the Oklahoma County Criminal Justice Authority (OCCJA) and the Board of County Commissioners of Oklahoma County (BOCC), as parties. The parties have a common interest in defending several pending and anticipated lawsuits and/or legal proceedings before various state and federal courts and agencies, including but not limited to the Equal Employment Opportunity Commission, the United States District Court for the Western District of Oklahoma, and/or the District Court of Oklahoma County.

1. **Purpose.** The Parties have determined to coordinate their efforts in defense of the claims asserted against them in common in the lawsuits. The parties wish to do so without thereby waiving any work product, attorney-client, or other privilege that may be applicable to documents or other information that the Parties may share with one another in the course of their defense of the legal proceedings. The commonly defended claims are generally described as follows: claims brought alleging constitutional rights violations, claims pursuant to 42 USC § 1983, claims brought pursuant to the Oklahoma Governmental Tort Claims Act, 51 OS § 151 *et seq.*, violations of the Oklahoma Anti-Discrimination Act, 25 OS § 1101, Title VII of the Civil Rights Act of 1964, 42 USC § 2000e *et seq.*, Section 1981; the Americans with Disabilities Act, as amended, 42 USC § 12101 *et seq.*, the Family Medical Leave Act, 29 USC § 2601, and common law claims. The claims brought against the signatories will generally involve the same investigations, the same records, and the same digital collections. There are and likely will continue to be factual and legal issues in the legal proceedings that are of common interest to the Parties that warrant cooperation among the Parties in preparation of the Parties' defense. The Parties enter into this Agreement to acknowledge their common interests and facilitate their exchange of information in support of asserting individual and common defenses.

2. **Who Has Rights and Duties Hereunder.** This Agreement is among the Parties and their counsel. The duties imposed by this Agreement on counsel for a Party are confined to signatory counsel and their respective agencies. Any counsel who subscribes to this Agreement on behalf of a Party are signatory counsel, regardless of when they subscribe.

The Parties and their signatory counsel shall be responsible, before disclosing any information protected herein to other counsel, agents, or consultants, to furnish such counsel, agents, or consultants with a copy of this Agreement and obtain their subscriptions to it. All signatories to this Agreement shall be responsible for ensuring that their own agents and consultants are apprised of the duties to safeguard information protected herein.

Only Parties and their signatory counsel have rights under this Agreement. All others subscribing to this Agreement do so solely to signify their knowledge of the terms hereof and that any disclosure to them of "Shared Information" is conditioned upon their compliance with the provisions of this Agreement protecting the confidentiality of such information. No such person shall make further disclosure of Shared Information under this Agreement without first apprising the Party or signatory counsel to whom they are rendering services, so that necessary subscriptions can first be obtained.

This Agreement is binding on a Party's successors and assigns with the same effect as it binds the respective Party.

3. **"Shared Information"**. Parties or their counsel may share, orally or in writing, information such as legal research and analysis, mental impressions, strategy, interview memoranda, reports, documents, or any other information that relates to the legal proceedings, especially drafts, work product and privileged documents. All such shared information shall be deemed "Shared Information" hereunder unless the Party who shares the information explicitly disavows that designation. The fact of communication of Shared Information under this Agreement, and the terms of the Agreement itself, are intended to be confidential and privileged, and constitute Shared Information. Documents subject to discovery in the possession of either signatory party may be produced without further consultation.

Nothing in this Agreement shall be construed to require a Party to disclose any information that such Party, in its sole discretion, shall determine not to disclose.

4. **No Intent to Waive Privileges or Other Protection**. The Parties intend that no claim of work product, attorney-client privilege, or other privilege or protection of confidential information shall be waived by reason of the disclosure of Shared Information pursuant to this Agreement. The Parties further intend that all communications made in connection with the defense efforts covered by this Agreement shall be protected from discovery by the applicable privilege and the joint defense doctrine to the fullest extent possible.

Protection other than that conferred by privilege may include, for example, information already protected by a court protective order.

The Parties would not disclose Shared Information to one another but for the signing of this Agreement, their mutual and common interest in connection with the anticipated or pending legal proceedings, and because of the Parties' belief and intention that such disclosure will not constitute a waiver of any applicable privilege or protective doctrine.

5. **Duties As to Shared Information**. All Shared Information herein will be kept confidential and shall not be used except in furtherance of the defense of existing and future legal proceedings. Except as provided herein, Shared Information shall not be voluntarily disclosed without the prior written consent of all Parties to this Agreement. A Party or that Party's counsel may disclose Shared Information in furtherance of the defense of legal proceedings to: (a) another Party to this Agreement or that Party's counsel, (b) an employee or other agent assisting the disclosing Party or its counsel with respect to the legal proceedings, (c) a person retained by the disclosing Party or its counsel as an expert or other consultant, or (d) an insurer who may reasonably be believed to be responsible for providing a defense or ultimately liable for the damages awarded on one or more of the jointly defended claims hereunder; provided, however, that no disclosure may be made to any person or entity who has not first been given a copy of and subscribed to the protective duties of the Agreement as set forth in Section 2. To avoid misunderstandings or inadvertent disclosure, a Party sharing Shared Information shall, to the extent possible, designate it in a prominent manner with an appropriate designation, such as

“Privileged and Confidential,” “Attorney-Client Privileged,” “Pursuant to Common Interest,” or “Common Interest Privilege.” However, failure to so designate Shared Information, or as privileged, shall not constitute a waiver of any applicable privilege, immunity or protection or of any provisions of this Agreement.

If any other person or entity requests or demands disclosure of Shared Information inconsistent with the above stated terms, whether by court process or otherwise, the signatory hereto receiving such request or demand will (a) immediately notify the signatory counsel for all Parties to this Agreement, and (b) assert the joint defense privilege with respect to the requested Shared Information, unless the privilege with respect to the requested Shared Information, unless the privilege is waived by the Party who originally conveyed the requested Shared Information. Each Party will take all steps necessary to permit the assertion of all applicable rights and privileges with respect to said Shared Information and shall cooperate fully with all other Parties in any judicial proceeding relating to the disclosure of Shared Information. Nothing herein shall require disobedience to a court order, Federal Rule 26 disclosure requirements, or valid discovery requests, however, if the Party who originally possessed the information may lawfully be afforded an opportunity to seek a state or interpose an objection without causing a violation, that opportunity must be furnished to such Party.

6. **Other Restrictions Permitted.** A Party or their counsel who shares information hereunder may impose other and stricter restrictions than those addressed herein, provided that the restrictions are communicated in writing. Any such restrictions shall control over inconsistent restrictions imposed by this Agreement. Such restrictions may include, for example, that Shared Information may be further disclosed only to counsel for a Party, or only to outside counsel for a Party. For example, law enforcement officer identification information, contact information, or personnel file information, other than training records and disciplinary records, may be subject to such restrictions or protective orders.

7. **Segregation and Physical Protection of Shared Information.** Each Party shall take steps to identify or designate all documents or information it sends or receives as Shared Information pursuant to this Agreement. A receiving Party shall (a) segregate from and avoid the commingling of such documents or information with documents or information not covered as Shared Information by this Agreement; and (b) provide adequate physical security for all documents or information covered as Shared Information by this Agreement.

8. **Unprotected Information.** Documents and information not otherwise privileged or confidential shall not gain any privilege or confidential status by virtue of disclosure as Shared Information, but the fact of such disclosure under this Agreement constitutes Shared Information should be designated as non-Shared Information shall not in itself justify treating that information as unprotected under this Agreement until the Party who originally shared the information is given fifteen (15) days written notice, during which time period the Party may seek court protection of the information.

9. **Party’s Rights As to Information Independently Possessed or Acquired.** Nothing in this Agreement shall prevent any Party from disclosing its own information or voluntarily waiving any privilege or doctrine protecting its own information, provided that the

information does not incorporate or otherwise reflect Shared Information of any other Party. Nor shall anything in this Agreement prevent any Party from disclosing information lawfully acquired independently of this Agreement, regardless of whether the information is exchanged as Shared Information under this Agreement by that or any other Party.

10. **No Impairment of Other Protections.** Nothing in this Agreement shall impair any protection provided to information independent of this Agreement, such as a protective order or other confidentiality agreement.

11. **Inadvertent Production.** The inadvertent production of any shared Information shall be without prejudice to any claim that such material is privileged, and such inadvertent production shall not reflect an intent by the producing party to waive any privilege or any confidentiality rights with respect to the Shared Information. The Parties shall seek to include in any protective order entered in the legal proceedings a provision for the return of inadvertently produced privileged information and that no waiver of privilege automatically occurs as a result of such inadvertent production.

12. **Discovery Between Parties Hereto.** Nothing in this Agreement prevents or limits any efforts by any Party to obtain information not protected by this Agreement through formal discovery from another Party in the legal proceedings as permitted under applicable law.

13. **No Agency Relationship.** This Agreement shall not create any agency or similar relationship among the Parties or their counsel. Nothing in this Agreement shall be construed to (a) impair the right of a Party to conduct an independent defense, (b) allow one Party to waive a privilege or right on behalf of another Party, (c) prevent any Party from independently settling the claims asserted against that Party, (d) impose an obligation to assist in or share the cost of another Party's defense, or (e) create any right of indemnity between the Parties for any liability imposed in the legal proceedings.

14. **Claims, Defenses, and Other Controversies Between Parties Not Impaired.** This Agreement shall not affect any Party's cross-claim, indemnity claim, or any other claim or defense against any other Party in the lawsuits or in any other proceeding; provided, however, that the protective provisions of this Agreement as to Shared Information shall remain intact and be observed.

15. **Ethics Issues.**

Attorney-client relation: Nothing contained in this Agreement shall be construed to affect the separate and independent representation of each Party by its respective counsel, or to create an attorney-client relationship, fiduciary duty, or duty of loyalty between any Party and any other Party's counsel.

Disqualification: Regardless of whether adversity arises between the parties or whether a Party's participation hereunder is terminated, neither this Agreement nor receipt of Shared Information hereunder will furnish a basis, in any lawsuit or other legal proceeding, for:

- (a) Asserting that counsel for a Party hereto has a conflict of interest;

- (b) Asserting that counsel for a Party is prevented from zealously or effectively representing that counsel's own client;
- (c) Seeking disqualification of counsel of any Party hereto, either in the existing or any future legal proceeding; or
- (d) Objecting to examination or cross-examination of any Party or its representatives by any other Party's counsel.

Provided, however, that this section does not impair the obligations imposed herein with respect to Shared Information, and is conditioned upon the affected counsel's compliance with those obligations.

16. **Additional Parties.** Additional parties to the legal proceedings who are aligned with the existing Parties to this Agreement as to the commonly defended claims described in Section 1 may join in this Agreement with the consent of the existing Parties. The Agreement becomes effective as to an additional party as of the date upon which such party signs the Agreement, unless a different date is specified.

17. **New Counsel.** Any Party has an unfettered right to change counsel during the term of this Agreement upon written notice to the other Parties. After such written notice has been given, Shared Information may be provided to the new counsel but shall not be provided to former counsel.

18. **Survival of Duties to Protect Shared Information.** The duties imposed by this Agreement to Protect Shared Information shall survive the termination of this Agreement. The duties imposed by this Agreement shall remain in full force and effect regardless of whether any lawsuit or legal proceeding is terminated in whole or in part by judgment, dismissal, settlement, or otherwise, and regardless of whether any Party terminates participation in this Agreement.

19. **Withdrawal from Agreement.** Any Party may give seven (7) days written notice of withdrawal from this Agreement, in which event the Agreement shall after such 7-day period no longer be effective as to future communications between the withdrawing Party and the remaining Parties, but shall continue to protect all Shared Information previously communicated by or to the withdrawing Party as set forth above. In the event any Party withdraws from the Agreement, any non-withdrawing Party may request in writing the return of all or any portion of Shared Information the non-withdrawing Party provided to the withdrawing Party. Within 10 calendar days of receipt of such written request, the withdrawing Party shall return the requested Shared Information to the appropriate Party or Parties or certify destruction of such Shared Information, whichever the non-withdrawing Party is agreeable to under the circumstances. The withdrawing Party shall not retain any copies of the Shared Information.

20. **Changes in Party Alignment.** At any time that one Party to the legal proceedings is no longer aligned with the other Parties in any part of the proceedings that comprise the commonly defended claims under this Agreement, such Party shall apprise the remaining Parties and return any documents containing Shared Information to the Originating Party, or with the written permission of that Party certify that such documents have been destroyed. Such Party shall

have no further right of access to Shared Information but shall remain bound by the protective provisions of this Agreement as set forth above.

21. **Return of Shared Information.** During the Term of this Agreement as defined below, all documents containing Shared Information received pursuant to this Agreement, and all copies of such documents, shall be delivered to the originating Party upon that Party's written request. Except as otherwise agreed in writing, within ninety (90) days after the expiration of the Term of this Agreement as defined below, all documents containing Shared Information received pursuant to this Agreement, and all copies of such documents, shall be delivered to the Originating Party.

The Originating Party may alternatively give written authorization for destruction of documents which must otherwise be returned to that Party under this Section.

Nothing in this Section shall require return or destruction of documents which are attached to publicly accessible filings in the legal proceedings or were produced in discovery.

22. **Term of Agreement.** This Agreement shall remain in full force and effect until it is terminated by written consent of all Parties who have not previously withdrawn from it.

23. **No Admission.** Nothing in this Agreement is intended as, shall constitute, or shall be interpreted, construed, or used as evidence of an admission by any Party of any wrongdoing, liability or fault (including joint liability), a waiver of any right of defense, an estoppel, or an admission as to any other matter of law or fact, either as between the Parties or with respect to any person or entity not a party to this Agreement; provided, however, that any Party shall be entitled to sue this Agreement to enforce the terms of this Agreement.

24. **Enforcement of the Agreement; Equitable Relief.** This Agreement may be enforced by any Party either in an existing legal proceeding or in any other action filed in any court of competent jurisdiction. The Parties agree that the rights, privileges, and interests protected by this Agreement are unique and that any violation of this Agreement would result in irreparable harm and injury to the non-breaching Parties for which there is no adequate legal remedy. The Parties agree that the terms of this Agreement may be enforced through appropriate injunctive or other equitable relief, as well as through any other appropriate and applicable remedies. Each Party acknowledges that immediate injunctive relief, without bond, is an appropriate and necessary remedy for a violation or threatened violation of this Agreement.

25. **Amendments.** This Agreement may be amended only by an instrument in writing and signed on behalf of all Parties.

26. **Entire Agreement.** This Agreement represents the entire agreement between the Parties as to the subject matter hereof, and all previous discussions, representations and negotiations among the Parties relating to the subject matter of this Agreement are merged herein.

27. **Captions.** The captions contained in this Agreement are inserted for convenience of reference only and shall not in any way define or affect the meaning, construction or scope of the provisions captioned.

28. **Severability.** In the event any provision of this Agreement should be declared invalid, illegal, or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not be affected or impaired thereby.

29. **Governing Law.** This Agreement shall be subject to and governed by and construed in accordance with the laws of the State of Oklahoma.

30. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be delivered by First-Class US Mail (postage prepaid), to the address listed with that Party's signature through counsel in the subscriptions section of this Agreement below or by electronic mail used by counsel for federal ECF filings or listed on state district court filings in the legal proceedings.

31. **Counterparts.** This Agreement may be executed in multiple counterparts and by electronic means, and all such counterparts taken together shall constitute one complete Agreement.

32. **Execution by Parties and Signatory Counsel.** This Agreement is being executed by each of the undersigned counsel on behalf of both the individually named signatory counsel and the corollary named Party, with that Party's informed authority and consent.

Party: Oklahoma County Criminal Justice Authority

Counsel Name and Address:

Aaron Etherington, OBA 18,259
Rod Heggy, OBA 4049
Carri Remillard, OBA 21,539
Oklahoma County Detention Center
201 N. Shartel Avenue
Oklahoma City, OK 73102

Counsel Signature: _____

Date: _____

Counsel Signature: _____

Date: _____

Counsel Signature: _____

Date: _____

Party: Board of County Commissioners of Oklahoma County

Counsel Name and Address:

Vicki Zemp Behenna, District Attorney
Lisa Endres, OBA 16,647
Yolanda Downing, OBA 18,934
Assistant District Attorneys
211 N. Robinson Avenue, Suite 700N
Oklahoma City, OK 73102

Counsel Signature: _____

Date: _____

Counsel Signature: _____

Date: _____

Counsel Signature: _____

Date: _____

Brian Maughan, Chairman (DATE)
Board of County Commissioners

Jim Holman, Chairman (DATE)
Oklahoma County Criminal Justice Authority

ATTEST:

Oklahoma County Clerk (DATE)