



# State of Minnesota Agreement

SWIFT Contract No.: **208746**

This Agreement is between the **State of Minnesota**, acting through its Commissioner of Public Safety (“State” or “DPS”), and **JAMS, Incorporated** on behalf of an Independent Expert Reviewer (“Reviewer”). DPS and the Reviewer may be referred to jointly as “Parties.”

## Recital

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Under the Mediated Settlement Agreement and appointment of an Independent Expert Reviewer to further the purposes of the Mediated Settlement Agreement corresponding to Case No. 20-CV-1302 (WMW/DTS) of the United States District Court, District of Minnesota, the Department of Public Safety will conduct an Independent Expert Review of the Department’s Internal Affairs investigations. The investigations will focus on complaints from the media about its treatment following the deaths of George Floyd in 2020 and Daunte Wright in 2021. Accordingly, the Parties agree as follows:

## Contract

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### 1. Term of Agreement

- 1.1 Effective Date. The Effective Date is the date of signature of the last signatory to the Agreement.
- 1.2 Expiration Date. The Expiration Date is 30 days after the submission of the report identified below in section 2.4 but in no event later than July 1, 2023. This date may be amended at the request of the Independent Expert Reviewer if he believes in good faith that more time is needed to complete the investigations or his report.

### 2. Agreement Between the Parties

The Parties mutually agree the Reviewer will provide Clifford Greene to:

- 2.1 Conduct an independent review of all events and complaints from the media related to media treatment following the deaths of George Floyd in May 2020 and Daunte Wright in April 2021. The review will include all complaints made to the State Defendants submitted within six months of the Effective Date of this agreement. The review will include all pending, completed, and future investigations of complaints regarding the events described in this agreement and the Court Order appointing Clifford Greene.
- 2.2 Have access from the State to all documents, email, video, and interviews conducted by the Department of Public Safety’s Internal Affairs division including copies of all complaints subject to this agreement, additional relevant documents, emails, videos, and interviews as requested by the Reviewer including documents identified in Case No. 20-CV-1302 (WMW/DTS) as “confidential” or “confidential – attorneys’ eyes only” consistent with his appointment as the Independent Expert Reviewer by the Court in that matter.
- 2.3 Consult with representatives of Internal Affairs regarding the scope and thoroughness of each investigation and ensure the investigations are completed in a timely manner.
- 2.4 Create and submit a written report to the State’s Authorized Representative, or his/her designee, at intervals mutually agreed to by the Parties but no later than Expiration Date. The Reviewer’s written report(s) will include:
  - a) a factual summary that shall include a general description of the Goyette Lawsuit and Mediated Settlement Agreement leading up to preparation of the report, the methodology used for the review,

- a general explanation of the types of the complaints reviewed, and other items that provide meaningful background to the report as determined by the Expert Reviewer;
- b) the total number of complaints identified pursuant to section 2.1 of this Agreement;
  - c) the number of complaints sustained and not sustained by DPS;
  - d) the length of time to complete the investigation of each complaint; and
  - e) an analysis of and suggested changes to the Internal Affairs investigative process including but not limited to the quality, timeliness, thoroughness, independence, and professionalism of the investigative process.

One copy of the report will be redacted, consistent with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, prior to the report being made public. The redacted copy will be prepared by the Department of Public Safety.

One copy of the report will be un-redacted and provided to the Plaintiffs at the same time it is provided to the State's Authorized Representative and subject to and consistent with the Protective Order dated February 26, 2021.

- 2.5 Refrain from providing any recommendation on discipline or potential discipline based on any complaint.
- 2.6 Subcontract, at the discretion of the Reviewer, tasks and duties pursuant to this Agreement.
- 2.7 The State understands that it is not engaging Clifford Greene to provide legal services or legal advice including but not limited to interpretations or applications of the Minnesota Government Data Practices Act. The State appreciates that Clifford Greene no longer practices law.

### 3. Subcontracting and Subcontract Payment

- 3.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Agreement by the Reviewer. The provisions of the Agreement shall apply with equal force and effect to subcontractors engaged by the Reviewer. Notwithstanding approval by DPS, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Reviewer for timely and satisfactory performances of the obligations contemplated by the Agreement.
- 3.2 Subcontractor Payment. DPS shall pay any subcontractor.

### 4. Payment

- 4.1 DPS will pay the Reviewer a fee up to but not exceeding **Forty Thousand and 00/100 Dollars (\$40,000.00)**.
  - 4.1.1 The Parties mutually agree the Reviewer shall submit four (4) invoices totaling \$10,000 each at any time subsequent to completion of invoiced services and DPS will pay the Reviewer within thirty days of receipt of invoice.
- 4.2 DPS will directly pay the Reviewer's subcontractor, James Welna, a fee up to but no exceeding **Ten Thousand and 00/100 Dollars (\$10,000.00)**.
  - 4.2.1 The Parties mutually agree the subcontractor shall directly submit to DPS invoices on its behalf at any time subsequent to completion of subcontractor's invoiced services and DPS will pay the subcontractor within thirty days of receipt of invoice.
- 4.3 The total obligation of DPS to the Reviewer and its subcontractors shall not exceed **Fifty Thousand and 00/100 Dollars (\$50,000.00)**.

### 5. Authorized Representatives

- 5.1 State's Authorized Representative.

The State's Authorized Representative is the individual below, or his successor.

Name: Kevin Donnan-Marsh, Contract Manager  
Address: Department of Public Safety  
445 Minnesota Street, Suite 1000

Saint Paul, MN 55101  
Telephone: 651.201.7006  
Email Address: Kevin.Donnan-Marsh@state.mn.us

5.2 Reviewer's Authorized Representative.

The Reviewer's Authorized Representative is the individual below, or her successor.

Name: Amanda Foster, Assistant Manager  
Address: JAMS  
333 Seventh Street South, Suite 2550  
Minneapolis, MN 55402  
Telephone: 612.332.8225  
Email Address: AFoster@jamsadr.com

6. **Assignment**

Neither the State nor the Reviewer may assign or transfer any rights or obligations under this Agreement.

7. **Termination**

Either party may terminate this Agreement, with or without cause, upon 30 days written notice to the other party. The terms of this Agreement remain in effect through the date of termination.

8. **Liability**

The Parties mutually agree each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. The Department of Public Safety's liability shall be governed by provisions of the Minnesota Tort Claims Act, Minnesota Statutes § 3.736, and other applicable law.

Pursuant to the Court Order appointing Clifford Greene as an Independent Expert Reviewer, Clifford Greene and anyone else identified as a subcontractor of Mr. Greene, including James Welna, shall be entitled to all the privileges and immunities appointed by the Court to facilitate the Mediated Settlement Agreement including, but not limited to, a prohibition on any testimony or production or work product based on information obtained in their capacity as an Independent Expert Reviewer or a subcontractor of the Independent Expert Reviewer.

The State will provide Clifford Greene with legal defense if a complaint arises from conduct within the scope of his engagement as an Independent Expert Reviewer. If a complaint arises, DPS will determine whether Clifford Greene was acting within the scope of his engagement. Before being denied a defense, Clifford Greene has the right to a meeting with DPS wherein he may provide information he believes entitles him to defense and indemnification.

If DPS certifies Clifford Greene was acting within the course and scope of the engagement, the Attorney General may review and overrule the certification. The State will not defend Clifford Greene if, in the opinion of the Attorney General, his conduct was not within the scope of his engagement. Also, if Clifford Greene's conduct involves malfeasance in willful or wanton conduct, or neglect of duty within the meaning of section 3.735, subdivision 9, the State will not defend or indemnify Clifford Greene. If the State will not defend Clifford Greene, he must arrange for his own defense related to the complaint and pay any damages against him.

The Attorney General's Office does not represent Clifford Greene until the Attorney General determines he is entitled to defense and indemnification by the State. If the Attorney General determines Clifford Greene is entitled to defense, a lawyer from the Attorney General's Office will be assigned to represent him.

The decision to defend and indemnify may be rescinded at any time if Clifford Greene fails to cooperate, fails to disclose pertinent information, or if facts are discovered at a later time indicating he was acting outside the course and scope of the engagement.

**9. Government Data Practices**

DPS and the Reviewer and its subcontractors must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by DPS under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Reviewer and its subcontractors under this Agreement. The civil remedies of Minnesota Statutes section 13.08 apply to the release of the data governed by Chapter 13, by either DPS or the Reviewer and its subcontractors.

If the Reviewer or its subcontractor receives a request to release data referred to in this section, the Reviewer must immediately notify and consult with the State’s Authorized Representative, or his/her designee, as to how the Reviewer or its subcontractor shall respond to the request. The Reviewer’s or its subcontractor’s response to the request shall comply with applicable law.

**10. Survival of Terms**

The following sections survive the expiration or termination of this Agreement: Liability; and Government Data Practices.

**State of Minnesota; Department of Public Safety**

By: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**JAMS, Incorporated**

By: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Clifford Greene**

By: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_