

Attachment A - Sample Agreement

**AGREEMENT FOR LEGAL SERVICES
BETWEEN
THE CITY OF PHOENIX
FOR ITS OWN ACCOUNT AND
ON BEHALF OF CERTAIN AFFILIATED OR SUPPORTED ENTITIES
AND
FIRM NAME HERE**

AGREEMENT NO. _____

THIS Agreement is made and entered into on this 1st day of July, 2019, by and between the City of Phoenix (hereinafter "CITY"), acting by and through the Phoenix City Attorney, for and on behalf of the CITY and on behalf of certain separate legal entities affiliated with or financially supported by the CITY (individually referred to as "CLIENT" and collectively referred to as "CLIENT ENTITIES"); and ****FIRM NAME HERE**** (hereinafter "COUNSEL" or "CONTRACTOR").

Recitals

1. The CITY issued a Request for Proposals seeking outside legal counsel to represent the CITY and certain CLIENT ENTITIES, for which the CITY has acted as a procurement agent.

2. The CITY has determined that it is in its best interests to employ COUNSEL to furnish legal services to the CITY or to one or more CLIENT ENTITIES on the terms and conditions specifically set forth below and subject to the additional requirements set forth in a Letter of Engagement ("LOE") issued at the time a matter is referred to COUNSEL.

Agreement

Now therefore, in consideration of the mutual promises, terms, covenants and conditions set forth herein, the parties agree as follows:

1. **Scope**

If a lawsuit or other legal matter is referred by the City Attorney, COUNSEL will provide any necessary legal representation to the CITY or to the CLIENT and any of its officers, employees or agents as directed by the CITY. COUNSEL will perform all necessary legal services, including but not limited to investigation, legal research, preparation of legal memoranda, pleadings and briefs, drafting and review of legal documents, providing legal advice and opinions, conducting discovery and making appearances before administrative tribunals and courts and, when necessary, try cases, (hereinafter "legal services") in representing CLIENT. The legal services must be carried out under the supervision of the City Attorney, in a manner consistent with COUNSEL'S ethical obligations to the CITY and the CLIENT.

COUNSEL must not undertake any representation of the CITY and CLIENT or perform any legal services for the CITY and CLIENT at the request of any CITY and

CLIENT official or employee without first obtaining specific written authorization to do so from the City Attorney or his designee.

COUNSEL will not file any action or enter any litigation on behalf of the CITY and CLIENT without first obtaining permission to do so from the City Attorney or his designee.

Before releasing any written legal opinion or statement affecting the CITY or CLIENT or any of their officers or employees, COUNSEL must obtain the City Attorney's concurrence.

2. **Referral of Work to Counsel**

Referral of legal matters to COUNSEL under this AGREEMENT will only be through the City Attorney or his designee.

Work performed by COUNSEL on matters that are not referred to COUNSEL as set forth in this AGREEMENT will be considered unauthorized and non-compensable. COUNSEL will provide legal services to the CITY and CLIENT only through the City Attorney, and not independently of the City Attorney. COUNSEL will report to the City Attorney any effort made to engage the services of COUNSEL independently of the City Attorney's Office.

Referral of legal matters to COUNSEL will be through a Letter of Engagement ("LOE") signed by the City Attorney or his designee and addressed to a specific attorney in COUNSEL'S FIRM. This attorney shall be the lead attorney and be expected to try the legal matter if necessary. The LOE will contain: (1) the name and a description of the matter for which legal services are sought, (2) an explanation of the scope of work, (3) the compensation the CITY and CLIENT will pay COUNSEL for the services sought, and if CLIENT or another entity— but not the CITY— will be responsible for payment of COUNSEL's fees, describing the payment arrangements and responsibilities, (4) a designated Contact Attorney in the City Attorney's Office, and (5) as appropriate, the identification of the specific Client Representative(s) with whom COUNSEL will communicate and from whom COUNSEL will receive direction. The Letter of Engagement is not effective unless it is signed by the City Attorney, the Chief Assistant City Attorney, or Chief Counsel.

The LOE is effective upon receipt. Each LOE will identify a specific Contact Attorney from the Office of the City Attorney with whom COUNSEL will be working and to whom COUNSEL will be reporting. In the event that COUNSEL needs to communicate with someone other than the Contact Attorney, COUNSEL will contact the City Attorney, Chief Assistant City Attorney, or the Chief Counsel, Civil Division.

In situations where the CLIENT is not the CITY, COUNSEL acknowledges that the entity responsible for payment will be specified in the LOE, and may be an entity other than the CITY. COUNSEL will not accept compensation from the CITY for representing CLIENT unless: (1) CLIENT gives informed consent; (2) there is no interference with COUNSEL's independence of professional judgment or with the

client-lawyer relationship; and (3) confidential information relating to COUNSEL's representation of CLIENT is protected. Rule 42, RPC E.R. 1.8 (f) and 1.6, Az.R.Sup.Ct.

3. **Client Contact**

All decisions requiring the consent of CLIENT will be brought by COUNSEL to the attention of the Client Representative and the Contact Attorney, as appropriate and as referenced in the above paragraph.

4. **Staffing**

CITY and CLIENT reserve the right to designate one or more specific attorneys in COUNSEL'S firm to work on specific matters. COUNSEL will employ suitably trained and skilled professional personnel to perform the legal services. Prior to changing any key personnel, especially those key personnel who the CITY relied upon in making this AGREEMENT, COUNSEL must obtain the approval of the Contact Attorney. All staffing decisions must be discussed and agreed upon with the CITY and, if applicable, with CLIENT in advance. The key personnel who the CITY relied upon in making this agreement shall try the legal matter, if necessary.

5. **Materials and Investigative Services**

CITY and CLIENT will furnish COUNSEL all investigative and other materials the CITY and CLIENT has relative to the legal services to be provided by COUNSEL and will conduct such additional investigation as COUNSEL may request.

6. **Compensation**

COUNSEL will be paid for services under this AGREEMENT as set forth in Exhibit A, entitled "Compensation."

6.1 **Hourly Rate**

If compensated on an hourly rate, COUNSEL will be paid at an hourly rate that includes all costs and expenses except for those specific reimbursable expenses listed in Exhibit B, entitled "Reimbursable Expenses." The monthly payment of billed hourly fees must be reduced by 2% if COUNSEL is paid within 10 days of receipt of COUNSEL'S invoice.

6.2 **General Contingency**

If COUNSEL is compensated on a contingency basis, for other than Collections, COUNSEL will be paid an amount equal to the agreed upon contingency percentage multiplied against the return, plus all costs and expenses listed in Exhibit B, entitled "Reimbursable Expenses."

6.3 **Collections Contingency**

[This paragraph intentionally left blank.]

6A. Compensation for Arbitration Cases

For cases billed on an hourly basis and deemed to be arbitrable under A.R.S. §12-133, COUNSEL will be paid a single lump sum as set forth in Exhibit A, entitled "Compensation." The lump sum includes all fees, costs, and expenses except for those specific reimbursable expenses listed in Exhibit B, entitled "Reimbursable Expenses."

The lump sum amount will apply for the term of this AGREEMENT and will not be renegotiated during the term of this AGREEMENT, except that COUNSEL will have the ability under this AGREEMENT to request the CITY and CLIENT to change the compensation designation to an hourly rate under paragraph 6 when unforeseen developments make continued billing under this paragraph unfair or unreasonable. CITY and CLIENT will not unreasonably deny such a request from COUNSEL.

7. Reimbursement for Expenses

COUNSEL will be reimbursed for approved expenditures where the expense is itemized in the invoice and COUNSEL provides the documentation supporting the invoiced amount.

All expenses must be billed at COUNSEL's actual out-of-pocket cost without any mark-up.

8. Accounting and Auditing

The CITY, the CLIENT, and their duly authorized representatives may access and examine all books, documents, papers, records, and other evidence reflecting all time charges, compensation and costs billed under this AGREEMENT. These materials must be made available at the office of COUNSEL at any reasonable time for inspection, audit, or reproduction until the expiration of five (5) years from the date of final payment under this AGREEMENT.

COUNSEL is prohibited from transmitting, or assisting in the transmission of, any billing information generated by COUNSEL under this AGREEMENT to any person or organization other than the CITY and CLIENT without the express written consent of the City Attorney.

9. Hourly Billing – Paper Invoices

COUNSEL will prepare invoices for services rendered and expenses incurred during the prior month on each matter handled. COUNSEL should submit monthly invoices on or before the 15th day of every month to get paid for that month; the CITY will not rush payments on late billings. The CITY tracks fees and expenditures by matter, and expects to receive a separate invoice for each matter billed. All billing will be in accordance with ABA Opinion No. 93-379. If mailed, the monthly invoices should be addressed to:

ATTN: Outside Counsel Invoice Processor

Office of the City Attorney
200 West Washington Street, Suite 1300
Phoenix, Arizona 85003-1611
602-262-6761

Each matter should be covered in a separate invoice in an easily understandable format. Each invoice should contain the following information: (1) this AGREEMENT No; (2) for liability defense cases, the Risk Management claim number, and for other matters, the department, project number, and project name; (3) the bill and invoice date; (4) the Matter Identification Number assigned to the matter; (5) the date and time of each activity billed; (6) the initials of the individual performing the activity; (7) the corresponding ABA task codes, (8) for each activity, a specific description of the work done sufficient to ascertain the work involved being mindful of the potential limitations under E.R. 1.8 in situations where CLIENT is not the CITY; and (9) a separate itemization of reimbursable disbursements and expenditures, including the corresponding ABA expense code for the expense, along with the supporting documentation.

Along with each paper invoice COUNSEL must also provide a separate Invoice Summary Page in the form and containing the information exhibited by Exhibit C, "Sample Invoice Summary Page".

10. Hourly Billing – Electronic Invoices

If requested by the CITY or CLIENT, COUNSEL must become, at COUNSEL's sole expense, a subscriber to Acuity Management Solutions© (<http://www.acuityelm.com>) hereinafter "Acuity" and comply with Acuity's directions concerning the submission, review, and approval of monthly electronic invoices. COUNSEL will submit invoices electronically following the basic LEDES (Legal Electronic Data Exchange Standard) format as directed by Acuity, being mindful of the potential limitations under E.R. 1.8 in situations where CLIENT is not the CITY.

COUNSEL will contact Acuity directly concerning the costs associated with such a subscription and to arrange the necessary training.

If invoices are submitted electronically, then for purposes of calculating the CITY's and CLIENT's entitlement to the 2% discount referenced in ¶ 6, the date COUNSEL's invoice is received by the CITY and CLIENT will be the date when the invoice status is changed by COUNSEL to "For Approval." If invoices are not submitted electronically, then the invoice will be deemed to be received on the date the invoice is delivered by mail. Similarly, the date COUNSEL is paid by the CITY and CLIENT will be the date the payment is mailed to COUNSEL by the CITY and CLIENT.

11. Hourly Billing Restrictions

Unless otherwise agreed to by the Contact Attorney:

- Only one billing professional may bill to attend meetings, depositions, and arguments.
- COUNSEL is not to bill for more than ten hours of any professional's time in any one day.
- COUNSEL is not to bill for more than ten hours of research on any one matter.
- Internal conferences are billable only by one of the participants.
- COUNSEL will not bill for more than two hours of travel time without Contact Attorney's prior approval.
- COUNSEL is not to bill the CITY in increments of less than 6 minutes (.1 hour).
- COUNSEL will be paid only for productive time that advances the interest of CLIENT.
- COUNSEL is not to bill for clerical time or other overhead expenses.

12. **Restrictions on Reimbursements**

Unless otherwise agreed to by the Contact Attorney:

- Reimbursement for expenses is limited to those specific reimbursable expenses listed in Exhibit B and entitled "Reimbursable Expenses".
- COUNSEL will not be reimbursed for any single expense greater than ONE THOUSAND DOLLARS (\$1,000).
- Travel expenditures of COUNSEL within Maricopa County will not be reimbursed. Mileage and parking will not be reimbursed.
- Airfare will be reimbursed at coach fare rates. Hotel accommodations will be reimbursed at commercial rates for non-resort facilities.
- Experts or consultants will be retained by COUNSEL on behalf of the CITY or CLIENT only after consultation with and approval by the Contact Attorney. COUNSEL is expected to pay the consultant for services provided and then submit an invoice for reimbursement.
- All experts and consultants must submit each bill similar to the format for outside counsel. The format includes itemized time, services, and expenses entries with all the supporting documentation attached.
- No contract or subcontract will be made by COUNSEL with any other person to furnish any work or services under this AGREEMENT without advance approval of the Contact Attorney.

13. **Fiscal Year**

CITY'S fiscal year begins July 1 and ends June 30 of each calendar year. CITY may only make payment for services rendered or costs encumbered during a fiscal year and for a period of 60 days immediately following the close of the fiscal year. Billings for services performed or costs incurred prior to the close of a fiscal year must be submitted within ample time to allow payment within this 60 day period.

14. Final Payment

The CITY will make final payment for all services performed and accepted within 60 days after COUNSEL has delivered to the CITY any final progress reports, documentation, materials, and evidence of costs and disbursement as required under this AGREEMENT.

15. Conflict of Interest

COUNSEL is retained by the CITY to represent the CITY and CLIENT only for the purposes and to the extent set forth in this AGREEMENT. COUNSEL will be free to dispose of such portion of COUNSEL'S entire time, energy, and skill as are not required to be devoted to the CITY and CLIENT in such a manner as COUNSEL sees fit and to such persons, firms or corporations as COUNSEL deems advisable. But COUNSEL must not engage in any representation of any nature, including legislative or administrative lobbying, which could appear or be adverse to the CLIENT or the CITY at the same time COUNSEL is representing the CLIENT or the CITY under this AGREEMENT. If any representation presents an ethical conflict of interest, and if a waiver is permitted, a waiver of the conflict must first be obtained before COUNSEL undertakes the representation. COUNSEL agrees to have established policies and procedures to avoid conflicts of interest and to protect the attorney-client privilege. COUNSEL will immediately bring all situations involving adverse representation, and all conflicts and potential conflicts, to the attention of the CLIENT, the CITY, and the City Attorney. These include situations that may be subject to the Rules of Professional Conduct and circumstances where COUNSEL would otherwise be expected to identify the CLIENT or the CITY as a party, a potential party, or a non-party at fault. COUNSEL hereby represents and warrants that there is no known conflict of interest existing between a client or potential client of COUNSEL and the CLIENT or the CITY as a result of this AGREEMENT. Before COUNSEL may undertake to represent parties in matters that may arise after execution of this AGREEMENT, which may present issues adverse to the CLIENT or the CITY, COUNSEL must present the circumstances of the matter to the CLIENT and the CITY and request a waiver of any ethical conflict of interest. Any conflict of interest that may arise as a result of COUNSEL'S representation of parties adverse to the CLIENT or the CITY will not be waived unless expressly stated in writing by the CLIENT and the CITY after full disclosure of the nature and extent of the conflict.

16. Copies of Documents

Throughout the course of the representation COUNSEL will seasonally furnish the Contact Attorney copies of all significant pleadings, discovery material, investigative, expert witness, transactional documents and other reports and correspondence (other than routine transmittal letters). All significant depositions and answers to interrogatories will be summarized promptly and furnished to the Contact Attorney. COUNSEL may also be asked to furnish such copies to CLIENT and the involved City Department(s) and insurance carrier(s). At the conclusion of COUNSEL's representation on any matter, COUNSEL will return the complete file to THE CITY as set forth in Paragraph 25, but may retain copies at COUNSEL's expense.

17. **Budgeting**

COUNSEL may be asked by the CITY and CLIENT to submit a budget and strategic plan. The plan must include a description of the available options for handling the matter, the major steps likely to be involved, the timing and sequence of the major steps, the projected costs (within a narrow range) associated with each step and the likelihood of prevailing in percentages.

If COUNSEL has subscribed to Acuity, COUNSEL will submit budget and exposure information as directed by Acuity.

18. **Status Reports and Assessment of Exposure**

COUNSEL must keep CLIENT and the CITY fully and currently informed about the status of all matters and the import of that status. As soon as practical after receipt of any referral, and in civil cases governed by Rule 26.1, Arizona Rules of Civil Procedure, as soon as disclosure statements are exchanged, COUNSEL will evaluate in writing the merits of the disputed matter and COUNSEL'S assessment of the monetary exposure or potential recovery, if any, to the CLIENT and the CITY. COUNSEL will also make appropriate recommendations. COUNSEL will furnish subsequent monthly or quarterly status reports as directed by the Contact Attorney.

Status reports should be addressed to the Client Representative and Contact Attorney and should briefly outline the status of the case or matter, emphasize significant developments, summarize depositions and discovery, and address settlement proposals. COUNSEL must promptly notify the CLIENT and the CITY of events significantly affecting exposure and recovery.

COUNSEL will e-mail status reports and attach any important documents as .pdf images. A status report should precede any scheduled meeting where a comprehensive analysis of the case or matter is expected.

Any significant document that is not routine, or that is to be provided to third parties, including the court or administrative agencies, will be sent to the CLIENT and the CITY with enough time so that CLIENT and the CITY may have a meaningful review of it prior to distribution. All final copies of documents and memoranda for which the CITY is charged must be sent to the CITY.

19. **Offers of Compromise**

COUNSEL must consider the possibility of resolving disputes through both traditional and nontraditional methods of alternative dispute resolution.

All offers of compromise must be promptly transmitted to the CLIENT and the CITY through the Client Representative and Contact Attorney together with COUNSEL'S recommendations. The CITY and CLIENT will be responsible for obtaining proper authority to accept a compromise or make a counteroffer. COUNSEL may be required to attend meetings to adequately explain the status of a matter before a regulatory body or in litigation.

20. **Notice**

Any notice, consent, or other communication (“Notice”) required or permitted under this Agreement will be in writing and either delivered in person, sent by e-mail or facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed to the Client Representative or Contact Attorney as appropriate.

21. **Withdrawal of Counsel**

COUNSEL must request to withdraw from representation of the CLIENT or the CITY, or any department, officer, agent or employee thereof, when it would be ethically improper to continue the representation. If COUNSEL requests to withdraw, the request must be in writing to the City Attorney setting forth in detail the reasons COUNSEL must withdraw.

22. **Special Counsel Designation**

It is expressly understood and agreed that COUNSEL is appointed as SPECIAL COUNSEL to the City Attorney for the purposes of carrying out the provisions of this AGREEMENT. However, COUNSEL agrees to act as co-counsel with the City Attorney in those matters where the City Attorney determines that it is advisable to do so.

23. **Appeals**

No appeals or special actions may be filed without prior written approval of the CITY or CLIENT and the City Attorney.

24. **Confidentiality and Data Security**

All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to COUNSEL in connection with this Agreement is confidential proprietary information owned by the CITY or CLIENT. Except as specifically provided in this Agreement, COUNSEL will not disclose data generated in the performance of the service to any third person without the prior written consent of the Contact Attorney, City Attorney, or Chief Counsel.

Personal identifying information, financial account information, or restricted CITY information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, COUNSEL must encrypt and password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted CITY information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by COUNSEL in connection with this Agreement is believed to have been compromised, COUNSEL must notify the Contact Attorney, City Attorney, Chief Assistant City Attorney, or Chief Counsel immediately. COUNSEL agrees to reimburse the CITY for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

COUNSEL agrees that the requirements of this Section will be incorporated into all subcontractor/subconsultant agreements entered into by COUNSEL. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

The obligations of COUNSEL under this Section survive the termination of this Agreement.

25. **Media Relations**

COUNSEL is not authorized by the CITY or CLIENT to comment publicly on CLIENT or CITY matters. All media inquiries should be directed to the Contact Attorney.

26. **Records Retention/Return**

At the conclusion of the matter, COUNSEL will notify the Contact Attorney that the matter is closed and prepare the file for shipment as set forth in Exhibit D.

27. **Other Contracts**

CITY and CLIENT have the right to let other contracts in connection with work under this AGREEMENT and COUNSEL will cooperate with any other contractor.

28. **Compliance with Laws and Regulations**

COUNSEL must comply with all applicable federal and State statutes, City ordinances, executive orders, and regulations. In particular COUNSEL agrees to comply with all legal requirements relating to civil rights and non-discrimination in employment.

COUNSEL understands and acknowledges the applicability to COUNSEL of the Immigration Reform and Control Act of 1986 (IRCA). COUNSEL agrees to comply with the IRCA in performing under this AGREEMENT and to permit CITY inspection of personnel records to verify such compliance.

29. **Lawful Presence Requirement**

Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be

imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.

30. **Legal Worker Requirements**

CITY is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, COUNSEL agrees that:

COUNSEL and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

A breach of warranty under paragraph 1 will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

CITY retains the legal right to inspect the papers of COUNSEL or subcontractor employee(s) who work(s) under this Agreement to ensure that COUNSEL or subcontractor is complying with the warranty under paragraph 1.

31. **Contractor and Subcontractor Worker Background Screening**

31.1 **Contract Worker Background Screening**

COUNSEL agrees that all COUNSEL'S contract workers and subcontractors (collectively "Contract Worker(s)") that COUNSEL furnishes to the City pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at COUNSEL'S sole cost and expense as set forth in this Section. The Background Screening provided by COUNSEL will comply with all applicable laws, rules and regulations. COUNSEL further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare.

31.2 **Background Screening Risk Level**

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges. The current risk level and background screening required is **STANDARD RISK LEVEL**.

31.3 **Standard Risk Level**

A standard risk background screening will be performed when the Contract Worker's work assignment will:

31.2.1 require a badge or key for access to City facilities; or

31.2.2 allow any access to sensitive, confidential records, personal identifying information or restricted City information; or

31.2.3 allow unescorted access to City facilities during normal and non-business hours.

31.4 Requirements

The background screening for this standard risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.

31.5 Contractor Certification; City Approval of Background Screening

31.5.1 Unless otherwise provided for in the Scope, COUNSEL will be responsible for:

31.5.1.1 determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,

31.5.1.2 for reviewing the results of the background check every five years; and,

31.5.1.3 to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,

31.5.1.4 Submitting the list of qualified Contract Workers to the contracting department.

31.5.2 Background check requirements are waived and deemed satisfied if COUNSEL is a member in good standing of the State Bar of Arizona.

31.5.3 For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.

31.5.4 By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

31.6 Terms of This Section Applicable to all of COUNSEL'S Contracts and Subcontracts

COUNSEL will include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.

31.7 Materiality of Background Screening Requirements; Indemnity

The Background Screening requirements of this Section are material to City's entry into this Agreement and any breach of this Section by COUNSEL will be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in Section 35 of this Agreement, COUNSEL will defend, indemnify and hold

harmless the City for any and all Claims (as defined in Section 35) arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by COUNSEL or the City for failure to satisfy this Section. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect COUNSEL from any liabilities that may arise out of the Contractor Worker's services under this Agreement or failure to comply with this section. Therefore, COUNSEL and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

31.8 **Continuing Duty; Audit**

COUNSEL'S obligations and requirements that Contract Workers satisfy this Background Screening Section will continue throughout the entire term of this Agreement. COUNSEL will maintain all records and documents related to all Background Screenings and the City reserves the right to audit COUNSEL'S compliance with this Section pursuant to Section 8.

32. **Waiver**

The failure of the CITY or the CLIENT at any time to require performance of any provision of this AGREEMENT in no way affects the CITY'S or the CLIENT'S right to subsequently enforce that provision. Nor will the waiver of any succeeding breach of the provision act as a waiver of the provision itself.

33. **Termination**

The CITY or the CLIENT may terminate this AGREEMENT in whole or in part at any time, for any reason or for no reason, without penalty or further obligation. COUNSEL will be paid at a rate equal to the agreed compensation for requested legal services rendered and reimbursed for authorized expenses actually incurred as of the date of the termination after the City Attorney or the City Council approves payment. This payment for services performed constitutes the total compensation due to COUNSEL for termination. COUNSEL will deliver to the City Attorney a complete set of all materials, information, and data required or prepared by COUNSEL as of the termination date. All of the materials, information, and data constitute the CITY'S property and must be delivered to the City Attorney at termination or completion of services.

34. **Indemnification Clause**

Contractor ("Indemnitor") must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("Claims") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of COUNSEL or any of its owners, officers, directors, agents, employees or subcontractors in connection with this Contract. This indemnity includes any Claims arising out of or recovered under

the Workers' Compensation Law or arising out of the failure of COUNSEL to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. COUNSEL must indemnify Indemnatee from and against any and all Claims, except where it is proven that those claims are a result solely from Indemnatee's own negligent or willful acts or omissions. COUNSEL will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, COUNSEL agrees to waive all rights of subrogation against Indemnatee for losses arising from the work performed by COUNSEL for the City. The obligations of COUNSEL under this provision survive the termination or expiration of this Contract.

35. INSURANCE REQUIREMENTS:

COUNSEL and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by COUNSEL and its agents, representatives, employees and subconsultants. COUNSEL and subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits stated in this section are sufficient to protect the COUNSEL from liabilities that might arise out of the performance of the work under this contract by the COUNSEL, its agents, representatives, employees or subcontractors and COUNSEL is free to purchase additional insurance as may be determined necessary.

1.1. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** COUNSEL must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1.1.1. Commercial General Liability – Occurrence Form

Policy must include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The policy must be endorsed to include the following additional insured language: "The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the COUNSEL."

1.1.2. Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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The policy must be endorsed to include the following additional insured language: “The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the COUNSEL, including automobiles owned, leased, hired or borrowed by the COUNSEL.”

1.1.3. **Worker’s Compensation and Employers’ Liability**

Workers’ Compensation	Statutory
Employers’ Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. 23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

1.1.4. **Professional Liability (Errors and Omissions Liability)**

The policy must cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, COUNSEL warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies must include, or be endorsed to include, the following provisions:

- 2.1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured to the full limits of liability purchased by the COUNSEL even if those limits of liability are in excess of those required by this Contract.

2.2. The Contractor's insurance coverage must be primary insurance and non-contributory with respect to all other available sources.

3. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the COUNSEL must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to **(City of Phoenix Department Representative's Name & Address & Fax Number)**.
4. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the COUNSEL from potential insurer insolvency.
5. **VERIFICATION OF COVERAGE:** COUNSEL must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to **(City Department Representative's Name and Address)**. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

6. **SUBCONTRACTORS:** COUNSELS' certificate(s) must include all subcontractors as additional insureds under its policies **or** COUNSEL must furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors must be subject to the minimum requirements identified above.
7. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment but may be made by administrative action.

36. **Advertising and Promotion**

The name of the City of Phoenix and, if applicable, of CLIENT, will not be used in any advertising or other promotional context by COUNSEL without prior written approval of the City Attorney.

37. **Non-Assignability**

This Agreement is in the nature of a personal services agreement, and COUNSEL will have no power to assign its rights and obligations under this AGREEMENT without the prior written consent of the CITY and of the CLIENT. Any attempt to assign the AGREEMENT without this prior written consent is void.

An essential consideration provided to the CITY and CLIENT by COUNSEL to induce the CITY and CLIENT to enter into the AGREEMENT is the ability of the CITY and CLIENT to assign work to COUNSEL'S principal attorneys. Therefore, if a principal attorney severs his or her relationship with COUNSEL, or otherwise becomes unavailable to carry out COUNSEL'S duties under this AGREEMENT for an extended period of time (as determined in the CITY'S or CLIENT'S sole discretion), then the CITY and CLIENT may, without notice, immediately terminate this AGREEMENT.

38. **Entire Agreement**

It is expressly agreed that this written AGREEMENT embodies the entire AGREEMENT of the parties in relation to the subject matter, and that no understanding or agreements, verbal or otherwise, in relation thereto, exist between the parties, except as herein expressly set forth. To the extent there is any conflict between the terms of this AGREEMENT and any LOE entered into between COUNSEL and the CITY and CLIENT, the LOE will be controlling.

39. **Governing Laws**

It is the expressed intention of the parties thereto that this AGREEMENT and all terms hereof will be in conformity with and governed by the laws of the City of Phoenix and the State of Arizona, both as to interpretation and performance. Any action to enforce or interpret this AGREEMENT will be brought only in a court located in Maricopa County, Arizona.

40. **Independent Contractor**

The parties agree that COUNSEL is providing the Services under this AGREEMENT on a part-time and temporary basis and that the relationship created by this AGREEMENT is that of independent contractor. Neither Counsel nor any of Counsel's agents, employees or helpers will be deemed to be the CITY'S employee, agent, or servant. The CITY is interested only in the results obtained under this AGREEMENT; the manner, means and mode of completing the AGREEMENT are under COUNSEL'S sole control.

This AGREEMENT is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization

of any kind, and the rights and obligations of the parties will be only those expressly set forth in this AGREEMENT. The parties agree that no individual performing under this AGREEMENT on behalf of COUNSEL will be considered a city employee, and that no rights of city civil service, city retirement or city personnel rules will accrue to such individual. COUNSEL will have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and will save and hold harmless the CITY with respect thereto.

41. **Cancellation**

This AGREEMENT is subject to cancellation by the CITY pursuant to Arizona Revised Statutes Annotated § 38-511.

42. **Electronic Communication**

CITY expects COUNSEL to provide a specific electronic mail address, accessible from or through the Internet that will allow direct communication between CITY and CLIENT and the attorney assigned to provide legal services for a particular matter.

43. **Third-Party Beneficiaries**

This AGREEMENT and all services provided by COUNSEL are intended to benefit the corporate and municipal interests of the CITY and CLIENT alone, and no other person will claim any implied right, benefit or interest in such services.

44. **Term**

This AGREEMENT expires on June 30, 2021, unless mutually extended by COUNSEL and the City Attorney, in writing, for no more than one additional year. In the event of such an extension, COUNSEL will be permitted to renegotiate the terms of this Agreement.

Upon expiration of this AGREEMENT, COUNSEL must cease all work under this AGREEMENT in a fashion consistent with COUNSEL'S ethical obligations to protect the interests of the CITY and CLIENT; COUNSEL will submit a final bill and status report on each matter then being handled by COUNSEL; and, COUNSEL will return the matter and all related files to the CITY and CLIENT.

45. **Equal Employment Opportunity Requirement**

In order to do business with the City, Counsel must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Counsel will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

45.1 For a Contractor with 35 employees or fewer. Contractor in performing under this Agreement will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and

employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

- 45.2 For a Contractor with more than 35 employees: Contractor in performing under this Agreement will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and will adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and will ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.
- 45.3 Documentation: Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
- 45.4 Monitoring: The Equal Opportunity Department will monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

46. **Amendments**

Whenever an addition, deletion, or alteration to the services described in **Exhibit A** substantially changes the scope of work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the CITY and COUNSEL before such addition, deletion or alteration will be performed. Changes to the services may be made and the compensation to be paid to COUNSEL may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by COUNSEL will be allowed except as provided herein, nor will COUNSEL do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by COUNSEL without prior written authorization will be at COUNSEL'S risk, cost and expense, and COUNSEL agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

47. **No Oral Modifications**

No modification or variation of this AGREEMENT'S terms is binding on the parties unless the modification or variation is in writing and signed by each party. No oral understanding or agreement not incorporated into this AGREEMENT is binding on either party.

In witness whereof, the parties or their authorized representatives have made and executed this AGREEMENT the day and year first above written.

City of Phoenix, a municipal corporation

[FIRM NAME]

Ed Zuercher, City Manager

By _____

Its _____

By _____

Cris Meyer
Phoenix City Attorney

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

EXHIBIT A -- COMPENSATION

The "AREAS OF PRACTICE AND RATE SCHEDULE" as set forth in Attachment D of the RFP are incorporated into this contract by this reference.

EXHIBIT B -- REIMBURSABLE EXPENSES

Expense Code Set

E100 Expenses
E101 Copying
E102 Outside printing
E107 Delivery services/messengers
E109 Local travel (outside of Maricopa County)
E110 Out-of-town travel
E112 Court fees
E113 Subpoena fees
E114 Witness fees
E115 Deposition transcripts
E116 Trial transcripts
E117 Trial exhibits
E118 Litigation support vendors
E119 Experts
E120 Private investigators
E121 Arbitrators/mediators
E122 Local counsel
E123 Other professionals
E124 Other

American Bar Association, Expense Codes,
http://www.abanet.org/litigation/utbms/utbms_counseling_expensecode.html

EXHIBIT C – SAMPLE INVOICE SUMMARY PAGE

LAW FIRM NAME
LAW FIRM ADDRESS

Office of the City Attorney
Outside Counsel Invoice Processor
200 West Washington, Suite 1300
Phoenix, AZ 85003-1611

Invoice Date:
Invoice, No:
Client No:

Professional Services Period: XXXX X, 2015 through XXXXX X, 201X

RE: *Case Name/Subject Matter:*
Letter of Engagement No:
Contract No:
Project No:
Risk Management No:

TOTAL FEES	\$25,000.00
TOTAL DISBURSEMENTS	\$200.00
TOTAL THIS BILL	\$25,200.00
PREVIOUS BALANCE	\$10,000.00
TOTAL PAYMENTS & ADJUSTMENTS	(\$10,000.00)
TOTAL DUE UPON RECEIPT	<u>\$25,200.00</u>

EXHIBIT D – FILE HANDLING UPON COMPLETION

CITY OF PHOENIX OUTSIDE COUNSEL RECORDS RETENTION/RETURN PROCEDURES

GOVERNING STATUTE:

Within 60 days of the conclusion of the matter for which services were retained, and to further the purposes of ARS § 41-1346, COUNSEL will follow the procedures listed below.

CITY REQUIREMENTS:

A. City Contact – Counsel will contact the Law Department to obtain the following information

- Year and box number
- Review of Excel Index
- Month and year to be destroyed
- Completed transmittal form

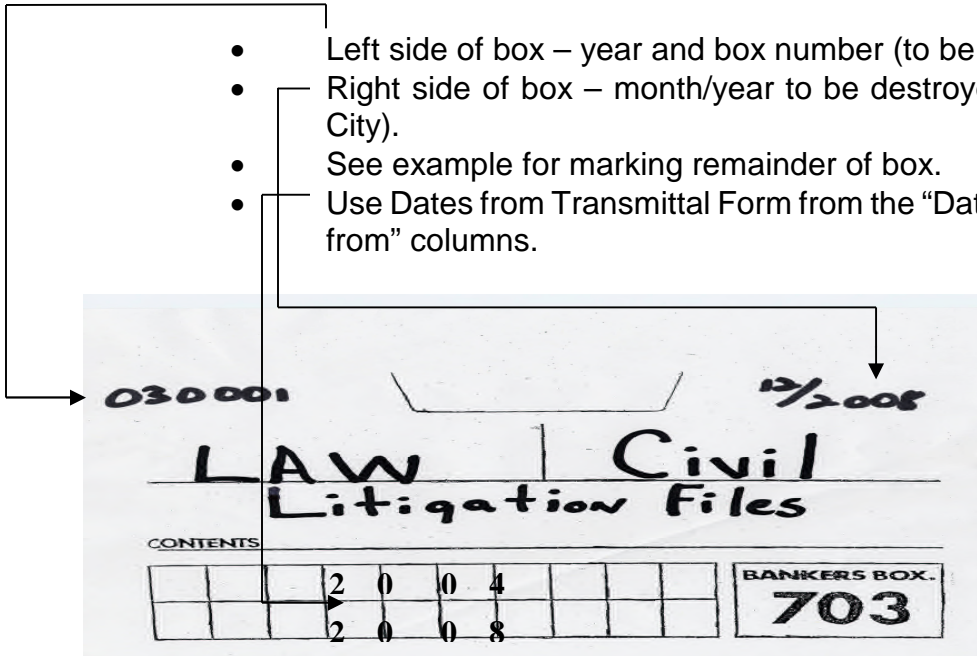
Note: Contact will be secretary for the attorney you have been working with on the cases you are archiving

B. Boxes - Contents

- Items must be boxed in bankers' boxes (#703 boxes preferred).
- Box size must be 10"H x 12" W x 15" D.
- All files should face the same direction/forward.
- No hanging files, notebooks, binder clips or binders in boxes.
- Highlight box number on paperwork before placing paperwork in boxes.
- Not necessary to seal the boxes, as they will be examined at Records Center.

C. Boxes – Outside labeling (See example below)

- Left side of box – year and box number (to be provided by City).
- Right side of box – month/year to be destroyed (to be provided by City).
- See example for marking remainder of box.
- Use Dates from Transmittal Form from the “Date of Records – To and from” columns.



D. Archive Index and Transmittal Forms (See examples below)

- City of Phoenix will forward blank index in Excel Format to Law Firm
- Law firm completes and returns an electronic copy of the index containing contents of each box being sent to the City.

BOX NO.	DATE ARCHIVED	YEARS TO RETAIN	ATTORNEY NAME (DO NOT ABBREVIATE)	TYPE OF CASE	CASE NO.	NAME OF CASE (DESCRIPTION OF BOX CONTENTS)
06-2222	05/07/06	5	Smith & Doe LLC John H. Doe	Litigation	CV2005-5555	Mary Lawsuit v. Bad Company, et al., pleadings, depositions, correspondence, attorney notes, legal research, trial exhibits, etc.

- City will fax approved “Records Transmittal Form” to law firm to be placed inside box along with index of box contents.

RECORDS CENTER TRANSMITTAL FORM
(SEE INSTRUCTIONS ON BACK)

Phoenix, Arizona
City Clerk Department
Records Management Division
262-6811

Records Center
1101 East Jefferson
261-8648

1. Department Law
Division Civil
Section Litigation

2. Preparer Smith & Doe Telephone 262-6761

3. Date 5/2/03

4. Alphabetic Numeric Chronological

5 Box Number	6 CENTER USE ONLY		7 RECORD NAME (As listed in Records Retention Schedule)	8 Confidential		9 Retention Schedule		10 Micro- filmed		11 Date of Records		12 Ret. in	13 Destroy
	Shelf	Location		Yes	No	Page	Item	Yes	No	From	To	Years	Date
030001			Litigation Files		X	D96	3		X	1999	2003	5	5/08

14. Comment: _____

15. Records Control Officer Approval: _____ Phone No. _____ 16. Records Shipment Received by: _____ Date: _____
CALL RECORDS CENTER TO SCHEDULE SHIPMENT

White (or xerox) – Place in each box.
Yellow – Send to Records Center with shipment.
Pink – Retain for agency control file – Records Center will phone back location.

ONLY ONE BOX NUMBER PER LINE. NO DUPLICATE BOX NUMBERS. USE ONLY NUMBER 703 STORAGE BOXES.

22-601 Rev. 09/97

Date of
Records

E. Records Center

- When boxes are completed **law firm will contact the Records Center at 602-261-8648 to arrange a date to have boxes delivered.** (Records Center is located at 2640 South 22nd Avenue, Phoenix.)

Please contact the City Attorney’s Office, Gloria Torres at 602-534-1109, with any questions you may have regarding these procedures.