

Attachment B Sample Agreement (Collections)

**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 (hereinafter "AGREEMENT"), is made and entered into on this 1st day of July, 2015, by and between the City of Phoenix (hereinafter "CITY"), acting by and through the 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").

RECITALS

WHEREAS, the City Manager and City Attorney 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; and

WHEREAS, after issuing a Request for Proposals, the City Manager and City Attorney have determined that it is in the best interests of the CITY and the CLIENT ENTITIES to employ COUNSEL to furnish legal services to the CITY and/or to one or more CLIENT ENTITIES on 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

COUNSEL shall provide any necessary account collection services and legal representation to the CITY and/or to the CLIENT and any of its officers, employees or agents as directed by the CITY. COUNSEL agrees to 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, and making appearances before administrative tribunals and courts, in representing CLIENT. The legal services shall be carried out in cooperation with and under the supervision of the Finance Department of the City of Phoenix, in a manner consistent with COUNSEL'S ethical obligations to the CITY and/or to the CLIENT.

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

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

COUNSEL shall not file any action or enter any litigation on behalf of the CITY and/or 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 CLIENT or CITY or any of their officers or employees, COUNSEL shall obtain the City Attorney's concurrence.

2. ABATEMENT OF COLLECTION EFFORTS

COUNSEL shall return a referred matter to the Authorized Finance Department Representative when: (i) if COUNSEL has been unable to collect the amount due or make acceptable payment arrangements with the party responsible for the account by June 30, 2019; or (ii) the account debtor files a petition for relief in bankruptcy; (iii) at the request of the CITY, if any matter referred to COUNSEL is affected by a petition for bankruptcy, COUNSEL shall immediately advise the Contact Attorney and return the file to the Authorized Finance Department Representative. COUNSEL will not receive any compensation for any matter returned to the CITY pursuant to this section.

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

Referral of legal matters to COUNSEL under this AGREEMENT will be through a single Letter of Engagement ("LOE") signed by the Phoenix City Attorney or his designee. The LOE will contain: (1) the name and a general description of the matter for which legal services are sought, (2) an explanation of the scope of work, (3) the compensation the CITY and/or 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 Phoenix City Attorney's Office, and (5) as appropriate, the identification of the Authorized Finance Department 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 Phoenix City Attorney or, the Chief Assistant City Attorney.

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 shall 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 shall be brought by COUNSEL to the attention of the Finance Department Representative and/or the Contact Attorney, as appropriate. The Finance Department Representative and Contact Attorney will be identified in Letters of Engagement provided with referred matters—and as referenced in the above paragraph.

4. STAFFING

CITY and CLIENT reserve the right to designate a specific attorney(s) in COUNSEL'S firm to work on specific matters. COUNSEL shall employ suitably trained and skilled professional personnel to perform the account collection and legal services. Prior to changing any key personnel, especially those key personnel who the CITY relied upon in making this AGREEMENT, COUNSEL shall obtain the approval of the Contact Attorney. All staffing decisions shall be discussed and agreed upon with the CITY and, if applicable, with CLIENT in advance.

5. MATERIALS AND INVESTIGATIVE SERVICES

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

6. COMPENSATION

COUNSEL will be paid for services under this AGREEMENT as set forth below.

Compensation rates shall apply for the term of this AGREEMENT and shall not be renegotiated during the term of this AGREEMENT.

- a. Counsel's compensation for services under this AGREEMENT shall not exceed XX% of the referred account balance for matters prior to the commencement of a formal legal proceeding. COUNSEL's compensation for services under this AGREEMENT shall not exceed XX% of the referred account balance for matters after the commencement of formal legal proceeding. COUNSEL's recovery amount shall be reduced for any cost paid by the CITY to collect referred account proceeds.
- b. Compensation shall be paid to COUNSEL on a monthly basis for Reimbursable Expenses per Exhibit A. Compensation shall be paid to

COUNSEL on a monthly basis for referred accounts directly recovered by City in the prior month when such recovery includes full payment of CITY's portion plus additional amounts COUNSEL is entitled to. COUNSEL is responsible for recovering remaining amounts from DEBTOR, not CITY.

- c. For all accounts placed with COUNSEL, the Debtor will be held responsible for paying the COUNSEL contingency fees for collection services rendered, including payments the CITY receives directly from Debtor. The COUNSEL will add their fee percentage, as awarded by this contract, onto the original debt amount placed with them for collection from the CITY (with the exception of all Fire Department, Emergency Transportation accounts). Upon recovery of the debt amounts, whether full or partial payments, the COUNSEL will remit the CITY's portion of the payment back to the City. The COUNSEL fees will be kept by COUNSEL without being remitted to the CITY (with the exception of all Fire Department, Emergency Transportation accounts). COUNSEL'S reimbursable fees are not subject to recovery from the debtor but shall be handled in the manner described herein between CITY and COUNSEL. In no event shall COUNSEL recover from debtor an amount greater than its contingency fee applied to the referred account balance.
- d. COUNSEL is required to use CITY's Excel formulas to calculate their contingency fee percentage and corollary payment.
- e. A monthly statement must include the amount collected for the CITY as well as the detailed breakdown of the COUNSEL's fee percentage collected from the debtor. Such payment shall be directed to the Finance Department Representative and shall include a detailed invoice and back up documentation showing the account name, number or reference, the proceeds recovered, costs aid by the CITY to collect such proceeds, costs reimbursed to the CITY, the net proceeds and COUNSEL's compensation.
- f. Fire Department, Emergency Transportation accounts whether full or partial payment, the COUNSEL will remit 100% of the amount collected back to the CITY without charging the debtor the COUNSEL fee percentage. The fee percentage will be reimbursed to the COUNSEL after the CITY is invoiced at month end. The monthly invoice must include the amount collected for the CITY as well as the detailed breakdown of the COUNSEL's fee percentage. This invoice shall be separately reported from collections of other accounts.
- g. Payment exceptions. In center specific, factual situations, as described below, no remuneration will be paid to COUNSEL.
 - 1. The application of direct account payments from government recovery program for account balances filed prior to referral to COUNSEL are not subject to payment. These programs include the set off of income and transaction privilege tax refunds from the Arizona Department of Revenue, amounts directly paid to CITY from statutorily liens, pay warrants of CITY employees/contractors.

2. If an account has been referred to COUNSEL and prior to first contract therefrom, debtor pays CITY directly, such transaction is not subject to payment.
3. If an account is returned/closed by COUNSEL, no payment will be made to COUNSEL if CITY is contacted by debtor after six (6) months thereof.

7. COUNTERCLAIMS AND CROSS-CLAIMS

In the event CITY is served or threatened with a counterclaim or cross-claim in connection with any matter referred to COUNSEL, COUNSEL shall immediately advise the Contact Attorney and the Authorized Finance Department Representative of the nature of the counterclaim or cross-claim. CITY may issue a separate agreement and LOE for COUNSEL to represent CITY on such counterclaim or cross-claim.

8. JUDGMENTS – NO RENEWAL OF JUDGMENTS

9. REIMBURSEMENT FOR EXPENSES

Except filing fees, if any, and service of process fees, COUNSEL may deduct Reimbursable Expenses (hereinafter defined) from proceeds recovered. (See No. 11 Restriction on Reimbursement/Recoveries) For filing fees, if any, and service of process fees, COUNSEL will send to the CITY an invoice itemizing the cost to be paid by the CITY. COUNSEL shall include the documentation supporting the invoiced amount. Any Reimbursable Expenses paid by the CITY shall be first repaid to the CITY from any proceeds recovered in the matter. All expenses shall be billed at COUNSEL's actual out-of-pocket cost without any mark-up. COUNSEL will be reimbursed for approved expenditures where the expense is itemized in the invoice and COUNSEL provides the documentation supporting the invoiced amount.

CITY does not request COUNSEL attempt service of process within the State more than five (5) separate dates. Expenses to serve debtor subsequently must be approved by CITY. Any out-of-state service of process expenses must be approved in advance by CITY.

10. ACCOUNTING AND AUDITING

COUNSEL agrees that the CITY and/or CLIENT or their duly authorized representatives shall have access to and the right to examine any books, documents, papers, records and other evidence reflecting all time charges, compensation and costs billed under this AGREEMENT. The materials described herein shall be made available at the office of COUNSEL at any reasonable time for inspection, audit or reproduction until the expiration of three (3) 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/or CLIENT without the express written consent of the City Attorney.

11. RESTRICTIONS ON REIMBURSEMENTS

Unless otherwise agreed to by the Finance Department Representative and Contact Attorney:

- Reimbursement for expenses is limited to those specific reimbursable expenses listed in Exhibit A 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 the approval of the Finance Department Representative and Contact Attorney. COUNSEL is expected to pay the consultant for services provided and then submit an invoice for reimbursement.
- All experts and consultants shall be required to submit an invoice similar to the format for outside counsel prior to payment, including the need to itemize expenses and attach the supporting documentation.
- No contract or subcontract shall be entered into by COUNSEL with any other person to furnish any work or services under this AGREEMENT without the prior approval of the Authorized Finance Department Representative and Contact Attorney.
- The application of payments from government recovery program that were filed before account referred to COUNSEL are not subject to contingency %, ex. Arizona Department of Revenue debt set-off, any liens, pay warrants.
- If an account has been referred to COUNSEL and prior to first contact therefrom, debtor pay City directly, such payment not subject to contingency % or hourly rate.
- If an account is returned/closed by COUNSEL, no contingency % will be paid if City is contacted by Debtor after 6 months thereof.

12. 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.

13. CONFLICT OF INTEREST

COUNSEL is retained by THE CITY to represent THE CITY and/or CLIENT only for the purposes and to the extent set forth in this AGREEMENT. COUNSEL shall 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/or CLIENT in such a manner as COUNSEL sees fit and to such persons, firms or corporations as COUNSEL deems advisable, but shall not engage in any representation of any nature, including legislative or administrative lobbying, which could be adverse to CLIENT or THE CITY at the same time COUNSEL is representing the CLIENT or THE CITY pursuant to this AGREEMENT. If such representation presents an ethical conflict of interest, and if a waiver is permitted, a waiver of such conflict must first be obtained prior to undertaking such 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 CLIENT and THE CITY. These would include situations that may be subject to the Rules of Professional Conduct as well as those situations where COUNSEL would otherwise be expected to identify CLIENT or THE CITY as a party, a potential party, or as a non-party at fault. COUNSEL hereby represents and affirms that there is no known conflict of interest existing between a client and potential client of COUNSEL and 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 CLIENT or CITY, COUNSEL will present the facts and circumstances of the matter to the CLIENT or THE CITY and request a waiver of any ethical conflict of interest. It is further understood that any conflict of interest which may arise as a result of COUNSEL'S representation of parties adverse to the CLIENT or THE CITY is not waivable unless expressly so stated in writing by CLIENT and THE CITY after full disclosure of the nature and extent of the conflict.

14. STATUS REPORTS AND ASSESSMENT OF EXPOSURE AND POTENTIAL FOR RECOVERY

COUNSEL shall keep the Authorized Finance Department Representative 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 shall furnish CLIENT and THE CITY an evaluation of the merits of the disputed matter and COUNSEL'S assessment of the monetary exposure or potential recovery, if any, to CLIENT and/or THE CITY, along with appropriate recommendations. Thereafter, status reports shall be furnished by COUNSEL on a monthly or quarterly basis as directed by the Authorized Finance Department Representative. Status reports should be addressed to the Authorized Finance Department Representative and Contact Attorney and should briefly outline the status of the case or matter, emphasizing significant developments, depositions and discovery, and settlement proposals. COUNSEL shall promptly notify CLIENT and THE CITY of events significantly affecting exposure and recovery.

COUNSEL shall e-mail encrypted status reports. COUNSEL is encouraged to format all native documents in Microsoft Word® and to scan significant third-party documents into a *.pdf Adobe Acrobat® format and e-mail them as an attachment to a status report. A status report should precede

any scheduled meeting where a comprehensive analysis of the case or matter may be expected.

Any significant document that is not routine, or that is to be provided to third parties, including the court or administrative agencies, shall be sent to the Authorized Finance Department Representative and contact attorney with enough time so that 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 shall be sent to the Authorized Finance Department Representative.

15. RETENTION OF RECORDS

COUNSEL shall retain all records in accordance with the City's Records Retention Schedule attached hereto as Exhibit B and incorporated herein by reference. Records do not have to be stored in paper form but must be capable of reproduction on paper upon request.

16. OFFERS OF COMPROMISE AND SETTLEMENT

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

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

COUNSEL IS PRE-AUTHORIZED TO ENTER INTO PAYMENT PALNS, ON THE MOST FAVORABLE TIME FRAME POSSIBLE, NOT TO EXCEED 12 MONTHS WITH 25% LIABILITY PLUS 100% OF FULL COSTS REPAYABLE TO OR REIMBURSIBLE FROM CITY AS DOWN PAYMENT. REMAINING BALANCE CAN BE PAID THORUHG 11 LEVEL, MONTHLY PAYMENTS. PAYMENT PLANS FOR PRIVILEGE LICENSE TAXES MAY NOT INCLUDE TOTAL INTEREST THAT IS HIGHER HAN WHAT CITY COULD INTERNALLY CHARGE. ANY REQUIRED ADJUSTMENT WILL BE MADE BY REDUCING THE FINAL INSTALLEMENT AMOUNT.

SETTLEMENT AUTHORITY MUST BE REQUESTED PER EACH CASE. CITY WILL PROVIDE SETTLEMENT TEMPLATES BASED ON SINGLE OR MULTIPLE PAYMENTS. CITY WILL INFORM COUNSEL OF ANY STANDARD SETTLEMENT TERMS (INCLUDING REJECTION TERMS) THAT APPLY TO THE TYPE OF ACCOUNT REFERRED.

17. 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 Authorized Finance Department Representative or Contact Attorney as appropriate.

18. WITHDRAWAL OF COUNSEL

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

19. 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.

20. APPEALS

No appeals or special actions will be filed without the prior written approval of THE CITY or CLIENT, acting through the City Attorney.

21. 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 shall 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 Assistant City Attorney.

Personal identifying information, financial account information, or restricted CITY information, whether in electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, COUNSEL must encrypt and/or 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 shall notify the

Contact Attorney, City Attorney, or Chief Assistant City Attorney 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 shall be incorporated into all subcontractor/subconsultant agreements entered into by COUNSEL. It is further agreed that a violation of this Section shall 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.

Further, pursuant to Section 14-510 of the Phoenix City Code, COUNSEL shall not make known any information concerning the business financial affairs or operations of any person except to the extent necessary to successfully represent the CITY in any lawsuit filed to collect money owing to the CITY.

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

22. 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.

23. RECORDS RETENTION/RETURN

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

24. NON-EXCLUSIVE

CITY and/or CLIENT shall have the right to execute other contracts in connection with work under this AGREEMENT and COUNSEL shall cooperate with any other contractor.

25. COMPLIANCE WITH LAWS AND REGULATIONS

COUNSEL shall 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.

26. 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 this Section, paragraph 1 shall 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 this Section, paragraph 1.

27. CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

27.1 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 shall 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 shall 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. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect COUNSEL from any liabilities that may arise out of COUNSEL'S services under this Agreement or COUNSEL'S failure to comply with this Section. Therefore, in addition to the specific measures set forth below, COUNSEL and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement.

27.2 Background Screening Requirements and Criteria

Because of the varied types of services performed, the City has established three levels of risk and associated Background Screening. The risk level and Background Screening required for this Agreement is Minimum.

27.3 Minimum Risk and Background Screening ("Minimum Risk")

A minimum risk Background Screening shall be performed when the Contract Worker: (i) will not have direct access to City facilities or information systems; or (ii) will not work with vulnerable adults or children; or (iii) when access to City facilities is escorted by City workers. The Background Screening for minimum risk shall consist

of the screening required by Arizona Revised Statutes §§ 41-4401 and following to verify legal Arizona worker status.

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

COUNSEL shall 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.

27.5 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 shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in Section 35 of this Agreement, COUNSEL shall 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.

27.6 Continuing Duty; Audit

COUNSEL'S obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. COUNSEL shall 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.

28. WAIVER

The failure of the CITY and/or CLIENT at any time to require performance of any provision of this AGREEMENT shall in no way affect the right of CITY and/or CLIENT thereafter to enforce such provision. Nor shall the waiver of any succeeding breach of such provision act as a waiver of the provision itself.

29. TERMINATION

CITY and/or CLIENT shall have the right to terminate this AGREEMENT in whole or in part at any time and without penalty or further obligation. COUNSEL shall be paid at a rate equal to the agreed compensation for requested legal services rendered (\$0.00 if nothing is recovered) and reimbursed for authorized expenses actually incurred in rendering such services, as of the date of such termination and if payment is made by the CITY, after approval of payment is obtained from the City Council. Such payment for Services already completed shall be the total compensation due to COUNSEL for Termination. COUNSEL shall deliver to the Authorized Finance Department Representative a complete set of all materials, information and data required or prepared by COUNSEL as of the date of termination. All such materials, information, and data shall be the property of the CITY and shall be delivered to the Authorized Finance Department Representative at the termination or completion of services or in no event later than 45 days from the date of termination. A list of any ongoing payment plans entered into by COUNSEL shall be provided as soon as possible.

30. SPECIFIC PERFORMANCE

COUNSEL agrees in the event of a breach by COUNSEL of any material provision of this AGREEMENT, CITY shall, in addition to any other remedy provided by law and upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this AGREEMENT. In the event CITY and/or CLIENT shall elect to treat any such breach on the part of COUNSEL as a discharge of the AGREEMENT, CITY and/or CLIENT may nevertheless maintain an action to recover damages arising out of such breach.

31. INSURANCE REQUIREMENTS

COUNSEL shall procure and maintain until all of its obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by COUNSEL, its agents, representatives, or employees.

The insurance requirements herein 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 contained herein are sufficient to protect COUNSEL from liabilities that might arise out of the performance of the work under this Contract by the COUNSEL, its agents, representatives, or employees and COUNSEL is free to purchase additional insurance as may be determined necessary.

a. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** COUNSEL shall provide coverage with limits of liability not less than those stated below.

1. Worker's Compensation and Employers' Liability

	Worker's Compensation Statutory Employers' Liability
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

1a. Policy shall contain a waiver of subrogation against the CITY of Phoenix and, if applicable, CLIENT.

2. Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

2a. 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 shall 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.

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

1. On insurance policies where the CITY of Phoenix and/or CLIENT is named as an additional insured, the CITY of Phoenix and/or CLIENT shall be an additional insured to the full limits of liability purchased by COUNSEL even if those limits of liability are in excess of those required by this Contract.
2. COUNSEL'S insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by COUNSEL shall not be limited to the liability assumed under the indemnification provisions of this Contract.

c. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the CITY, and, if applicable, to CLIENT. Such notice shall be sent directly to Gary Verburg, City Attorney, City of Phoenix, 200 W. Washington, 13th Floor, Phoenix, AZ 85003 and to the designated CLIENT Representative and shall be sent by certified mail, return receipt requested.

d. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies 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 COUNSEL from potential insurer insolvency.

e. **VERIFICATION OF COVERAGE:** COUNSEL shall furnish the CITY and, if applicable, the CLIENT 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 endorsements are to be received and approved by the CITY and, if applicable, by the CLIENT 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 shall be sent directly to Gary Verburg, City Attorney, City of Phoenix, 200 W. Washington, 13th Floor, Phoenix, AZ 85003 and to the designated CLIENT Representative. The CITY or CLIENT project/contract number and project description shall 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.

f. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

32. INDEMNIFICATION

COUNSEL shall indemnify, defend, save and hold harmless the CITY and, if applicable, the CLIENT and their respective officers, officials, agents, and employees (hereinafter referred to as "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) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of COUNSEL or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount 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. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by COUNSEL from and against any and all claims. It is agreed that COUNSEL will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, COUNSEL agrees to waive all rights of subrogation against CITY and, if applicable, the CLIENT, their officers, officials, agents and employees for losses arising from the work performed by COUNSEL for THE CITY or CLIENT.

33. ADVERTISING AND PROMOTION

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

34. NON-ASSIGNABILITY

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

An essential consideration provided to the CITY and/or CLIENT by COUNSEL to induce the CITY and/or CLIENT to enter into the AGREEMENT is the ability of the CITY and/or CLIENT to control the actual assignment of work to COUNSEL's principal attorneys. Therefore, should such a principal attorney sever their relationship with COUNSEL, or otherwise be unavailable to carry out COUNSEL's duties under this AGREEMENT for an extended period of time, which period shall

be determined at the sole discretion of the CITY and/or CLIENT, then the CITY and/or CLIENT may, without notice, immediately terminate this AGREEMENT for cause.

35. 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/or CLIENT, the LOE shall be controlling.

36. GOVERNING LAWS

It is the expressed intention of the parties thereto that this AGREEMENT and all terms hereof shall 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 shall be brought only in a court located in Maricopa County, Arizona.

37. INDEPENDENT CONTRACTOR

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

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 shall 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 shall accrue to such individual. Counsel shall 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 shall save and hold harmless the City with respect thereto.

38. CANCELLATION

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

39. 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/or CLIENT and the attorney assigned to provide legal services for a particular matter.

40. THIRD-PARTY BENEFICIARIES

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

41. TERM

This AGREEMENT is effective beginning July 1, 2019, and 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 will cease all work under this AGREEMENT in a fashion consistent with COUNSEL'S ethical obligations to protect the interests of the CITY and/or 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/or CLIENT no later than 45 days from date of AGREEMENT expiration.

42. 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.

43. 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 shall 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 shall 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 shall 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.

44. NO ORAL ALTERATIONS

No alteration or variation of the terms of this Agreement shall be binding on the parties herein unless such alteration or variation is in writing and signed by each of the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties herein.

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

ED ZUERCHER, City Manager

By _____

Its _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

By _____
Cris Meyer
City Attorney

EXHIBIT A -- REIMBURSABLE EXPENSES

Expense Code Set

- E100 Expenses -detailed description must be included when using this code, prior approval if exceeds \$1,000.00
- E101 Copying @ \$0.15/page
- 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 B**RECORDS RETENTION SCHEDULE**CITY CLERK DEPARTMENT
RECORDS MANAGEMENT DIVISIONDepartment: CITYWIDE RECORDS
Division:

ITEM NO.	NAME OF RECORD (SERIES)	RETENTION PD. IN YRS.			DISP INST	REMARKS
		Active	Inactive	Total		
1.	Accounts Payable Claim Records, Payment Control Documents, Invoices, Receipts, Receiving Reports, Vouchers Payable and All Supporting Documents	10	–	10	X	(Prime Copy – Finance/Accounts Payable)
2.	Accounts Receivable Records	6	–	6	X	(Prime Copy – Finance/Accounts)
3.	Banking Records (Void or Returned Checks, Deposits, Reconciliations, Statements, Stubs, etc.)	5	–	5	X	(Prime Copy – Individual Depts.)
4.	Cash Receipts	5	–	5	X	(Prime Copy – Individual Depts.)
5.	Claim Files, Liability and Recovery Claims	5	–	5	X	After settlement or after maturity of claim if minor (Prime Copy – Finance/Risk Management)
6.	Contracts, Leases and Agreements	6	–	6	X	After expiration (Prime Copy – City Clerk)
7.	Correspondence, General	2	–	2	X	(Prime Copy – Individual Depts.)
8.	Credit Card Receipts	2	–	2	X	After transaction completed (Prime Copy – Individual Depts.)
9.	Electronic Mail	1 mo	–	1 mo	X	(Prime Copy – individual Depts.)
10.	Finance Department Letters	–	–	–	X	After reference value served (Prime Copy – Finance/Administration)
11.	Journal Entries	5	–	5	X	After fiscal year created (Prime Copy – Individual Depts.)
12.	Non-City Cash Fund Receipts	3	–	3	X	(Prime Copy – City Clerk)
13.	Payroll Register	21	–	21	X	(Prime Copy – Finance/Accounts)
14.	Petty Cash	3	–	3	X	(Prime Copy – Individual Depts.)
15.	Purchase Requisitions	5	–	5	X	(Prime Copy – Finance/Purchasing)
16.	Transitory Materials (Letters of Transmittal, Informational Bulletins, Correspondence of Limited Value)	3 mo	–	3mo	X	(Prime Copy – Individual Depts.)
17.	Unsuccessful Bids – Professional Services	1	–	1	X	(Prime Copy – Individual Depts.)
18.	Work Orders/Activity Allocations	5	–	5	X	(Prime Copy – Individual Depts.)
19.	Work Order Time Cards	3	–	3	X	(Prime Copy – Individual Depts.)
20.	Work Reports (Daily Reports, Weekly Reports, Reports of Limited Value)	1 mo	–	1 mo		(Prime Copy – Individual Depts.)

EXHIBIT C – FILE HANDLING UPON COMPLETION

CITY OF PHOENIX OUTSIDE COUNSEL 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

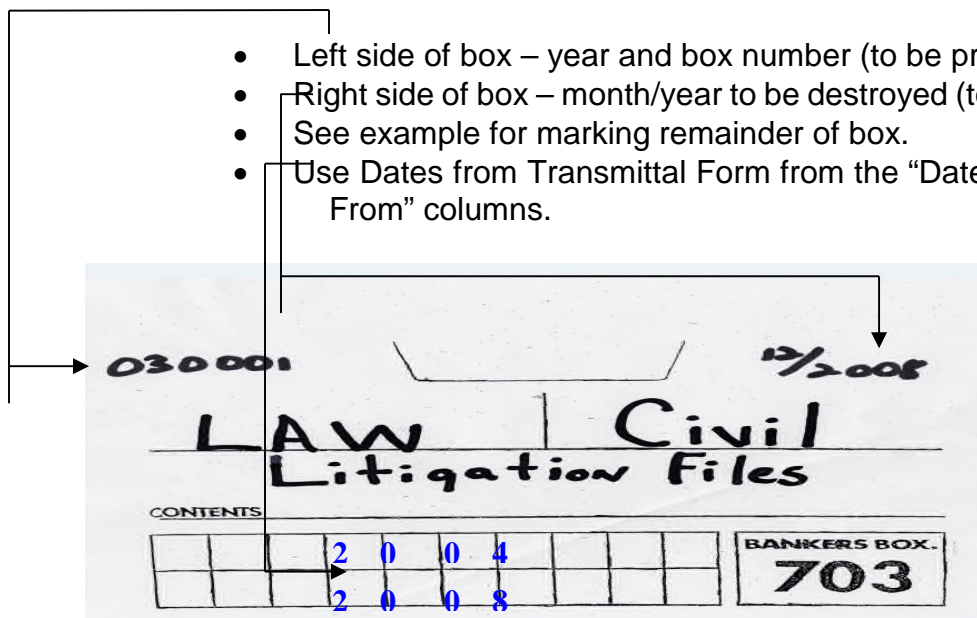
Note: Contact will be secretary for the attorney you have been working with on the cases you are archiving

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 Years	13 Destroy Date
	Shelf	Location		Yes	No	Page	Item	Yes	No	From	To		
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.

2240 Rev. 09/7

[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.