

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

AGREEMENT NO. _____

THIS Agreement is made and entered into on this 1st day of July 2025, 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 **(INSERT FIRM NAME HERE)** (hereinafter "COUNSEL" or "CONTRACTOR").

Recitals

1. The CITY issued a Request for Qualifications seeking outside legal counsel to represent the CITY and certain CLIENT ENTITIES.

2. The CITY and COUNSEL agree that COUNSEL may 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. **Term**

This AGREEMENT is effective beginning July 1, 2025, and expires on June 30, 2028.

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.

2. **Scope**

If a lawsuit or other legal matter is referred to 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.

3. 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. If 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.

4. **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.

5. **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.

6. **Materials and Investigative Services**

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

7. **Compensation**

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

7.1 **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.

7.2 **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."

6A. **Compensation for Arbitration Cases**

For cases billed on an hourly basis and deemed to be 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.

8. **Reimbursement for Expenses**

COUNSEL will be reimbursed for approved expenditures where the expense is itemized on 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.

9. **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.

10. **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. The monthly invoices should be sent electronically to law.civil.invoices@phoenix.gov and 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".

11. **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.

12. **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; requests for more time must be made and approval by the City documented and attached to invoice.
 - Adjustments will be considered for days spent in trial or when

handling time sensitive matters with compressed deadlines, such as requests for preliminary injunction or temporary restraining orders. COUNSEL must receive prior approval from the Contract Attorney.

- COUNSEL is not to bill for more than twelve hours of research on any one matter; requests for more time must be made and approval by the City documented and attached to the invoice.
- Internal conferences are billable only by one of the attorneys or firm 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 six minutes (one 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.

13. **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 like 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.

14. **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.

15. **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.

16. **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 and the LOE. 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 the 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.

17. **Copies of Documents**

Throughout the course of the representation COUNSEL will timely 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.

18. **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.

19. **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.

20. **Offers of Compromise**

COUNSEL must consider the possibility of resolving disputes through both traditional and non-traditional 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.

21. **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.

22. **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.

23. **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.

24. **Appeals**

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

25. **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 always protected 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.

If 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 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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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. 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.

31. **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.

The 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.

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

32.1 **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.

32.2 **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**.

32.3 **Standard Risk Level**

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

- 32.3.1 require a badge or key for access to City facilities; or

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

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

32.4 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.

32.5 Contractor Certification; City Approval of Background Screening

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

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

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

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

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

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

32.5.3 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.

32.5.4 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.

32.6 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.

32.7 Materiality of Background Screening Requirements; Indemnity

The Background Screening requirements of this Section are material to the 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.

32.8 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.

33. 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.

34. 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 the materials, information, and data constitute the CITY'S property and must be delivered to the City Attorney at termination or completion of services.

35. 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 Indemnitee from and against any and all Claims, except where it is proven that those claims are a result solely from Indemnitee'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 Indemnitee 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. Notwithstanding the indemnity language contained in the Agreement, the obligations to defend, indemnify, save and hold harmless the City of Phoenix and its officers, officials, agents and employees aka "Indemnitee" from and against any and all claims, actions, liabilities, damages, losses or expenses caused or alleged to be caused, in whole or in part, by the errors or omissions of Indemnitor or any of its officers, owners, agents, directors, employees or subcontractors, will only apply to claims covered by INDEMNITOR'S professional liability insurance company. This Agreement does not purport to make the CITY an additional insured under the professional liability policy, nor does subrogation apply to such claims.

36. 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 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 COUNSEL, its agents, representatives, employees or subcontractors and COUNSEL is free to purchase additional insurance as may be determined necessary.

36.1 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.

36.1.1 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.”

36.1.2 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.”

36.1.3 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.

36.1.4 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.

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

36.2.1 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.

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

36.3 **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 procurement@phoenix.gov.

36.4 **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.

36.5 **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 procurement@phoenix.gov. 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.**

36.6 **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.

36.7 **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **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.

42. **Cancellation**

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

43. **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.

44. **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.

45. **Equal Employment Opportunity Requirement**

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 regarding 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

Jeffrey Barton, City Manager

Name of firm here

By: _____
Typed name of authorized signer

Its _____

By: _____
Julie M. Kriegh
Phoenix City Attorney

ATTEST:

City Clerk

Date

APPROVED AS TO FORM:
Julie M. Kriegh, City Attorney

By: _____
Name of Attorney, Title of Attorney

EXHIBIT A -- COMPENSATION

“AREAS OF PRACTICE AND RATE SCHEDULE”

AS SET FORTH BELOW SHALL BE IN EFFECT DURING THE TERM OF THIS CONTRACT.

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

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

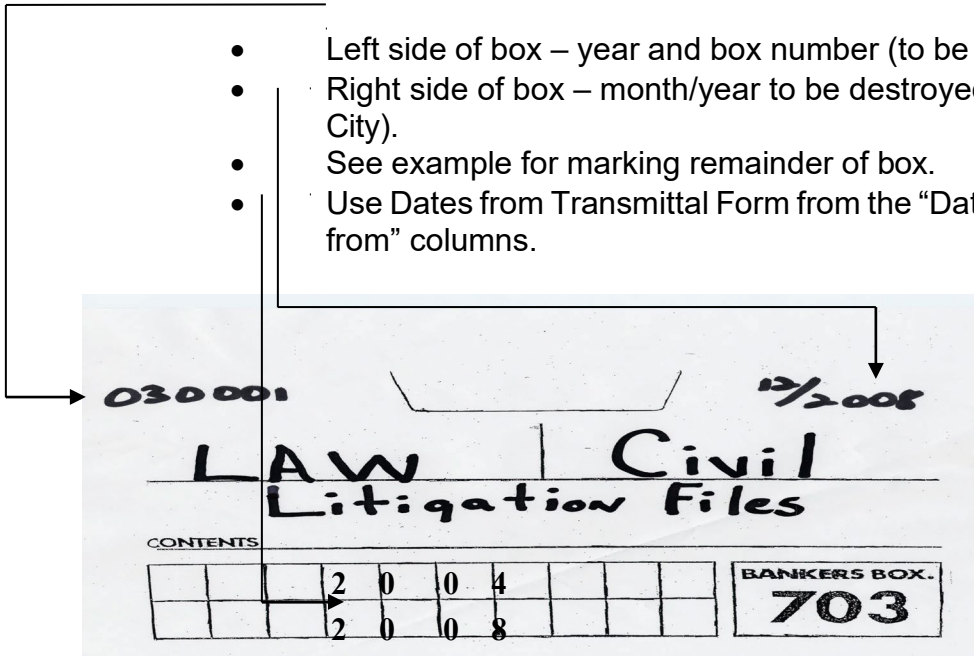
Note: Contact will be secretary for the attorney you have been working with on the cases you are archiving

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 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.

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, Lupe Meraz at (602) 495-0363, with any questions you may have regarding these procedures.

**City of Phoenix Law Department
Outside Counsel Services**

Attorney or Firm Name:

Mailing Address:

Address line 2:

City, State, Zip:

E-mail Address:

Tax ID Number:

Date:

Main Phone:

Fax Number:

SBE Certified: Date of Insurance Certificate:

SBE Cert Exp Date: Amount of Insurance Certificate:

Rates per hour

Area of Practice	Senior Partner	Junior Partner	Senior Associate	Junior Associate	Paralegal	Specialized Paralegal
Aviation Law						
Bankruptcy						
Bond Counsel						
Collections						
Discrimination Issues and Litigation (State and Federal)						
Economic Development Law						
Elections, Voting Rights, Open Meeting and Public Records Law and Litigation						
Eminent Domain						
Employment Law including Personnel, Pension, Benefits Issues and Litigation						
Engineering, Architectural and Construction Contracting Issues and Litigation						
Environmental Issues & Litigation						
General Civil Litigation						
General Municipal Law						
HUD - Funded Housing Program, Mixed Finance Development and other Affordable Housing and Development						
Immigration						
Intellectual Property						
Investment Funds and Financing Expertise						
Labor Law including Negotiations and Litigation						

Attachment E - Area of Law Rates/Spreadsheet

**City of Phoenix Law Department
Outside Counsel Services**

Lending Law (including workouts and loan defaults)						
Mediation						
Municipal Finance Law						
Municipal Law						
New Market Tax Credits transactions, analysis and compliance						
OSHA/ADOSH						
Planning, Zoning and Land Use Issues and Litigation						
Public-Private Utility Law						
Public Utility Law						
Real Estate Transactions and Litigation						
Retirement and ERISA Issues and Litigation						
Taxation Law and Litigation (including non profit and exempt entities)						
Tort Liability and/or Insurance Coverage						
Transit						
Water Law						
Worker's Compensation						
Other						
Arbitration						
	Flat Fee:					

This figure represents the single, lump sum amount that COUNSEL will charge for representing CITY in Court-mandated arbitration cases involving less than \$50,000.00 in Maricopa County Superior Court under Rules 72 through 76, Arizona Rules of Civil Procedure.

The City Attorney's office will grant preference to those firms who bid an economical rate for handling arbitration matters.

CONTINGENCY FEE

COUNSEL and CITY may negotiate a contingency fee calculated against a settlement or award COUNSEL obtains for CITY. CITY is not liable to COUNSEL for the payment of COUNSEL's attorney's fees if COUNSEL is unsuccessful in obtaining an award of settlement for CITY. Please list the percentage fee for the following types of cases:

- | | |
|--|---|
| 1. Creditor Rights/Collections Percentage: | % of Recovery on accounts resolved prior to a lawsuit being filed. |
| 2. Creditor Rights/Collections Percentage: | % of Recovery on accounts resolved after a lawsuit has been filed. |

ACCELERATED PAYMENT DISCOUNT

COUNSEL agrees that the monthly payment of billed hourly fees will be reduced by 2% if CITY pays COUNSEL within 10 days of receiving COUNSEL'S invoice. If the amount owed COUNSEL is disputed by CITY, then COUNSEL agrees that the monthly payment of undisputed hourly fees may be reduced by 2% if CITY pays COUNSEL the undisputed fees within 10 days of receiving COUNSEL'S invoice, with the remaining fees paid without a discount following resolution of the dispute.

ATTACHMENT F

RECORDS RETENTION SCHEDULE

CITY CLERK DEPARTMENT
RECORDS MANAGEMENT DIVISION

Department: 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 Timecards	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.)

JULIE M. KRIEGH
City Attorney



City of Phoenix

OFFICE OF THE CITY ATTORNEY

Date

Attorney Name
Firm Name
Address
City, State Zip Code

Re: **Matter:**
Cause No.:
Letter of Engagement No.:
Risk Management No.:
Contract No.:
Responsible Dept:

Dear :

By this letter of engagement, the City of Phoenix retains the firm of “Firm Name” and assigned primary attorney to represent Phoenix, its employees, agents and interests in the above-listed matter.

The firm should perform all necessary legal services, including, but not limited to, investigation, legal research, drafting pleadings, memoranda, motions, briefs, appearing in court, conducting discovery and performing other reasonable and necessary work. **Should trial be necessary the City expects you the assigned attorney in the firm to try this case, unless otherwise approved by the City.**

In the event that you or another attorney from your firm are required to attend a claims committee or an executive session in connection with your representation, we ask that you bill at half your hourly rate for waiting time and bill your full rate for participating in the meeting.

All legal services will be performed under my supervision in a manner consistent with a lawyer’s ethical obligations. The parties’ contract for legal services (Contract No. “Contract #”) applies. You will be compensated based on the schedule agreed to in the contract and listed below.

The firm understands that the rates listed below shall apply through the completion of this case/assignment:

Tort Liability and Insurance

Letter to "Attorney Name"

Date

Page 2

Senior Partner Rate:	\$0.00
Junior Partner Rate:	\$0.00
Senior Associate Rate:	\$0.00
Junior Associate Rate:	\$0.00
Legal Assistant:	\$0.00

Additionally, per contract, we ask that your firm front the costs for payment of all expert fees. You will be fully reimbursed for said payments. Documentation supporting all claimed expenditures should be provided along with your invoice. Omission of these items can result in delayed payment.

The procedures outlined below should be followed when processing monthly invoices:

Monthly bills will be filed and tracked according to the above Letter of Engagement number and Risk Management number. **It is important that every invoice contain these two numbers.**

Documentation supporting costs incurred must be provided with your invoice. Omission of these items can result in delayed payment.

Monthly invoices and any questions should be sent electronically to law.civil.invoices@phoenix.gov and addressed to:

ATTN: Outside Counsel Invoice Processor
200 W. Washington, Suite 1300
Phoenix, AZ 85003-1611
(602) 262-6761

An electronic duplicate of your monthly invoice should be e-mailed to me at les.tuskai@phoenix.gov. Questions concerning the electronic invoices will be addressed by me.

A written status report should be sent to the City of Phoenix monthly or with greater frequency where circumstances warrant.

In connection with this engagement, you will be working with and reporting to me. I can be reached at (602) 262-6761. All status reports should be directed to me, with copies to Olivia Albany, Risk Management, at 251 W. Washington Street, Suite 800, Phoenix, AZ, 85003 (602) 262-6187.

Letter to "Attorney Name"

Date

Page 3

"Firm Name" also acknowledges that a conflict check has been completed and there are no conflicts with this representation of the City.

We look forward to your representation of the City of Phoenix and its interests. If you have any questions, feel free to contact me at (602) 262-6761.

Very truly yours,

Les S. Tuskai
Assistant Chief Counsel

Accepted & Acknowledged:

"Firm Name"

Name of authorized representative

LST:ca

Enclosures

cc:



JULIE M. KRIEGH
City Attorney

City of Phoenix

OFFICE OF THE CITY ATTORNEY

Date

Attorney Name
Firm Name
Address
City, State, Zip Code
Email address

Re: **Matter:**
Letter of Engagement No.:
Billing No.:
Contract No.:
Responsible Department:

Dear :

By this letter of engagement, the city of Phoenix (the “City”) retains “Firm Name” to represent the City and its interest in the “Matter Name” matter.

The firm should perform all necessary legal services, including, but not limited to, investigation, legal research, drafting pleadings, memoranda, motions briefs, appearing in court, conducting discovery, and performing other reasonable and necessary work **Should trial be necessary the City expects you the assigned attorney in the firm to try this case, unless otherwise approved by the City.**

In the event that you or another attorney from your firm are required to attend a claims committee or an executive session in connection with your representation, we ask that you bill at half your hourly rate for waiting time and bill your full rate for participating in the meeting.

Attorney Name

Date

Page 2

All legal services will be performed under my supervision in a manner consistent with a lawyer's ethical obligations. The parties' contract for legal services (**Contract No.:** "Contract #") applies. You will be compensated based on the schedule agreed to in the contract and listed below:

The firm understands that the rates listed below shall apply through the completion of this case/assignment:

Senior Partner Rate:	\$0.00
Junior Partner Rate:	\$0.00
Senior Associate Rate:	\$0.00
Junior Associate Rate:	\$0.00
Paralegal:	\$0.00

Additionally, per contract, we ask that your firm front the costs for payment of all expert fees. You will be fully reimbursed for said payments. Documentation supporting all claimed expenditures should be provided along with your invoice. Omission of these items can result in delayed payment.

The procedures outlined below should be followed when processing monthly invoices:

- Monthly invoices must be filed and tracked according to the above letter of engagement number. This number must appear on each of your invoices.
- Documentation supporting costs incurred must be provided with your invoice. Omission of these items can result in delayed payment.
- Monthly invoices should be sent electronically to law.civil.invoices@phoenix.gov and addressed to:

Attn: Outside Counsel Invoice Processor
200 W. Washington, Suite 1300
Phoenix, AZ 85003-1611
(602) 262-6761

- A written status report should be sent to the City monthly, unless circumstances warrant more or less frequent updates.

Attorney Name

Date

Page 3

- Invoice should contain the following information:
 - Case Name/Subject Matter
 - Letter of Engagement No.
 - Contract No.
 - Project No/Billing No.
 - Responsible Department.

In connection with this engagement, you will report to _____, Assistant City Attorney, _____@phoenix.gov, (602) 262-6761, and me. All status reports should be directed to _____.

“Firm Name” also acknowledges that a conflict check has been completed and there are no conflicts with this representation of the City.

We look forward to your representation of the City and its interests. If you have any questions, feel free to contact me at (602) 262-6761.

Sincerely,

Julie M. Kriegh
City Attorney

Accepted & Acknowledged:

“Firm Name”

Name of authorized representative

JMK:jme

cc:

JULIE KRIEGH
City Attorney



City of Phoenix

OFFICE OF THE CITY ATTORNEY

Date

Attorney Name
Firm Name
Address
City, State, Zip Code

Re: **Matter:**
Cause No.:
Letter of Engagement No.:
Risk Management No.:
Contract No.:
Responsible Dept:

Dear :

By this letter of engagement (LOE) the City of Phoenix retains “Firm Name” to represent Phoenix, its employees, agents and interests in the above matter.

The firm should perform all necessary legal services, including, but not limited to, investigation, legal research, drafting pleadings, memoranda, motions briefs, appearing in court, conducting discovery and performing other reasonable and necessary work **Should trial be necessary the City expects you the assigned attorney in the firm to try this case, unless otherwise approved by the City.**

In the event that you or another attorney from your firm are required to attend a claims committee or an executive session in connection with your representation, we ask that you bill at half your hourly rate for waiting time and bill your full rate for participating in the meeting.

All legal services will be performed under my supervision in a manner consistent with a lawyer’s ethical obligations. The parties’ contract for legal services (Contract No.: “Contract #”) applies. You will be compensated based on the schedule agreed to in the contract and listed below.

The firm understands that the rates listed below shall apply through the completion of this case/assignment:

Letter to "Attorney Name"

Date

Page 2

Tort Liability and Insurance

Senior Partner Rate:	\$0.00
Junior Partner Rate:	\$0.00
Senior Associate Rate:	\$0.00
Junior Associate Rate:	\$0.00
Legal Assistant:	\$0.00
Specialized Paralegal Rate:	\$0.00

Please submit your monthly invoices as previously instructed by TrialNet, Inc. *When doing so, it is critical that you have the correct billing number for each electronic invoice.* **Additionally, per contract, we ask that your firm front the costs for payment of expert witness fees. You will be fully reimbursed for said payments as long as documentation supporting all claimed expenditures is included with your invoice. Omission of these items can result in delayed payment.**

With the advent of electronic billing, it is no longer necessary to send hard copies of your invoices to the City or to e-mail hard copies to the City. Questions concerning the review, approval, and payment status of invoices should largely be resolved by accessing the TrialNet site. All other questions should be directed to the undersigned.

A written status report should be sent to my attention *on a quarterly basis*, unless circumstances warrant more frequent communication, with a copy to Olivia Albany at: Risk Management Division, at 251 W. Washington Street, Suite 800, Phoenix, AZ 85003 (602) 262-6187. Status reports are also being tracked through TrialNet and the failure to provide a status report will implicate the bill review process.

"Firm Name" also acknowledges that a conflict check has been completed and there are no conflicts with this representation of the City.

We are looking forward to your representation of the City of Phoenix and its interests. If you have any questions, feel free to contact me at (602) 262-6761.

Very truly yours,

Les S. Tuskai
Assistant Chief Counsel

Letter to "Attorney Name"

Date

Page 3

Accepted & Acknowledged:

"Firm Name"

Name of authorized representative

LST:ca

cc:

ATTACHMENT J – Collections Scope

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 agreed to by COUNSEL and the CITY. For each such matter, 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 Collections Efforts

COUNSEL shall return a referred matter to the Authorized Finance Department Representative: (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, 2023; 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 additional 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.

In situations where the CLIENT is not the CITY, COUNSEL acknowledges that the entity responsible for payment will be specified in the Letter of Engagement (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) or paralegals in COUNSEL'S firm to work on specific matters with input from the managing partner of COUNSEL'S Phoenix office. 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 which are in line with industry standards. 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 25% of the collected account balance for matters prior to the commencement of a formal legal proceedings. CITY will be entitled to recover 100% of costs it paid in the collection of the debt, before payment of COUNSEL's fee.
- b. COUNSEL's compensation for services under this AGREEMENT shall not exceed 33.33% of the collected account balance for matters after the commencement of formal legal proceedings. CITY will be entitled to recover 100% of costs it paid in the collection of the debt, before payment of COUNSEL's fee.

- c. COUNSEL's compensation for services under this AGREEMENT for partial payments, payment plans, or settlements shall be 33.33% per payment after payment of expenses to CITY to ensure that CITY's costs are reimbursed first.
- d. COUNSEL'S compensation for services under this AGREEMENT shall be paid to COUNSEL on a monthly basis for Reimbursable Expenses in accordance with 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.
- e. 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 (except for 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 (except for 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.
- f. COUNSEL is required to use CITY's Excel formulas to calculate their contingency fee percentage and corollary payment.
- g. 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.
- h. 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.
- i. COUNSEL'S compensation for services under this Agreement shall include all court ordered compensation (i.e., commission) fees. The CITY

shall remit such fees to COUNSEL in accordance with Section 6(g).

Compensation payment exceptions. No remuneration will be paid in the following circumstances:

1. All direct account payments from government recovery program for account balances 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. All accounts referred to COUNSEL and debtor pays CITY directly prior to first contact.
3. All accounts referred to COUNSEL and subsequently returned/closed to the CITY.
4. All open referral accounts COUNSEL possesses at the expiration of this Agreement will revert back to the CITY in the instance COUNSEL fails to renew the contract, unless otherwise agreed to by the CITY.

7. **Counterclaims and Crossclaims**

In the event CITY is served or threatened with a counterclaim or crossclaim 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 crossclaim. CITY may issue a separate agreement and LOE for COUNSEL to represent CITY on such counterclaim or crossclaim.

8. **Judgments – No Renewal of Judgments**

(Left intentionally blank)

9. **Reimbursement for Expenses**

Except filing fees, if any, and service of process fees, COUNSEL may deduct any unpaid Reimbursable Expenses (hereinafter defined) from proceeds recovered. (See No. 11 Restriction on Reimbursement/Recoveries) before remitting any funds to CITY and will itemize the same with its remittance of collected amounts. 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) unless prior approval has been obtained.
- 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.
- COUNSEL and CITY agree to negotiate payment arrangements for any required expert witnesses in good faith, with the understanding that neither COUNSEL nor CITY normally pay these fees up front. 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. Unless otherwise agreed ahead of time, 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 like 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 and the LOE. 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 because 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 counteroffer. COUNSEL may be required to attend meetings to adequately explain the status of a matter before a regulatory body or in litigation.

COUNSEL must obtain SETTLEMENT AUTHORITY for each case. The CITY may provide settlement templates in the event the parties agree. 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**

(refer to Section 6, Special Terms and Conditions)

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. 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 warrant 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**

(refer to Section 6, Special Terms and Conditions)

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 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**

(refer to Section 8, Insurance Requirements)

32. **Indemnification Clause**

(refer to Section 7, Defense Indemnification)

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 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 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**

(refer to Section 3, Scope of Work)

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 regarding these requirements to the Equal Opportunity Department, (602) 262-6790.

Attachment K

Additional Required Provisions Pertaining to Engagements of Legal Counsel for HOPE VI and other HUD Funded Projects

Contracts with outside counsel providing services in connection with HOPE VI and other HUD Funded projects will incorporate, in some fashion, the provisions of the Addendum, HUD form 5370c, and HUD Form 5369c, which are attached as a part of this Attachment G.

Certifications and Representations of Offerors

Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1) has, has not employed or retained any person or company to solicit or obtain this contract; and
- (2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:
(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
 - (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.
- (b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:
- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
 - (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

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Section I - Clauses for All Non-Construction Contracts greater than \$100,000
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1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

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- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
 - (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

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- (1) Agency and legislative liaison by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
- (b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
- (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
- (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
- (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
- (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
- (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.
- (iii) Selling activities by independent sales representatives.
- (c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
- (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.
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16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

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Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000
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1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
 - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

ATTACHMENT L



CITY OF PHOENIX
OUTSIDE COUNSEL
LEGAL SERVICES
REQUEST FOR
QUALIFICATION NO.
RFQu-25-0623

QUESTION FORM

Questions regarding this RFP should be submitted in writing to **William Langbehn**, Procurement Officer, via e-mail to william.langbehn@phoenix.gov, no later than **XXXX XX, 2025, by 2:00 p.m., local Phoenix time**. Answers will be provided in the form of addenda and posted to the City of Phoenix website: <https://www.phoenix.gov/solicitation>.

NAME:		DATE:	
COMPANY:			

QUESTION #1:	
QUESTION #2:	
QUESTION #3:	
QUESTION #4	
QUESTION #5	



**CITY OF PHOENIX
OUTSIDE COUNSEL
LEGAL SERVICES
REQUEST FOR QUALIFICATION
NO. RFQu-25-0623**

BUSINESS CERTIFICATION AND OTHER INFORMATION

1. BUSINESS INFORMATION

Please provide the following:

Name of Firm:	
Principal Office Address:	
Mailing Address:	
Telephone Number:	
Fax Number:	
E-mail Address:	
Date:	

2. FORM OF BUSINESS ENTITY

Is your firm a:

- Corporation* Partnership Individual Joint Venture

Authorized Person, Title:	
Signature of Authorized Person:	
Telephone Number:	
Fax Number:	
E-mail Address:	



**CITY OF PHOENIX
OUTSIDE COUNSEL
LEGAL SERVICES
REQUEST FOR QUALIFICATION
NO. RFQu-25-0623**

*If a corporation, answer the following:

Where incorporated:	
Date incorporated:	
Have your Articles ever been suspended or revoked?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, when, for what reason, and when were they reinstated:	

3. CONFLICT OF INTEREST AND RIGHT TO DISQUALIFY

Respondent shall disclose if it knows, or has reason to believe, that a conflict of interest may exist in its performing the services under any resulting contract. City further reserves the right to disqualify any Respondent on the basis of any real or apparent conflict of interest that is disclosed by the qualifications submitted or any other data available to the City.

City reserves the right to disqualify any Respondent who fails to provide information or data requested, or who provides materially inaccurate or misleading information or data. This disqualification is at the sole discretion of City.

By submission of qualifications hereunder, the Respondent waives any right to object now or in the future, before any body or agency, including but not limited to, the City Council, the Board, or any court, as to City's right to disqualify or as to any disqualification by reason of or apparent conflict of interest determined by City.

- (a) Describe any conflict or potential conflict of interest.
- (b) Describe any procedures that you have to mitigate or eliminate potential conflicts of interest.



**CITY OF PHOENIX
OUTSIDE COUNSEL
LEGAL SERVICES
REQUEST FOR QUALIFICATION
NO. RFQu-25-0623**

4. PENDING LITIGATION

Provide detailed information regarding any pending or threatened bankruptcy, litigation, liens or claims involving Respondent.

ATTACHMENT N

AFFIDAVIT

Assurances

The undersigned proposer hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's Request for Qualification (RFQu-25-0623) and referenced materials. Proposer further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by the proposer.

The undersigned proposer acknowledges and states, under penalty of perjury, as follows:

1. The City is relying on proposer's submitted information and the representation that proposer has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in the resulting contract.
2. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by proposer.
3. Proposer has read and fully understands all the provisions and conditions set forth in the solicitation documents, upon which its proposal is based.
4. The forms and information requested in the solicitation are complete and made part of the proposal. The City is not responsible for any proposer errors or omissions.
5. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
6. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
7. This proposal is valid for a minimum of 180 days after the solicitation proposal deadline.
8. All costs incurred by proposer in connection with this proposal shall be borne solely by proposer. Under no circumstances shall the City be responsible for any costs associated with proposer's proposal or the solicitation process.

9. Proposer has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the solicitation process.

10. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.

11. To the best of the proposer's knowledge, the information provided in its proposal is true and correct and neither the undersigned proposer nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

[FIRM NAME]

By _____

Its _____