

ATTACHMENT A

**AGREEMENT FOR LEGAL ASSISTANT/PARALEGAL SERVICES
BETWEEN
THE CITY OF PHOENIX
AND
FIRM NAME HERE**

AGREEMENT NO. _____

THIS AGREEMENT is made and entered into on this _____ of _____, 2008 (“Effective Date”), by and between the CITY OF PHOENIX, acting by and through the Office of the City Attorney, hereinafter called “City,” and Contractor’s Name, a _____ type of entity (LLC, Inc., etc.) _____, with a principal business location of _____ Street Address _____, _____ City _____, _____ State _____, hereinafter referred to as “Contractor.”

FOR AND IN CONSIDERATION of the mutual promises, terms, covenants, conditions and agreements set forth herein, the parties hereto do agree as follows:

1. Scope

Contractor shall provide legal assistant services to the City with respect to projects for which the scope of work will be determined on a project-by-project basis. Such legal assistant services shall include case organization, file management, preparation of discovery and responses thereto, deposition summaries, organization, management and review, legal research, gathering of information, trial preparation, and other appropriate and normal duties to be performed by a legal assistant in connection with the City.

2. Term

The term of this agreement is for a two year period commencing on the Effective Date. At the City’s discretion, this Agreement may be renewed for one (1) one-year period.

3. Compensation

Hours worked shall be at the general direction and under the control of the City. Contractor shall be paid at an hourly rate (**Exhibit A**) that includes all costs and expenses except for those specific reimbursable expenses listed in **Exhibit B**, entitled “Reimbursable Expenses”. However, City will not pay for transportation time, expenses or parking for paralegal firms or their representatives to commute to/from the City Attorney’s Office, 200 W. Washington Street, Phoenix, AZ 85003-1611. Billing rates shall apply for the term of this Agreement and will not be renegotiated during the term of this Agreement. Only one professional shall attend meetings, or assist a City staff attorney at trial or depositions unless the attendance of more is required to accomplish the purpose of the meeting and such attendance is discussed and approved by the City’s staff attorney in advance for each instance where multiple attendances are requested.

4. Work Site

Contractor shall be able to provide services at its own work site, any changes to which will be disclosed to the City, with its own equipment necessary for the completion of those outlined services. At the City’s sole discretion, if services on a case or matter are better provided within or appurtenant to the Phoenix City Attorney’s Office, then the City may make workspace available to the Contractor on a temporary basis.

5. Billing, Payment and Audit Provisions

5.1 Contractor shall prepare billings on a monthly basis and submit same for review to the City for payment. Billings shall show the number of hours worked, the specific hours spent on defined areas of work, and any reimbursable expenses (**Exhibit B**).

Reimbursable expenses shall be documented to the extent possible. The billings should be addressed to:

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

5.2 Contractor agrees that City or its 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 to the City 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.

5.3 Contractor recognizes that any agreement entered into shall commence upon the date first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Phoenix, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

Billings for services performed or costs incurred prior to the close of a fiscal year (June 30th) must be submitted within ample time to allow payment within 60 days immediately following the close of the fiscal year or Contractor forfeits any and all right to payment for unpaid work.

6. Conflicts of Interest

Contractor is retained by the City only for the purposes and to the extent set forth in this agreement. Contractor shall be free to dispose of such portion of its entire time, energy, and skill as are not required to be devoted to the City in such a manner as Contractor sees fit and as to such persons, firms or corporations as Contractor deems advisable, but shall not engage in assisting any other attorney in litigation against the City at the same time Contractor is assisting the City pursuant to this agreement unless such representation does not present an ethical conflict of interest, or a waiver of such conflict is first obtained from the City. Contractor hereby represents and affirms that there is no known conflict of interest existing between a client or potential client and Contractor or an attorney by whom Contractor is presently employed, and the City of Phoenix as a result of this agreement.

7. Covenant Against Contingent Fees

Contractor represents that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this representation, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct the commission, brokerage or contingent fee from its payment to Contractor.

8. Gratuities

The City may, by written notice to the Contractor, terminate the right of the contractor to proceed under this Agreement upon one (1) calendar day notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the

City with a view toward securing a contract or securing favorable treatment with respect to awarding or amending, or the making of any determinations with respect to the performance of such contract; provided that the existence of the facts upon which the City makes such finds shall be an issue and may be reviewed in any competent court. In the event of such termination, the City shall be entitled to pursue the same remedies against the Contractor as the City could pursue in the event of a default by the Contractor.

9. Payment Deduction Offset Provision

Contractor recognizes the provisions of the City Code of the City of Phoenix which require and demand that no payment be made to any contractor as long as there is any outstanding obligation due the City, and directs that any such obligation be offset against payment due the Contractor.

10. Copies of Documents and Research

Contractor shall furnish to City copies of all pleadings, discovery material, investigative or other reports and correspondence, other than routine transmittal letters which Contractor has generated in the course of this agreement. All research produced by Contractor in connection with this agreement shall be the property of the City.

11. Confidentiality

All material subject to the attorney-client and work product privileges shall be kept confidential and shall not be disclosed to any other party or person without the prior consent of the City Attorney or designee.

12. Time Conflicts

The City shall have priority upon all time of Contractor during the course of this agreement.

13. Waiver

The failure of the City at any time to require performance of any provision of this agreement shall in no way affect the right of the City thereafter to enforce such provision. Nor shall the waiver of any succeeding breach of such provision act as a waiver of the provision itself.

14. Termination

The City shall have the right to terminate this agreement in full or in part at any time and without penalty or further obligation beyond payment of the hours accrued up to the point of termination. Contractor shall deliver to the City a complete set of all materials, information and data required or prepared by Contractor as of the date of termination.

15. Assignment

Contractor shall not assign the rights nor delegate the duties or otherwise dispose of any right, title or interest in all or part of any of this agreement or assign any monies due or to become due to Contractor without the prior written consent of the City.

16. Independent Contractor

It is mutually agreed that Contractor and legal assistants and staff provided by Contractor shall be considered independent contractors in the performance of this agreement and shall not be considered an employee or agent of the City by virtue of such agreement. Contractor shall be responsible for payment of all worker's compensation, unemployment disability claims, FICA and other tax withholding, or claims under similar laws. Because the Contractor will be acting as an independent contractor, the City assumes no responsibility for Contractor's acts.

17. Contractor's Indemnification and Insurance Requirements

INDEMNIFICATION CLAUSE:

Contractor shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

INSURANCE REQUIREMENTS:

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are

satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

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

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

1. **Professional Liability - Errors and Omissions Liability**

- Annual Aggregate \$2,000,000
- Each Claim \$1,000,000
- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, CONTRACTOR warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2. **Automobile Liability**

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

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor"**.

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

a. Policy shall contain a **waiver of subrogation** against the City of Phoenix.

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

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

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to Gary Verburg, Office of the City Attorney, 200 West Washington Street, Suite 1300, Phoenix, Arizona 85003-1611, and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall 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 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 shall be sent directly to:

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

The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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

18. **Affirmative Action**

Contractor agrees to abide by the provision of the Phoenix City Code Chapter 18, Article V as amended.

Any Contractor, in performing under this Agreement, shall not discriminate against any worker, employee, or applicant, or any member of the public, because of race, creed, color, religion, sex, or national origin, nor otherwise commit unfair employment practice. Contractor will take affirmative action to ensure that applicants are employed, and that employees are dealt with during employment without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees that this clause will be

incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this agreement.

19. Compliance with Laws

Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Agreement regardless of whether or not they are referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

20. Notices

Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows;

If to the City: City of Phoenix

Gary Verburg, City Attorney
200 West Washington St., Suite 1300
Phoenix AZ 85003
FAX (602) 534-9866

If to the Contractor:

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

21. Entire Agreement

It is expressly understood that this written agreement embodies the entire agreement of the parties in relation to the subject matter, and no other agreements, verbal or otherwise, in relation thereto, exist between the parties, except as expressly set forth herein. To the extent that there is a conflict between this Agreement and the RFQ, the Response and related documents the order of precedence is as follows:

1. This Agreement
2. Letter of Engagement
3. The RFQ
4. The Contractor's Response to the RFQ

22. Governing Laws

It is the express intention of the parties hereto 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.

23. Cancellation

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

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the parties have made and executed this agreement the day and year first set forth.

CITY OF PHOENIX,
a municipal corporation

FRANK FAIRBANKS, City Manager

By _____
Gary Verburg, City Attorney

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

By _____

dcl/741740

EXHIBIT A -- COMPENSATION

The “AREAS OF SPECIALTY AND RATE SCHEDULE” as set forth in Attachment C of the RFQ are incorporated into this contract by this reference.

EXHIBIT B -- REIMBURSABLE EXPENSES

Expense Code Set

E100 Expenses
E101 Copying @ \$0.15/page
E102 Outside printing
E107 Delivery services/messengers
E109 Local travel (outside of Maricopa County)
E110 Out-of-town travel
E112 Court fees
E113 Subpoena fees
E115 Deposition transcripts
E116 Trial transcripts
E117 Trial exhibits
E118 Litigation support vendors
E124 Other

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