

Contract Award Notice



City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/purchasing

Contract Number: T12-096-01

Staff Summary # 20120426fsta04

Holm Wright Hyde & Hays PLC
Brad Holm
10429 S. 51st Street
Phoenix AZ 85044

Contract Period 04/27/2012
To

Phone: (480)961-0422
bholm@holmwright.com

Vendor Number: 81101

Solicitation/Contract Requirements

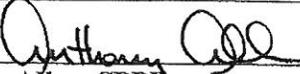
This Contract Award Notice is issued for the purchase of **Legal Representation for Statewide Efforts to Collect Unpaid Taxes** per the terms, conditions, specifications and requirements of **RFP #12-096**. The contract shall remain in effect until the case is settled to the City of Tempe's satisfaction or cancelled. It is to be noted that any contracted vendor document(s) that conflict with the language and requirements of the City's solicitation are not acceptable and will void the contract. In addition, contracted vendor is not to begin work or make delivery of awarded items until any and all required insurance and/or performance bonds are posted with the City Procurement Office.

Item No.	Pricing Item Description	Unit Price
1.	Contingency based - fee to be 27.0% of collected amount	

Vendor Address Change

If contracted vendor has a change of address for mailing payments and/or for mailing future bid solicitations, it is the vendor's responsibility to notify the City Procurement Officer identified with this contract and to ensure all such mailing address information is kept current. At least once a year, contact the Procurement Officer identified for this contract and ensure your current address has been entered to the City Procurement Office automated system.

Please note that your City of Tempe contract number is **T12-096-01**. This number **must** appear on all receivers, invoices and statements. Payment will be made on a monthly basis following receipt of a monthly itemized statement. Monthly invoices must be segregated by City departments and mailed directly to each City customer department. Invoices **must** be mailed to the following address: City of Tempe, **Division, Attn:**, P.O. Box 5002, Tempe, AZ. 85280. Statements **must** be mailed to: City of Tempe, **Accounting** PO Box 5002, Tempe, Arizona 85280.


Tony Allen, CPPB
Procurement Officer
(480) 350-8548


Michael Greene, CPM
Central Services Administrator

THIS IS NOT A PURCHASE ORDER.

All terms and conditions of this Award Document are per the City's Solicitation Document

Staff Summary Report



Council Meeting Date: _____

Agenda Item Number: _____

SUBJECT: Request approval to award a contract to Holm Wright Hyde & Hays PLC to provide legal representation related to potential actions against on-line travel companies (OTCs) in relation to underpayment of taxes.

DOCUMENT NAME: 20120426fsta04 PURCHASES (1004-01)

COMMENTS: There is no direct cost associated with this contract. There is no specified end date to the contract since it is impossible to determine the time that may be necessary to settle this issue. Contract will remain open until a determination in the case is made or the participating cities recommend closure.

PREPARED BY: Tony Allen, CPPB, Procurement Officer, 480-350-8548

REVIEWED BY: Jerry Hart, CPA, Deputy Finance & Technology Director - Finance, 480-350-8505
Michael Greene, CPM, Central Services Administrator, 480-350-8516
Andrew Ching, City Attorney, 480-350-8575
Dave Park, Assistant City Attorney, 480-350-8907
Phil Falcosky, Tax Audit Supervisor, 480-350-8685

LEGAL REVIEW BY: Dave Park, Assistant City Attorney, 480-350-8907

DEPARTMENT REVIEW BY: Ken Jones, Finance & Technology Director, 480-350-8504

FISCAL NOTE: (RFP12-096) Representing firm has agreed to a contingency based fee in relation to any recovery; therefore, there is no cost to the City.

RECOMMENDATION: Award the contract.

ADDITIONAL INFO: The City of Tempe, acting as lead jurisdiction in a multijurisdictional action, issued a Request for Proposal (RFP) to establish a contract for legal representation against on-line travel agencies in relation to the underpayment of taxes.

The City of Tempe conducted an audit for the period of January 2001 through March 2009 on behalf of the below mentioned Arizona cities and towns, all of which administer and collect municipal transaction privilege taxes separately from the state collection system(classified as "Non-Program Cities").

Apache Junction
Chandler
Flagstaff
Glendale
Mesa
Nogales
Peoria
Phoenix
Prescott
Scottsdale
Tempe
Tucson

It is the group's contention that OTCs have charged customers amounts greater than the amount for which tax has been remitted by hotels. The Non-Program Cities contend that the

OTCs, under Model City Tax Code Regulations, are subject to municipal transaction privilege tax on the full amount paid by the customer. Upon information and belief, the audit indicates that municipal transaction privilege taxes have been filed and remitted by hotels only on the amount received from the OTCs and not on the amount paid by the customer. The Non-Program Cities allege that the OTCs are therefore liable for municipal transaction privilege taxes on any amounts received from customers in excess of that reported by the hotels and any interest and penalties accrued on this amount.

The underpayment of tax by OTCs included in the audit, covering the period of January 2001 through March 2009, is believed to be in excess of \$6.5 million for all participating cities. Liability on due taxes since March 2009 has not yet been determined.

Evaluation Process

Four (4) proposals were received and scored by a committee comprised of Legal, Tax & License and Procurement staff.

The responding firms were evaluated based on the following criteria – all subcategories carry equal weight unless noted otherwise.

Criteria	Weight
1 Fee Structure	6 (32%)
2 Qualifications and experience	6 (32%)
a Qualifications of firm	
b Qualifications of lawyers to be assigned	
c Experience of firm in this legal area	
d Experience of lead attorney to be assigned	
3 Methodology to be used	5 (26%)
4 Overall response to RFP	2 (10%)
a Quality, composition and completeness	
b Acceptance of terms and conditions	
5 Interview – if held	

Results of Scoring

Firm	Score	Cost
Holm Wright Hyde & Hays	180.00	27.5% Contingency
Struck Wieneke & Love	134.00	30.0% Contingency + expenses
Dimalanta Clark	105.00	hourly fee
Asimou & Associates	101.00	20% contingency + hourly fee or straight hourly fee

Best and Final

A Best and Final offer was sent to the top two scoring firms to allow them the opportunity to insure that they had made their best offer to the City.

Holm Wright Hyde & Hays lowered their contingency fee to 27.0%.

Struck Wieneke & Love made no adjustment to their fee.

Recommendation

It is recommended that a contract be awarded to Holm Wright Hyde & Hays PLC, the high scorer.

Cost

This is a contingency based arrangement so there will be no cost due any of the participating cities. The firm of Holm Wright Hyde & Hays included a provision in their proposal that stated if the case is lost there would be no cost to the participating cities.

If the case is settled in favor of the participating cities, the collected recovered monies, less the fee due Holm Wright Hyde & Hays, will be distributed to the cities in direct proportion to the taxable amounts due them.

REQUEST FOR PROPOSAL

CITY OF TEMPE

REQUEST FOR PROPOSAL : 12-096

RFP ISSUE DATE: 02/09/2012

Commodity Code(s): 063-12

PROCUREMENT DESCRIPTION: **Legal Representation** for Statewide Efforts to Collect Unpaid Taxes

PROPOSAL DUE DATE/TIME: **Thursday, March 8, 2012, 3:00 P.M. Local Time**

Late proposals will not be considered.

PROPOSAL RESPONSE MUST BE DELIVERED TO CITY PROCUREMENT OFFICE.

Mailing Address: P.O. Box 5002, Tempe, AZ 85280
Street Address: 20 E. Sixth Street (2nd Floor), Tempe, AZ 85281

Mailing Alert: Firms should use the Street Address to ensure on-time express deliveries. The Mailing Address provided above routes through the City's internal mail distribution center and may impact delivery time.

PRE-PROPOSAL CONFERENCE (if scheduled): N/A

DEADLINE FOR INQUIRIES: **Monday, February 27, 2012, 5:00 P.M., Local Time**

Sealed proposals must be received and in the actual possession of the City Procurement Office on or before the exact Proposal Due Date/Time indicated above. Proposal responses will be opened and each Offeror's name will be publicly read. Prices are not read and shall be kept confidential until award. Late proposals will not be considered.

Proposals must be submitted by a sealed envelope/package with the Request for Proposal number, Offeror's name and address clearly indicated on the envelope/package. **It is critical that the RFP number be included on the front of the envelope to ensure proper handling.**

Proposals must be completed in ink or typewritten and a completed proposal response returned to the City Procurement Office by the Proposal Due Date/Time indicated above. The "Vendor's Offer" (Form 201-B RFP) must be completed and signed in ink. Proposals by electronic transmission, telegraph, mailgram or facsimile will not be considered.

Offerors are asked to immediately and carefully read the entire Request for Proposal and not later than ten (10) days before the Proposal Due Date/Time, address any questions or clarifications to the Procurement Officer identified below:

Tony Allen _____, CPPB E-mail: anthony_allen@tempe.gov Phone No: (480)350.8548

Procurement Officer

Award recommendations are publicly posted to the City Procurement Office web page www.tempe.gov/purchasing and at the Procurement Office reception counter.

Submit one (1) original signed and completed proposal response for evaluation purposes. For this specific RFP, eight (8) additional copies of RFP response – each copy must be on an individual CD or Flash Drive are also to be submitted for evaluation purposes. A late, unsigned and/or materially incomplete proposal response will be considered nonresponsive and rejected.

The City Procurement Office is committed to fair and equal procurement opportunities for all firms wishing to do business with the City and encourages the participation of small and disadvantaged businesses.

MG

Michael Greene, C.P.M.
Central Services Administrator

RFP #12-096

STANDARD TERMS & CONDITIONS

Please note that these Standard Terms & Conditions shall be fully complied with by Offeror. Failure to comply with these requirements may result in rejection of a proposal for non-responsiveness, or cancellation or termination of any awarded Contract.

1. **Applicable Law:** This Contract shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code as adopted in the State of Arizona, except as otherwise provided in this Request for Proposal and resultant Contract, and all statutes or ordinances pertaining specifically to the City. This Contract shall be governed by State of Arizona law and suits pertaining to this Contract may only be brought in courts located in Maricopa County, Arizona.
2. **Arizona Climate Action Compliance:** Offeror shall comply with all applicable standards, laws, rules, orders and regulations issued pursuant to A.R.S. §49-101, *et seq.*, including but not limited to, Arizona Executive Orders Nos. 2006-13 and 2005-02, with regard to reducing GHG emissions, increasing energy efficiency, conserving natural resources and developing renewable energy sources.
3. **Availability of Funds for the Next Fiscal Year:** The City's obligation for performance of the Contract is contingent upon the availability of City, state and federal funds that are allocated or appropriated for payment obligations of the Contract. If funds are not allocated by the City or available for the continued use or purchase of services, work and/or materials set forth herein, the City may terminate the Contract. The City will use reasonable efforts to notify Contractor of such non-allocation affecting the obligations of the Contractor and/or City. The City shall not be penalized or adversely affected for exercise of its termination rights. Further, the City shall in no way be obligated or liable for additional payments or other damages as a result of such termination. No legal liability on the part of the City for any payment may arise for performance under this Contract.
4. **Certification:** By signing the "Vendor's Offer", form 201-B (RFP), the Offeror certifies:
 - A. The submission of the vendor's proposal Offer response did not involve collusion or other anti-competitive practices.
 - B. The City is an equal opportunity, affirmative action employer. Offeror hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Offeror agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.
 - C. Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer. Failure to sign the "Vendor's Offer" or signing it with a false statement shall void the submitted proposal and any resulting Contract. In addition, the Offeror may be barred from future proposal and bidding participation with the City and may be subject to such further actions as permitted by law.
 - D. The Offeror agrees to promote and offer to the City only those materials and/or services as stated and allowed by this Request for Proposal and resultant Contract award. Violation of this condition shall be grounds for Contract termination by the City.

- E. The Offeror expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, *et seq.*, and all laws, regulations, requirements and duties relating thereto. Offeror further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
- F. Offeror agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Offeror acknowledges that a breach of this warranty is a material breach of this Contract and Offeror is subject to penalties for violation(s) of this provision, including termination of this Contract. The City retains the right to inspect the documents of any and all contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Offeror. Offeror hereby agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations thereof.
5. **Commencement of Work:** Contractor is cautioned not to commence any work or provide any materials or services under the Contract until and unless Contractor receives a purchase order, Notice to Proceed, or is otherwise directed in writing to do so, by the City.
6. **Confidentiality of Records:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
7. **Conflict of Interest:** This Contract is subject to the cancellation provisions of A.R.S. § 38-511.
8. **Contract Formation:** This Contract shall consist of this Request for Proposal and the vendor's proposal Offer submitted, as may be found responsive and approved by the City. In the event of a conflict in language between the documents, the provisions of the City's Request for Proposal shall govern. The City's Request for Proposal shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Offeror and the City are not applicable to this Contract or other resultant contracts. Any contracted vendor documents that conflict with the language and requirements of the City's solicitation are not acceptable and void the Contract.
9. **Contract Modifications:** This Request for Proposal and resultant Contract may only be modified by a written contract modification issued by the City Procurement Office and counter-signed by the Contractor. Contractors are not authorized to modify any portion of this solicitation or resulting Contract without the written approval of the City Procurement Office and issuance of an official modification notice.
10. **Contracts Administration:** Contractor must notify the designated Procurement Officer from the City's Procurement Office for guidance or direction of matters of Contract interpretation or problems regarding the terms, conditions or scope of this Contract. The Contract shall contain the entire agreement between the City and the Contractor and the Contract shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

11. **Cooperative Use of Contract:** Any Contract resulting from this solicitation shall be for the use of the City of Tempe. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tempe's Department of Procurement are eligible to participate in any subsequent Contract. Additionally, this Contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/SAVE/save-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter and/or rules and regulations of the respective political entity.
- Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others. Contractor shall be responsible for correctly administering this Contract in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.
12. **Dispute Resolution:** This Contract is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Contractor agree to negotiate with each other in good faith to resolve any disputes arising out of the Contract. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.
13. **Energy Efficient Products:** The City may consider energy conservation factors including costs in the evaluation of equipment and product purchases for the purpose of obtaining energy efficient products. In addition, vendor proposal Offers may specify items that have been given an energy efficient classification by the federal government for consideration by the City.
14. **Billing:** All invoices submitted by Contractor for the City's review and approval shall be in itemized form to identify the specific item(s) being billed. Items must be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the City shall refer to the Contract number resulting from this Request for Proposal. Separate invoices are required on individual contracts or purchase orders. Only invoices with items resulting from this Request for Proposal will be accepted for review and approval by the City.
15. **Estimated Quantities:** This Request for Proposal references quantities as a general indication of the City's needs. The City anticipates considerable activity resulting from Contracts that will be awarded as a result of this Request for Proposal; however, the quantities shown are estimates only and the City reserves the right to increase or decrease any quantities actually acquired, in its sole discretion. No commitment of any kind is made concerning quantities and Offeror hereby acknowledges and accepts same.
16. **Events of Default and Termination:**
- A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Contract. The City reserves the right to terminate the whole or any part of the Contract due to Contractor's failure to fully comply with any term or condition herein.
- i) Any failure by Contractor to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Contract or provide personnel that do not meet Contract requirements;
- ii) Any failure by Contractor to observe, perform or undertake any provision, covenant or condition of this Contract to be observed or performed by Contractor herein, including but not limited to failing to submit any report required herein;

- iii) Any failure to make progress in the performance required pursuant to the Contract and/or gives the City reason to believe that Contractor cannot or will not perform to the requirements of the Contract; or,
- iv) Any failure of Contractor to commence construction, work or services within the time specified herein, and to diligently undertake Contractor's work to completion.

B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Contractor, may do the following:

- i) Terminate the Contract;
- ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Contract; and/or,
- iii) Recover any and all monies due from Contractor, including but not limited to, the detriment proximately caused by Contractor's failure to perform its obligations under the Contract, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Contractor for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Contract and/or arising there from.

C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Contract at any time, in its discretion. The City may terminate this Contract for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Contractor.

D. Termination shall be commenced by delivery of written notice to Contractor by the City personally or by certified mail, return receipt requested. Upon notice of termination, Contractor shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease work pursuant to the Contract. Contractor shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Contractor could reasonably have avoided.

E. The City, in its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.

17. **Termination for Convenience:** The City at its sole discretion may terminate this Contract for convenience with thirty (30) days advance notice to Contractor. Contractor shall be reimbursed for all appropriate costs as provided for within the Contract up to the termination date specified.

18. **Force Majeure:**

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Contract only in the event that and to the extent that such party's performance of the Contract is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a subcontractor.
- C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Contract.

19. **Gratuities:** The City may elect to terminate any resultant Contract, if it is found that gratuities in any form were offered or given by the Contractor or agent thereof, to any employee of the City or member of a City evaluation committee with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of gratuity.

20. **Indemnification:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Contractor, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Contractor may be legally liable in the performance of this Contract. Contractor's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Contract by Contractor or any employee of the Contractor or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Contractor may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Contract.

21. **Interpretation of Parole Evidence:** This Contract is intended as a final expression of the agreement between the parties and as a complete and exclusive statement of the Contract, unless the signing of a subsequent Contract is specifically called for in this Request for Proposal. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of the Contract, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

Contractor shall respond within five (5) calendar days after notice by the City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should the Contractor fail to respond promptly as set forth herein, the City shall correct the job site at the expense of the Contractor, and recover all attendant costs.

22. **Key Personnel:** Contractor shall provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract during the Contract term and any renewal periods. The Contractor must agree to assign specific individuals to the key positions.

- A. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without prior written notice to the City.
- B. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall replace each person with personnel of substantially equal ability and qualifications upon prior City approval.

23. **Licenses and Permits:** Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, at its sole expense.

24. **No Assignment:** No right or interest in this Contract shall be assigned by Contractor and no delegation of any duty of Contractor shall be made without prior written permission of the City.

25. **Notices:** All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Procurement Officer
20 E. 6th Street (Second Floor)
PO Box 5002
Tempe, Arizona 85280

[Contractor's Name]
[Attn of Offeror Named in Contract]
[Address]

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

26. **No Waiver:** No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
27. **Overcharges by Antitrust Violations:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the City. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as the goods and/or services used fulfill the Contract.
28. **Performance Standards:** Equipment shall operate in accordance with the performance criteria specified in the Request for Proposal, including the manufacturer's published specifications applicable to the machine involved. Each machine is expected to be available for productive use, as provided in the procurement documents. Penalties and/or bonuses applicable to machine and system performance, if any, shall be calculated as specified in the Request for Proposal.
29. **Preparation of Specifications by Persons Other Than City Personnel:** No person preparing specifications for this Request for Proposal shall receive any direct or indirect benefit from the use of these specifications.
30. **Procurement of Recycled Materials:** If the price of recycled material that conforms to specifications is within five percent (5%) of the lower priced material that is not recycled and the recycled Offeror is otherwise the lowest responsive and responsible Offeror, the proposal containing recycled material shall be considered more advantageous; provided the item(s) to be obtained contains at least the minimum amount of recycled content material as defined in the City's solicitation and sufficient funds have been budgeted for the purchase.
31. **Provisions By Law:** Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract will forthwith be physically amended to make such insertion or correction.
32. **Public Record:** After award of Contract, proposal responses shall be considered public record and open for public inspection except to the extent the withholding of information is permitted or required by law. If an Offeror believes a specific section of its proposal response is confidential, the Offeror shall mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Offeror shall include a written statement as to the basis for considering the marked pages confidential and the City Procurement Office will review the material and make a determination, pursuant to A.R.S. §§ 39-121, *et seq.*, and 41-1330, *et seq.* A general statement of confidentiality (boiler plate statement) that is not appropriately referenced to a specific section of the RFP will not be sufficient to warrant protection by the City. The confidential portion of the submission must be clearly noted with accompanying justification for treating the section confidential. Failure of the vendor to appropriately designate confidential information in this manner will relieve the City of any obligation to protect this information as confidential.
33. **Records:** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §§ 35-214 and 36-215, Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the City Attorney or City Procurement Office.

34. **Relationship of Parties:** It is clearly understood that each party to this Contract will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Contractor is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Offeror. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
35. **Rights and Remedies:** No provisions of this Request for Proposal or in the proposal shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Contract. The failure of the City to insist upon strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, shall not release the Contractor from any responsibilities or obligations imposed by the Contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.
36. **Safety Standards:** All items supplied on this Contract must comply with the current applicable Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.
37. **Serial Numbers:** Proposals shall include equipment on which the original manufacturer's serial number has not been altered in any way. The City reserves the right to reject any and all equipment.
38. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
39. **Specially Designated Nationals and Blocked Persons List:** Contractor represents and warrants to the City that neither Contractor nor any affiliate or representative of Contractor:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 ("Order");
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
40. **Time of the Essence:** Time is and shall be of the essence in this Contract. If the delivery date(s) specified herein cannot be met, Contractor shall notify the City using an acknowledgment of receipt of order and intent to perform without delay, for instruction. The City reserves the right to terminate this Contract and to hold Contractor liable for any cost of cover, excess cost(s) or damage(s) incurred as a result of delay.

41. **Unauthorized Firearms & Explosives:** No person conducting business on City property is to carry a firearm or explosive of any type. All Offerors, Contractors and subcontractors shall honor this requirement at all times and failure to honor this requirement shall result in Contract termination and additional penalties. This requirement also applies to any and all persons, including those who maintain a concealed weapon's permit. In addition to Contract termination, anyone carrying a firearm or explosive device will be subject to further legal action.
42. **Warranties:** Contractor expressly warrants that all materials and/or goods delivered under the Contract shall conform to the specifications of this Contract, and be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. This express warranty shall not be waived by way of acceptance or payment by the City, or otherwise. Contractor expressly warrants the following:
- A. All workmanship shall be finest and first-class;
 - B. All materials and goods utilized shall be new and of the highest suitable grade for its purpose; and,
 - C. All services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City, and shall run to the City, its successors, agents and assigns.

The Contractor agrees to make good by replacement and/or repair, at its sole expense and at no cost to the City, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedies.

43. **Work for Hire and Ownership of Deliverables:** Contractor hereby agrees and covenants that all the results and proceeds of Contractor's work and/or services for the Project specified herein, for Contractor and all of its agents, employees, officers and subcontractors, shall be owned by the City, including the copyright thereto, as work for hire. In the event, for any reason such results and proceeds are not deemed work for hire, Contractor agrees and covenants that it shall be deemed to have assigned to the City all of its right, title and interests in such results, proceeds and content to the City, without limitation. Contractor agrees to indemnify and hold the City harmless from and against all claims, liability, losses, damages and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent or copyright infringement and any litigation based thereon, with respect to any work, services and/or materials contemplated in this Contract. Contractor agrees to pay to defend any and all such actions brought against the City. Contractor's obligations hereunder shall survive acceptance by the City of all covenants herein as well as the term of the Contract itself.
44. **Non-exclusive Contract:** Any Contract resulting from this Request for Proposal shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source to secure cost savings or if timely delivery may be met by the Contractor
45. **Ordering Process:** Upon award of a Contract by the City Procurement Office, the City may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate Contractor. Each purchase order must cite the correct Contract number. Such purchase order is required for the City to order and the Contractor to deliver the material and/or service.

46. **Shipping Terms:** Prices shall be F.O.B. Destination to the delivery location(s) designated herein. Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. The City will notify the Contractor promptly of any damaged materials and shall assist the Contractor in arranging for inspection. Shipments under reservation are prohibited. No tender of a bill of lading shall operate as a tender of the materials.
47. **Delegated Awards:** In the event this Contract is administratively awarded via delegated authority as provided for in Section 26A-5 of the Procurement Ordinance, the Contractor acknowledges that a final Contract with the City of Tempe requires City Council approval and possibly the signature of the Mayor. Should this Contract be rejected by the City Council, Contractor agrees that it is immediately void and unenforceable against any party. The awarded firm(s) will be compensated only for any and all costs incurred up to the date of notification of such termination.

Special Terms and Conditions

Proposals taking exception to Special Terms & Conditions stated within this Request for Proposal may cause the Proposal to be considered nonresponsive and rejected.

1. **City Procurement Document:** This Request for Proposal is issued by the City. No alteration of any portion of this Request for Proposal by an Offeror is permitted and any attempt to do so shall result in vendor's proposal Offer being considered nonresponsive, and rejected. No alteration of any portion of a resultant Contract is permitted without the written approval of the City Procurement Office and any attempt to do so shall be considered a breach of the Contract. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, Contract termination and/or suspension of the Contractor.
2. **Offer Acceptance Period:** To allow for an adequate evaluation, the City requires the vendor's proposal Offer in response to this Request for Proposal to be valid and irrevocable for one hundred twenty (120) days after the proposal due time and date.
3. **Contract Type:** Firm fixed price, Single Requirement, definite quantity.

4. **Insurance:**

- A. **Insurance Required:** Prior to commencing services under this Contract, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, subcontractors, or sub-subcontractors. For Offerors with self-insurance, proof of self-insurance with minimum limits expressed below must be submitted on proper forms for evaluation prior to award of Contract.

A Contract Award Notice or Purchase Order will not be issued to a Vendor until receipt of all required insurance documents by the City Procurement Office with such documents meeting all requirements herein. In addition, before any Contract renewal, all required insurance must be in force and on file with the City Procurement Office. Contractor must submit required insurance within ten (10) calendar days after request by the City Procurement Office or the award may be rescinded and another Vendor selected for award.

- B. **Minimum Limits of Coverage:** Without limiting any obligations or liabilities, the Contractor, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

- i. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:

a. **Commercial General Liability**

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Contract or the general aggregate shall be twice the required per claim limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Contractor shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

In case services are subcontracted, the Contractor will require the subcontractor to provide worker's compensation and employer's liability to at least the same extent as provided by Contractor.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

- C. Additional Insured. The insurance coverage, except for workers compensation and professional liability coverage, required by this Contract, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Contractor shall be primary insurance. This provision and the naming of the city as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).
- D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Contract.
- E. Primary Coverage. Contractor's insurance shall be primary insurance to the City, and any insurance or self insurance maintained by the City shall not contribute to it.
- F. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- G. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Contractor.
- H. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self insured retentions shall be disclosed by the contractor and shall not be applicable with respect to the coverage provided to the City under such policies. Contractor shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require

Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

- I. Certificates of Insurance. Prior to commencing work or services under this Contract, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
 - J. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Contractor's obligations under this Contract.
5. Professional Liability: The Contractor shall maintain professional liability insurance covering errors and omissions arising out of the services performed by the Contractor and/or any person(s) employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of services as evidenced by annual certificates of insurance provided by Contractor to the City. In addition, Contractor shall maintain property coverage on an all-risk, replacement cost basis in an amount established by the City with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the Contractor used in the completion of this Contract.

Scope of Work

The City of Tempe is issuing this Request for Proposal (RFP) to establish a contract for legal representation related to potential actions against on-line travel companies (OTCs) in relation to underpayment of taxes.

Because of the potential for a lengthy process, the resulting contract for legal services will have no specified end date. The contract will be renewed on an annual basis until legal action is completed, or completed to the satisfaction of the participating cities – predicated on satisfactory performance of the awarded firm.

The City of Tempe is acting as lead jurisdiction in a multijurisdictional audit of room reservations secured through OTCs and related transaction privilege tax remittances. The completed audit covers the period of January 2001 through March 2009. This audit has been conducted on behalf of the below mentioned Arizona cities and town, all of which administer and collect municipal transaction privilege taxes separately from the state collection system (classified as “Non-Program Cities”).

- Apache Junction
- Chandler
- Flagstaff
- Glendale
- Mesa
- Nogales
- Peoria
- Phoenix
- Prescott
- Scottsdale
- Tempe
- Tucson

OTCs have charged customers amounts greater than the amount for which tax has been remitted by hotels. The Non-Program Cities contend that the OTCs, under Model City Tax Code Regulations, are subject to municipal transaction privilege tax on the full amount paid by the customer. Upon information and belief, the audit indicates that municipal transaction privilege taxes have been filed and remitted by hotels only on the amount received from the OTCs and not on the amount paid by the customer. The Non-Program Cities allege that the OTCs are therefore liable for municipal transaction privilege taxes on any amounts received from customers in excess of that reported by the hotels and any interest and penalties accrued on this amount.

The underpayment of tax by OTCs included in the audit, covering the period of January 2001 through March 2009, is believed to be in excess of \$6.5 million. Liability on due taxes since March 2009 has not yet been determined.

Background

The Model City Tax Code is a uniform sales and use tax act which has been adopted by all Arizona cities. A complete copy of the Model City Tax Code can be found using the following web address:

<http://www.arizonatax.com/modeltaxcode.htm>

Selected elements of the code that are shown below are believed to be pertinent to any potential legal action against OTCs. Be advised that this list is not exhaustive and other Code sections and Arizona laws may apply.

Sec. ___-100. General definitions.

"Broker" means any person engaged or continuing in business who acts for another for a consideration in the conduct of a business activity taxable under this Chapter, and who receives for his principal all or part of the gross income from the taxable activity.

"Hotel" means any public or private hotel, inn, hostelry, tourist home, house, motel, rooming house, apartment house, trailer, or other lodging place within the City offering lodging, wherein the owner thereof, for compensation, furnishes lodging to any transient, except foster homes, rest homes, sheltered care homes, nursing homes, or primary health care facilities.

Sec. ___-200. Determination of gross income: in general.

(a) Gross income includes:

(1) the value proceeding or accruing from the sale of property, the providing of service, or both.

(2) the total amount of the sale, lease, license for use, or rental price at the time of such sale, rental, lease, or license.

(3) all receipts, cash, credits, barter, exchange, reduction of or forgiveness of indebtedness, and property of every kind or nature derived from a sale, lease, license for use, rental, or other taxable activity.

(4) all other receipts whether payment is advanced prior to, contemporaneous with, or deferred in whole or in part subsequent to the activity or transaction.

(b) Barter, exchange, trade-outs, or similar transactions are includable in gross income at the fair market value of the service rendered or property transferred, whichever is higher, as they represent consideration given for consideration received.

(c) No deduction or exclusion is allowed from gross income on account of the cost of the property sold, the time value of money, expense of any kind or nature, losses, materials used, labor or service performed, interest paid, or credits granted.

Sec. ___-400. Imposition of Privilege Taxes; presumption.

(a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector:

(1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the City or not, or whether derived from within the City or from without.

Sec. ___-444. Hotels.

The tax rate shall be at an amount equal to ___ percent (___%) of the gross income from the business activity upon every person engaging or continuing in the business of

(a) Transient.

(b) Exclusions. The tax imposed by this Section shall not include:

(1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility.

(2) Gross proceeds of sales or gross income that is properly included in another business activity under this Article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this Article.

(4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section ___-410 or Section ___-475 due to an exclusion, exemption or deduction.

(5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section ___-445 or Section ___-450 as rental, leasing or licensing for use of real or tangible personal property.

Sec. ___-447. Rental, leasing, and licensing for use of real property: additional tax upon transient lodging.

In addition to the taxes levied as provided in Section ___-444, there is hereby levied and shall be collected an additional tax in an amount equal to _____ percent (___%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging

Reg. ___-100.1. Brokers

(a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section ___-405, relating to advertising commissions.

(b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:

(1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.

(2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.

(c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.

(d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.

List of potential firms for settlement

Based upon preliminary results of the audit, the OTCs from which underpaid taxes are due may include, but are not limited, the following firms:

Orbitz Worldwide Incorporated
The Expedia Companies
Priceline.com Inc. and its subsidiaries
Travelocity.com LP

The Non-Program Cities wish the action to be as complete as possible, however, good judgment must prevail and costs to litigate against some firms may exceed any derived repayment of taxes.

Desired results from this legal action

Payment of taxes due participating cities along with interest and penalties.

It is essential that the actions against firms set a precedent for future transactions conducted by all OTCs so that, in the future, taxes are paid in full.

Requirements and Responsibilities

Desired minimum requirements are listed below:

- Provide review of audit information and verify quality of information and suitability for potential legal actions.
- Determine if an additional audit is necessary to determine liability since the end date of the current audit.
- Counsel will provide legal representation, litigation and all necessary legal services, including investigation, legal research, preparation of documents, pleadings, briefs and memoranda, and appear in court as needed.
- Legal services shall be for all participating cities. Through the issuance of this RFP by the City of Tempe, the City of Tempe assumes a coordinator role only.
- The participating cities will designate a central contact who will serve as the representative for all aspects related to this action and shall be kept informed of progress, actions, etc. related to this action.
- No significant decisions, in whole or in part, shall be made without the prior approval of by the participating cities, including but not limited to, resolution of legal issues, or litigation of any kind, including appeals.
- Any and all offers of compromise by adverse parties shall be promptly transmitted to the participating cities together with Counsel's recommendations.
- It is preferred that the lead attorney have a minimum of five (5) years current experience in providing legal service to municipal clients.
- Determine what, if any, changes must be made to the Common Interest Agreement entered into by the Non-Program Cities related to this proposed representation and audit.

Subject to the advice of the law firm selected, it is preferred that any litigation will be filed in courts located in Maricopa County, Arizona.

- Lawyer(s) representing participating cities must be able to be admitted to practice law in Arizona courts.

Awarded firm must provide:

- Expertise in tax issues
- Familiarity with actions against OTCs
- Have experience in similar cases with positive results

- Provide a review of the audit that has been conducted and the verify soundness of the data
- Provide all staffing, including staff for potential legal litigation, on behalf of participating cities
- Monthly updates of progress must be submitted to contacts provided by participating cities
- Any required contract agreement(s) from the Law firm pertaining to this RFP shall be submitted at the time of submission



HOLM WRIGHT HYDE & HAYS PLC

ATTORNEYS AT LAW
10429 SOUTH 51ST STREET, SUITE 285
PHOENIX, ARIZONA 85044
(480) 961-0040
FAX (480) 961-0818

Brad Holm
Direct Line: (480) 961-0422
bholm@holmwright.com

March 8, 2012

Tony Allen
City of Tempe
Financial Services/Procurement Office
20 E. Sixth Street (2nd Floor)
Tempe, Arizona 85281

Re: RFP, Legal Representation for Statewide Efforts to Collect Unpaid Taxes
Subject: Team Proposal, RFP No. 12-096

Dear Mr. Allen:

Thank you for the opportunity to submit our proposal to provide legal services for the City of Tempe and other municipalities in the statewide effort to collect unpaid taxes. We understand that the municipalities intend to retain lawyers to file litigation against on-line travel companies (OTCs) for underpayment of taxes.

Our litigation team—comprised of Holm Wright Hyde & Hays PLC, Schneider Wallace Cottrell Brayton Konecky LLP, and The National Online Travel Litigation Group (consisting of lawyers from the Bird Law Group, P.C.; Crongeyer Law Firm, P.C.; and The Finnel Firm, P.C.)—has specific and vast experience handling complex and numerous cases against OTCs.

A. Statement of submission.

Our team submits this formal proposal in response to Tempe and the municipalities' request for proposal no. 12-096.

B. Small and Disadvantaged Business Participation.

Our team understands the municipalities' commitment to small and disadvantaged businesses. We often use the WBE/SBE-certified firm—Griffin & Associates, L.L.C.—for our court reporting needs. And we will make every effort to hire small and disadvantaged businesses as we seek consultants, expert witnesses, and other supportive entities in the performance of the contract.

Tony Allen
City of Tempe
March 8, 2012
Page 2

C. Proposal organization.

Our proposal is organized by tab numbers as set forth in the proposal checklist for submittals on page 31 of Tempe's request for proposal. We submit one original and eight electronic copies (8 CDs under tab 2) with this letter. If you have questions regarding our response, please contact me directly at (480) 961-0422.

Very truly yours,

HOLM WRIGHT HYDE & HAYS PLC

By 
Brad Holm

BH/eml

**PROPOSAL: LEGAL REPRESENTATION FOR STATEWIDE
EFFORTS TO COLLECT UNPAID TAXES**

CITY OF TEMPE REQUEST FOR PROPOSAL
RFP NO. 12-096, ISSUED 02/09/2012

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

Holm Wright Hyde & Hays PLC

Phoenix, Arizona

Schneider Wallace Cottrell

San Francisco, California

The National Online Travel Litigation Group

Atlanta, Georgia

1. Offer Form and Proposal.

Our team submits the signed vendor's offer form (no. 201B) and we present our complete proposal. Accompanying our proposal are three white papers on reclaiming unremitted taxes from online travel companies for the cities of Tempe, Tucson, and Phoenix (tabs A, B, and C). The legal analysis in these white papers is also applicable to the other municipalities: Apache Junction, Chandler, Flagstaff, Glendale, Mesa, Nogales, Peoria, Prescott, and Scottsdale.

Vendor's Offer

Form 201-B (RFP)

Return this Section with your Response

It is required that Offeror complete, sign and submit the original of this form to the City Procurement Office with the proposal response. An unsigned "Vendor's Offer", late proposal response and/or a materially incomplete response will be considered nonresponsive and rejected.

Offeror is to type or legibly write in ink all information required below.

Company Name:	<u>Holm Wright Hyde & Hays PLC</u>				
Company Mailing Address:	<u>10429 South 51st Street, Suite 285</u>				
City:	<u>Phoenix</u>	State:	<u>Arizona</u>	Zip:	<u>85044</u>
Contact Person:	<u>Brad Holm</u>	Title:	<u>Managing Partner</u>		
Phone No.:	<u>480-961-0422</u>	FAX:	<u>480-961-0818</u>	E-mail:	<u>bholm@holmwright.com</u>
<u>Company Tax Information:</u>					
Arizona Transaction Privilege (Sales) Tax No.: _____ or					
Arizona Use Tax No.: _____					
Federal I.D. No.: <u>86-0974303</u>					
City & State Where Sales Tax is Paid: _____, _____					
If a Tempe based firm, provide Tempe Transaction Privilege (Sales) Tax No.: _____					

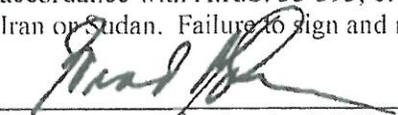
THIS PROPOSAL IS OFFERED BY

Name of Authorized Individual (TYPE OR PRINT IN INK) Brad Holm

Title of Authorized Individual (TYPE OR PRINT IN INK) Managing Partner

REQUIRED SIGNATURE OF AUTHORIZED OFFEROR (MUST SIGN IN INK)

By signing this Vendor's Offer, Offeror acknowledges acceptance of all terms and conditions contained herein and that prices offered were independently developed without consultation with any other Offeror or potential Offeror. In accordance with A.R.S. 35-393, et seq., the Offeror hereby certifies that it does not have scrutinized business operations in Iran or Sudan. Failure to sign and return this form with proposal response will be considered nonresponsive and rejected.



Signature of Authorized Offeror

March 8, 2012

Date

(H:/RFP 3-2008)

PROPOSAL TO RECLAIM UNREMITTED TAXES FROM ONLINE TRAVEL
COMPANIES ON BEHALF OF ARIZONA MUNICIPALITIES

Submitted March 8, 2012

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

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INTRODUCTION

Across the country, the online travel companies (“OTCs”), e.g., Expedia, Travelocity, Orbitz, and Priceline, utilize a uniform plan to sidestep the payment of sales tax and transient room tax (collectively “hotel tax”) for the rental of hotel rooms. The essence of the OTCs’ plan is simple: they collect more than the amount they remit in hotel taxes to the government and hide the difference by bundling the taxes owed with their “travel facilitation fees.”

The difference between the hotel taxes collected from consumers on the retail amount they paid and the transient room and sales taxes remitted by the OTCs translates into *millions of dollars* of lost revenue to cities each year.

1. SCOPE OF REPRESENTATION

Our litigation team—comprised of Holm Wright Hyde & Hays PLC (“Holm Wright”), Schneider Wallace Cottrell Brayton Konecky LLP (“Schneider Wallace”), and The National Online Travel Litigation Group¹ (“National Group”)—has specific and vast experience handling complex and multi-faceted litigation against the OTCs. Members of our team have handled several cases against the OTCs for more than a half decade.

These cases involve comprehensive and detailed discovery (often exceeding several hundred thousand pages) and substantive pleadings. We believe our team’s collective experience will provide the cities of Phoenix, Tucson, Scottsdale, and the other municipalities that have adopted the Arizona Model Tax Code (the “municipalities”) with the strategic and practical advantages that will help expedite and aggressively advance the pursuit of the municipalities’ claims against OTCs. We have included as an exhibit a preliminary white paper on our initial thoughts regarding the OTCs’ liability in this case, utilizing Tempe’s, Tucson’s and Phoenix’s tax code as a point of reference.

We believe that Holm Wright’s success representing Phoenix in major complex litigation combined with the National Group’s specific expertise in this exact litigation (against these same companies, represented by the same law firms, on behalf of cities, counties, and states with interests similar to Arizona cities) would provide the municipalities with comprehensive and balanced representation on this important issue.

¹ The National Group consists of lawyers from the Bird Law Group, P.C, Crongeyer Law Firm, P.C., and The Finnell Firm, P.C. These firms are headed by William Bird, John Crongeyer, and Robert Finnell.

2. THE TEAM—WHO'S INVOLVED

A. Experience

Our litigation team is comprised of trusted local and national counsel with a wealth of experience in complex litigation, governmental agency representation, and hotel tax litigation. The team's capacity to pursue the municipalities' claims and effectively respond to the OTCs' defenses is enhanced by the fact that the team's attorneys have worked together previously on litigation against OTCs around the country. This collaboration has given our team the unique experience, knowledge, and resources necessary to provide the municipalities with a distinct advantage over other counsel.

Specifically, members of our team have represented cities, counties, and states around the country for more than six years. We have experience in more states than any other team, nationally, with cases in Colorado, Montana, Georgia, Indiana, Michigan, Maryland, Missouri, and California. And the team has filed or is preparing litigation on behalf of Houston, Pittsburg, Adelanto, Reno, Modesto, Winter Park, and the state of Utah.

Members of our team include the first attorneys to successfully resist the OTCs' motion to dismiss in federal court. Specifically, in May 2006, Judge Harold Murphy in the Northern District of Georgia denied the OTCs' dismissal motion and wrote the seminal opinion since followed by more than a dozen other federal and state courts.

Several recent victories in Maryland have added to our team's reputation and success. Specifically, on behalf of the City of Baltimore, we steered around a negative federal court decision in the Fourth Circuit and defeated the OTCs' motion to dismiss. Following our team's performance at a critical hearing on cross-motions for summary judgment, two of the OTC defendants settled with Baltimore for millions of dollars on previously disputed claims. A partial summary judgment was then obtained against the remaining defendants.

Our efforts have achieved outstanding results at all stages of litigation. And these efforts have accomplished tangible results for clients. Our team has also obtained OTC settlements in Michigan and Missouri.

Besides victories for current clients, our team has access to a wealth of invaluable information to assist new clients. *The team has the most substantial database of documents and substantive discovery of any lawyers in the country working these cases.* This database includes collection data and documents pertaining to hundreds of thousands of hotel bookings by OTCs.

The team even has access to discovery from other teams representing governments, although these teams do not have access to our discovery.² The discovery—sharing orders obtained from Maryland, Michigan, and Georgia courts—provide our team with a unique competitive advantage over all other attorneys.

The team's experience and resources are self-evident in a list of our recent cases. These cases comprise some of the current hotel tax litigation with which members of the team are involved.

- *Town of Breckenridge, Colorado v. Colorado Travel Company, LLC*, Case Number 2011CV420 (Summit County District Court, 5th J.D., CO);
- *Montana Dep't of Revenue v. Priceline.com*, Cause No. CDV-2010-1056 (Mont. 1st Jud. Dist.);
- *City of Rome, Georgia v. Hotels.com*, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga.);
- *City of Oakland, California v. Hotels.com*, Civil Action No. C07-03432 (N.D. Ca.);
- *Baltimore County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-1104 (D. Md.);
- *Mayor & City Council of Baltimore v. Priceline.com, Inc.*, Civil Action No. MJG-08-3319 (D. Md.);
- *Montgomery County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-3558 (D. Md.); and
- *County of Genesee, et al. v. Hotels.com, L.P., et al.*, Civil Action File No. 09-276-CZ (Cir. Ct. for Ingham County) (action on behalf of multiple Michigan local governments).

Several team members proposing to represent the municipalities have devoted the majority of their practice (more than 75%) to representing plaintiffs in complex litigation, running the gamut from actions against online travel companies to class actions against manufacturers. Litigation is the primary area of practice for our proposed lead and other attorneys.

² Such a distillation of information is important where the OTCs routinely produce thousands of pages of documents.

Specifically, Holm Wright's trial lawyers have appeared in federal and state courts at all levels, and they routinely handle complex matters encompassing all substantive areas of law. Brad Holm recently obtained a \$19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a \$130 million construction-manager-at-risk project in Phoenix, Arizona. Additionally, he and his firm recovered \$16 million against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.

B. Lead Attorneys

Lead Attorneys	Law Firms
Brad Holm and Scott Andersen	Holm Wright Hyde & Hays PLC
Garrett W. Woytkins and Michael McKay	Schneider Wallace Cottrell Brayton Konecky LLP
Bill Bird, John Crongeyer, and Bob Finnell	The National Online Travel Litigation Group

C. Lead Attorney Profiles (Partners)

Brad Holm

Brad Holm concentrates his practice in commercial litigation, with particular emphasis on construction, architect/engineer liability, and environmental matters.

His recent experience includes:

- A \$19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a \$130 million construction-manager-at-risk project in Phoenix, Arizona.
- The successful procurement of a contractor to supply the Automated Train Operating System for the new PHX Sky Train at Phoenix Sky Harbor International Airport. This \$1 billion project is currently under construction.
- The successful defense of an Arizona municipality in a \$200 million dispute involving construction of a unified plant at one of the largest wastewater treatment facilities in the United States.
- The successful defense of a commercial client in a significant business dispute that involved a covenant not to compete and pitted one the nation's largest business-forms manufacturers against a local commercial printer.

- A \$16-million recovery against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.
- The successful procurement of a contractor to build a new reach of the San Antonio River Walk in San Antonio, Texas.
- The successful defense of a national engineering firm in Superfund litigation involving the Phoenix/Goodyear North site. TCE from the old Unidynamics production facility had seeped down to groundwater.
- The privilege of serving as counsel to the Arizona Diamondbacks Major League Baseball team during construction of Bank One Ballpark (now Chase Field) in Phoenix, Arizona. Mr. Holm worked on procurement, arbitrated disputes during construction, and litigated construction claims following substantial completion.
- In 2005-2007, Mr. Holm simultaneously handled two cases *each* involving over 10 million pages of documents. In the two cases, he and his partners took about 100 depositions. One of those was a plaintiff's case in which his client recovered \$19.1 million; the other was a defense case settled at mediation for \$0.

Court Admissions

- 1981, Utah and U.S. District Court, District of Utah
- 1984, U.S. Court of Appeals, Tenth Circuit
- 1987, Arizona, U.S. District Court, District of Arizona, and U.S. Court of Appeals, Ninth Circuit
- 2001, United States Supreme Court

Education

- J. Reuben Clark Law School, Brigham Young University, UT, 1981, Juris Doctor Honors: *cum laude*; J. Reuben Clark Scholar (top 10% of law class); BYU Law Review; Moot Court
- Brigham Young University, Provo, UT, 1978, Bachelor of Arts Honors: *summa cum laude*

Professional Activities and Memberships

- Adjunct Professor, Sandra Day O'Connor College of Law, Arizona State University (2011-2012), teaching electronic discovery and digital evidence
- Maricopa County Superior Court Judge Pro Tem (1989-1993)
- Member, Construction Section, State Bar of Arizona (former member of Executive Council of Construction Section)
- Instructor of Business Law, Stevens Henager College (Provo, Utah)

- American Bar Association (member of Forum on the Construction Industry and Litigation Section)
- Maricopa County Bar Association
- Frequent seminar speaker on construction-related topics (including presentations at Construction Superconference in San Francisco)

Professional Recognition and Awards

- Southwest Super Lawyers® (2011-2012)
- Harry S. Truman Scholarship, 1977
- Edwin S. Hinckley Scholarship, 1977

Representative Presentations

- *Mastering Construction Law 2011: Arizona's Construction Anti-Indemnity Statutes*, State Bar of Arizona (February 2011)
- *Arizona Construction Law 2010: Compliance with Notice Provisions in Your Construction Contract*, Mock Appellate Advocate, State Bar of Arizona (February 2010)

Scott Andersen

Mr. Andersen graduated from Arizona State University with an economics degree in 1997. He received his law degree from California Western School of Law in 1999. He is admitted to practice before all Arizona state courts, the U.S. District Court for the District of Arizona and the United States Court of Appeals for the Ninth Circuit.

He primarily practices commercial litigation, construction law, and insurance-defense litigation, representing corporations, municipalities, and individuals in all phases of litigation.

Garrett Woytkins

Garrett Woytkins is the head of Schneider Wallace's financial services practice and its consumer class action practice. Mr. Woytkins is a frequent writer, speaker and continuing legal education ("CLE") instructor concerning complex litigation. He has served as a faculty member during the past two years for the Practising Law Institute's ("PLI") Consumer Financial Services Institute, and he has contributed articles to the textbooks that the PLI generates incident to that project. He has served as a CLE instructor at CLE events sponsored by the State Bar of Arizona, Legal Assistance for Seniors in California, Bridgeport, Strafford and Mass Torts Made Perfect.

In 2008, the Arizona Volunteer Lawyers Program gave Mr. Woytkins its "For Love of Justice" award in recognition of his volunteer work assisting Arizona homeowners fighting foreclosure. Mr. Woytkins is currently an officer of the Business Torts Section of the American Association for Justice. He currently represents a number of public entities as plaintiffs against insurance companies, investment banks and pharmaceutical companies; among them are the cities of Phoenix and Adelanto, California, the state of Louisiana and hospitals and hospital financing districts in West Virginia and Texas.

Mr. Woytkins received his Bachelor of Arts Degree from Rice University, where he graduated magna cum laude, and received his law degree from the University of Chicago Law School, where he was a staff member of The University of Chicago Law Review. Following law school, Mr. Woytkins served for a year as a law clerk to the Honorable John M. Duhe, Jr., of the United States Court of Appeals for the Fifth Circuit, and worked for five years in the Washington, DC, office of O'Melveny & Myers LLP.

Michael McKay

Michael McKay represents plaintiffs in complex commercial disputes and class actions. His experience includes litigating securities claims, consumer fraud claims, antitrust allegations, racketeering claims and business torts. He has recovered over \$500 million in the last five years for his clients. Mr. McKay, along with other lawyers, represented a nationwide class in *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, MDL No. 1610 AHM (C.D. Cal.), which settled for over \$400 million. He represented a nationwide class in *In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663 GEB (D. New Jersey), which settled for over \$121 million.

Mr. McKay is admitted to practice before the U.S. Supreme Court, Ninth Circuit Court of Appeals, U.S. District Court, District of Arizona, U.S. District Court, District of Colorado, and the Arizona Supreme Court. Prior to joining Schneider Wallace, he served as a law clerk for The Honorable Gordon J. Low, Utah First District Court, and as a law clerk for the United States Attorney's Office, N.D.N.Y. He graduated with honors from Syracuse University College of Law.

John W. Crongeyer, M.D.

John W. Crongeyer of Crongeyer Law Firm, P.C. has extensive experience in prosecuting and defending complex litigation cases. Dr. Crongeyer has served as lead or co-lead counsel in more than 30 complex litigation matters, including initiating and leading litigation efforts on behalf of counties and cities in Georgia, Missouri, Indiana, and Michigan to collect hotel taxes owed by online travel companies. Dr. Crongeyer also represents the cities of Baltimore and Oakland in their respective efforts to obtain back taxes, penalties, and interest.

Dr. Crongeyer was valedictorian at the University of Mississippi, graduating *summa cum laude*, before obtaining his medical degree at the Johns Hopkins School of Medicine, where he served as the Commencement Speaker. After completing his internship in neurosurgery, Dr. Crongeyer elected to continue his education and pursue a law degree from Yale Law School.

Dr. Crongeyer and his firm's legal work have been cited in the national media, including the Wall Street Journal, USA Today, the New York Times, the Atlanta Journal Constitution, Chicago Tribune, Washington Post, and ABC Primetime. Dr. Crongeyer has also appeared live on "Good Morning America" to discuss one of his complex litigation cases with Diane Sawyer.

Education

Yale University Law School, New Haven, CT, 2002

Juris Doctor

Johns Hopkins School of Medicine, Baltimore, MD, 1998

M.D.

Commencement Speaker

University of Mississippi, Oxford, MS, 1994

B.S.,

Valedictorian

Professional Associations and Memberships

State Bar of Georgia

Member

American Bar Association

Member

Atlanta Bar Association

Member

Lawyers Club of Atlanta

Member

Bar/Court Admissions

Georgia

Georgia Court of Appeals

Georgia Supreme Court

U.S. District Court Northern District of Georgia

U.S. District Court Eastern District of Michigan

U.S. Patent Bar

William Q. Bird

William Q. Bird has been practicing law in Atlanta for over 38 years, having handled complex civil litigation matters throughout his career. The managing partner of Bird Law Group, P.C., Mr. Bird enjoys an outstanding reputation as an honest and uncompromising trial attorney. Mr. Bird was elected to and served in the position of past president of the Georgia Trial Lawyers Association. He currently serves as an esteemed member of the American College of Trial Lawyers.

Mr. Bird has been consistently named one of The Best Lawyers in America and honored as one of Georgia's Legal Elite. Additionally, he has been voted by his peers as one of Georgia's Super Lawyers and named as one of Georgia's Top 100 Attorneys. Recently, Mr. Bird was awarded the prestigious Tradition of Excellence Award by the State Bar of Georgia.

Mr. Bird is well-known throughout the legal community for his ability to handle complex cases and to fight hard to recover adequate compensation for his clients.

Education

The University of Texas School of Law, Austin, TX, 1972	<i>Juris Doctor</i>
Wabash College, Crawfordsville, IN, 1969	<i>B.A.</i>
Brunel University, Uxbridge, England	

Honors and Awards

State Bar of Georgia Tradition of Excellence Award, 2009	<i>Recipient</i>
Insurance Counsel Journal Award, 1971	<i>Recipient</i>
Best Lawyers in America	
Atlanta's Top 100 Super Lawyers	
Georgia Elite Lawyers	
National Institute of Trial Advocacy	<i>Fellow</i>
American College of Trial Lawyers	<i>Fellow</i>

Professional Associations and Memberships

Atlanta Bar Association	<i>Member</i>
American Bar Association	<i>Member</i>
State Bar of Georgia	<i>Member</i>
Georgia Trial Lawyers Association	<i>President, 1989 – 1990</i>
Georgia Trial Lawyers Association	<i>President-Elect, 1988 - 1989</i>
Georgia Trial Lawyers Association	<i>Executive Vice-President, 1987 - 1988</i>
American Association for Justice	<i>Board of Governors, 1991 - 1996</i>
American Board of Trial Advocates	<i>Member</i>
Lawyers Club of Atlanta	<i>Member</i>
Roscoe-Pound American Trial Lawyers Foundation	<i>Member</i>
Georgia Bar Foundation	

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

Robert K. Finnell

Robert "Bob" Finnell has over 35 years of experience in civil litigation, with substantial experience in class action and complex litigation. He heads the Finnell Firm, P.C. in Rome, Georgia. He has been involved in multiple suits brought against the online travel companies.

Education

Cumberland School of Law, Birmingham, AL
The University of Kentucky, Lexington, KY

Juris Doctor
B.A.

Honors and Awards

Rome News-Tribune Readers' Choice Award, 2009

Recipient

Professional Associations and Memberships

American Association for Justice
Georgia Trial Lawyers Association

Member
Member

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

D. Associate Profiles

Amy Lin Hadra

Amy Lin Hadra, an associate with Bird Law Group, P.C., practices civil litigation, with a focus on federal and appellate work. Ms. Hadra has successfully represented a wide variety of clients at all stages of litigation, including local governmental agencies. Following a hearing at which she argued the motion for summary judgment as counsel before the court, Ms. Hadra obtained summary judgment and effectively negotiated a settlement on behalf of the local governmental agency. She now focuses her practice primarily on litigation against OTCs.

Ms. Hadra received her law degree from the University of Georgia in 2006, where she was recognized as a Bryant T. Castellow Scholar and received a seat on the 2005-2006 UGA Law School Mock Trial Board. Ms. Hadra attended Yale University, where she attained dual Bachelor of Arts degrees in History of Art and East Asian Studies. While an

undergraduate, Ms. Hadra was recognized as a GM Corporate Scholar, and she was selected to serve as co-chair of Yale's Asian Pacific American Heritage Month celebration. Recently, Ms. Hadra was selected from over 200 applicants to participate in the Georgia Bar Leadership Academy.

Education

The University of Georgia School of Law, Athens, Georgia, 2006	<i>Juris Doctor</i>
Yale University, New Haven, CT, 2001	<i>B.A. in East Asian Studies</i> <i>B.A. in History of Art</i>

Honors and Awards

Bryant T. Castellow Scholarship	<i>Recipient</i>
UGA Law Mock Trial Board	<i>Board Member, 2005-2006</i>
J. Melvin England Mock Trial Competition	<i>Quarter-Finalist, 2004</i>
Phi Alpha Delta Law School Fraternity	<i>President/Justice, 2004-2005</i>
GM Corporation Full Scholarship	<i>Recipient</i>

Professional Associations and Memberships

Georgia Bar Leadership Academy	<i>Participant, 2008</i>
Yale Alumni Association	<i>Interviewer, 2007-2008</i>
Georgia Mock Trial Association	<i>Coach, 2007</i>
Georgia Bar Association	<i>Member</i>
Atlanta Bar Association	<i>Member</i>
Georgia Trial Lawyers Association	<i>Member</i>

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Middle District of Georgia
U.S. Court of Appeals, 11th Circuit

Micah Ray Alexander

Micah Ray Alexander, an associate at Holm Wright Hyde & Hays PLC, graduated in 2001 from Kansas State University with a bachelor's degree in civil engineering. He received his law degree from the University of Kansas in 2004, where he served as an Editor of the Kansas Journal of Law and Public Policy. Mr. Alexander also earned a master's degree in public administration from the University of Missouri in 2009.

Mr. Alexander served for more than five years in state government (the Missouri Department of Transportation) as in-house counsel, focusing on transportation,

construction, and contract law. He provided counsel and guidance on day-to-day legal matters, advised in the development of policies and programs, drafted administrative rules, prepared contracts and project procurement documents, and represented state employees in legal proceedings.

Bar/Court Admissions

2010, Arizona and United States District Court for the District of Arizona

2005, Missouri, United States District Court for the Western District of Missouri and United States District Court for the Eastern District of Missouri

2004, Kansas and United States District Court for the District of Kansas

3. FEE PROPOSAL

Our team proposes a contingency fee of 27.5% of the total recovery in the case.

The team proposes to advance litigation costs. If we lose the case, the municipalities will *not* be liable to pay costs. Our team will bear them. This disposition is permitted by Arizona Ethical Rule 1.8.

If the E.R. is revised, and the municipalities must bear costs, we will divide and allocate the total costs among the municipalities in the proportion that each city's claim bears to the municipalities' total claim. So if Tempe's claim were 10% of the total of all the cities' claims, Tempe would bear 10% of the total costs.

If we win the case, the team will first reimburse itself for costs advanced. Next, the team will calculate the municipalities' recovery (72.5%) and the contingent fee.

4. APPROACH TO LITIGATION

Our litigation team is comprised of three principal firms or groups with significant experience in this kind of litigation. Our proposed litigation plan is based on that experience.

First, our team will counsel with Phoenix, Tucson, and Scottsdale the other participating Arizona local governments to ensure that we have at our disposal all pertinent ordinances, rules, and regulations. We will simultaneously begin to preserve, collect, and process all relevant paper and electronic documents and other evidence.

Second, we will draft the complaint against the OTCs. The complaint will plead the common practices that OTCs employ nationally. But we will also tailor it to address the

specific language—in and the application of—the Arizona Model Tax Code and other local codes.

The complaint will be drafted in anticipation of the OTCs' motion to dismiss. This is typically their first litigation move. Our team's past success in defeating OTCs' motions to dismiss is based on our own experience and the wealth of discovery we have obtained. Though litigation results cannot be guaranteed, we believe we can defeat the motion.

Third, after defeating the OTCs' motion to dismiss, and depending on our forum (federal or state), we will propound written discovery to the defendants. To enhance our success in the case, we will also move the court to allow us to use discovery previously obtained in other cases. This is done by seeking a discovery sharing order/protocol. If successful, we would be entitled to use discovery materials we have amassed over the last 6 years.

These documents are comprised of between 600,000 and 1,000,000 pages, including depositions, corporate memos, e-mail, letters, and crucial business materials that demonstrate and support our clients' claims. This substantial discovery has resulted in victories around the country, both through summary judgment, trial, and settlement.

But to supplement the existing discovery, we will aggressively seek additional information from the OTCs in this case. We would coordinate with all of the municipalities to determine the information they already have by way of communications with OTCs and financial data relating to the OTCs' conduct in Arizona.

We will propound discovery for updated documents and data specific to Arizona. Additional depositions will be taken. One of our lead attorneys has previously deposed corporate representatives from major OTC defendants, including Expedia, Hotels.com, Orbitz, and Hotwire. This experience will help guide and inform the deposition strategy developed in this case.

Fourth, depending on the evidentiary record and court rulings, our team will draft a summary-judgment motion. We will also respond to the OTCs' motion for summary judgment. Members of our team have been involved not only in drafting summary-judgment motions (such as in Baltimore), but also in defending against the OTCs' motions (e.g., in Baltimore and Georgia).

Many cases have been resolved at the summary-judgment stage, either by settlement or court ruling. Members of our team have participated in mediations, settlement conferences, and other informal resolution efforts.

To assist us and the court or jury, we have retained forensic accounting experts who are familiar with the defendants' hotel-transaction data. These experts know how to

calculate damages, penalties, and interest. Once we obtain location-specific data, we can begin to refine damage estimates and prepare the case accordingly.

If the case is not resolved by motion, we will try the remaining issues. Collectively, the trial experience of Holm Wright, Schneider Wallace, and the Litigation Group's attorneys is extensive—with literally hundreds of jury trials and arbitrations. But the reality is there have been more than 80 OTC cases filed nationally, and only one has required a trial. Although trial is unlikely given this record, we will prepare for this contingency.

The lead attorneys in our litigation team are not just proposing to work on this litigation. They will actually be handling the case on a day-to-day, month-to-month basis over the long haul. We will argue the motions, take the depositions, coordinate the strategy, and personally try the case. We believe this separates us from other teams that market for these cases nationally.

CONCLUSION

Our litigation team offers the City of Tempe and the other municipalities a team of dedicated attorneys, experienced helping government pursue hotel tax revenues wrongfully withheld by OTCs. The team has both strong national experience with hotel tax litigation and sophisticated local expertise in complex litigation and state and local government law. Importantly, our team has been involved in several litigation milestones against OTCs nationally. And we have achieved several key victories on our clients' behalf.

With experience in complex litigation practice and comprehensive discovery, our team of lead attorneys, associates, and staff has the organizational capability to effectively and aggressively pursue the municipalities' claims. We ask you to engage our team and allow us the privilege of bringing our expertise and dedication to work on your behalf.

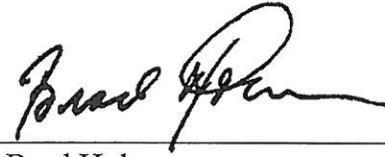
We are available to provide any information you may need to clarify any information provided in this proposal. We look forward to working with you and your representatives in Arizona.

The contact person for further information is Brad Holm, Holm Wright Hyde & Hays PLC, 10429 South 51st Street, Suite 285, Phoenix, AZ 85044; telephone number 480-961-0422; e-mail bholm@holmwright.com.

Dated March 8, 2012.

HOLM WRIGHT HYDE & HAYS PLC

By:

A handwritten signature in black ink, appearing to read "Brad Holm", written over a horizontal line.

Brad Holm
10429 S. 51st Street, Suite 285
Phoenix, Arizona 85044

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

2. Additional Copies.

Our team provides eight additional copies of our response to Tempe's request for proposal. *See* attached CDs.

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

3. Proposal Questionnaire.

Our team includes the following, completed questionnaire for our proposal. *See* attached questionnaire.

Proposal Questionnaire

Return this Section with your Response

Bidder shall submit answers to the following questions. Responses will be utilized in determination of contract award. The City of Tempe may consider other information, whether or not specifically provided by the bidder, in response to this RFP.

1. Provide the address of the office that will supply services to the participating cities.

Holm Wright Hyde & Hays PLC
10429 S. 51st Street, Suite 285
Phoenix, AZ 85044

Schneider Wallace Cottrell
180 Montgomery Street, Suite 2000
San Francisco, California 94104

The National Online Travel Litigation Group, consisting of lawyers from:

Bird Law Group, P.C.
2170 Defoor Hills Road, NW
Atlanta, Georgia 30318

Crongeyer Law Firm, P.C.
2170 Defoor Hills Road, NW
Atlanta, Georgia 30318

Finnell Firm, P.C.
1 West 4th Avenue, Suite 200
Rome, Georgia 30161

2. Describe your firm and its history

In this section, we describe Holm Wright Hyde & Hays PLC and our litigation team. First, Holm Wright.

Firm size and experience.

Recognized for high professional standards and ethics, Holm Wright Hyde & Hays PLC has been repeatedly listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers. The Martindale-Hubbell Bar Register™ recognizes only the most distinguished law practices. Holm Wright's AV® rating signifies the highest level of legal ability and

very high adherence to the professional standards of conduct, ethics, reliability, and diligence.

Founded in 1999, Holm Wright is a multi-service law firm dedicated to providing our clients aggressive, uncompromising legal representation. The firm presently has 12 attorneys, three paralegals, and a talented support staff. We are a firm of established attorneys who previously practiced with one of the largest law firms in Arizona. Holm Wright is committed to a practice that emphasizes quality legal services provided by the firm's principals. More detailed information about our experience is set forth below.

Type of firm organization.

Holm Wright is a professional limited liability company, chartered under Arizona law.

Overall firm practice areas.

Holm Wright is a multi-service construction, litigation, business, and education law firm dedicated to providing our clients aggressive, uncompromising legal representation.

Holm Wright's representative clients.

Arizona Diamondbacks; Arizona School Risk Retention Trust, Inc; City of Chandler, Arizona; Empire Renewable Energy, LLC; Encompass Electrical Technologies; Ericsson, Inc.; Farm Bureau Insurance Companies; Gilbert Unified School District No. 41; Grand Canyon University; The Hunt Construction Group; Malcolm Pirnie, Inc.; Town of Marana; City of El Mirage; City of Phoenix; City of St. George, Utah; Tucson Electric Power Company; Unisource Energy Corporation; Valley Metro Rail, Inc.; Western Agricultural Insurance; and Wigwam Joint Venture L.P.

Our practice and future plans.

We are a boutique professional service firm of experienced attorneys with a commitment that emphasizes quality legal services provided by the firm's principals. Because the Phoenix metropolitan area and Arizona continue to grow and the needs of our clients are increasing, we expect continuing growth in the next few years.

We turn now to the litigation team proposed for this engagement.

The OTC litigation team.

Our litigation team is comprised of trusted local and national counsel with a wealth of experience in complex litigation, governmental agency representation, and hotel tax

litigation. The team's capacity to pursue the municipalities' claims and effectively respond to the OTCs' defenses is enhanced by the fact that the team's attorneys have worked together previously on litigation against OTCs around the country. This collaboration has given our team the unique experience, knowledge, and resources necessary to provide the municipalities with a distinct advantage over other counsel.

Specifically, members of our team have represented cities, counties, and states around the country for more than six years. We have experience in more states than any other team, nationally, with cases in Colorado, Montana, Georgia, Indiana, Michigan, Maryland, Missouri, and California. And the team has filed or is preparing litigation on behalf of Houston, Pittsburg, Adelanto, Reno, Modesto, Winter Park, and the state of Utah.

Members of our team include the first attorneys to successfully resist the OTCs' motion to dismiss in federal court. Specifically, in May 2006, Judge Harold Murphy in the Northern District of Georgia denied the OTCs' dismissal motion and wrote the seminal opinion since followed by more than a dozen other federal and state courts.

Several recent victories in Maryland have added to our team's reputation and success. Specifically, on behalf of the City of Baltimore, we steered around a negative federal court decision in the Fourth Circuit and defeated the OTCs' motion to dismiss. Following our team's performance at a critical hearing on cross-motions for summary judgment, two of the OTC defendants settled with Baltimore for millions of dollars on previously disputed claims. A partial summary judgment was then obtained against the remaining defendants.

Our efforts have achieved outstanding results at all stages of litigation. And these efforts have accomplished tangible results for clients. Our team has also obtained OTC settlements in Michigan and Missouri.

Besides victories for current clients, our team has access to a wealth of invaluable information to assist new clients. *The team has the most substantial database of documents and substantive discovery of any lawyers in the country working these cases.* This database includes collection data and documents pertaining to hundreds of thousands of hotel bookings by OTCs.

The team even has access to discovery from other teams representing governments, although these teams do not have access to our discovery. The discovery—sharing orders obtained from Maryland, Michigan, and Georgia courts—provide our team with a unique competitive advantage over all other attorneys.

3. Please provide contact information for the primary account representative and a backup contact.

Name	Phone	Cell Phone	E-Mail
Brad Holm	(480) 961-0422	(602) 538-3471	bholm@holmwright.com
Scott Andersen	(480) 477-8595	(480) 221-7657	sandersen@holmwright.com

4. Who would make up the team that would be assigned to this case? Provide resumes

Lead Attorney Profiles (Partners)

Brad Holm, Holm Wright Hyde & Hays PLC

Brad Holm concentrates his practice in commercial litigation, with particular emphasis on construction, architect/engineer liability, and environmental matters.

His recent experience includes:

- A \$19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a \$130 million construction-manager-at-risk project in Phoenix, Arizona.
- The successful procurement of a contractor to supply the Automated Train Operating System for the new PHX Sky Train at Phoenix Sky Harbor International Airport. This \$1 billion project is currently under construction.
- The successful defense of an Arizona municipality in a \$200 million dispute involving construction of a unified plant at one of the largest wastewater treatment facilities in the United States.
- The successful defense of a commercial client in a significant business dispute that involved a covenant not to compete and pitted one of the nation's largest business-forms manufacturers against a local commercial printer.
- A \$16-million recovery against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.
- The successful procurement of a contractor to build a new reach of the San Antonio River Walk in San Antonio, Texas.
- The successful defense of a national engineering firm in Superfund litigation involving the Phoenix/Goodyear North site. TCE from the old Unidynamics production facility had seeped down to groundwater.
- The privilege of serving as counsel to the Arizona Diamondbacks Major League Baseball team during construction of Bank One Ballpark (now Chase Field) in

Phoenix, Arizona. Mr. Holm worked on procurement, arbitrated disputes during construction, and litigated construction claims following substantial completion.

- In 2005-2007, Mr. Holm simultaneously handled two cases *each* involving over 10 million pages of documents. In the two cases, he and his partners took about 100 depositions. One of those was a plaintiff's case in which his client recovered \$19.1 million; the other was a defense case settled at mediation for \$0.

Court Admissions

- 1981, Utah and U.S. District Court, District of Utah
- 1984, U.S. Court of Appeals, Tenth Circuit
- 1987, Arizona, U.S. District Court, District of Arizona, and U.S. Court of Appeals, Ninth Circuit
- 2001, United States Supreme Court

Education

- J. Reuben Clark Law School, Brigham Young University, UT, 1981, Juris Doctor Honors: *cum laude*; J. Reuben Clark Scholar (top 10% of law class); BYU Law Review; Moot Court
- Brigham Young University, Provo, UT, 1978, Bachelor of Arts Honors: *summa cum laude*

Professional Activities and Memberships

- Adjunct Professor, Sandra Day O'Connor College of Law, Arizona State University (2011-2012), teaching electronic discovery and digital evidence
- Maricopa County Superior Court Judge Pro Tem (1989-1993)
- Member, Construction Section, State Bar of Arizona (former member of Executive Council of Construction Section)
- Instructor of Business Law, Stevens Henager College (Provo, Utah)
- American Bar Association (member of Forum on the Construction Industry and Litigation Section)
- Maricopa County Bar Association
- Frequent seminar speaker on construction-related topics (including presentations at Construction SuperConference in San Francisco)

Professional Recognition and Awards

- Southwest Super Lawyers® (2011-2012)
- Harry S. Truman Scholarship, 1977
- Edwin S. Hinckley Scholarship, 1977

Representative Presentations

- *Mastering Construction Law 2011: Arizona's Construction Anti-Indemnity Statutes*, State Bar of Arizona (February 2011)
- *Arizona Construction Law 2010: Compliance with Notice Provisions in Your Construction Contract*, Mock Appellate Advocate, State Bar of Arizona (February 2010)
- *A Close Inspection of Recent Arizona Construction Law Decisions, Enforceability of Oral Change Orders on Public Projects*, State Bar of Arizona (February 2009)
- *Construction SuperConference, Point/Counterpoint: Is there Life Before and After Termination*, Presenter (December 2008)

Scott Andersen, Holm Wright Hyde & Hays PLC

Mr. Anderson graduated from Arizona State University with an economics degree in 1997. He received his law degree from California Western School of Law in 1999. He is admitted to practice before all Arizona state courts, the U.S. District Court for the District of Arizona and the United States Court of Appeals for the Ninth Circuit.

He primarily practices commercial litigation, construction law, and insurance-defense litigation, representing corporations, municipalities, and individuals in all phases of litigation.

Garrett Woytkins, Schneider Wallace Cottrell

Garrett Woytkins is the head of Schneider Wallace's financial services practice and its consumer class action practice. Mr. Woytkins is a frequent writer, speaker, and continuing legal education ("CLE") instructor concerning complex litigation. He has served as a faculty member during the past two years for the Practising Law Institute's ("PLI") consumer Financial Services Institute, and he has contributed articles to the textbooks that the PLI generates incident to that project. He has served as a CLE instructor at CLE events sponsored by the State Bar of Arizona, Legal Assistance for Seniors in California, Bridgeport, Strafford and Mass Torts Made Perfect.

In 2008, the Arizona Volunteer Lawyers Program gave Mr. Woytkins its "For Love of Justice" award in recognition of his volunteer work assisting Arizona homeowners fighting foreclosure. Mr. Woytkins is currently an officer of the Business Torts Section of the American Association for Justice. He currently represents a number of public entities as plaintiffs against insurance companies, investment banks and pharmaceutical companies; among them are the cities of Phoenix and Adelanto, California, the state of Louisiana and hospitals and hospital financing districts in West Virginia and Texas.

Mr. Woytkins received his Bachelor of Arts Degree from Rice University, where he graduated magna cum laude, and received his law degree from the University of Chicago Law School, where he was a staff member of The University of Chicago Law Review. Following law school, Mr. Woytkins served for a year as a law clerk to the Honorable John M. Duhe, Jr., of the United States Court of Appeals for the Fifth Circuit, and worked for five years in the Washington, DC, office of O'Melveny & Myers LLP.

Mr. Woytkins received his Bachelor of Arts Degree from Rice University, where he graduated magna cum laude, and received his law degree from the University of Chicago Law School, where he was a staff member of The University of Chicago Law Review. Following law school, Mr. Woytkins served for a year as a law clerk to the Honorable John M. Duhe, Jr., of the United States Court of Appeals for the Fifth Circuit, and worked for five years in the Washington, DC, office of O'Melveny & Myers LLP.

Michael McKay, Schneider Wallace Cottrell

Michael McKay represents plaintiffs in complex commercial disputes and class actions. His experience includes litigating securities claims, consumer fraud claims, antitrust allegations, racketeering claims and business torts. He has recovered over \$500 million in the last five years for his clients. Mr. McKay, along with other lawyers, represented a nationwide class in *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, MDL No. 1610 AHM (C.D. Cal.), which settled for over \$400 million. He represented a nationwide class in *In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663 GEB (D. New Jersey), which settled for over \$121 million.

Mr. McKay is admitted to practice before the U.S. Supreme Court, Ninth Circuit Court of Appeals, U.S. District Court, District of Arizona, U.S. District Court, District of Colorado, and the Arizona Supreme Court. Prior to joining Schneider Wallace, he served as a law clerk for The Honorable Gordon J. Low, Utah First District Court, and as a law clerk for the United States Attorney's Office, N.D.N.Y. He graduated with honors from Syracuse University College of Law.

John W. Crongeyer, M.D., The National Online Travel Litigation Group

John W. Crongeyer of Crongeyer Law Firm, P.C. has extensive experience in prosecuting and defending complex litigation cases. Dr. Crongeyer has served as lead or co-lead counsel in more than 30 complex litigation matters, including initiating and leading litigation efforts on behalf of counties and cities in Georgia, Missouri, Indiana, and Michigan to collect hotel taxes owed by online travel companies. Dr. Crongeyer also represents the cities of Baltimore and Oakland in their respective efforts to obtain back taxes, penalties, and interest.

Dr. Crongeyer was valedictorian at the University of Mississippi, graduating *summa cum laude*, before obtaining his medical degree at the Johns Hopkins School of Medicine, where he served as the Commencement Speaker. After completing his internship in neurosurgery, Dr. Crongeyer elected to continue his education and pursue a law degree from Yale Law School.

Dr. Crongeyer and his firm's legal work have been cited in the national media, including the Wall Street Journal, USA Today, the New York Times, the Atlanta Journal Constitution, Chicago Tribune, Washington Post, and ABC Primetime. Dr. Crongeyer has also appeared live on —Good Morning America to discuss one of his complex litigation cases with Diane Sawyer.

Education

Yale University Law School, New Haven, CT, 2002	<i>Juris Doctor</i>
Johns Hopkins School of Medicine, Baltimore, MD, 1998	<i>M.D.</i>
	<i>Commencement Speaker</i>
University of Mississippi, Oxford, MS, 1994	<i>B.S.,</i>
	<i>Valedictorian</i>

Professional Associations and Memberships

State Bar of Georgia	<i>Member</i>
American Bar Association	<i>Member</i>
Atlanta Bar Association	<i>Member</i>
Lawyers Club of Atlanta	<i>Member</i>

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Eastern District of Michigan
U.S. Patent Bar

William Q. Bird, The National Online Travel Litigation Group

William Q. Bird has been practicing law in Atlanta for over 38 years, having handled complex civil litigation matters throughout his career. The managing partner of Bird Law Group, P.C., Mr. Bird enjoys an outstanding reputation as an honest and uncompromising trial attorney. Mr. Bird was elected to and served in the position of past president of the

Georgia Trial Lawyers Association. He currently serves as an esteemed member of the American College of Trial Lawyers.

Mr. Bird has been consistently named one of The Best Lawyers in America and honored as one of Georgia's Legal Elite. Additionally, he has been voted by his peers as one of Georgia's Super Lawyers and named as one of Georgia's Top 100 Attorneys. Recently, Mr. Bird was awarded the prestigious Tradition of Excellence Award by the State Bar of Georgia.

Mr. Bird is well-known throughout the legal community for his ability to handle complex cases and to fight hard to recover adequate compensation for his clients.

Education

The University of Texas School of Law, Austin, TX, 1972	<i>Juris Doctor</i>
Wabash College, Crawfordsville, IN, 1969	<i>B.A.</i>
Brunel University, Uxbridge, England	

Honors and Awards

State Bar of Georgia Tradition of Excellence Award, 2009	<i>Recipient</i>
Insurance Counsel Journal Award, 1971	<i>Recipient</i>
Best Lawyers in America	
Atlanta's Top 100 Super Lawyers	
Georgia Elite Lawyers	
National Institute of Trial Advocacy	<i>Fellow</i>
American College of Trial Lawyers	<i>Fellow</i>

Professional Associations and Memberships

Atlanta Bar Association	<i>Member</i>
American Bar Association	<i>Member</i>
State Bar of Georgia	<i>Member</i>
Georgia Trial Lawyers Association	<i>President, 1989 – 1990</i>
Georgia Trial Lawyers Association	<i>President-Elect, 1988 - 1989</i>
Georgia Trial Lawyers Association	<i>Executive Vice-President, 1987 - 1988</i>
American Association for Justice	<i>Board of Governors, 1991 - 1996</i>
American Board of Trial Advocates	<i>Member</i>
Lawyers Club of Atlanta	<i>Member</i>
Roscoe-Pound American Trial Lawyers Foundation	<i>Member</i>
Georgia Bar Foundation	

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

Robert K. Finnell, The National Online Travel Litigation Group

Robert "Bob" Finnell has over 35 years of experience in civil litigation, with substantial experience in class action and complex litigation. He heads the Finnell Firm, P.C. in Rome, Georgia. He has been involved in multiple suits brought against the online travel companies.

Education

Cumberland School of Law, Birmingham, AL	<i>Juris Doctor</i>
The University of Kentucky, Lexington, KY	<i>B.A.</i>

Honors and Awards

Rome News-Tribune Readers' Choice Award, 2009	<i>Recipient</i>
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Professional Associations and Memberships

American Association for Justice	<i>Member</i>
Georgia Trial Lawyers Association	<i>Member</i>

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. Court of Appeals, 11th Circuit
U.S. Supreme Court

Associate Profiles

Amy Lin Hadra, The National Online Travel Litigation Group

Amy Lin Hadra, an associate with Bird Law Group, P.C., practices civil litigation, with a focus on federal and appellate work. Ms. Hadra has successfully represented a wide variety of clients at all stages of litigation, including local governmental agencies. Following a hearing at which she argued the motion for summary judgment as counsel before the court, Ms. Hadra obtained summary judgment and effectively negotiated a settlement on behalf of the local governmental agency. She now focuses her practice primarily on litigation against OTCs.

Ms. Hadra received her law degree from the University of Georgia in 2006, where she was recognized as a Bryant T. Castellow Scholar and received a seat on the 2005-2006 UGA Law School Mock Trial Board. Ms. Hadra attended Yale University, where she attained dual Bachelor of Arts degrees in History of Art and East Asian Studies. While an undergraduate, Ms. Hadra was recognized as a GM Corporate Scholar, and she was selected to serve as co-chair of Yale's Asian Pacific American Heritage Month celebration. Recently, Ms. Hadra was selected from over 200 applicants to participate in the Georgia Bar Leadership Academy.

Education

The University of Georgia School of Law, Athens, GA, 2006	<i>Juris Doctor</i>
Yale University, New Haven, CT, 2001	<i>B.A. in East Asian Studies</i> <i>B.A. in History of Art</i>

Honors and Awards

Bryant T. Castellow Scholarship	<i>Recipient</i>
UGA Law Mock Trial Board	<i>Board Member, 2005-2006</i>
J. Melvin England Mock Trial Competition	<i>Quarter-Finalist, 2004</i>
Phi Alpha Delta Law School Fraternity	<i>President/Justice, 2004-2005</i>
GM Corporation Full Scholarship	<i>Recipient</i>

Professional Associations and Memberships

Georgia Bar Leadership Academy	<i>Participant, 2008</i>
Yale Alumni Association	<i>Interviewer, 2007-2008</i>
Georgia Mock Trial Association	<i>Coach, 2007</i>
Georgia Bar Association	<i>Member</i>
Atlanta Bar Association	<i>Member</i>
Georgia Trial Lawyers Association	<i>Member</i>

Bar/Court Admissions

Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Court Northern District of Georgia
U.S. District Court Middle District of Georgia
U.S. Court of Appeals, 11th Circuit

Micah Ray Alexander

Micah Ray Alexander, an associate at Holm Wright Hyde & Hays PLC, graduated in 2001 from Kansas State University with a bachelor's degree in civil engineering. He received his law degree from the University of Kansas in 2004, where he served as an Editor of the Kansas Journal of Law and Public Policy. Mr. Alexander also earned a master's degree in public administration from the University of Missouri in 2009.

Mr. Alexander served for more than five years in state government (the Missouri Department of Transportation) as in-house counsel, focusing on transportation, construction, and contract law. He provided counsel and guidance on day-to-day legal matters, advised in the development of policies and programs, drafted administrative rules, prepared contracts and project procurement documents, and represented state employees in legal proceedings.

Bar/Court Admissions

2010, Arizona and United States District Court for the District of Arizona
2005, Missouri, United States District Court for the Western District of Missouri and United States District Court for the Eastern District of Missouri
2004, Kansas and United States District Court for the District of Kansas

5. What resources would participating cities need to provide?

Our team needs help with preserving the municipalities' documents. This entails identifying and issuing litigation holds to all key custodians. We must also collect all relevant documents and databases—both hardcopy and electronic—that the municipalities possess. These documents and electronically stored information include related tax assessment, collection, and other financial records. The municipalities must also monitor the preservation efforts to ensure compliance with legal requirements. We will assist in this effort.

Our team also needs the municipalities' assistance in identifying witnesses and other key personnel. We will interview these representatives to effectuate the litigation hold and prepare our disclosure statement and discovery responses. We will also need their

help to prepare for depositions. Some of these representatives will testify at trial and may represent the municipalities at trial.

6. Describe your anticipated legal approach to the issues outline in this RFP?

Our litigation team is comprised of three principal firms or groups with significant experience in this kind of litigation. Our proposed litigation plan is based on that experience.

First, our team will counsel with Phoenix, Tucson, and Scottsdale the other participating Arizona local governments to ensure that we have at our disposal all pertinent ordinances, rules, and regulations. We will simultaneously begin to preserve, collect, and process all relevant paper and electronic documents and other evidence.

Second, we will draft the complaint against the OTCs. The complaint will plead the common practices that OTCs employ nationally. But we will also tailor it to address the specific language—in and the application of—the Arizona Model Tax Code and other local codes.

The complaint will be drafted in anticipation of the OTCs' motion to dismiss. This is typically their first litigation move. Our team's past success in defeating OTCs' motions to dismiss is based on our own experience and the wealth of discovery we have obtained. Though litigation results cannot be guaranteed, we believe we can defeat the motion.

Third, after defeating the OTCs' motion to dismiss, and depending on our forum (federal or state), we will propound written discovery to the defendants. To enhance our success in the case, we will also move the court to allow us to use discovery previously obtained in other cases. This is done by seeking a discovery sharing order/protocol. If successful, we would be entitled to use discovery materials we have amassed over the last 6 years.

These documents are comprised of between 600,000 and 1,000,000 pages, including depositions, corporate memos, e-mail, letters, and crucial business materials that demonstrate and support our clients' claims. This substantial discovery has resulted in victories around the country, both through summary judgment, trial, and settlement.

But to supplement the existing discovery, we will aggressively seek additional information from the OTCs in this case. We would coordinate with all of the municipalities to determine the information they already have by way of communications with OTCs and financial data relating to the OTCs' conduct in Arizona.

We will propound discovery for updated documents and data specific to Arizona. Additional depositions will be taken. One of our lead attorneys has previously deposed

corporate representatives from major OTC defendants, including Expedia, Hotels.com, Orbitz, and Hotwire. This experience will help guide and inform the deposition strategy developed in this case.

Fourth, depending on the evidentiary record and court rulings, our team will draft a summary-judgment motion. We will also respond to the OTCs' motion for summary judgment. Members of our team have been involved not only in drafting summary-judgment motions (such as in Baltimore), but also in defending against the OTCs' motions (e.g., in Baltimore and Georgia).

Many cases have been resolved at the summary-judgment stage, either by settlement or court ruling. Members of our team have participated in mediations, settlement conferences, and other informal resolution efforts.

To assist us and the court or jury, we have retained forensic accounting experts who are familiar with the defendants' hotel-transaction data. These experts know how to calculate damages, penalties, and interest. Once we obtain location-specific data, we can begin to refine damage estimates and prepare the case accordingly.

If the case is not resolved by motion, we will try the remaining issues. Collectively, the trial experience of Holm Wright, Schneider Wallace, and the Litigation Group's attorneys is extensive—with literally hundreds of jury trials and arbitrations. But the reality is there have been more than 80 OTC cases filed nationally, and only one has required a trial. Although trial is unlikely given this record, we will prepare for this contingency.

The lead attorneys in our litigation team are not just proposing to work on this litigation. They will actually be handling the case on a day-to-day, month-to-month basis over the long haul. We will argue the motions, take the depositions, coordinate the strategy, and personally try the case. We believe this separates us from other teams that market for these cases nationally.

7. How will you verify the soundness of the audit data?

Collectively, our group has substantial experience and expertise in guiding and assisting all aspects of the audit process in this exact litigation. For instance, in the State of Georgia, our group assisted in the pursuit of administrative remedies and handled more than fifty (50) requests for information (including transactional data), notices, and assessments. Similarly, our group assisted the State of Montana's Department of Revenue (DOR) in their administrative pursuit of information and data on a pre-litigation basis.

Over the last 6-7 years in this litigation, we have assisted various other cities, counties and states in estimating damages and in evaluating obtained financial data to correctly

calculate damages. That experience has given our group detailed, first-hand knowledge of the applicable market shares, not just of the OTC industry as a whole but of the specific individual companies within that industry. This knowledge has assisted us in the past in recognizing incomplete productions of data and transactions from the OTCs.

Furthermore, our work with forensic accountants over the years in this litigation allows us to efficiently calculate damages from large data sets. In short, we can bring all of this experience to bear so as to benefit Tempe and the other Arizona local governments owed taxes by the OTCs.

8. Provide disclosures of actual and potential conflicts of interest, if any, including but not limited to identifying each and every matter in which Counsel has represented any entity or individual with an interest adverse to the participating Cities, its Council, or its employee(s).

No conflicts.

9. Will you require the City to sign a separate agreement upon acceptance?

Yes _____ No X .

If Yes, include a copy with your submission.

N/A

10. Have you litigated similar cases?

Yes X No _____.

If Yes, provide information and outcome.

The team's experience and resources are self-evident in a list of our recent cases. These cases comprise some of the current hotel tax litigation with which members of the team are involved.

- *Town of Breckenridge, Colorado v. Colorado Travel Company, LLC*, Case Number 2011CV420 (Summit County District Court, 5th J.D., CO);
- *Montana Dep't of Revenue v. Priceline.com*, Cause No. CDV-2010-1056 (Mont. 1st Jud. Dist.);
- *City of Rome, Georgia v. Hotels.com*, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga.);

- *City of Oakland, California v. Hotels.com*, Civil Action No. C07-03432 (N.D. Ca.);
- *Baltimore County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-1104 (D. Md.);
- *Mayor & City Council of Baltimore v. Priceline.com, Inc.*, Civil Action No. MJG-08-3319 (D. Md.);
- *Montgomery County, Maryland v. Priceline.com, Inc.*, Civil Action No. MJG-10-3558 (D. Md.); and
- *County of Genesee, et al. v. Hotels.com, L.P., et al.*, Civil Action File No. 09-276-CZ (Cir. Ct. for Ingham County) (action on behalf of multiple Michigan local governments).

Several team members proposing to represent the municipalities have devoted the majority of their practice (more than 75%) to representing plaintiffs in complex litigation, running the gamut from actions against online travel companies to class actions against manufacturers. The outcomes of these cases are reflected in the attached proposal and white papers.

Litigation is the primary area of practice for our proposed lead and other attorneys. Specifically, Holm Wright's trial lawyers have appeared in federal and state courts at all levels, and they routinely handle complex matters encompassing all substantive areas of law. Brad Holm recently obtained a \$19.1 million recovery against a national architectural firm and its insurers for design errors and omissions on a \$130 million construction-manager-at-risk project in Phoenix, Arizona. Additionally, he and his firm recovered \$16 million against a national engineering firm and its insurers for design errors and omissions on the Arizona Air National Guard Fuel Storage and Distribution Project.

11. Do you agree to the Terms and Conditions of this RFP?

Yes X No .

If No, explain below.

N/A

12. List three (3) references for which you have provided similar services.

Firm	Contact	Number	Date of Engagement
Crongeyer Law Firm	TERESA G. WHITNEY Attorney, Acting Spec. Asst. Atty. Gen. Montana Department of Revenue Legal Services Office 125 North Roberts Street P.O. Box 7701 Helena, Montana 59604-7701	406-444-1763	June 2010 (for recovery from OTCs)
Crongeyer Law Firm	GEORGE A. NILSON City Solicitor, City of Baltimore City Hall, Room 101 100 North Holliday Street Baltimore, Maryland 21202 e-mail: george.nilson@baltimorecity.gov	410-396-3297	July 2008 (for recovery from OTCs)
Crongeyer Law Firm	JOHN C. SCHLINKER Chief Deputy Treasurer Ingham County, State of Michigan P.O. Box 215 Mason, Michigan 48854	517-676-7235	June 2010 (for recovery from OTCs)

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

4. Fee and Costs Information.

Our team proposes a contingency fee of 27.5% of the total recovery in the case.

The team proposes to advance litigation costs. If we lose the case, the municipalities will *not* be liable to pay costs. Our team will bear them. This disposition is permitted by Arizona Ethical Rule 1.8.

If the E.R. is revised, and the municipalities must bear costs, we will divide and allocate the total costs among the municipalities in the proportion that each city's claim bears to the municipalities' total claim. So if Tempe's claim were 10% of the total of all the cities' claims, Tempe would bear 10% of the total costs.

If we win the case, the team will first reimburse itself for costs advanced. Next, the team will calculate the municipalities' recovery (72.5%) and the contingent fee.

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

5. No Required Contract Agreements.

Our team does not require a particular form of contract for this proposal. We do not take any exceptions to the municipalities' standard terms and conditions or their special terms and conditions, as provided at RFP, pp. 8-20.

Holm Wright Hyde & Hays PLC
Phoenix, Arizona

Schneider Wallace Cottrell
San Francisco, California

The National Online Travel Litigation Group
Atlanta, Georgia

6. Addendum.

Our team acknowledges receipt of Addendum No. 1. *See* attached, signed addendum.

Addendum to Solicitation



City Procurement Office/City of Tempe • PO Box 5002 • 20 East 6th Street • Tempe, AZ 85280 • (480) 350-8324 • www.tempe.gov/purchasing

This addendum will modify and/or clarify: Solicitation No.: | 12-096

and is Addendum No. | 1

Date: | 2/29/2012

Procurement Description: | Legal Representation for Statewide Effort
to Collect Unpaid Taxes

Following are questions that have been submitted and the City's response:

The Non-Program Cities (NPC) claim is based on the OTCs liability "for municipal transaction privilege taxes.....and any interest and penalties accrued on this amount" (page 23, 4th para).

These are under Sec. __-444. Although Tucson is in the list of NPCs (pg 23), it does not have a transaction privilege tax (TPT).

Please clarify that Tucson is not intending to make a claim under this RFP?

Tucson has adopted City Code Sections 19.1 and 19-66 et seq. which it believes will allow it to participate in the claim.

Please clarify that the RFP doesn't contemplate claims for TOT under Sec. __-447.

The multi-jurisdictional audit contemplated claims under either Section _444 or _447.

To better evaluate the extent of the claims of the cities, can you send me the TPT revenues of the 11 cities with TPT? Otherwise, can you direct me to where I can find it?

As for the TPT revenues of the eleven cities, refer to the Comprehensive Annual Financial Reports (CAFT) of each City. These reports are generally available at each City's website, usually in the finance and accounting section.

When is the anticipated contract start date?

No fixed date can be given – the contract will begin after internal review is completed and a recommendation approved by Council. The likely start will be in May 2012.

To how many vendors are you seeking to award a contract?

We are anticipating awarding to a single firm.

Can a copy of the audit report referenced in this proposal be obtained prior to submission of an offer?

The City will not release this information prior to award of a contract.

The balance of the specifications and bid solicitation instructions to remain the same. Bidders/Proposal Offerors are to acknowledge receipt and acceptance of this addendum by returning of signed addendum with bid/proposal response. Failure to sign and return an addendum prior to bid/proposal opening time and date may make the bid/proposal response non-responsive to that portion of the solicitation as materially affected by the respective addendum.

Holm, Wright Hyde & Hays

NAME OF COMPANY

10429 S. 51st Street, Suite 285

ADDRESS (or PO Box)

Phoenix, Arizona 85044

CITY

STATE ZIP

Brad Holm

BY NAME (please print) TITLE

(480) 961-0422

TELEPHONE

AUTHORIZED SIGNATURE

