

**CONTRACT FOR LEGAL SERVICES (On-Call)  
CITY OF FLAGSTAFF**

THIS CONTRACT is made and entered into on this \_\_\_\_\_ day of, \_\_\_\_\_ by and between the City of Flagstaff, a municipal corporation (“City”), and the law firm of (“Counsel”).

**RECITALS**

WHEREAS, City issued RFP # 2015-23 requesting proposals for legal services;

WHEREAS, Counsel submitted a proposal and is willing to provide legal services;

NOW, THEREFORE, it is agreed between the parties as follows:

**1. Scope of Service and Representation.** Counsel agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City on those specific matters as subsequently confirmed by letter between the City Attorney or designee and Counsel. This confirming letter will identify the specific Matter (“Matter”) and the scope of the representation, who will be the billing attorneys for Counsel on the Matter, and who will be the City’s contacts and Contract Administrator on the Matter, and who will be the primary contact for Counsel, either the Risk Manager in consultation with the City Attorney’s Office, or the City Attorney or designee. The legal services shall be carried out in cooperation with the City Attorney’s Office, who shall be apprised of the status of the Matter on a regular basis and at least monthly. Major decisions regarding the strategy or resolution of the legal issues or litigation shall be made in coordination and with the prior approval of the City Attorney’s Office. Copies of all correspondence and pleadings related to the Matter shall be provided to the City Attorney’s Office and, if designated in the confirming letter, the Risk Manager. Decisions related to the management of claims may be made at the discretion of the Risk Manager in coordination with the City Attorney’s Office. All offers of compromise made by opposing counsel shall be promptly transmitted to City through its City Attorney’s Office, together with Counsel’s recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney’s Office.

The attorney(s) who will have primary responsibility for overseeing all Matters is/are. However, Counsel may utilize other attorneys, paralegals, or other employees when appropriate upon approval of the City Attorney in the confirming letter for a Matter and pursuant to the generalized fee schedule in Section 3 below. Staffing decisions will be made with the objective of providing the best possible professional services for the City in an efficient and cost-effective manner.

2. **Advice and Status Reporting.** Counsel shall provide City with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as Counsel considers appropriate. Counsel shall provide copies of all pleadings and other documents prepared by Counsel, including research memoranda prepared by Counsel, unless they have been otherwise provided to the City Attorney's Office.

3. **Compensation.** CITY agrees to pay COUNSEL for services rendered under this Contract, up to a maximum of \$250,000 per year or as further limited in the confirming letter for a MATTER, as follows:

3.1 \$\_\_\_\_\_per hour for Partners and "Of Counsel" attorneys.

3.2 \$\_\_\_\_\_per hour for Associate Attorneys.

3.3 \$\_\_\_\_\_per hour for Paralegals.

3.4 \$0 per hour for "process servers" or "runners". (However costs of service are reimbursable).

3.5 Travel time shall be billed at no more than 50% of the hourly rates set forth above.

4. **Term.** The initial term of this Contract shall be for a three (3) year period, and may be renewed by mutual agreement of the parties for an additional two year term.

5. **Price Adjustment.** Counsel may offer to reduce its prices at any time to CITY. Counsel may request a price increase for the following fiscal year (effective July 1), provided that such request is received prior to March 1 annually. City is unable to consider requests for price increases which are untimely.

5.1 Any increased rate shall be based upon mutual consent of Counsel and the City and processed as an amendment to this Contract and as an amendment to the retention letter for a specific Matter; however, the Contract Administrator shall evaluate Counsel's performance, services and records documentation to determine the appropriateness of the increase requested, including the rates Counsel charges to other governmental clients.

5.2 Any increased rate greater than five percent (5%) must be approved by the Flagstaff City Council; an increased rate of less than 5% may be approved by the City Attorney.

6. **Travel.** Approval for travel shall be obtained through the City Attorney's Office or Risk Manager prior to departure. Travel time may be billed to City at no more than 50% of the attorney's hourly rate. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars

(\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. When possible, Counsel, consultants, experts, and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to City except when a rental car is used out-of-state.

**7. Reimbursement for Expenses.** All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. City will not reimburse Counsel for outgoing faxes, online legal research services (such as Westlaw, Lexis, or other similar services), or document management platforms (such as Relativity, Summation, CaseCentral, etc.).

**8. Billing Procedures.** Counsel shall follow these billing procedures:

- 8.1 “Itemized billing” is required. Counsel shall bill for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel re. time extension (1.); tel. to Mr. Smith re. events witnessed (2.); prepare motion to continue (3.); legal research re. statutes of limitation. “Block billing” is not permissible.
- 8.2 Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.
- 8.3 Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to City. Internal conferences are billable only by one of the participants. Work on this matter billed by attorneys not listed in the confirming letter must be approved by the Contract Administrator in advance.
- 8.4 All consultants, experts and subcontractors engaged to provide services to Counsel in the performance of this Contract, and the use and extent of those services, shall be approved by the City in advance. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.
- 8.5 Counsel shall submit monthly billings for services rendered and expenses incurred, which shall be paid by the City.
- 8.6 Each bill shall contain information to enable City to easily identify its ongoing costs related to each specific Matter, including the following:

- 8.6.1 Fees and costs incurred in the preceding month for each specific Matter (the invoiced amount);
  - 8.6.2 Fees and costs incurred since inception for each specific Matter (the accruing expense of the Matter), even if the Matter has been ongoing for a considerable length of time; and
  - 8.6.3 Total amount invoiced during the City's current fiscal year (July 1 to June 30).
- 8.7 Counsel will use its best efforts to inform the City eight weeks prior to Counsel billing the final fees and costs authorized under this contract. City will pay no fees incurred over and above the contract amount or specified in the confirming letter without prior authorization from City.

**9. Maintenance of Records.** City may audit all services performed by Counsel with reasonable notice to Counsel. Counsel shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a Matter for a time period consistent with the City's record retention policy, which shall be four years from conclusion of the final payment on a specific Matter. Upon reasonable notice by the City, Counsel shall make such materials available for review at their offices and, if requested, copies thereof shall be furnished or provided to City at City's expense.

**10. Conflict of Interest.** Counsel warrants and covenants that Counsel presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law or ethical standard, including the Arizona Rules of Professional Conduct. It shall be Counsel's responsibility to check for the existence of conflicts of interest. In the event that any conflict of interest should nevertheless hereinafter arise, Counsel shall promptly notify City of the existence of such conflict of interest, so that City may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to Counsel on behalf of the City.

**11. Reporting Requirements.** Within sixty (60) days following the issuance of a confirmation letter for a Matter, or at the time disclosure statements are first filed, whichever is sooner, Counsel shall provide City with an initial written evaluation containing the following:

- 11.1 A summary of the Matter's facts and issues;
- 11.2 An evaluation of the potential exposure to City;
- 11.3 An outline of the course of action Counsel intends to pursue in the matter (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);

- 11.4 An estimate of the cost (budget) to represent City through resolution of the Matter;
- 11.5 A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
- 11.6 The name of the attorney who will be primarily responsible for handling the Matter, the names of others who will assist that person, and their hourly rates consistent with this Contract.

**12. Additional Investigation.** Whenever additional investigation is deemed desirable by Counsel and can be provided by use of non-attorney investigators, Counsel shall notify City of such need, and City may elect, at its option, to conduct such investigation. In this event, City shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

**13. Termination.** City may terminate this Contract in whole or part with or without cause upon giving ten (10) days written notice. In the event of termination for cause, City shall not be liable to Counsel for any amount, and Counsel shall be liable to City for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular matter to which it applies, and any matter not particularly specified shall continue to be handled by Counsel and, as to those, this Contract will continue in effect; provided, however, the right is retained by City to terminate services at any time by notifying Counsel in writing.

**14. Relocation of Assigned Attorney.** If an attorney assigned to a Matter leaves the employment of Counsel, Counsel will immediately notify City. City may, in its sole discretion, request transfer of that Matter to a new firm or work with another attorney employed by Counsel.

**15. Notices.** When notice or correspondence is required to be sent to City, it shall be sent to the following:

City Attorney	and to:	Risk Manager
City of Flagstaff		City of Flagstaff
211 West Aspen Avenue		211 West Aspen Avenue
Flagstaff, Arizona 86001		Flagstaff, AZ 86001

Should the above notification information change, City will notify Counsel in writing.

When notice or correspondence is required to be sent to Counsel, it shall be sent to:  
**Michelle D'Andrea, City Attorney, 211 West Aspen Avenue, Flagstaff, Arizona 86001**

**16. Indemnification For Liability and Professional Liability.** To the fullest extent permitted by law Counsel, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Counsel relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Counsel's and Subcontractor's employees.

16.1 Insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

**17. Insurance Representations and Requirements**

17.1 Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

17.2 Without limiting any obligations or liabilities of Counsel, Counsel shall purchase and maintain, at its own expense, the minimum insurance required by this Contract with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City. Failure to maintain insurance as specified may result in termination of this Contract at City's option.

17.3 No Representation of Coverage Adequacy: By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Counsel. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Counsel from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

17.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under

the terms of subject contract is satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Contract.

- 17.5 Claims Made: In the event any insurance policies required by this Contract are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 17.6 Use of Subcontractors: Counsel shall not use subcontractors to perform work under this Contract, unless specifically authorized by the City.
- 17.7 Evidence of Insurance: Prior to commencing any work or services under this Contract, Counsel shall furnish City with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by Counsel’s insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the cited policies expire during the life of this Contract, it shall be Counsel’s responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions.
- 17.8 Required Coverage:
- 17.8.1 Professional Liability: Counsel shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by Counsel, or anyone employed by Counsel, or anyone for whose acts, mistakes, errors and omissions Counsel is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and Counsel shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.
- 17.8.2 Vehicle Liability: Counsel shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on Counsel’s owned, hired, and non-owned vehicles assigned to or

used in the performance of the Counsel's work or services under this Contract.

17.8.3 Workers' Compensation Insurance: Counsel shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Counsel's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

17.9 Additional Insurance Requirements:

17.9.1 City, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Business Automobile Liability.

17.9.2 Counsel's insurance shall be primary insurance as respects performance of this Contract.

17.9.3 All policies, except Professional Liability insurance, waive rights of recovery (subrogation) against City, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Counsel under this contract.

**18. Choice of Law.** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

**19. Whole Agreement.** This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

**20. Amendments.** Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY shall only need to notify Counsel in writing.

**21. Non-Assignment.** Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City.

**22. Cancellation.** In accordance with A.R.S. § 38-511, the City may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation

shall be effective when written notice from City is received by all other parties to the contract, unless the notice specifies a later time.

**23. Independent Contractor Status.** The services Counsel provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY shall report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, Counsel may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject Counsel to a penalty.

**24. Attorney's Fees in Contract Dispute.** In the event any action at law or in equity is instituted between the parties in connection with this Contract, the prevailing party in the action shall be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

**25. Severability.** Should any part of this Contract be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Contract, which shall continue in full force and effect, provided that the remainder of this Contract, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the parties.

**26. Compliance with Federal Immigration Laws and Regulations.** Counsel warrants that it complies with all Federal Immigration laws and regulations that relate to their employees and complies with A.R.S. § 23-214.A. COUNSEL acknowledges that pursuant to A.R.S. § 41-4401, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

**27. Licenses.** Counsel shall maintain current and in good standing all Federal, State, and local licenses and permits required for performance of services.

**28. Nonexclusive.** City may enter into other contracts for legal services with any firm of its choosing. This Contract is non-exclusive.

**City of Flagstaff**

**Law Firm**

\_\_\_\_\_  
Gerald W. Nabours  
Mayor

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:  
  
\_\_\_\_\_

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City Clerk

Approved as to form:

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City Attorney