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Model Retainer Agreement

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CITY ATTORNEY MODEL RETAINER AGREEMENT

By and Between
THE CITY OF *******
and
****

DRAFT

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DRAFT

Using this Agreement.

A. This Agreement is intended to provide a guide for a local government as client and a prospective law firm to negotiate an agreement to provide legal services as the chief legal officer for the local government. It is not intended to be legal advice. It is modelled after an agreement between a city and its outside city attorney. This Agreement uses the terms "City" and "City Attorney," but can be used by a County or a Special District and is not intended for use only by a city.
B. Often City Charters or state laws require an individual to act in the capacity as "City Attorney" or "County Attorney" and this model recognizes those requirements by including a provision to allow the parties to designate a person to fulfill the duties of the office. State law may require that the contract for legal services be between an individual and the local government rather than with a firm. This Model includes options to address that requirement. Many cities do not have charters so they must be guided by their state constitution or state law. This Model attempts to bridge the differences between the governing authority for cities, counties and other local governments that might use this Model.
C. Because this Agreement is a legal document and creates certain rights and responsibilities, both Attorney and Client are cautioned to seek independent counsel when negotiating its terms and to refer to state law to ensure the Agreement does not conflict with state law.
D. Attorney and Client are also cautioned that this Agreement may have tax consequences for each and that their review of its terms should include a review of its tax consequences. The question of whether a contractual arrangement creates an employer-employee relationship or that of an independent contractor is complex and caution and clarity in drafting can help to assure the desired relationship is created. This Model attempts to create the relationship of independent contractor. Other legal issues may arise from the relationship as can various liabilities and immunities. Clients, Firms and Attorneys are cautioned to determine how the peculiar liabilities and immunities of public officials whether sued individually or in their official capacities might be affected by this Agreement.
E. In some sections IMLA has offered suggested options from which the Attorney and Client may choose. This does not mean that other options are not available or that there are not other options to consider in those paragraphs where IMLA has not suggested an option.
F. IMLA includes language that requires the Client to join IMLA. This requirement parallels the ICMA model agreement for managers. With ICMA the Employee is a member, with IMLA the municipality is a member and it is served through its law office. Both organizations believe that professionals must maintain their understanding of their profession through conferences and educational programs and that the City should support those efforts. IMLA benefits to the municipality and its employees can be reviewed at www.imla.org. IMLA membership supports its legal advocacy program in the courts.
G. When hiring an outside city attorney, the City should consider that an attorney is required to hold a state issued license to perform the duties of the profession and is required by ethical rules to maintain independence of legal judgment in the performance of services. Attorneys can be foreclosed by ethical limitations from representing others and in handling the work of some clients based on their city duties; these limitations may require consideration in the structure of the Agreement.
H. This Agreement creates an attorney client relationship and should be governed by the Lawyers Rules of Professional Conduct or such other ethical guidelines as have been adopted in the state. In a case involving the in-house city attorney for the City of Miami, a Florida court concluded that the city attorney had a duty to advise the governing board to seek independent advice while renegotiating his contract. *Fernandez v. City of Miami*,(Cir.Ct. 11th Judicial Circuit in and for Miami-Dade County, Case #08-17486CA13, 2011), affirmed: Fernandez v. City of Miami, 147 So. 3d 553, 2014 Fla. App. LEXIS 8521, 39 Fla. L. Weekly D 1182 (Fla. Dist. Ct. App. 3d Dist. 2014); jurisdiction denied: *Fernandez v. City of Miami,* 2014 Fla. LEXIS 3758, 160 So. 3d 894 (Fla. 2014). The Circuit Court also found that the resulting agreement was ambiguous and not clearly explained to the governing body. IMLA recommends that the governing body seek legal counsel to conduct an independent review of an Agreement to hire its attorney just as it should in negotiating and adopting contracts with its other officials or professional entities.
I. IMLA provides consulting services to cities and may be able to help a city when it is considering hiring a city attorney. IMLA does not provide legal consultation and use of its consulting service is not a substitute for getting independent legal counsel.

DRAFT

CITY ATTORNEY RETAINER AGREEMENT

THIS CITY ATTORNEY RETAINER AGREEMENT (the "Retainer Agreement") is entered into by and between the City of _____ (the "City") and the law firm of _____ ("Firm") and is effective as of the ___ day of _____.

WHEREAS, the City and Firm desire to engage in a stable and flexible long term contractual relationship whereby the City can recognize pricing efficiencies for legal services and the Firm is available to provide service as City Attorney required by its Charter, as well as additional legal services on an as needed basis, in a thoughtful and cost effective manner;

WHEREAS, the City and the Firm desire to comply with the City's Charter, and to also more efficiently provide only requested and necessary additional legal services to the City on an as needed basis;

WHEREAS, the City's Charter provides in **[insert City Charter provision number]** that the City Attorney shall **[description of duties or job description]**;

WHEREAS, the City's Charter provides in **[insert City Charter provision number]** that the City Attorney shall meet certain qualifications and requirements, including **[description of qualifications and requirements in Charter, for example, a "qualification" might be "must be a member in good standing of the _____ Bar Association for the last 5 years" and a "requirement" would be "and resides within city limits"]**;

WHEREAS, the City Council has **[set forth selection process; for example, has engaged IMLA to solicit and recommend at least three but no more than five candidates for City Attorney; or advertised in the Law News for four consecutive weeks, appointed a committee from the City Bar Association and judiciary to review all applications from candidates and to recommend four finalists and the City Council conducted interviews, and met in a public meeting to select the Firm as being the most qualified and best candidate]**;

WHEREAS, the City Council has determined that the Firm, including those designated City Attorney or Assistant City Attorney, meets these qualifications and requirements;

WHEREAS, the City and Firm desire to respectively receive and provide legal services specifically described herein pursuant to this Retainer Agreement;

WHEREAS, the City and Firm specifically acknowledge that this Agreement is not an employment agreement and does not establish a relationship of employer and employee between Firm and City, between City Attorney and City, or between City and any Assistant City Attorney, but defines a relationship between the parties wherein the Firm, its officers and employees, including those designated City Attorney or Assistant City Attorney are in fact independent contactors of the City and remain solely the employees of the Firm; and

WHEREAS, Firm reserves its independence to act within the limits imposed by law and professional obligations such that the City's policy objectives during the representation will be furthered through means the Firm considers appropriate under its professional obligations after consultation with City and as may otherwise be required by the rules regulating the [***insert appropriate state***] Bar, including Rule [***insert the Rule equivalent to the ABA Model Rule 1.2***].

OPTION 1.

Comment: this Option 1 should be used when the Agreement is with an individual attorney as opposed to a "Firm". The preceding paragraphs should be used if the Agreement is with a "Firm".

THIS CITY ATTORNEY RETAINER AGREEMENT (the "Retainer Agreement") is entered into by and between the City of _____ (the "City") and _____ ("Attorney") and is effective as of the ___ day of _____.

WHEREAS, the City and Attorney desire to engage in a stable and flexible long term contractual relationship whereby the City can recognize pricing efficiencies for legal services and the Attorney is available to provide service as City Attorney required by its Charter, as well as additional legal services on an as needed basis, in a thoughtful and cost effective manner;

WHEREAS, the City and the Attorney desire to comply with the City's Charter, and to also more efficiently provide only requested and necessary additional legal services to the City on an as needed basis;

WHEREAS, the City's Charter provides in **[insert City Charter provision number]** that the City Attorney shall **[description of duties or job description]**;

WHEREAS, the City's Charter provides in **[insert City Charter provision number]** that the City Attorney shall meet certain qualifications and requirements, including **[description of qualifications and requirements in Charter, for example, a "qualification" might be "must be a member in good standing of the _____ Bar Association for the last 5 years" and a "requirement" would be "and resides within city limits"]**;

WHEREAS, the City Council has **[set forth selection process; for example, has engaged IMLA to solicit and recommend at least three but no more than five candidates for City Attorney; or advertised in the Law News for four consecutive weeks, appointed a committee from the City Bar Association and judiciary to review all applications from candidates and to recommend four finalists and the City Council conducted interviews, and met in a public meeting to select the Attorney as being the most qualified and best candidate]**;

WHEREAS, the City Council has determined that the Attorney meets these qualifications and requirements;

WHEREAS, the City and Attorney desire to respectively receive and provide legal services specifically described herein pursuant to this Retainer Agreement;

WHEREAS, the City and Attorney specifically acknowledge that this Agreement is not an employment agreement and does not establish a relationship of employer and employee between Attorney and City, between City Attorney and City, but defines a relationship between the parties wherein the Attorney is in fact an independent contactor of the City; and

WHEREAS, Attorney reserves independence to act within the limits imposed by law and professional obligations such that the City's policy objectives during the representation will be furthered through means the Attorney considers appropriate under its professional obligations after consultation with City and as may otherwise be required by the rules regulating the [***insert appropriate state***] Bar, including Rule [***insert the Rule equivalent to the ABA Model Rule 1.2***].

End Option 1.

NOW, THEREFORE, it is agreed as follows:

1. RETAINER AGREEMENT AND TERM.

(A) This Retainer Agreement restates, supersedes, and replaces all prior agreements between the parties concerning the provision of legal services in the manner and under the terms described in this Agreement.

(B) The term of this Retainer Agreement shall be [x] years from its [execution/approval/registration]. There shall be [y] renewal periods [z] years each to be exercised on the agreement of the Parties. Renewals shall be on the same terms and conditions, except as agreed by the Parties.

2. CITY ATTORNEY SERVICES.

(A) Firm will provide legal services as City Attorney to the City relative to the Charter of the City of _____ which provides the City Attorney [**insert appropriate Charter language here for example: "shall serve as chief legal advisor to the city council, city manager, and all city departments and offices. The City Attorney shall be responsible for the representation of the City in all legal proceedings including the supervision of Assistant City Attorneys and consultants deemed necessary to support legal services and shall perform any other duties prescribed by this charter or by Ordinance."**]

For purposes of this Retainer Agreement [**insert name of proposed City Attorney here**] of Firm shall be initially designated to the office of City Attorney ("Designated Lawyer").

Comment*: *This provision contemplates that the City will be served by a law firm, which can include a solo practitioner. To avoid the potential that the IRS may see this as an employment agreement rather than an independent contractor agreement, the parties may want to enter the agreement with the Firm as a party rather than with an individual and should seek tax guidance on this issue. Generally, a City will want an individual to be named as the designated City Attorney to comply with requirements of the Charter, ordinance and state law, which often discuss the duties of the City Attorney. The designation as a charter officer clarifies the role of the City Attorney for analysis of issues such as insurance coverage, qualified immunity and apparent authority to bind the City.

Option 2:
The Designated Lawyer of the Firm serving as City Attorney for the City may be substituted following notice to the City Council and shall become the "City Attorney" upon approval of the City Council.

***Comment:** In some cases a private firm may wish to assign someone different to act as the city attorney. The designated lawyer might have moved to another firm, died or become incapacitated. Where the City wishes to continue with the Firm regardless of who acts as the Designated City Attorney, this clause would allow the Firm and the City to substitute another lawyer either permanently or temporarily to act as City Attorney.*

End Option 2.

(B) Firm shall also designate (***insert number here***) or more Assistant City Attorneys, who along

with the Designated Lawyer shall serve accompanied by other members of the Firm, and the City shall have access to, the complete complement of practice groups and breadth of experience of Firm attorneys along with the full statewide resources of the Firm. Such initial designation of Assistant City Attorney shall include [***insert names of assistants here***].

Comment: *Where a multi-lawyer firm is the Firm, this provision helps to ensure that the city and its staff will know who will act on its behalf.*

OPTION 1. (If Option 1 above is chosen, then this language should be used.)

(A) Attorney will provide legal services as City Attorney to the City relative to the Charter of the City of _____ which provides the City Attorney [**insert appropriate Charter language here for example: "shall serve as chief legal advisor to the city council, city manager, and all city departments and offices. The City Attorney shall be responsible for the representation of the City in all legal proceedings including the supervision of Assistant City Attorneys and consultants deemed necessary to support legal services and shall perform any other duties prescribed by this charter or by Ordinance."**]

End Option 1.

(C) The contemplated services described in this Agreement are to be provided in conjunction with efforts of designated officials and staff of the City to achieve the goals of the City as determined by its Council and its City Manager. The Agreement contemplates that the work will be assigned to the City Attorney either by the City Council/Commission or by the City Manager. Such legal services shall consist of (1) City Attorney Legal Services, as defined in Section 2(D) below, which shall be provided on a monthly retainer basis; (2) Additional City Attorney Legal Services, as defined in Section 3 below, which shall be provided on an hourly basis pursuant to an approved work order; and (3) Additional Special Counsel Legal Services, as defined in Section 4 below, which shall also be provided on an hourly basis pursuant to an approved work order or as otherwise approved by the City Council.

Comment: *the structure of this Agreement contemplates that the City and the Firm or Attorney will negotiate a set amount to be paid monthly regardless of the work actually assigned to the City Attorney but which include all of the requirements defined as "City Attorney Legal Services". In addition, other work the City requires must be authorized in advance and will be paid based upon invoices that detail the time spent, the tasks performed by whom and when at the rates agreed upon and which are defined as "Additional City Attorney Legal Services". Finally, specialized work described as "Special Counsel Legal Services" is contemplated but must be authorized in advance and will be paid at rates to be agreed upon based upon invoices that detail the time spent, the tasks performed by whom and when.*

(D) City Attorney Legal Services encompass the following:

(1) Attend up to [***insert number here***] City Council meetings per month, as requested;

(2) Attend up to [***insert number here***] City Council workshops per month as requested;

(3) Participate in up to one weekly conference either in person or via teleconference (as required by City Manager) at a regular time to be mutually determined by the City Manager and City Attorney that will include the City Manager and Department Heads to identify and discuss outstanding legal issues, discuss projects both proposed and in development, share information associated with services to be provided by the Firm, and address the means to serve

the City's legal needs;

(4) Develop and implement a procedure to provide prompt responses to the City Manager and the City Council as appropriate with tracking of all internal requests for legal services and to coordinate that work with the City Manager's and Council's workplans and develop appropriate quality control and establish with the Council and City Manager benchmarks to measure performance under this Agreement;

(5) Develop and submit to the City Manager:

a. a budget for providing legal services (including Additional City Attorney Legal Services) for each fiscal year as requested and in the format required by the City Manager;

b. a budget for any Additional City Attorney Legal Services not included in the budget;

c. a budget for any Special Counsel Services when authorized either upon request in advance of receiving a work order or within 10 days of receiving a work order for those Services; and

d. an updated budget regularly and seek approval from the City Manager or Council for increases in the budget before performing work that will exceed the budget for that work (except in an emergency and upon approval by the City Manager);

(6) Provide administration and periodic oversight and review of all special counsel engagements (including those involving other law firms or attorneys), or use of consultants necessary to support all special counsel engagements, including review, analysis and recommendation regarding payment of all billings by special counsel, including consultants;

(7) Provide legal advice to the City Council and participate in individual calls with City Council members in order to provide advice to the Council regarding upcoming City Council agenda items or ethics inquiries and participate in the preparation of agendas for the City Council and be prepared to offer legal advice on all agenda items at meetings of the Council or other boards and commission;

(8) Provide to the Council and the City Manager a monthly report that describes the status of all outstanding matters and provides such other information regarding the matters being handled by the Firm under this Agreement as requested by the Council;

(9) Clearly distinguish between legal advice and business or policy advice when providing services to the Council and staff;

Comment: *The attorney should be expected to define whether the legal advice involves a decision guided by the law where the City has no choice under the law or a decision where the City may choose based on its business acumen what to do and in most cases an attorney will help advise the client as to mixed questions of business and law but the City needs to understand where it has authority to choose which course to follow.*

(10) Provide the Council and City Manager timely updates regarding changes in the law (legislation or cases) that may affect city operations, policies or activities; and

(11) Provide the Council and the City Manager with options to cost effectively handle all legal matters incorporated in this Agreement while retaining the high quality of legal services through the use of forms, the use of lower priced staff, various

alternate billing methods including using special counsel, temporary employees, task based billing, or other methods of charging for services or service delivery.

(12) Provide [***insert number here***] training sessions for staff each year that will help to reduce questions by staff about legal issues and reduce the City's risk in its operations.

(E) City Attorney Legal Services do not encompass or include Additional City Attorney Legal Services or Additional Special Counsel Legal Services described herein, nor the provision of bond counsel, disclosure counsel or other legal services not specifically included in this subsection.

Comment: *The description of services to be included in City Attorney Legal Services are those services that at a minimum are necessary for the client to understand what the attorney's work under the contract involves. At a minimum the Contract should require attendance at council and staff meetings and for the attorney to be fully prepared to offer legal advice on matters coming before the Council or that may be considered by management.*

3. ADDITIONAL CITY ATTORNEY LEGAL SERVICES.

(A) Additional City Attorney legal services encompass the following:

(1) Facilitate the adherence to provisions of the Charter of the City of [***insert name of city here***], and drafting appropriate ordinances, resolutions, legislation, service agreements, interlocal agreements, and other documents and instruments to collaboratively and cooperatively achieve the City's objectives in the most cost effective and time efficient manner;

(2) Attend, as reasonably required or requested all meetings of the City Council not described in the foregoing subsection as City Attorney Legal Services,

(3) Attend meetings with third parties or City staff and/or City Department Heads, as reasonably required or requested by the City Manager;

(4) Render advice that distinguishes between legal advice and business advice as needed through written memoranda, oral opinions or written opinions as directed by the Council, the City Manager or as the City Attorney determines appropriate regarding:

a. procurement matters involving contracts;
b. policies, ordinances, resolutions, or regulations;
c. compliance with relevant local, state, or federal statutes or regulations;

(5) Represent the City in the acquisition and disposition of real property rights and interests in the normal course of business, including the issuance of title insurance commitments and policies;

(6) Coordinate, in concert with the City Manager, with legal counsel and other professionals representing governmental agencies or third parties on routine legal matters affecting the City in the normal course of business;

(7) cooperate and coordinate with the City Manager and designated City staff;

(8) Attend meetings of and advise the following Boards or Commissions of the City: [***insert here the names of those Boards or Commissions***]

Comment: *Some or all of these meetings can also be included as part of the City Attorney legal services covered under the retainer. The parties should negotiate whether increasing the retainer to cover these meetings or paying for these meetings by the hour or per meeting offers the best arrangement. This paragraph assigns responsibility to both internal as well as independent boards and commissions to seek and receive legal representation through the City Attorney. The local government should carefully review*

which boards and commissions it includes and whether for internal boards some form of supervision by Council or staff ought to be included to insure that requests for legal advice are properly budgeted and approved. For independent boards and commissions, IMLA recommends that the local government incorporate in its Charter limitations on expenditures for legal advice to prohibit requests for legal services that are not funded in the board or commission budget. Attorney representation is generally appropriate for boards or commissions that have quasi-judicial functions.

(9) Prosecute local code violations cases (including traffic violations) in court or before administrative agencies;

(10) Perform other legal services which the City and Firm mutually agree are within the normal and regular scope of day-to-day general counsel services, excluding special legal projects of a significant nature outside the normal day-to-day representation of the City;

(11) Prosecute or defend litigation as directed by the Council or City Manager, including mediation, validation proceedings, and arbitrations before administrative boards, arbitrators, mediators, courts of all levels of the county, state or federal governments and report to Council and Manager on that litigation regularly; and

(12) Prosecute or defend appeals in the courts of this county, state and the federal government and administrative boards having jurisdiction over matters effecting the City as directed by the Council or the City Manager.

Comment: *It may be appropriate for the parties to limit the courts to which these provisions apply as Additional City Attorney Legal Services as the work in some courts and on some projects may justify a different agreement. Normally, however, local courts, state intermediate appellate courts and lower federal courts would likely be included.*

(13) Provide advice and representation involving labor and employment matters regarding employee disciplinary and discharge matters.

Comment: *If Collective Bargaining is involved representation in collective bargaining should be specifically included here or in Special Counsel Legal Services. Collective Bargaining often requires a unique specialization.*

(14) Provide services as issuer's counsel in giving opinions that are necessary for the issuance of bonds and other long term indebtedness working with the bond counsel and disclosure counsel.

Comment: *Bond issues involve complex legal matters that are generally not within the expected expertise of a local government attorney; nevertheless, while representing a local government, the attorney should be expected to provide opinions regarding some of the underlying legal issues associated with the bond issue that the city attorney should be expected to know and give an opinion regarding. These issues can include, but are not limited to: whether litigation has been filed or threatened regarding the bond issue or the project it funds; whether litigation has been filed or threatened challenging the authority of officers of the local government to their office if those officers must approve the bond issue or provide information regarding it; and other similar matters that the practice in the state normally accords to and requires of the local government attorney.*

(B) Additional City Attorney Legal Services do not include City Attorney Legal Services,

Additional Special Counsel Legal Services, or services such as bond counsel and disclosure counsel services.

(C) The provision of Additional City Attorney Legal Services shall be conditioned upon a scope of services as directed or authorized by either the City Manager or the City Council, as applicable, and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A", or as otherwise approved by the City Council.

Comment: *Some of the work described above as Additional City Attorney Legal Services does not lend itself easily to the Work Order requirement and the parties may wish to limit the Work Order requirement to some of the tasks identified in paragraphs A(3) through (14).*

4. ADDITIONAL SPECIAL COUNSEL LEGAL SERVICES.

(A) Firm shall also be available to provide Additional Special Counsel Legal Services to the City. Such services are of a nature that require recognized expertise, experience, or specialized subject matter knowledge and focus above and beyond routine or normal day-to-day City Attorney Legal Services or Additional City Attorney Legal Services, and shall generally include the following:

(1) Providing advice, research, and assistance on extraordinary City administration or operational matters and negotiations, including City structural consolidation, contracting, development and acquisition strategies;

(2) Drafting significant amendments to the City's Land Development Code;

(3) Rendering written memoranda or opinions outside the scope of City Attorney Legal Services or Additional City Attorney Legal Services and which expose the Firm to significant liability;

(4) Providing advice and research on the feasibility and legal sufficiency of statutory and home rule alternative revenue sources, including the development or implementation of special assessment, impact fee, user fee, and extraordinary revenue, utility fee or rate programs;

(5) Negotiating, preparing, obtaining, delivering, and filing all documents in connection with the closing on any acquisition, contribution, sale, exchange, or disposition of any significant City assets or systems requiring the financing thereof, including real and personal property associated with such City assets or systems;

(6) Nominally acting as a lobbyist before any legislative, administrative, or executive branch of government (such services, if extensive, may require a separate engagement);

(7) Legal formulation, negotiation, drafting, and implementation of special or significant City programs or initiatives;

Option 1

(8) Provide services as bond counsel;

End Option 1.

Option 2

(9) Handle real estate transactions including issuing title opinions and title insurance.

End Option 2.

Comment: *Not all firms have the ability to provide bond counsel or title services. If the Firm has the ability to provide these services and Rules governing the Bar of the State allow the Firm to serve in this role while also serving as City Attorney, then the City may wish to negotiate with the Firm to provide these services.*

(B) The provision of Special Counsel Legal Services shall be conditioned upon a scope of services as directed or authorized by either the City Manager or the City Council, as applicable, and shall be set forth in a written work order in substantially the form attached hereto as Exhibit "A", or as otherwise approved by the City Council.

(C) Special Counsel Legal Services described in this section do not include bond counsel, disclosure counsel, underwriter's counsel, or other legal services which are already or will be the subject of other separate agreements with the City, or are premised upon negotiated fees.

5. COMPENSATION

(A) Firm will be compensated for City Attorney Legal Services at the monthly retainer rate set forth herein. Firm will be compensated for Additional City Attorney Legal Services and Additional Special Counsel Legal Services at the rates set forth herein.

(1) The Firm will be compensated for City Attorney Legal Services at the following monthly retainer rate:

(a) $[***insert monthly retainer amount here***] to be billed at the beginning of each calendar month [select: for work to be performed, or for work that has been performed] and paid within thirty (30) days.

Comment: *A retainer is generally a form of compensation that is paid in advance of work being performed to "retain" the attorney. A retainer may involve a fee that compensates the attorney for being available to the client and forsaking other clients or potential clients either with conflicts or due to the projected amount of work involved in the retainer agreement. The City and the Attorney should determine if the retainer contemplated in this Agreement is to be paid in advance or after the service is performed by making the selection offered in the Model. As contemplated in this Model, the retainer requires the Attorney to perform all services described as City Attorney Legal Services for a set amount without regard to how many hours of work are actually involved. Under this arrangement, the Attorney and City agree that the normal duties of the City Attorney will involve a fairly consistent amount of work and each takes a risk: the Attorney risks having to do more work than estimated and the City risks that its estimate of the amount of work will be sufficient to justify the fee. Each party can be expected to maximize their interests with the Attorney working smarter and implementing productivity and efficiency models while the City expands its use of City Attorney Legal Services to gain the benefit of the Attorney's legal advice. Detailed billing statements are not contemplated for a retainer; however, while not contemplated by this Model, the City and Attorney may agree that some description of the services performed under the retainer using the detailed billing required for hourly billing must be submitted. If they do, then this provision will require amendment.*

(2) The Firm will be compensated for Additional City Attorney Legal Services for hourly work at the following hourly rates:

Option 1:

(a) A blended rate of $[***insert hourly rate here***] per hour of attorney time

(recorded and billed in increments no greater than 0.10 hour segments);

End Option 1.

Option 2:

(a) The Firm will be compensated for the work of the attorneys named below, per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments), at the rates specified:

[***insert attorney name and billing rate here***]

End Option 2.

Option 3:

(a) The Firm will be compensated for the work of partners at the rate of $[***insert hourly rate here***] per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments), and for the work of associates at the rate of $[***insert hourly rate here***] per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments).

End Option 3.

(b) Firm paralegals or law clerks at the rate of $[***insert minimum rate here***] for paralegals and $[***insert minimum rate here***] for law clerks per hour (recorded and billed in increments no greater than 0.10 hour segments).

(c) Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk or combination of attorney, paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance. Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to City as is in the City's best interest.

(3) The Firm will be compensated for Additional Special Counsel Legal Services for hourly work at the following discounted and blended hourly rates:

Option 1:

(a) A blended rate of $[***insert amount of blended rate here***] per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments);

(b) Firm paralegals or law clerks at the rate of $[insert minimum rate here] to $[insert maximum rate here]for paralegals and $[insert minimum rate here] for law clerks per hour (recorded and billed in increments no greater than 0.10 hour segments).

End Option 1.

Option 2:

(a) The Firm will be compensated for the work of attorneys named below for Special Counsel Legal Services per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments) at the rates specified:

[***insert attorney name and billing rate here***]

(b) Firm paralegals or law clerks at the rate of $[insert minimum rate here] to $[insert maximum rate here]for paralegals and $[insert minimum rate

here] for law clerks per hour (recorded and billed in increments no greater than 0.10 hour segments)

End Option 2.

Option 3:

(a) The Firm will be compensated for the work of partners at the rate of $[insert hourly rate here] per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments), and for the work of associates at the rate of $[insert hourly rate here] per hour of attorney time (recorded and billed in increments no greater than 0.10 hour segments).

(b) Firm agrees to assign work to attorneys, paralegals and law clerks in a manner to achieve the most cost effective benefit to City as is in the City's best interest and Firm agrees not to bill for the services of more than one attorney (or paralegal/law clerk) who attends the same meeting, conference or event unless approved in advance.

End Option 3.

(4) No attorney time shall be charged for any travel to the City or for travel to any meetings of the City Council if held within the County.

(5) At the beginning of each fiscal year commencing October 1, ***, the foregoing monthly retainer and hourly rates shall be reviewed in conjunction with any change in the Consumer Price Index ("CPI") for all urban consumers in the *** metropolitan area over the most recently reported annual period prior to such fiscal year, and agree to review changes in prevailing rates for legal services in the area and if appropriate to adjust the retainer as agreed upon. Going forward, in the event there is no increase in the Firm's hourly rates for two (2) consecutive years the foregoing monthly retainer and hourly rates shall be reviewed and may be increased.

Comment: *The City is cautioned to evaluate if it should enter into an agreement with an automatic escalator clause. Legal fees are often market based and determined not by increases or decreases in the CPI but on other factors. By locking in rates and an escalator the City may benefit; similarly, the attorney may benefit. Both parties need to evaluate carefully how locking in rates and an escalator over time serve them. This Model does not include an automatic escalator clause. The City and its attorney should regularly review the legal fees being charged and the rates to ensure fairness to both parties. There are other compensation models that the Firm and City should consider for specific matters such as flat fees, task based billing, contingent fees (where allowed and appropriate), value or success based fees and other alternatives to hourly fee arrangements. Special fee arrangements can be hybrids in which the Firm receives a percentage of its hourly rate, with the remainder contingent on the outcome of the matter. If there is an unfavorable result, no further fees are paid. If there is a positive outcome, the Firm might receive a multiple of the fees it has at risk. In addition, special fee arrangements can span more than one case. The City and the Firm can consider negotiating special fee arrangements that provide a fixed contingency across a group of cases, or to handle a group of defense cases at a reduced rate. The retainer that is described in Paragraph A.1.a of this Section is a form of "flat fee." Other alternative fee arrangements are not included in this Model.*

(B) The Firm shall also be entitled to receive reimbursement for reasonable costs actually incurred, such as, long distance telephone charges, overnight delivery charges, and travel expenses (when travel is necessary and requested by the City from outside of the ****area; i.e, [***insert number here***] miles from the City); however, no other overhead charges will be reimbursed for copying, secretarial services or other overhead as those costs are considered a part of the fees paid under this Agreement. No travel expenses will be charged for daily travel within the City or for any travel for the purpose of attending and staffing any regularly scheduled meeting of the City Council in the Firm's role in providing City Attorney Legal Services. Applicable travel expenses will be reimbursed in accordance with [***insert appropriate statute or ordinance or policy here***], or such other schedule of reimbursement specified by the City and agreed to by the Firm.

(C) The process of acquisition and disposition of real property necessarily involves the use of title research and title insurance. To the extent the City acquires or disposes of any real property or insurable interest, the Firm agrees, upon direction of the City, to obtain and provide appropriate title research and title insurance policies insuring the real property involved and shall charge therefore the minimum premium rates [***insert here the entity that sets title insurance premium rates either the insurer or the governmental entity***].

(D) The Firm shall bill the City periodically for monthly retainer and hourly work, but not more often than monthly, and shall provide an itemized statement of fees for services provided and costs incurred to date. Invoices must be submitted within 60 days of the first billing date in the cycle and all bills for the fiscal year must be submitted within [***insert number here***] days after the conclusion of that fiscal year with an estimate of that bill's total submitted before the end of the fiscal year as reasonably required by the City Manager. All invoices shall include documentation for costs and be submitted to, approved, and promptly processed for payment by the City Manager. Each statement submitted by the Firm shall contain the following statement: "This statement sets forth only actual time spent by the Firm's attorneys and paralegals and does not contain any unit billing, multipliers, or other devices that permit payment for more than actual time spent." The Firm shall also utilize the American Bar Association or similar coding system or other agreed upon description of services to submit hourly statements in order for the City to specifically monitor the use of its legal resources.

Comment: *Some Public Information laws allow disclosure of attorneys' invoices and may result in the disclosure of information that may not be in the best interest of the Firm or the local government. Attorneys and the City should carefully consider the effect of laws requiring disclosure of the attorneys' invoices, possible authority to redact confidential or exempt information and other factors when determining how much information to include in an invoice. In states where Public Information laws do not require disclosure of legal bills, IMLA recommends that like their private counterparts local governments obtain detailed billing information so that the government can more effectively control its legal services costs.*

(E) City may determine to provide space for Firm to use to facilitate access to city employees and reduce costs both to City in travel time, lost productivity and to provide greater access to Firm by City staff. The provision of space is not compensation, nor does it change the nature of the relationship from that of independent contractor and Firm agrees to make use of the space as an accommodation to the City and only to conduct City business.

6. USE OF NECESSARY CONSULTANTS OR OTHER SPECIAL COUNSEL; APPROVAL PROCEDURE.

(A) The City may necessarily require legal expertise beyond the scope of the City Attorney, Additional City Attorney, or Special Counsel legal service roles contemplated herein. Subject to the concurrence or recommendation of the City Manager and, if required, the approval of the City Council, the Firm shall have the authority to use or retain on behalf of the City such additional consultants, experts, or counsel that it deems necessary to implement the objectives and programs of the City. The City's concurrence and/or approval shall be first requested of the City in writing and shall include a scope of services and proposed compensation for each additional consultant, expert, or counsel requested.

(B) The City Attorney is expressly authorized without further approval to retain on behalf of the City independent local co-counsel for prosecution of code enforcement, animal control or similar cases at a not to exceed rate per case or other compensation approach approved by the City in advance.

(C) The City Attorney shall maintain oversight and request and provide to the City periodic status reports from either litigation or local counsel in the event of any representation pursuant to this section.

(D) Statements for fees and costs incurred by any approved consultant, expert, or counsel, shall be first reviewed by the Firm for accuracy and completeness and, upon approval, submitted to the City Manager and/or the City Council for payment.

7. CONFLICTS OF INTEREST AND DISCLOSURE.

(A) The City recognizes that the Firm represents other clients, including but not limited to ---------- in ------ and other matters. The Firm as City Attorney will not represent any client, including but not limited to a municipality, county, local or state government agency or other person or entity in matters which the Firm determines to be directly adverse to the City nor will the Firm represent City in matters which the Firm determines to be directly adverse to the interests of any other client of the Firm.

Comment: *The ABA Model Rules of Professional Responsibility for Lawyers address the issue of conflict of interest both generally and specifically. Each State has its own Rules of Professional Conduct some of them mirror the ABA's rule while others do not. Because each state's rules differ, IMLA does not include specific conflict waiver language in this Model and the City and the Firm are cautioned to evaluate how the Rules of Professional Conduct allow, prohibit or limit waivers of current and prospective conflicts of interest in their state. Indeed, IMLA understands that in at least one state the "public" cannot waive a conflict, so language addressing a waiver would be inappropriate in that state. Where waivers are allowed, a City should seek a full explanation in writing of the nature of the conflict; how it will be resolved or dealt with; what impact or effect the conflict will or might have on the City; how prospective unresolvable conflicts will be handled including how the City will be informed regarding a prospective conflict when and if one arises; and what steps the City may take if it believes a prospective waiver should no longer apply. The Firm should seek to give the full explanation described in this Comment and obtain a written consent to the manner in which the Firm proposes to resolve the conflict either through waiver or as otherwise proposed by the Firm.*

8. VIRTUAL ATTENDANCE AT MEETINGS.

The City Attorney or other Firm attorneys may, following prior approval by the City Council, attend and participate in any meetings contemplated under this Retainer Agreement by utilizing video and telephonic technology to the extent allowable by law. This provision is intended to allow for minimizing costs and the efficient provision of legal services along with conscious regard of limited City and Firm resources. For meetings involving Additional City Attorney Legal Services or Special Legal Services, the Firm shall not assign more than one billing professional to the meeting unless approved in advance by the City Manager.

9. CONTRACT ADMINISTRATION.

(A) For ease and convenience of administration, the City Council hereby also supplementally designates its City Manager to provide policy direction and instructions to the Firm in the administration of its duties hereunder, approving and authorizing work orders, the provision of Additional Legal Services and all other matters necessary to administer this Retainer Agreement on behalf of the City. However, the City Attorney shall not be under the supervision and control of the City Manager but shall instead be responsible directly to the City Council.

Comment: *For purposes of this Model, the Agreement assumes that the City Attorney is selected by and reports to the Council. If the Charter provides for a different selection and reporting process, for example, appointed by the Mayor and confirmed by the Council, or appointed by and reports to the Manager, the language in the last sentence of this paragraph 9(A) should be amended to reflect the required structure. If the Charter is not clear IMLA recommends that the last sentence be included and that the attorney report directly to the Council. Where a Charter governs the operations of the City and conflicts with this Model, the language of this Model in this and other paragraphs should be amended to conform to the requirements of the Charter.*

(B) The Firm shall be entitled to reasonably rely upon such direction received from the City Manager.

(C) The Firm will alert the City Manager if any project or service it is working on or which it is asked to work on may exceed the budget for the year, or for that project or service and will not proceed to provide services for which it seeks compensation until sufficient funding to pay the Firm for its services for the project or service is approved; unless specifically directed by Council or City Manager to proceed.

10. GENERAL.

(A) This Retainer Agreement shall be governed by and construed in accordance with the laws of the State of [***insert name of state***]. In the event of any dispute arising out of or relating to this Retainer Agreement, the parties agree to waive trial by jury and agree that venue shall lie in ****** County, [***insert name of state***]. In the case of litigation of such disputes, the prevailing party shall be entitled to recover attorney fees and costs from the other party. This Retainer Agreement may be amended only by a written agreement entered into by the parties.

(B) This Retainer Agreement or the appointment of Firm as City Attorney to the City may be terminated with or without cause by the City Council or upon the hiring of a full-time attorney

directly employed by the City as City Attorney or by Firm at any time upon ninety (90) days written notice. Additionally, even if the City does elect to seek and obtain either City Attorney Legal Services or Additional City Attorney Legal Services, or both, from an attorney or firm other than Firm, this contract may stay in force and effect so that the Firm is available to provide to the City, on an as needed and agreed to basis, supplemental legal services as provided for herein. In the event of termination, the Firm shall assume responsibility for completion of and shall be compensated for all representation requested prior to the notice of termination and through any prompt transition to termination agreed upon by the parties at the hourly rates agreed upon for Additional City Attorney Legal Services for any remaining City Attorney Legal Services or Additional City Attorney Legal Services and at the rates agreed upon for Special Counsel Legal Services for those services. Provided however, the City Council may terminate this Retainer Agreement for breach by the Firm with such notice as may be reasonable under the circumstances. In the event of termination, with or without cause, the Firm shall be compensated in accordance herewith for approved time and expenses expended prior to the date of termination. This Retainer Agreement may be executed in multiple counterparts. All original files (their contents), records and documents are the property of the City and not of the Firm or its Attorneys and upon termination shall be returned to or delivered to the City as the City Manager reasonably directs at the expense of the Firm. The Firm may retain copies as necessary to comply with the Rules of the [***insert state here***] Bar.

Comment: *Most states recognize in their Rules of Professional Conduct that the client can terminate an attorney's services at any time. This Contract does not attempt to deviate from the standard but allows the City to terminate the Contract and the attorney to recover its fees as agreed upon.*

C. Professional Liability Insurance.

Option 1 (Not addressed in a Request for Proposals):

Prior to commencing work under this Agreement, the Firm (Option – Attorney) agrees to procure and maintain during the life of this Agreement professional liability insurance in an amount not less than $_____ Million Dollars for each claim and $ _____ Million Dollars in the aggregate, and to provide the City with proof of such insurance. [Additionally, the City shall be named as Additional Insured.] Any changes in the insurance carrier, insurance limits, terms or conditions shall be provided and discussed with the City prior to any change becoming effective, except for a non substantial change made by the carrier on its own and over which the Firm has no control. The decision as to whether a change is non-substantial shall be in the sole reasonable discretion of the City. This provision shall survive the termination of this Agreement.

End Option 1.

Option 2 (Addressed in a Request for Proposals):

Prior to commencing work under this Agreement, the Firm (Option – Attorney) agrees to procure and maintain during the life of this Agreement professional liability insurance in the amounts and terms as required by the provisions of the City's Request for Proposal, and to provide the City with proof of such insurance. Any changes in the insurance carrier, insurance limits, terms or conditions shall be provided and discussed with the City prior to any change becoming effective, except for a non substantial change made by the carrier on its own and over which the Firm (Option – Attorney) has no control. The decision as to whether a change is non-substantial shall be in the sole reasonable discretion of the City. This provision shall survive the termination of this Agreement.

End Option 2.

Comment: *In some states the Designated City Attorney will be considered an "officer" of the government and may be entitled to immunities or subject to liabilities different from an attorney representing a private client. To the extent state or local law requires the local government to indemnify its officers or employees, the Designated City Attorney will be indemnified by the local government if the Designated City Attorney is found to be an officer of the local government. Generally, malpractice insurance does not extend to actions taken by an attorney as an officer of a local government, but to the extent it does, the local government should require that it be subrogated to the extent of its liability.*

D. Notices

Notice pursuant to this Agreement may be given by personal service, by email, by nationally recognized courier, or by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

(a) As to City: City/County of _____

Address

City, State Zip

(b) As to Firm/Attorney: name of Firm/Attorney

Address

City/State Zip

E. Merger. This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement.

F. Amendments. The City and Firm (Option – Attorney) by mutual written agreement may amend this agreement. Such amendments shall be incorporated into and made a part of this agreement.

G. Assignment. This Agreement may not be assigned by either party without the written consent of the other party.

H. Severability. If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon agreement by the parties, be deemed stricken from the Agreement without affecting the binding force of the remainder.

I. [OPTIONAL PROVISION] Ethical Commitments. Firm shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office in the governing body, nor seek or accept any personal enrichment or profit derived from confidential information, or holding office, or misuse of public time. City shall support Firm in keeping these commitments by refraining from any order, direction or request that would require Firm to undertake any of the aforementioned activities. Specifically, neither the governing body nor any individual member thereof shall request Firm to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter involving personnel on a basis other than fairness, impartiality and merit. For purposes of this Paragraph, "Firm" includes each attorney who is a member of or employed by the Firm.

Comment: *In some states attorneys selected to represent the local government are frequently supporters of the elected officials and this provision should not be used. In other states or communities, ethical provisions such as "pay to play" may apply and this provision should be considered. IMLA believes that a local government is best served when it selects its Attorney based on merit.*

J. This Retainer Agreement shall be effective as of the date first written above and is the entire agreement between the parties concerning the subject matter hereof.
K. City agrees to budget and pay for City's membership in the International Municipal Lawyers Association (IMLA).
L. City agrees to budget and pay for IMLA distance learning programs as Attorney and Firm may believe important and beneficial to City and its staff.

11. APPOINTMENT.

Pursuant to the Charter of the City of [***insert name of city here***], the City Council hereby appoints Firm as City Attorney for the City; this Retainer Agreement shall hereafter provide the terms and conditions for such engagement. Such appointment may be changed or altered from time-to-time by resolution of the City Council. As required, the City Manager is directed and authorized to use and consult with Firm for City Attorney Legal Services and Additional City Attorney Legal Services as described herein. Additionally and as required, the City Manager is directed and authorized to use and consult with Firm for Special Counsel Legal Services at a cost not to exceed the delegated purchasing limit of the City Manager on any single project or matter. For projects or matters above the then current delegated purchasing limit of the City Manager, Special Counsel Legal Services shall be provided by work order or as otherwise authorized and approved by the City Council.

12. [Optional Provision] SPECIAL MAGISTRATE OR SPECIAL MASTER.

(A) Upon commencement of this Retainer Agreement the Firm shall, within forty-five (45) days, propose a Special Magistrate or Special Master system to the City Council for code enforcement cases involving violations of the Code of Ordinances that may result in a lien on real property, for animal control cases and for City Police impoundment procedures. The proposed program shall be aimed to meet

the following objectives:

(1) Allow for reimbursement of enforcement by the City and associated Special Magistrate or Special Master costs;

(2) Provide efficient prosecution of substantial number of minor or similarly repetitive cases;

(3) Whenever practicable or possible, allow for liens on real property so as to provide a clear and significant enforcement mechanism;

(4) Reduce the use of City legal resources by allowing for administrative enforcement or prosecution by code enforcement or animal control officers in cases where the opposing party is not represented by counsel; and

(5) Increase City revenue and compliance with the Code of Ordinances through an efficient and streamlined process.

(B) In providing Additional City Attorney Legal Services, the Firm shall maintain oversight, and request and provide periodic status reports concerning the use of non-attorney code enforcement or animal control officials or use of local counsel in such cases.

(C) Because such work can be unduly time consuming and often rote, the Firm will make a concerted and continuous effort to outsource such legal work on behalf of the City to individual attorneys or other firms willing and able to perform such narrow legal services at lesser cost or rate to the City. Such work by the Firm will be performed at rates for Additional City Attorney Legal Services and the outsourcing costs directly expensed to the appropriate City cost centers. Whenever cost efficient and practicable, all associated legal expenses associated with a Special Magistrate or Special Master System, or similar alternative means of enforcement, shall be recovered from offenders at rates described herein and actually expended by City.

[Remainder of page intentionally left blank.]

EXHIBIT A

EXEMPLARY FORM OF LEGAL SERVICES
WORK ORDER No. [*insert an identifying work order number here*]

TO:

FROM: City Manager/Mayor
City of

1. Scope of Services: **[*describe whether Additional City Attorney services (general counsel) or Additional Special Counsel Legal Services*]** are to be performed based upon the description attached hereto (A-1) in a proposal by the City Attorney that describes the scope of services, the time for performance and estimates the cost of performance.

2. Compensation: Hourly rates and reimbursement for actual costs as provided in the City Attorney Retainer Agreement between the parties.

3. Work Order Budget: The initial funding authorization or budget appropriation for this Work Order shall not exceed the amount of [amount] or the estimate incorporated in the Scope of Services attached to this Work Order whichever is lower. However, it is understood that the direction of the City will control the work effort and additional budget appropriations may be required and authorized.

[4. Use of Necessary Consultants: Pursuant to the Retainer Agreement, the City confirms, directs, and authorizes the use of (1) **[name of consultant]** and (2) **[name of consultant]** and the scope of services and method(s) of compensation necessary to support the provision of legal services and continued assistance to the City with the **[describe work effort and provide attachment].]**

Authorized by:

Title: City Manager/Mayor

Date: _____

Accepted by:

Title: Authorized Signatory

Date: _____

[*Attach Scope of Service A-1*]

A-1

Attachment to Work Order No. [***insert work order number here***]