
CITY ATTORNEY MODEL RETAINER
AGREEMENT

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

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EXHIBIT A EXEMPLARY FORM OF LEGAL SERVICES WORK ORDER

DRAFT

Using this Agreement.

- A. This Agreement is intended to provide a guide for a local government and a prospective city attorney to negotiate an agreement for legal services. It is not intended to be legal advice. It is modelled after an agreement between a city and its outside city attorney.
- B. 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. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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. That 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.
- G. IMLA provides consulting services to cities and may be able to help a city when it is considering hiring a city attorney to determine appropriate compensation. IMLA does not provide legal consultation and use of its consulting service is not a substitute for getting independent legal counsel.

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; and

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 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]*.

NOW, THEREFORE, it is agreed as follows:

1. **RETAINER AGREEMENT.** 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.

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 represent the city in all legal proceedings 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 as City Attorney ("Designated Lawyer"). The Designated Lawyer of the Firm serving as City Attorney for the City may be substituted following notice to the City Council.

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.

(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.

(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, as enumerated below, are to be provided as City Attorney Legal Services on a monthly retainer basis, and supplemented by Additional City Attorney Legal Services, as enumerated below, on an hourly basis as approved by work order. Additional Special Counsel Legal Services will also be provided separately by the Firm or other firms on an hourly basis by separate work orders for special services or as otherwise approved by the City Council as provided in Sections 3 and 4 hereof.

Comment: the structure of this Agreement contemplates that the City and the Firm 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, if requested;

- (2) Attend [*insert number here*] City Council workshop per month;
- (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 with date stamping (or other tracking for accountability purposes) 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 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 and develop and submit to the City Manager a budget for any Additional City Attorney Legal Services not included in the budget and 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 thereafter to update the budget regularly and seek approval from the City Manager or Council for increases in the budget and 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 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 Special Counsel Legal Services described herein, nor 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) Represent the City's boards, commissions and departments;

Comment: 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.

- (2) Share the experiences and prior involvement of the Firm's attorneys in local governmental matters;
- (3) 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;
- (4) Attend, as reasonably required or requested all meetings of the City Council not described in the foregoing subsection as City Attorney Legal Services, and attend meetings with third parties or City staff and/or City Department Heads, as reasonably required or requested by the City Manager;
- (5) 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;
- (6) 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;
- (7) 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;
- (8) Communicate on a regular basis, as required, and cooperate and coordinate with the City Manager and designated City staff;
- (9) Represent the City's [*insert here the other independent boards and commissions of the city*];
- (10) Attend meetings of Boards or Commissions of the City, including: [*insert here the names of those Boards or Commissions*]
- (11) Prosecute code enforcement cases (including traffic violations) in court or before administrative agencies;
- (12) 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;
- (13) 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
- (14) 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.

(B) City Attorney Legal Services or Additional City Attorney Legal Services do not include (1) the Special Counsel Legal Services described in Section 4 hereof, or (2) 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 (13).

4. SPECIAL COUNSEL SERVICES.

(A) Firm shall also be available to provide Special Counsel Legal Services to the City. Special

Counsel Legal Services are to be provided on an hourly basis or by task based billing or other billing arrangements as agreed upon by the parties in advance and commenced by separate work orders as described in this Agreement and as agreed by the parties. 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 adaptations 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;

(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; or other legal services otherwise subsequently agreed to between the parties or third parties.

5. COMPENSATION FOR PROFESSIONAL SERVICES.

(A) Firm will be compensated for City Attorney Legal Services at the monthly retainer rate as authorized herein. Firm will be compensated for Additional City Attorney Legal Services and Special Counsel Legal Services at hourly rates as authorized herein. Unless otherwise agreed to by the parties, Firm will be compensated for legal services at negotiated and hourly rates as authorized herein.

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

(a) \$[insert monthly retainer amount here] to be billed at the beginning of each calendar month for work to be performed and paid within thirty (30) days.

(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);

Option 2:

(a) The attorneys named below will be compensated 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] per hour (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; Firm agrees to assign matters to paralegals and law clerks to achieve the most cost effective service in the City's best interest.

(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.

Option 1:

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

(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] per hour (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; and

Option 2

(3) (a) The attorneys named below will be compensated 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] per hour (recorded and billed in increments no greater than 0.10 hour segments), dependent upon experience and expertise; Firm agrees to assign matters to paralegals and law clerks to achieve the most cost effective service in the City's best interest.

(c) 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.

(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 may be increased by three (3%) percent upon the passage of each two (2) year period.

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.

(B) The Firm shall also be entitled to receive reimbursement for actual costs incurred such as, long distance telephone charges, overnight delivery charges, and travel expenses (when travel is necessary and requested 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 documenting the acquisition and disposition of real property necessarily involves the use of title research and title insurance. To the extent the City acquires or disposes any real property or insurable interest, the Firm agrees 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 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 to submit hourly statements in order for the City to specifically monitor the use of its legal resources.

(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. Such approval shall be first requested in writing and shall include a scope of services and method of 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. 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. *[If appropriate insert the following language: The City agrees that representation by the Firm of the City of ***** as City Attorney is not directly adverse to the interest of the City and not prohibited by this Agreement.]*

(B) The rules regulating The *[insert name of state here]* Bar provide that common representation of multiple parties is permissible where the clients are generally aligned in interest,

even though there is some difference in interest among them. It is also possible that during the course of the Firm's representation of the City's interests the City may become involved in transactions or disputes with other clients of the Firm in which the City's interests are or become adverse to the interests of one or more of the Firm's other clients, whether present or future. If such a conflict between the City interests and those of another of the Firm's clients, whether present or future, were to arise, the Firm will promptly notify the City of that circumstance. The Firm reserves the right, on account of any such conflicts of interest, to withdraw from the matter in question and will assist the City in securing interim or alternative counsel for the matter in conflict if a conflict waiver is not otherwise permissible under the rules regulating The [*insert name of state*] Bar. The Firm represents local governments and private sector clients throughout [*insert name of state*] and [*insert name other jurisdictions if any*], and wishes to be able to consider the representation of other local governments or public sector clients who may have interests that are potentially adverse to the City's, but with respect to matters that are unrelated in any way to our representation of the City. The ethics rules that govern the Firm permit it to accept such multiple representations, assuming certain requirements are met. Accordingly, during the term of this engagement, the Firm agrees that it will not accept representation of another client to pursue interests that are directly adverse to the City's interests unless and until the Firm makes full disclosure to the City of all the relevant facts, circumstances, and implications of the Firm's undertaking the two representations, and confirm to the City in good faith that the Firm has done so and that the following criteria are met: (1) there is no substantial relationship between any matter in which the Firm is representing or has represented the City and the matter for the other client; (2) any confidential information that the Firm has received from the City will not be available to the attorneys and other Firm personnel involved in the representation of the other client; (3) our effective representation of the City and the discharge of the Firm's professional responsibilities to the City will not be prejudiced by representation of the other client; and (4) the other client has also consented in writing based on our full disclosure of the relevant facts, circumstances, and implications of the Firm's undertaking the two representations. If the foregoing conditions are satisfied, the City agrees that the Firm may undertake the potentially adverse representation and that all conflict issues will be deemed to have been resolved or waived by the City.

8. 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.

(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) 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.

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 Special Counsel 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, the hourly rates if not as described in the Retainer and which 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, or this Work Order. If different rates from those included in the Retainer agreement are not included in the Scope of Services, then the Retainer rates apply.

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:

Accepted by:

Title: City Manager/Mayor

Title: Authorized Signatory

Date: _____

Date: _____

[Attach Scope of Service A-1]

A-1
Attachment to Work Order No. [*insert work
order number here*]