

**AGREEMENT FOR PROFESSIONAL LEGAL SERVICES RELATING TO A
WORKER’S COMPENSATION BENEFITS PROGRAM**

**THIS AGREEMENT FOR PROFESSIONAL LEGAL SERVICES RELATING TO
A WORKER’S COMPENSATION BENEFITS PROGRAM (“Agreement”)** is made between
the **CITY OF HOUSTON, TEXAS (“City”)**, a home rule city of the State of Texas, and
_____ (“Firm”), a _____ doing business in the State of Texas.

1. PARTIES

1.1 Address

The initial addresses of the Parties, which one Party may change by giving written notice
to the other Party, are as follows:

City

City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251

Firm

Attn: _____

Houston, Texas _____

Phone: _____

Email: _____

The Parties agree as follows:

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EXHIBITS

Exhibit A – Scope of Services

Exhibit B – City Attorney’s Policy on Engagement of Outside Legal Counsel

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Exhibit C – Drug Policy Compliance Agreement

Exhibit D – Contractor’s Certification of No Safety Impact Positions

Exhibit E – Drug Policy Compliance Declaration

Exhibit F – Performance Standards

Exhibit G – Subrogation Recovery Report

1.3 **Parts Incorporated**

The above-designated sections and exhibits are incorporated into this Agreement.

1.4 **Controlling Parts**

If a conflict among the sections and exhibits arises, the sections control over the exhibits.

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1.5 Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

FIRM:

By: _____
Name: _____
Title: _____
Tax Identification Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

City Attorney

City Controller

APPROVED:

DATE COUNTERSIGNED:

Chief Procurement Officer

APPROVED AS TO FORM:

Sr. Assistant City Attorney

L.D. File No. _____

2. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

- 2.1 “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and the Firm.
- 2.2 “Benefit” means a medical benefit, an indemnity benefit, a death benefit, or a burial benefit based on a compensable injury.
- 2.3 “Business Day” means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City as designated by City Council.
- 2.4 “Chief Procurement Officer” (“CPO”) means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.5 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.6 “City Attorney” or “Director” means the City Attorney of the City of Houston, or the person he or she designates.
- 2.7 “Claimant” means an employee of the City seeking workers’ compensation benefits as a result of an injury sustained while in the course and scope of employment with the City.
- 2.8 “Contested Claim” means any disputed claim that is appealed from a ruling of a benefit review conference.
- 2.9 “Countersignature Date” means the date shown as the date countersigned on the signature page of this Agreement.
- 2.10 “Documents” means notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement
- 2.11 “DWC-1” means the Employer’s First Report of Injury or Illness that the City files to begin the worker’s compensation claims process.
- 2.12 “Firm” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.13 “Fiscal Year” means the City Fiscal Year that runs from July 1 through June 30.
- 2.14 “HR Director” means the Director of the City’s Department of Human Resources or his or her designee(s).

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- 2.15 “Litigation Expenses” includes taxable court costs, deposition costs, mediation fees, expert witness fees, medical cost containment services, transcripts, translators, photocopy costs, and long-distance calls, subject to **Exhibit B**. Litigation Expenses are not recoverable in Subrogation Claims.
- 2.16 “Party” or “Parties” means one or all the entities set out in the preamble that are bound by this Agreement.
- 2.17 “Performance Standards” are defined in **Exhibit F**.
- 2.18 “Program” means the City of Houston Worker’s Compensation Benefits Program established pursuant to Texas Labor Code, Title 5, Section 504.001 *et seq.*
- 2.19 “Salary Continuation” means the sum of money, before withholding and deductions, paid by City funds in conjunction with injury leave, to eligible or injured workers to a maximum equating the amount regularly paid to a Claimant, in order to supplement the benefits mandated by the Worker’s Compensation Act.
- 2.20 “Subrogation Claim” means a claim against a third party who is liable to pay damages for an injury or death to a workers’ compensation Claimant that is compensable under the Workers’ Compensation Act (Tex. Labor Code Ann. Section 401.001 *et seq.*).
- 2.21 “Subrogation Recovery” means the gross amount of the Workers’ Compensation Lien actually recovered by the City in an action where the Claimant recovers damages from the third-party tortfeasor.
- 2.22 “Third-Party Litigation” means any litigation instituted by the workers’ compensation Claimant where a third party is, or becomes, liable to pay damages for an injury or death that is compensable under the Worker’s Compensation Act.
- 2.23 “TPA” means the third-party administrator for the Program.
- 2.24 “Workers’ Compensation Lien” means the total amount of Benefits, including Salary Continuation that the City has paid on behalf of a Claimant.

Whenever the singular form of a term is used in this Agreement, the same shall include the plural form of such term, whenever appropriate, and vice versa.

3. DUTIES OF THE FIRM

3.1 Scope of Services

- 3.1.1 In consideration of the payments specified in this Agreement, the Firm shall provide professional legal services as follows:

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- 3.1.1.1 Represent the City in all matters referred to Firm by the City Attorney relating to the defense, prosecution, negotiation, and resolution of any litigation, Contested Claims, Subrogation Claims, and all other legal work and services assigned to it by the City Attorney under the Program, including but not limited to, those duties set out in **Exhibit A**, subject to the Performance Standards in **Exhibit F** and the City Attorney’s Policy on Engagement of Outside Legal Counsel in **Exhibit B**.
 - 3.1.1.2 Provide other services requested by the City Attorney and agreed upon by the Firm for which funds are available.
 - 3.1.2 The Firm must provide, at no cost to the City, a minimum of three hours per year of Continuing Legal Education (CLE) instruction, for the City of Houston Legal Department. The Firm shall obtain prior accreditation for CLE by the State Bar of Texas, unless otherwise approved by the Handling City Attorney. CLE instruction shall address an area of law relating to any one or more of the topics described in the scope of services, or such other topic of instruction as mutually agreed upon by the Handling City Attorney and the Firm. CLE instruction may be offered in a variety of manners or methods mutually agreed upon by the Handling City Attorney and the Firm, such as three one-hour live sessions held at the City of Houston Legal Department’s offices, or one three-hour webinar. The Firm shall provide the CLE instruction upon request of the Handling City Attorney.
 - 3.1.3 _____ shall be the principal attorneys providing services under this Agreement. The Firm shall provide services at the hourly rates set out in **Exhibit A** and in accordance with the terms of the City Attorney’s Policy on Outside Counsel attached as **Exhibit B**, unless a term of the policy conflicts with a term of the main body of this Agreement in which case the main body of the Agreement shall govern.
 - 3.1.4 The Firm shall replace any personnel assigned to provide services under this Agreement who are deemed unsuitable by the City Attorney.
- 3.2 Settlement Authority**
 - 3.2.1 The City Attorney shall have the sole authority to make all decisions regarding settlement of all Contested Claims and Subrogation Claims relating to the Program. The City Attorney’s authority shall include, but not be limited to, the following:
 - 3.2.1.1 Deciding whether to appeal a decision of the Texas Department of Insurance/Division of Workers’ Compensation or to litigate a Contest Claim;
 - 3.2.1.1.1 Compromising or settling Subrogation Claims in litigation; or
 - 3.2.1.1.2 Compromising a Workers’ Compensation Lien.
 - 3.2.2 The Firm shall make no settlement without the prior written approval of the City Attorney.

3.3 Coordinate Performance

3.3.1. The Firm shall coordinate its performance with the City Attorney and other persons that the City Attorney designates. The Firm shall promptly inform the City Attorney and other person(s) of all significant events relating to the performance of this Agreement. The Handling City Attorney for this Agreement is _____. The Handling City Attorney may be modified at any time, provided that the City Attorney provides notice (including by e-mail) of the modification.

3.4 Reports

3.4.1. The Firm shall submit all reports and progress updates required by the City Attorney.

3.5. Payment of Subcontractors

3.5.1. In accordance with the Texas Prompt Payment Act, the Firm shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **THE FIRM SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF THE FIRM'S FAILURE TO MAKE THESE PAYMENTS.**

3.6. Release

3.6.1. **THE FIRM AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY IN THIS SECTION THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED AS A RESULT OF THE FIRM'S NEGLIGENT PERFORMANCE OF THIS AGREEMENT. THE FIRM HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

3.6.2. **THE FIRM SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE TO THE CITY.**

3.7. Insurance

3.7.1. The Firm shall maintain in effect certain insurance coverage and shall furnish evidence of insurance satisfactory to the City Attorney, in duplicate form, before beginning its performance under this Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size

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Category of Class VI or better, according to the most current Best's Key Rating Guide.

- 3.7.2. The Firm shall maintain the following insurance coverage in the following amounts.

Professional Liability

\$1,000,000 per claim; \$3,000,000 aggregate

Aggregate limits are per 12-month policy period unless otherwise indicated

- 3.7.3. The Firm shall give 30 days' written notice to the City before the policy may be canceled, materially changed, or nonrenewed. Within the 30-day period, the Firm shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If the Firm does not comply with this requirement, the City Attorney, at his or her sole discretion, may immediately suspend the Firm from any further performance under this Agreement and begin procedures to terminate for default.

3.8. Confidentiality - Protection of City's Interest

- 3.8.1. The Firm, its agents, employees, its contractors and subcontractors shall hold all City information, data and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. The Firm, its agents, employees, its contractors and subcontractors shall not disclose, disseminate or use the Information unless the City Attorney authorizes it in writing. The Firm shall obtain written agreements from its agents, employees, its contractors and subcontractors that bind them to the terms in this Section.
- 3.8.2. The Firm shall at all times maintain the confidentiality of any communications with the City and with subcontractors who are engaged by the Firm and approved in advance and in writing by the City Attorney to perform services.

3.9. Use of Work Products

- 3.9.1. The Firm agrees that all Documents drafted pursuant to this Agreement are the property of the City. The City owns and may use all Documents, that the Firm prepares or obtains under this Agreement. In addition, the Firm shall provide the City Attorney with supporting schedules, flow charts or other analysis necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report; however, if requested by the City Attorney, the Firm shall provide this information from its work paper files.
- 3.9.2. The Firm warrants that to the extent any documents provided to the City by it are copyrighted, the Firm owns the copyright to the Documents or otherwise has rights to provide the documents.

3.9.3. The Firm shall deliver the original Documents to the City Attorney on request. Upon request, within five working days after this Agreement terminates, the Firm shall deliver to the City Attorney the original Documents, and all other files and materials the Firm produces or gathers during its performance under this Agreement.

3.9.4. The Firm shall have the right to retain copies of documents and other work products drafted or created pursuant to the Agreement and use them for training purposes or as forms or reference materials in connection with representing other clients, without attribution to the City and provided that Firm redacts any confidential information relating to representation of the City.

3.10. Licenses and Permits

3.10.1. The Firm shall obtain, maintain and pay for all licenses, permits and certificates including all professional licenses necessary to provide the legal representation by any statute, ordinance, rule or regulation. The Firm shall immediately notify the City Attorney of any suspension, revocation or other detrimental action against the license of any of its attorneys providing service to the City.

3.11. Compliance with Laws

3.11.1. The Firm shall comply with all applicable state and federal laws and regulations, The Texas Rules of Professional Responsibility and the City Charter and Code of Ordinances.

3.12. Conflicts of Interest

3.12.1. The Firm represents and warrants that the provision of the legal services under this Agreement will not constitute an actual or potential conflict of interest. The Firm covenants that no person under its employment has any personal financial interest, direct or indirect, which would influence his or her professional judgment or the performance of services under this Agreement. The Firm further covenants that no person having such conflicting interest shall be employed in the performance of this Agreement. The Firm has disclosed or shall promptly disclose in writing to the City all actual or potential conflicts of interest relative to the performance of this Agreement, including but not limited to the Certificate of Interested Parties required by Section 2252.908 of the Texas Government Code and the Conflict of Interest Questionnaire required by Section 176.006 of the Texas Local Government Code, if applicable.

3.12.2. If an actual or potential conflict arises between the City's interests and the interests of other clients the Firm represents, within the meaning of the Texas Disciplinary Rules of Professional Conduct, the Firm shall either terminate its representation of the other client whose interests are or may be in conflict with those of the City or immediately notify the City Attorney and Handling City Attorney by telephone, or email. If the City Attorney consents to the Firm's continued representation of the other clients, the City Attorney shall notify the Firm in writing. If the City Attorney does not issue written consent within 3 business days after receipt of the Firm's notice, the Firm shall immediately terminate its

representation of the other client whose interests are or may be in conflict with those of the City.

3.13. Drug Abuse Detection and Deterrence

- 3.13.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. The Firm shall comply with all the requirements and procedures set forth in the Mayor’s Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 (“Executive Order”), which is incorporated into this Agreement and is on file in the City Secretary’s Office.
- 3.13.2. Before the City signs this Agreement, the Firm shall file with the Contract Compliance Officer for Drug Testing (“CCODT”):
1. a copy of its drug-free workplace policy,
 2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit C**, together with a written designation of all safety impact positions and,
 3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.
- 3.13.3. If the Firm files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit E**. The Firm shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its notice to proceed or if no notice to proceed is issued, on the first day the Firm begins work under this Agreement.
- 3.13.4. The Firm also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to the Firm’s employee work force.
- 3.13.5. The Firm shall require that its subcontractors comply with the Executive Order, and the Firm shall secure and maintain the required documents for City inspection.

3.14. Compliance with Equal Opportunity Ordinance

- 3.14.1. The Firm shall comply with the City’s Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

3.15. Pay or Play

3.15.1. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. The Firm has reviewed Executive Order No. 1-7 Revised and, to the extent applicable to this Agreement, shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

3.16. Minority and Women Business Enterprise Compliance

3.16.1. The Firm shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances and the applicable Office of Business Opportunity’s (“OBO”) Policies and Procedures. Firm shall make good faith efforts to award subcontracts or supply agreements in at least ____% of the value of this Agreement to MWBEs (“Stated MWBE goal”). If the Firm is a certified MBE or WBE, Firm may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Firm acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

3.16.2. For purposes of this paragraph, “Contract Year” means a twelve (12) month period during the term of the contract commencing on the Effective Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Firm’s MWBE participation level in a Contract Year is less than the Stated MWBE goal, then within 30 calendar days of the end of each Contract Year Firm must provide a written explanation to both the City Attorney and Office of Business Opportunity Director (“OBO Director”) of the following: (1) the discrepancy between Firm’s MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy, and (3) Firm’s good faith efforts (in accordance with the City’s policy) towards achieving the Stated MWBE goal. As part of the good faith efforts assessment, the OBO Director may consider Firm’s failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Firm for said failures in accordance with Chapter 15 of the Code of Ordinances, OBO’s policies and procedures, and the City’s good faith efforts policy.

3.16.3. Firm shall maintain records showing:

- 3.16.3.1. Subcontracts and supply agreements with Minority Business Enterprises;
- 3.16.3.2. Subcontracts and supply agreements with Women Business Enterprises;
- 3.16.3.3. Subcontracts and supply agreements with Small Business Enterprises (if any);
- 3.16.3.4. Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
- 3.16.3.5. Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Firm shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

3.16.4. Firm shall ensure that all subcontracts with MWBE subcontractors and suppliers contain

the following terms:

- 3.16.4.1. [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- 3.16.4.2. Within five (5) business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.
- 3.16.4.3. After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.17. Zero Tolerance Policy for Human Trafficking and Related Activities

- 3.17.1. The requirements and terms of the City's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. The Firm has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the countersignature Date. The Firm shall notify the City's Chief Procurement Officer ("CPO") and City Attorney of any information regarding possible violation of the Firm or its subcontractors providing services or goods under this Agreement within seven days of the Firm becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.18. Compliance with Certain State Law

- 3.18.1. *Anti-Boycott of Israel.* Firm certifies that Firm is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 3.18.2. *Anti-Boycott of Energy Companies.* Firm certifies that Firm is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

- 3.18.3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Firm certifies that Firm does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- 3.18.4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Firm certifies that, at the time of this Agreement neither Firm nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Firm, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

3.19. Preservation of Contracting Information

- 3.19.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Firm agrees that this Agreement can be terminated if the Firm knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Firm shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the City Attorney, Firm shall provide any Contracting Information related to this Agreement that is in the custody or possession of Firm. Upon the expiration or termination of this Agreement, Firm shall, at the City Attorney's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Firm, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.
- 3.19.2. If the Firm fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the City Attorney shall provide notice to the Firm and may terminate this Agreement. To effect final termination, the City Attorney must notify Firm in writing with a copy of the notice to the City's Chief Procurement Officer. After receiving the notice, Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

4. DUTIES OF CITY

4.1 Duty

4.1.1 The City shall have no duty whatever to the Firm except for obligations specifically set forth in this Article IV.

4.2 Payment Terms

4.2.1 Subject to all terms and conditions of this Agreement, the City, for and in consideration of the services rendered by the Firm during each contract year, agrees to pay the Firm as follows:

4.2.1.1 *Contested Claims and All Other Workers' Compensation Matters Related to the Program.* The City shall pay an amount not to exceed _____ per Fiscal Year to the Firm under this Agreement for handling Contested Claims and other workers' compensation matters, excluding Subrogation Claims, based upon an hourly billing rate not to exceed \$ _____, plus Litigation Expenses incurred, if any, provided however, to the extent the payment terms under this Agreement relating to a Contested Claim conflict with the Guidelines for Legal Services and Allowable Expenses pursuant to the Texas Workers' Compensation Act, Section 401.001 *et seq.*, ("Act") as amended, and the rules promulgated by the Texas Department of Insurance/Division of Workers' Compensation ("Rules"), the City shall pay according to the Act and the Rules. The Firm shall include a copy of the approved DWC-152, Application and Order for Attorney's Fees, with its monthly invoice to the City Attorney for payment.

4.2.1.2 *Subrogation Claims.* The City has allocated no funds to pay the Firm for legal services or Litigation Expenses relating to Subrogation Claims. All fees that the Firm receives for services relating to Subrogation Claims shall come from Subrogation Recoveries, if any. Fees for Subrogation Claims shall be calculated and paid as follows:

4.2.1.2.1 The City will pay the Firm an attorney fee of ____% of each Subrogation Recovery of the City's Workers' Compensation Lien without Third Party Litigation.

4.2.1.2.2 In Subrogation Claims involving Third Party Litigation, the total amount the City will pay in attorney fees to the Firm or to the Claimant's counsel out of its Subrogation Recovery, which fees in total shall not exceed the statutory amount of one-third of the Subrogation Recovery pursuant to Texas Labor Code Section 417.003 *et seq.* However, the City will pay the Firm an attorney fee of ____% of the Subrogation Recovery if the Claimant's counsel is

not paid an attorney fee. If the Claimant's counsel is to be paid an attorney's fee out of the City's Subrogation Recovery, and the court apportions to the attorney fees between the Firm and Claimant's Counsel, the Firm shall receive the attorney fee, if any, awarded by the court. The Firm understands that if the court awards the total one-third fee to Claimant's counsel the Firm shall not receive any attorney fee. If the court does not apportion the attorney fees, the Firm and Claimant's counsel must agree to an apportionment of the fee, and the City will pay according to their agreement.

4.2.1.3 If the City's Subrogation Recovery is to be paid pursuant to an installment agreement and the third party defaults on the installment agreement, the Firm shall take all legal action necessary to enforce the installment agreement. If a court awards an additional attorney fee against the third party for the Firm's enforcement efforts, the City shall pay such fees to the Firm if received from the third party and only after the City has received all Subrogation Recovery amounts due under the installment agreement.

4.2.1.4 If the Firm is awarded attorney's fees or costs by the court for an amount in addition to the Subrogation Lien, the City will pay such fees or costs to the Firm if such fees or costs are paid by the third party.

4.2.2 *Legal Expenses.* Upon the City Attorney's receipt and approval of the Firm's itemized invoice showing the authorized expenses incurred, the City will reimburse the Firm for actual Litigation Expenses incurred by the Firm in relation to Contested Claims only, upon to the limit set out in Section 4.2.1.1. The Firm's Litigation Expense invoices shall comply with **Exhibit B**. Such reimbursement will solely be for actual Litigation Expenses and is not additional compensation to the Firm.

4.3 **Taxes**

4.3.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. The Firm's invoices to the City must not contain assessments of any of these taxes. The City Attorney will furnish the City's exemption certificate and federal tax identification number to the Firm if requested.

4.4 **Method of Payment**

4.4.1 The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from the Firm as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

4.4.2 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

4.5 Disputed Payments

4.5.1 If, for any reason, the City disputes all or part of any Firm invoice, the City Attorney shall not authorize payment of the disputed part of the invoice, and may, in the sole discretion of the City Attorney, elect to pay any undisputed portion of the invoice. The City Attorney shall 1) promptly notify the Firm that the City disputes all or part of the Firm's invoice, and 2) request that the Firm correct the invoice or otherwise respond to the City's concerns. The City Attorney is authorized to settle disputes and pay disputed invoices without approval by City Council if the amount paid by the City to the Firm to resolve the dispute does not cause the total of all payments by the City to the Firm under this Agreement to exceed the maximum contract amount approved by City Council for this Agreement.

4.6 Limit of Appropriation

4.6.1 The City's duty to pay money to the Firm for any purpose under this Agreement is limited in its entirety by the provisions of this Section.

4.6.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated **\$150,000.00** to pay money due under this Agreement during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

4.6.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to the Firm a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the City Attorney, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

§ _____

4.6.2.2 The Original Allocation plus all supplemental allocations effected by notice to the Firm in substantially the foregoing form, if any, shall be the “Allocated Funds”. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. The Firm must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, the Firm’s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.7 Access to Data

4.7.1 The City shall, to the extent permitted by law, allow the Firm to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for the Firm to perform under this Agreement.

4.7.2 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for the Firm’s use.

5. TERM AND TERMINATION

5.1 Contract Term and Renewals

5.1.1 This Agreement is effective on the Countersignature Date by the City Controller and remains in effect for 3 years (“Initial Term”).

5.1.2 Upon expiration of the Initial Term, and so long as the City makes sufficient Supplemental Allocations, this Agreement will be automatically renewed for 1 successive 1-year term on the same terms and conditions. If the City Attorney chooses not to renew this Agreement, he/she shall notify the Firm and the Chief Procurement Officer of non-renewal at least 30 days before the expiration of the then-current term.

5.2 Termination for Convenience by City

5.2.1 The City Attorney may terminate this Agreement at any time by giving ten days written notice to the Firm. The City’s right to terminate this Agreement for convenience is

cumulative of all rights and remedies, which exist now or in the future.

5.2.2 On receiving the notice, the Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, the Firm shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to the Firm for services actually performed, but not already paid for, in the same manner as prescribed in Section IV unless the fees exceed the allocated funds remaining under this Agreement.

5.2.3 **RECEIPT OF PAYMENT FOR SERVICES RENDERED IS THE FIRM'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. THE FIRM WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION) IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.**

5.3 Termination for Cause by City

5.3.1 If the Firm defaults under this Agreement, the City Attorney may either terminate this Agreement or allow the Firm to cure the default as provided below. The City's right to terminate this Agreement for the Firm's default is cumulative of all rights and remedies, which exist now or in the future. Default by the Firm occurs if:

5.3.1.1 The Firm fails to perform any of its duties under this Agreement;

5.3.1.2 The Firm becomes insolvent;

5.3.1.3 All or a substantial part of the Firm's assets are assigned for the benefit of its creditors; or

5.3.1.4 A receiver or trustee is appointed for the Firm.

5.3.2 If a default occurs, the City Attorney may, but is not obligated to, deliver a written notice to the Firm describing the default and the termination date. The City Attorney, at his or her sole option, may extend the termination date to a later date. If the City Attorney allows the Firm to cure the default and the Firm does so to the City Attorney's satisfaction before the termination date, then the termination is ineffective. If the Firm does not cure the default before the termination date, then the City Attorney may terminate this Agreement on the date the Court enters an order allowing the Firm to withdraw, if in litigation, and if not in litigation, on the later of the termination date or the date on which another attorney is substituted for the Firm, at no further obligation of the City.

5.3.3 To effect final termination, the City Attorney must notify the Firm in writing. After

receiving the notice, the Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.4 Termination for Cause by the Firm

- 5.4.1 The Firm may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and the Firm wishes to terminate the Agreement, then the Firm must deliver a written notice to the City Attorney describing the default and the proposed termination date. The date must be at least ten days after the City Attorney receives notice. The Firm, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then the Firm may terminate its performance under this Agreement on the termination date.

6. MISCELLANEOUS

6.1 Independent Contractor

- 6.1.1 The Firm shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

6.2 Severability

- 6.2.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

6.3 Entire Agreement

- 6.3.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

6.4 Written Amendment

- 6.4.1 Unless otherwise specified, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and the Firm. The City Attorney is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.5 Governing Law and Venue

- 6.5.1 This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to

this Agreement shall lie exclusively in Harris County, Texas

6.6 Notices

6.6.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States Postal Service registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in the preamble of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

6.7 Captions

6.7.1 Captions contained in this Agreement are for reference only and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.8 Non-Waiver

6.8.1 If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

6.8.2 An approval by the City Attorney, or by any other employee or agent of the City, of any part of the Firm's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The City Attorney is not authorized to vary the terms of this Agreement.

6.9 Inspections and Audits

6.9.1 City representatives have the right to perform, or have performed, (1) audits of the Firm's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. The Firm shall keep its books and records available for this purpose for at least three years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.10 Enforcement

6.10.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. The Firm shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining the Firm's compliance with this Agreement, with the exception of those documents made confidential by Federal or State law or regulation.

6.11 Ambiguities

6.11.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.12 Survival

6.12.1 The Firm shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

6.13 Publicity

6.13.1 The Firm shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the City Attorney.

6.14 Parties in Interest

6.14.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and the Firm only.

6.15 Successors and Assigns

6.15.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.16 Business Structure and Assignments

6.16.1 The Firm shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Attorney's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, the Firm shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

6.16.2 The Firm shall not delegate any portion of its performance under this Agreement without the City Attorney's prior written consent.

6.17 Remedies Cumulative

6.17.1 Unless otherwise specified, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies, which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

6.18 Firm Debt

- 6.18.1 IF THE FIRM, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT THE FIRM HAS INCURRED A DEBT, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY FIRM IN WRITING. IF THE FIRM DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO FIRM UNDER THIS AGREEMENT, AND THE FIRM WAIVES ANY RECOURSE THEREFOR.
- 6.18.2 THE FIRM SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY THE CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT A

SCOPE OF SERVICES

{TO BE INSERTED}

SAMPLE

EXHIBIT B

**CITY OF HOUSTON
OFFICE OF THE CITY ATTORNEY
POLICY ON ENGAGEMENT OF OUTSIDE LEGAL COUNSEL**

I. DEFINITIONS

- A. “Handling City Attorney” means the assistant City attorney who has been assigned to supervise the Firm’s provision of legal services in accordance with the terms of the professional services contract between the Firm and the City.
- B. “City” means the City of Houston, Texas.
- C. “Firm” means the outside law firm retained by the City to provide legal services to the City.
- D. “Agreement” means a written professional services contract between the Firm and the City for provision of legal services to the City. Agreement includes a City Purchase Order with an Addendum issued by the City for the provision of legal services.

II. INTRODUCTION

When contracting with the Firm, the City of Houston Legal Department expects to receive the highest caliber of professional legal services at the most reasonable price. All Firms providing legal services to the City shall comply with the provisions and directives contained in this Policy. Unless specifically agreed otherwise in writing, this Policy on Engagement of Outside Legal Counsel (“Policy”) shall supplement any related Agreement between the Firm and the City. To the extent one or more provisions of the Policy are inconsistent with the terms of the Agreement, the Agreement will govern as to the inconsistent Policy provision.

III. THE FIRM’S PROVISION OF LEGAL SERVICES

A. The Firm’s Staff

1. Concurrent with execution of the Agreement, the Firm shall advise the Handling City Attorney which lawyers in the Firm will provide such legal services. Firm shall not use or bill for additional lawyers or staff without prior approval by the City Attorney.
2. Only one attorney from the Firm shall attend meetings, depositions, arguments, discovery hearings, motion conferences, and so forth. The City will not pay for the participation or attendance of more than one attorney at events absent the City Attorney’s prior written approval. In the case of trials and major hearings, the Firm may have a second person attend, with the City Attorney’s prior written approval.

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3. As the Firm has been retained due to its expertise, the City will not pay and the Firm will not bill or invoice for any time spent or expenses incurred in educating Firm members or employees in procedural matters or the substantive law applicable to the legal matter the Firm is handling for the City.

4. The City acknowledges that staffing changes at the Firm may be necessary from time to time. However, once the Firm's attorneys or legal assistants have begun handling a legal matter for the City, the City will not pay, and the Firm will not bill or invoice, for any resulting "downtime", "learning time", or expenses that may result from a staffing change at the Firm.

B. Coordination of Work with the City Attorney's Office

1. The Firm shall inform the Handling City Attorney of any relevant developments relating to the legal matter being handled by the Firm, including (but not limited to):

- a. Due dates for:
 - (1) Responses to pleadings.
 - (2) Responses to discovery.
- b. Hearing and trial dates.
- c. Briefing deadlines.
- d. Motion deadlines.
- e. Witness meetings and depositions.

2. If the Handling City Attorney needs to be present at a meeting with the Firm, then the Firm shall schedule the meeting at a time and place convenient for the Handling City Attorney.

3. The Firm must promptly provide drafts of any original briefs, pleadings, or other documents ("Documents") it creates in the course of handling a legal matter for the City to the Handling City Attorney, for his or her approval and a copy of documents once finalized. The City shall not pay the Firm for the fees and expenses the Firm incurs in creating such Documents until the Firm provides them to the Handling City Attorney.

4. The Firm shall ensure that the Handling City Attorney receives copies of the following items in a timely manner.

- a. All pleadings filed by all parties involved. Pleadings shall include motions and exhibit documentation.
- b. All correspondence between the parties, their counsel, or the court.

5. In cases involving litigation, the Firm shall provide a pre-trial memorandum of legal issues and potential outcomes to the Handling City Attorney at least two weeks before commencement of the trial. The Firm shall provide a post-trial memo if requested by the Handling City Attorney.

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6. The Firm shall issue no press release, announcement or other release of information relating to legal matters on which it represents the City (or any party the City employs Firm to represent) without the prior consent of the City Attorney.

C. Legal Resources

1. The Firm's Use of the City Attorney's Office's Legal Resources

a. In order to reduce the City's legal costs where practicable, the Firm's attorneys shall make use of the legal personnel in the City Attorney's office, as well as any other personnel or facilities of the City. For example, the City's legal staff can help the Firm prepare discovery responses or schedule matters associated with the appearance or participation of City employees or officers. The Handling City Attorney will assist the Firm in coordinating such activities.

b. Prior to undertaking a legal research project, the Firm shall ask the Handling City Attorney to provide any research the City Attorney's Office has already performed regarding the legal matter the Firm is to handle for the City. Further, before the Firm undertakes a legal research project, the Handling City Attorney's prior approval is required.

c. In some cases, the Firm's attorney and the Handling City Attorney may share responsibilities for:

- (1) Document retrieval;
- (2) Pre-trial discovery;
- (3) Witness preparation;
- (4) Hearings;
- (5) Trial; and
- (6) Appellate work and argument.

2. Firm's Use of Other Legal Resources. When handling a legal matter for the City, the Firm shall use paralegal personnel whenever possible in order to reduce the City's overall legal costs.

IV. PAYMENT

A. The Firm's Budget and Billing Policies

1. Before the Firm begins handling a legal matter for the City, it shall provide to the City Attorney an initial budget which shall include, at a minimum, a list of each specific legal service the Firm shall perform for the City, including services subcontracted to MWBEs, if any, and include:

a. A detailed estimate of all fees, expenses, and costs the Firm shall charge for each legal service to be performed by the Firm;

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- b. The identity and billing rate of each of the Firm’s attorneys and paralegals who are to perform each legal services;
 - c. The amount of time the Firm expects to take to perform each legal service and an explanation of when MWBEs will be engaged and the services or goods the MWBEs will be engaged to provide.
2. The Firm shall update its budget every six months or more frequently when requested by the City Attorney or Handling City Attorney. The Firm shall provide a copy of each revised budget to the City Attorney and Handling City Attorney, and shall point out and explain each material modification or change from previous budgets.
3. ***If it becomes apparent to the Firm that it will exceed its budget, the Firm must promptly notify the City Attorney and First Assistant City Attorney in writing, describing in detail the reason(s) why the Firm expects to or has overrun its budget.***
4. The City will not pay any amount in excess of the Firm’s budget without the prior written approval of the City Attorney and, where appropriate, the City Council.
5. Failure to submit invoices **each month timely**, that is on or before the first business day of the month following the month in which services are rendered or expenses incurred, may result in the City denying or reducing payment for the invoiced amounts to the extent the invoiced amounts are (a) unverifiable or disputed by the Handling City Attorney or First Assistant City Attorney, or (b) otherwise prohibited or restricted as described in Section V, Monitoring Contract Funds.

B. The Firm’s Legal Fees

1. The Firm shall bill the City **on a monthly basis** as follows:
 - a. The Firm shall identify the total amount to be charged to the City for all legal services provided by the Firm.
 - b. The Firm shall provide a billing report for each specific legal service performed by the Firm as identified in the Firm’s budget. For each such legal service, the billing report shall record:
 - (1) each date on which the legal service was performed,
 - (2) the time expended performing legal services on each date,
 - (3) each member of the Firm, who performed this legal service during this day,
 - (4) the billing rate of each member of the Firm so identified,
 - (5) the total charge for performance of the legal service by each Firm member during this day and time. A sample of this billing report is included in Exhibit “B1”,
 - (6) the then-current maximum allocation and the cumulative total of all charges billed to date to the City under this Agreement,
 - (7) the amount paid that month to MWBEs (identified by vendor name) under this Agreement, if any,

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(8) the total of all charges paid to MWBEs to date under this Agreement, and said total payments expressed as a dollar amount and as percentage of the total contract value paid to MWBEs during the life of this Agreement and as a percentage of the cumulative total of all charges billed to date under this Agreement, and

(9) If the cumulative total that Firm has paid to MWBEs does not equal or exceed the percentage value of this Agreement required under the MWBE Compliance provision of this Agreement, if any, the billing report must include an explanation for the Firm's good faith efforts in awarding subcontracts or supply agreements to MWBEs and other reasons for the then-current level of MWBE engagement. By way of illustration, if the MWBE Compliance provision of this Agreement requires the Firm to make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs, and the cumulative total of such awards is less than 24%, the billing report must include the explanation described in this subparagraph.

2. All time billed by the Firm shall be in increments of 6 minutes (1/10 of an hour) and shall specifically identify the legal service performed by the Firm's personnel during that time, in accordance with the list of legal services identified in the Firm's budget.

3. Block billing is unacceptable. Each task and its corresponding time entry shall be identified separately.

4. If the Firm expects to be compensated for a conference between two or more of the Firm's personnel without any participants from outside the Firm, then

a. The Firm employees shall not each charge the City for their time spent participating in the conference at their individual hourly billing rates. Instead, the Firm shall be compensated for the conference at an amount that is equal to a "special conference hourly billing rate" multiplied by the length of the conference (in hours). The "special conference hourly billing rate" shall not exceed 150% of the highest billing rate associated with the conference, which the Firm may determine in either of the two following ways:

(1) As equal to the per-hour billing rate of the Firm employee participating in the conference with the highest per-hour billing rate, or

(2) As equal to the pro rata billing rate for the conference, which shall be calculated as follows:

(a) Each member's hourly billing rate is multiplied by the number of hours that member participated in the conference;

(b) Each member's individual per-hour billing rate charge is added together to arrive at the total amount of charges associated with the conference; and

(c) The total amount of charges associated with the conference is divided by the number of Firm members participating in the conference.

- b. The Firm must justify such an expense in writing at the time the bill for such a meeting is presented to the City, including a description of how the Firm arrived at the “special conference hourly billing rate” charged to the City for this conference.

C. The Firm’s Expenses

- 1. The City shall reimburse the Firm for the actual cost of out-of-pocket expenses incurred by the Firm which are related to the legal matter the Firm handles for the City, as follows:

- 2. Specific Expense Provisions

- a. Photocopy Expenses.

- (1) Any photocopy expenses incurred by the Firm at a cost of more than 10 cents per page must be approved in advance by the Handling City Attorney.

- (2) Any photocopy costs in excess of \$500 for a single job must be authorized in advance by the Handling City Attorney. The Firm’s request for approval of such photocopy costs must be accompanied by cost estimates provided by at least three (3) photocopy vendors, one of which may be the Firm itself.

- (3) Notwithstanding (1) and (2) above, the Firm shall use vendors such as court reporters and copying services under contract with the City whenever possible. The Firm should ask the Handling City Attorney to identify such contracts for its use.

- b. Travel Expenses.

- (1) The Firm shall exercise prudence in incurring travel expenses. Travel expenses for lodging, meals, and out-of-town transportation shall be at reasonable rates and consistent with the City’s travel policies. It shall be the Firm’s responsibility to apprise itself of the City’s travel policies; if clarification of such policies is required, the Firm may contact the Handling City Attorney for such clarification.

- (2) The Firm shall not charge for any time a Firm member spends traveling or providing legal services during travel, unless otherwise approved in advance by the City Attorney.

- (3) Whenever the Firm wishes to have more than one Firm member incur travel expenses related to the legal matter the Firm is handling for the City, the Firm must request and obtain advance approval from the City Attorney for such travel expenses. This requirement applies regardless of whether the different Firm members incur travel expenses at the same time or at different times.

- (4) The Firm shall not charge for time or mileage while traveling within the City limits.

- c. Telephone / Telecommunications Expenses.

- (1) The City shall not pay for any of the Firm’s local telephone expenses.

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(2) The maximum time the City shall pay for the Firm's long-distance phone calls related to the legal matter the Firm is handling for the City (whether incurred for voice or data transmission) is 6 minutes, unless the Firm provides a detailed explanation justifying payment for a longer period.

(3) The City shall not pay for the following unless agreed to in advance and in writing by the Handling City Attorney:

(a) Fax charges for local numbers;

(b) Fax charges for long distance numbers at more than the cost of the call.

d. The City shall not pay any of the following out-of-pocket expenses incurred by the Firm unless such payment is agreed to in advance by the City Attorney:

(1) Secretarial or word processing services (normal, temporary, or overtime);

(2) Any staff service charges, regardless of when such charges are incurred, such as meals, filing, or proofreading.

e. The following Firm expenses shall not be paid for by the City in any event:

(1) Office supplies.

(2) Firm time spent responding to the City's billing inquiries or preparing bills, billing estimates, expense reports, budgets or status reports;

(3) Overhead, including but not limited to, after-hours air conditioning or heating and online legal research service fees (including but not limited to any Westlaw or Lexis charges or fees), however characterized.

3. The Firm shall bill the City for its expenses by submitting invoices detailing the following for each expense for which the Firm wishes to be reimbursed:

a. Identification of the legal service performed for the City in which the Firm incurred the expense;

b. Identification of the specific expense incurred by the Firm, including but not limited to:

(1) Long distance calls to the extent permitted under Section C(2)(c) as a reimbursable travel expenses;

(2) Photocopying;

(3) Cost of transcripts;

(4) Cost of expert witnesses; and

(5) Court costs.

c. If the expense is a travel or out-of-town living expense, then the Firm shall itemize such expenses separately on an attached form and describe in specific detail the type of expense incurred and where applicable, the person incurring the charge or participating in the event. Allowable costs are:

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- (1) Travel;
- (2) Lodging;
- (3) Business meetings;
- (4) Meals;
- (5) Taxis and similar ride-sharing or transportation network vehicles (e.g. Uber, Get Me, or Lyft); and
- (6) Case-related long distance telephone or fax charges.

4. In addition to the above invoices, the Firm must also submit receipts or other documentation verifying each expense for which the Firm expects to be reimbursed by the City.

D. Audits and Reviews

1. At any time, representatives of the City may audit the Firm's invoices, billings, and invoicing and billing practices respecting the legal services the Firm provides to the City.
2. The Handling City Attorney shall review all bills and invoices and may request that the Firm reasonably adjust such bills and invoices to comply with the provisions and directives contained in this Policy.

V. MONITORING CONTRACT FUNDS

It is the Firm's responsibility to closely monitor expenditures under the contract and to notify the appropriate First Assistant City Attorney and the Handling City Attorney, in writing, when fees and expenses equal to 80% of the total contract funding have been accrued or committed, even if they have not yet been billed. At this point, the Firm shall stop providing services, unless instructed otherwise by the First Assistant City Attorney or City Attorney, until notified in writing that the City has allocated additional funding. The City has no obligation to pay for invoiced amounts in excess of the 80% allocation in the absence of prior, written approval from the First Assistant City Attorney or City Attorney. **THE CITY SHALL NOT HAVE ANY OBLIGATION TO PAY AND SHALL NOT PAY FOR SERVICES RENDERED OR EXPENSES INCURRED AFTER ALLOCATED FUNDS ARE EXHAUSTED.**

VI. TERMINATION

Despite the termination provisions set out in the professional services contract agreement between the City and the Firm, the Firm shall not terminate the agreement and stop providing legal services to the City in the following situations:

- A. Within 30 days of a deadline stated in the applicable docket control order;
- B. Within 60 days of a trial setting or administrative hearing or any appellate deadline in the cause in question; or
- C. In any other situation in which the Firm's termination of legal services would result in substantial prejudice to the City's rights.
- D. The Firm may withdraw in accordance with the Texas Disciplinary Rules of Professional Conduct.

THIS PROHIBITION OF TERMINATION OF THE AGREEMENT UNDER CERTAIN CIRCUMSTANCES DOES NOT AFFECT THE FIRM'S OBLIGATION TO SUSPEND THE PROVISION OF SERVICES UNDER SECTION V ABOVE.

SAMPLE

SAMPLE AGREEMENT – TERMS AND CONDITIONS SUBJECT TO
CHANGE

Exhibit B1

FIRM LETTERHEAD

PRIVILEGED AND CONFIDENTIAL

DATE

City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368
Attention: Handling City Attorney

INVOICE NUMBER: 2304
(ACH and Electronic Transfer
information optional)

For Professional Services rendered from June 1, 2019 to June 30, 2019

Re: Agreement or Purchase Order Number _____

(Brief description of legal matter) _____

(Style of case if in litigation) _____

Professional Services

Date	Name	Activity	Hours
06-04-2019	RPS	Meet with Ms. Jones regarding facts of the case and strategy	1.10
06-07-2019	MGI	Draft City's Plea to the Jurisdiction	0.80
06-24-2019	MGI	Prepare Motion for Summary Judgment	1.00
06-26-2019	RPS	Review plaintiff's response to City's MSJ on Limitations	0.20
06-28-2019	RPS	Attend pretrial conference	2.10

Professional Services Total Hours _____

Amount \$ _

SAMPLE AGREEMENT – TERMS AND CONDITIONS SUBJECT TO CHANGE

Time Summary

Initials	Name	Hours	Rate	Amount
RPS	Robert Paul Smith	3.40	\$340.00	\$1,156.00
MGI	Marta Gomez Ibarra	1.80	\$220.00	\$396.00

Additional Charges:	(documentation attached)	Amount
Photocopies		\$15.24
Long-Distance Telephone Charges		\$5.32
Total Expenses		\$20.56

Expenses for MWBE (identify MWBE by vendor name) \$1,200.00

Total amount of this bill \$2,772.56

Total Allocation (total maximum contract amount) \$10,000.00

Amount Remaining in Contract (as of date of bill) (e.g., Total Allocation – Cumulative total of all charged to date) \$2,000.00

Cumulative Total Amount Billed (as of date of bill) (e.g., cumulative total of all charged to date) \$8,000.00

Balance Due 07-01-2019 **\$2,772.56**

Amount paid to MWBE firms this month/billing cycle \$1,200.00

Cumulative total amount paid to MWBE firms (as of date of bill) \$1,920.00

Cumulative payments to MWBEs as a percentage of the Cumulative Total Amount Billed 24.00%

Cumulative payments to MWBEs as a percentage of the Total Allocation 19.20%

**SAMPLE AGREEMENT – TERMS AND CONDITIONS SUBJECT TO CHANGE
EXHIBIT C**

DRUG POLICY COMPLIANCE AGREEMENT

I, _____, as an owner or officer of
(Name) (Print/Type) (Title)
_____,
(Contractor)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug-testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

SAMPLE AGREEMENT – TERMS AND CONDITIONS SUBJECT TO CHANGE
Title

SAMPLE

EXHIBIT D

**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved in performing professional legal services for

(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

(Date) (Typed or Printed Name)

(Signature)

(Title)

EXHIBIT E

DRUG POLICY COMPLIANCE DECLARATION

I,

_____ as an owner or (Name) (Print/Type) (Title) officer of

_____ (Contractor) (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified. The Policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).
Initials

_____ Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.
Initials

_____ Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.
Initials

_____ Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.
Initials

_____ From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

SAMPLE AGREEMENT – TERMS AND CONDITIONS SUBJECT TO CHANGE

_____ Any employee who tested positive was immediately removed from the City
worksite consistent with
Initials the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in
accordance with established
Initials guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein, and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT F
PERFORMANCE STANDARDS

{TO BE INSERTED}

SAMPLE

EXHIBIT G

SUBROGATION RECOVERY REPORT

{TO BE INSERTED}

SAMPLE