

1422-578

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

SHER GARNER CAHILL RICHTER KLEIN & HILBERT, LLC

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and Sher Garner Cahill Richter Klein & Hilbert, LLC, represented by James M. Garner, Co-Managing Member (the "Contractor"). The City and the Contractor may sometimes be collectively referred to as the "Parties." The Agreement is effective as of the date of execution by the City (the "Effective Date").

RECITALS

WHEREAS, the City seeks to hire a firm or individual to provide outside legal services regarding the Home Rule Charter of the City of New Orleans;

WHEREAS, the Contractor has the requisite expertise, qualifications, and certifications in place, and is available for the performance of those professional services.

NOW THEREFORE, the City and the Contractor agree as follows:

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. Services. The Contractor will, in accordance with the schedule approved by the City:

1. Provide legal services necessary to assist the Executive Counsel to the Mayor in connection with delineation of the powers and duties of the executive and legislative branches as set forth in the Home Rule Charter.

2. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the Contractor's proposal dated May 19, 2022.

3. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

4. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

5. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

6. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. Standards. Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with the Louisiana Rules of Professional Conduct.

C. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

D. Invoices.

1. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include, at a minimum, the following information:

- a. Name of Contractor;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or Purchase Order Number issued by the City (i.e. K#);
- e. Name of the City Department to be invoiced (i.e. City Civil Service);
- f. Description of the Services completed;
- g. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.

2. Invoices will be processed in accordance with Article III Section B of the Agreement.

3. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

4. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

E. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

F. Audit and Inspection.

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors

and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested subject to attorney-client privilege. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

G. Insurance.

Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

Minimum Requirements:

Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance, with limits of not less than \$500,000 per accident for bodily injury or disease.

Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$2,000,000 each occurrence / \$4,000,000 policy aggregate.

Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.

Umbrella Liability Insurance with limits excess of Employers' Liability, Commercial General Liability and Automobile Liability Insurance in the amount of not less than \$1,000,000.

Cyber Liability Insurance to the Contractors profession, with limits of liability of not less than \$2,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations of the Contractor and shall include, but not limited to claims involving Network Interruption, Security and Privacy, extortion and release of private information.

Professional (Errors & Omission) Liability Insurance appropriate to the Contractors profession with limits of liability of not less than \$3,000,000 per occurrence or claim / \$3,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.

Other Insurance Provisions: The insurance policies are to contain, or be endorsed, to contain, the following provisions:

Additional Insured Status: The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked "Y" or Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation/Employers Liability and Property.

Primary Coverage: For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage.

Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this agreement.

Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this agreement.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.

Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Notice: The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref. : CEA) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

Copies of all policies of insurance, including all policies, forms, and endorsements:

Miscellaneous: Without notice from the City, the Contractor will:

- Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.

H. Indemnity.

1. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

4. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. **Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

C. **Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. **Conflict Of Interest.** The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. Contractor represents that it has performed a conflicts check and affirms that no actual, perceived or potential conflicts exist. Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a

conflict waiver must be presented to the City Attorney in writing in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

E. Employee Verification. The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this

F. The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Executive Counsel for the Mayor;
2. Provide the Contractor with documents deemed necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. Payment. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and
4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or

relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Contractor in accordance with the following rate:

<u>Timekeeper</u>	<u>Hourly Rate</u>
Senior and Junior Partners	\$225.00
Senior Associates	\$175.00
Junior Associates	\$150.00
Paralegals	\$60.00

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

4. The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

5. The Contractor shall comply with the City's Outside Counsel Billing Guidelines attached hereto as Exhibit A.

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is \$15,000.00

ARTICLE V - DURATION AND TERMINATION

A. Term. The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

C. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

D. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

E. Suspension. The City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and

selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE IX - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under

this Agreement.

ARTICLE X - NOTICE

A. In General. Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Executive Counsel
Office of the Mayor
City of New Orleans
1300 Perdido Street
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Contractor:

James Garner
Sher Garner Cahill Richter Klein & Hilbert, LLC
909 Poydras Street, 29th Floor
New Orleans, LA 70112

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Change. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XI - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

C. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. Compliance with City's Hiring Requirements – Ban the Box.

1. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating

why deviation from the hiring requirement is necessary.

2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.

4. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-contractors to comply with those provisions.

E. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

F. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

G. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

H. Jurisdiction. The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

I. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

J. No Third Party Beneficiaries. This Agreement is entered into for the exclusive benefit

of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

K. **Non-Exclusivity.** This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

L. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

M. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

N. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

O. **Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

P. **Severability.** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

Q. **Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

R. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XII - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 31st of May, 2022

FORM AND LEGALITY APPROVED:

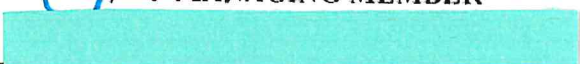
Law Department

By: 

Printed Name: Tracy Tyle

SHER GARNER CAHILL RICHTER KLEIN & HILBERT, LLC

BY: 
JAMES GARNER, CO-MANAGING MEMBER


FEDERAL TAX I.D.

CITY OF NEW ORLEANS
OUTSIDE COUNSEL BILLING GUIDELINES

INTRODUCTION

These Guidelines set forth further the terms of engagement between Outside Counsel and the City of New Orleans (the "City") and are designed to assist Outside Counsel in providing high quality legal service to the City of New Orleans, in the most efficient and cost-effective manner possible.

Law firms and attorneys retained by the City should ensure that a copy of these Guidelines is provided to all attorneys, paralegals, administrative, clerical or other assistants assigned to the City of New Orleans matters, as failure to comply herewith may result in the termination of the City's relationship with a particular law firm or attorney.

GUIDELINES FOR OUTSIDE COUNSEL

The City's engagement of your firm is subject to, but not limited to, the following requirements:

I. STAFFING MATTERS

The City Attorney should agree with Outside Counsel on which attorney(s) within the firm will have primary responsibility for the matter, and on the number and names of the partners, associates and legal assistants who will be assigned to the matter. Any request for changes to the staffing plan must be discussed and approved in advance. While it is important to have an adequate number of personnel at the right levels involved, the City Attorney expects Outside Counsel to exercise care to avoid overstaffing. Outside Counsel should limit the number of attorneys attending routine meetings, hearings and court proceedings to those essential to the performance of the task.

Unless otherwise approved in advance, the City will not pay for more than one attorney to attend a trial, motion hearing, meeting or deposition.

Unless otherwise approved in advance, the City will not pay for internal firm conferences or the inclusion of associates at meetings or hearings for the purpose of "associate development."

The City Attorney expects staffing to be efficient. Attorneys should not be performing work more appropriately assigned to a paralegal. Similarly, paralegals should not be assigned secretarial or other clerical tasks such as photocopying, filing or delivering materials, arranging travel or scheduling depositions or meetings. Routine file maintenance, calendaring, and data entry is Outside Counsel's responsibility and shall not be billed to the City of New Orleans.

The City Attorney believes that it is most efficient for a single attorney or group of attorneys to handle a matter from beginning to end, and we expect Outside Counsel to strive for continuity in staffing. The City will not pay for downtime or learning time that may result from staffing

changes. In addition, the City will not reimburse Outside Counsel for any routine training time, and will not ordinarily pay for summer associates time unless such time has been identified as part of the approved staffing plan for appropriate work such as approved research or drafting projects.

II. REPORTING SIGNIFICANT DEVELOPMENTS

Outside Counsel shall notify the City Attorney immediately of all significant developments that may affect the outcome of a case or matter or that may cause a budget to vary significantly.

Outside Counsel must immediately notify the City Attorney via e-mail of the following:

- (a) Filings or threatened filings of a motion to compel discovery, motion for sanctions, or any motion related to alleged spoliation of evidence.
- (b) Notices to depose City of New Orleans representatives.
- (c) All formal and informal offers to compromise litigation.
- (d) All actual or potential conflicts of interest.
- (e) All information related to the matter that may impact the City of New Orleans public relations.
- (f) Significant rulings by a court.
- (g) Assignments of trial, mediation, arbitration, and hearing dates.
- (h) Events that require the appearance or direct involvement of a City of New Orleans representative.
- (i) All verdicts.

The notice to the City Attorney shall be concise but provide sufficient detail to allow the City to make an informed decision, if one is required.

III. PLEADINGS, MOTIONS AND OTHER DOCUMENTS

Decisions to prepare and file substantive pleadings on behalf of the City shall be made jointly by Outside Counsel and the City Attorney.

Unless directed otherwise, Outside Counsel shall forward a draft copy of all pleadings to the City Attorney for review and approval prior to filing. Any pleading to be reviewed prior to filing must be submitted to the City Attorney no less than five (5) business days before the filing deadline. The City Attorney and Outside Counsel shall remain attentive to identifying legal and fact issues where the use of previously conducted research may be helpful and cost-efficient.

Any affidavits prepared by Outside Counsel for signature by a City employee must be reviewed and authorized in advance by the City Attorney. Outside Counsel are encouraged to use declarations in jurisdictions where they are allowed.

Unless otherwise instructed, Outside Counsel shall forward electronic copies of all substantive pleadings and significant correspondence to the City Attorney, including, specifically, all dispositive pre-trial and post-trial motions, supporting memoranda and responses, court orders, settlement correspondence, motions to compel or for sanctions, pre-trial reports, jury instructions, judgments, proposed findings of fact and conclusions of law, appellate briefs and, when requested by the City Attorney, summaries of medical and expert reports, if applicable.

A. Responding to Written Discovery

All discovery responses and requests, including any supplements, must be approved in advance by the City Attorney.

The City Attorney's Office will provide information to assist Outside Counsel in responding to interrogatories, requests for production of documents, requests for admission of fact, preparing Initial Disclosures and other types of written discovery. Within five (5) days of receipt, Outside Counsel shall email the complete discovery requests to the City Attorney.

IV. INVOICING FOR LEGAL SERVICES

The City Attorney views every bill from Outside Counsel as a certification by the firm that the legal services and disbursements reflected on the bill are reasonable for the legal matter involved and necessary for the proper provision of legal services. Attorney and paralegal time and disbursements that are not necessary for the cost effective handling of the legal matter should be deleted. We expect Outside Counsel to refrain from billing non-billable time or expenses as outlined in these Guidelines. Compliance with this procedure will avoid delays in processing invoices.

Invoices should be submitted monthly (unless agreed otherwise between the parties). Invoices must be emailed and approved by the City Attorney, or designee, before submitting electronically, via the City's supplier portal.

The City will pay for actual services rendered at rates established and agreed to in advance. Hourly rates will remain fixed for the duration of the representation on a particular matter unless otherwise agreed. Support services (secretaries, word processors, proofreaders, managing clerks, information system technicians, librarians, computer operators, etc.), including overtime, are part of Outside Counsel's normal overhead and will not be reimbursed. Time spent preparing, discussing, or supporting Outside Counsel's invoices will not be reimbursed.

Absent a specific agreement for an alternative fee arrangement, Outside Counsel fees shall be computed by applying the negotiated hourly rate to the time for the services expended. Time should be charged in units no larger than one-tenth of an hour. Hours shown must accurately reflect the time spent on the described activity and must either be the exact amount of time or the exact time rounded up or down, as the case may be, to the nearest one-tenth of an hour.

Block billing will not be accepted.

All charges must reflect the work performed within the billing period or a reasonable time before the billing period.

All charges must reflect the work performed within the billing period or a reasonable time before the billing period. The City may question and refuse to pay any charges incurred more than 90 days prior to a statement's listed billing period.

The City of New Orleans will promptly terminate the services of any Outside Counsel whose billing practices raise questions about the Outside Counsel's integrity, honesty or compliance with the applicable rules of professional conduct.

A. Line Item Entry Guidelines

Outside Counsel should review each invoice to determine that each line item clearly and succinctly describes the task performed and the legal reason for the task if the same is not apparent from the task description itself. The City of New Orleans reserves the right to reduce or reject any invoice or invoice line item because of a failure to comply with these Guidelines because an invoice line item is unclear or unreasonable or for any other valid and reasonable purpose.

Task descriptions should be written in plain English. The purpose for the task should either be plain from the context or should be succinctly described.

V. INVOICING FOR DISBURSEMENTS AND EXPENSES

The City will reimburse Outside Counsel for reasonable, documented and itemized out-of-pocket disbursements and charges incurred on behalf of the City, with the exceptions and limitations set forth herein. Outside Counsel's invoices to the City should reflect the actual cost of expenses and should not include any markup.

The City does not pay court filing fees. The City will reimburse Outside Counsel for actual costs incurred for court reporters and transcripts. The City will pay for only one copy (electronic and hard) of a transcript. Outside Counsel should obtain the lowest possible charge for court reporting fees, including any possible volume discounts.

The City discourages the use of express mail and courier services for both cost and environmental reasons. When an alternative electronic means for exchange of documents (*e.g.*, e-mail) is reasonably available, the City will not pay express mail charges. If electronic or facsimile delivery is unavailable, the City will reimburse Outside Counsel only for reasonable and necessary delivery charges. If Outside Counsel has a volume discount arrangement with a vendor, the City should be charged on that basis. Charges for time spent preparing express mail packages are part of Outside Counsel's overhead and are not reimbursable.

The approval of the City must be obtained in writing prior to retaining any third-party services other than legal-process servers and court reporters.

VI. NON-BILLABLE TIME

The following examples are not all-inclusive but represent many items for which the City will not reimburse Outside Counsel:

- (a) Time spent preparing invoices, completing time slips or resolving billing questions.
- (b) Time spent by paralegals performing clerical, secretarial or administrative work.
- (c) Time spent by attorneys performing paralegal work.
- (d) Time training a new staff member, attorney or paralegal or time incurred as a result of staffing changes made by Outside Counsel.
- (e) Time spent on staffing issues.
- (f) File creation, organization and maintenance, including data entry, input of project or matter information in Outside Counsel's financial billing system or litigation support system, labeling, binding, indexing and sorting documents, reorganizing, re-filing and storage preparation, document disposal and retrieval of documents.
- (g) Internal conferences. (Intra-office conferences are considered an internal law firm management tool. However, at the discretion of the City Attorney, conference charges may be paid where the conference adds value to the case, project or matter or results in cost-effective management of the matters assigned to Outside Counsel.)
- (h) Other administrative support services such as those performed by library and computer or information systems.
- (i) Time for more than one attorney to review pleadings, briefs, correspondence, or emails.
- (j) Time for more than one attorney to attend meetings, court, depositions, or other events. If more than one billing attorney or paralegal is needed to attend or handle a billable event or task, Outside Counsel must first receive written authorization from the City Attorney.

VII. CONFIDENTIALITY

In the course of representing the City of New Orleans, Outside Counsel frequently has access to nonpublic and confidential information, including information excluded from Louisiana's Public Records law. Outside Counsel must have in place appropriate procedures to ensure the protection of all such information. Outside Counsel must take appropriate measures to ensure that all legal and non-legal personnel are familiar with this requirement and are effectively supervised in this regard. Outside Counsel must consult with the City Attorney before

disseminating any potentially sensitive information acquired from the City or developed or learned while representing the City.

VIII. FILE RETENTION

Outside Counsel shall retain pleadings, correspondence, verified discovery responses, deposition transcripts, and similar documents and work product for a period of no less than five (5) years from the date the matter is concluded or for the time period specified by rule of law in the jurisdiction in which the matter was pending, whichever is longer. Outside Counsel shall notify the City Attorney's Office no less than 30 days prior to destroying any file. Along with the notification, Outside Counsel shall submit an inventory of any original City of New Orleans documents contained in the file to be destroyed and a certification that any electronic version of the file also will be destroyed or deleted. The City, in its sole discretion, may request any/all files be turned over to the City at no additional cost.