

CONTRACT FOR LEGAL SERVICES

By and Between

THE CITY OF WICHITA, KANSAS

And

McDONALD TINKER PA

THIS CONTRACT made and entered into this 28th day of March, 2017, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation of the State of Kansas, having its principal office at 455 North Main Street, Wichita, Kansas ("City"), acting for and on behalf of its Department of Law ("City Attorney"), and **McDONALD TINKER PA** having its principal office at 300 W. Douglas Ave., Suite 500, Wichita, Kansas, 67202 ("Attorney").

WITNESSETH:

WHEREAS, City, through its City Attorney, is authorized by law to employ attorneys to assist the City Attorney in her representation of the legal interests of the City; and

WHEREAS, City is in need of outside legal counsel to provide representation in the defense of civil rights litigation asserted against the City and its agents; and

WHEREAS, a competitive procurement process has been conducted in accordance with City policies and ordinances, and Attorney has been selected as a result of such process.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

1. GENERAL

Attorney shall be retained by the City to provide professional services in connection with the above-referenced litigation matters.

Attorney agrees to provide professional services to the City as required herein, by and through various members and associates of the firm with requisite experience for the services to be provided.

Attorney agrees to, and hereby does, accept such employment and agrees to do the work necessary to perform professional legal services for the City as described herein pursuant to the terms thereof.

2. TERM

Attorney agrees to commence such work the date this contract is executed, and agrees to execute the same with reasonable diligence until the 15th day of April, 2018. Renewal of said contract for continued legal services for a twelve-month period (the renewal period) will be at the discretion of the governing body of the City upon terms to be mutually agreed upon by the parties hereto. If the parties are unable to agree upon the terms of engagement for the renewal period, then this contract will terminate; Attorney shall be paid in full for all services provided and expenses incurred to date of termination; and, Attorney shall be relieved of all further duties and obligations with regard to any then pending litigation consistent with the Kansas Rules of Professional Conduct. This contract may be renewed up to four additional one-year renewals.

3. COMPENSATION

It is agreed that the Attorney shall be compensated for its services on an hourly basis as set forth in Exhibit "A" which is attached to and made a part of this contract. Such rates shall be effective for all services provided on and after April 14, 2017. The charges for professional services will be on the basis of time spent and actual expenses incurred in performing services for and on behalf of the City. Billing statements shall be prepared in a manner consistent with the parameters set forth in Cypress Media, Inc. v. City of Overland Park, 268 Kan. 407 (2000) for the purpose of protecting attorney-client privileged information and work product.

Attorney shall also be reimbursed for its disbursements and advances for items such as expert witness fees and expenses, consultants' fees and expenses, reproduction of documents, shipping and postage, long distance telephone calls, and similar costs as set out in Exhibit "B" which is attached to and made a part of this contract. Such rates shall be effective for all services provided on and after April 14, 2017.

Statements for fees and itemized expenses shall be submitted on a monthly basis in accordance with Attorney's standard billing practices and shall be paid within thirty days after receipt by the City.

Attorney shall maintain a contemporaneous record of time billed, indicating a brief summary of description of the work performed. The statements submitted for services rendered under the terms of the contract will reflect the time expended by Attorney and describe the work performed.

4. ASSIGNMENT

This contract may not be assigned, transferred, or in any way disposed of by Attorney without first having obtained written approval from the City Manager or City Council of the City.

5. LIMITATIONS ON AUTHORITY

It is understood and agreed that because of the responsibilities of the City Attorney, the City Attorney will appear on all documents and pleadings. Attorney must consult with the City Attorney on all major strategic or tactical decisions with a matter. The City Attorney does not expect to be involved in every routine decision. However, important decisions always should be raised with the City Attorney in sufficient time to allow for meaningful review and consideration of the issues, especially if a case involved policy issues or substantial sums. This contract contains no authorization in any event for Attorney to sign any papers or documents in the name of the City Attorney. Further, it is understood and agreed that Attorney shall have no authority or incur any liability, cost, or expense on the part of the City except as may be authorized by this contract or specifically authorized in writing by the City Attorney.

6. SCOPE OF SERVICES TO BE PROVIDED

During the performance of the contract, Attorney shall agree to perform and shall be prepared to provide a broad range of professional services related to defense of civil litigation asserted against the City or agencies thereof pursuant to the Kansas Tort Claims Act or 42 U.S.C. §1983 et seq. The professional services performed by the Attorney will be under the direction and control of the City Attorney. In some situations, the services provided will be done in association with in-house legal staff of the Department of Law. The professional services include, but are not limited to, the following:

- a. Research and general investigation into the civil rights law suits asserted against the City and its employees;
- b. Research and general investigation aimed at assessing the likely success of civil rights actions asserted against the City and its employees;
- c. Render advice, guidance, and assistance when requested by the City Manager, City Attorney, or Department Representatives relative to litigation and training;
- d. Consulting with the City Attorney and City staff regarding:
 - i. analysis and review of civil litigation asserted against the City of Wichita and its employees pursuant to the Kansas Tort Claims Act and 42 U.S.C. §1983;
 - ii. suggestions for training and policy development.
- e. Draft and preparation of pleadings in civil rights litigation filed pursuant to the Kansas Tort Claims Act and 42 U.S.C. §1983 including all necessary discovery, motion practice, trial preparation and trial, either to the court or a jury and appellate proceedings beyond the District Court;
- f. Have available at all reasonable times a senior member of the firm for the purpose of providing the services described herein in a timely manner;
- g. Avoid representation of other clients which cause or will result in conflicts of interest for Attorney except as otherwise provided hereinafter;
- h. Upon request, attend City Council meetings when a matter involving civil rights litigation filed pursuant to the Kansas Tort Claims Act and 42 U.S.C. §1983 is to be considered by the City Council.

7. CITY IS THE CLIENT

Attorney represents that in providing professional services under this Contract that they represent solely and only the City's interests and interests of city employees Attorney is assigned to represent.

8. PROFESSIONAL LIABILITY INSURANCE

Attorney will maintain policies of professional liability insurance coverage, with a Certificate of Insurance or a copy of the policy to be provided to the City upon written request.

9. NON-DISCRIMINATION

Attorney agrees to the terms and conditions as set forth in Exhibit "C" which is attached to and made part of this contract.

10. TERMINATION OF CONTRACT FOR CAUSE

It is mutually agreed that the City reserves the right to terminate this contract at any time, upon written notice, in the event of Attorney's inability to perform the services or in the event the services of Attorney are unsatisfactory; provided, that in such case the Attorney will be paid the reasonable value of the services rendered up to the time of termination.

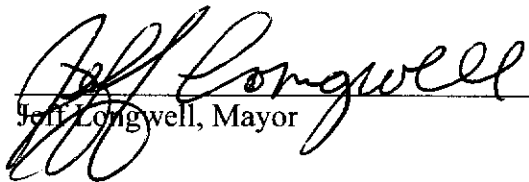
11. CONFLICTS

In the event a potential or actual conflict of interest issue arises between the City and any of the Attorney's other clients or potential clients relating to services provided by Attorney to such clients, Attorney shall notify the City Attorney in writing and seek a waiver of the conflict of interest.

IN WITNESS WHEREOF, this contract has been executed the day and year first above written.

CITY OF WICHITA, KANSAS

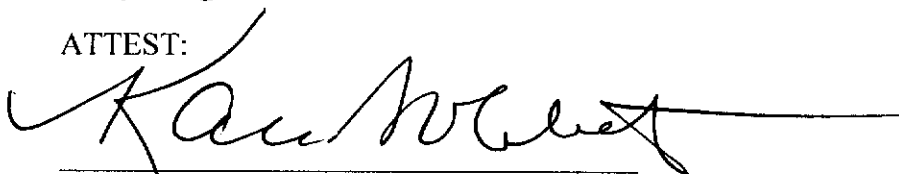
By:



Jeff Longwell, Mayor



ATTEST:



Karen Sublett, City Clerk

Karen Sublett, City Clerk

McDONALD TINKER PA

By: Jennifer

Title: Director

APPROVED AS TO FORM:

Jennifer Magaña
Jennifer Magaña, City Attorney and Director of Law

EXHIBIT "A"

Rate for Attorney (Partner/Members)	\$160.00/hr
Rate for Attorney (Associates and Of Counsel)	\$135.00/hr
Rate for Legal Assistant/Paralegal	\$ 80.00/hr
Mileage (current IRS reimbursable amount)	\$ 0.535/mi

EXHIBIT "B"

Actual costs will be reimbursed for the following types of costs incurred when receipts and/or detailed statements are provided and charges are approved by the City:

- | | |
|---|-------------------------|
| 1. In-house Photocopying | \$.10 per page |
| 2. Outside Printing for Large or Non-Standard Copy Projects | Actual expense incurred |
| 3. Facsimile Transmittals | None |
| 4. Long Distance Telephone Expense | Actual expense incurred |
| 5. Postage and Shipping Expenses | Actual expense incurred |
| 6. Overnight Delivery Publication Expenses | Actual expense incurred |
| 7. Recording/Filing Fees | Actual expense incurred |
| 8. State Agency Fees | Actual expense incurred |
| 9. Travel Expenses: | |
| a. Mileage | Current IRS rates |
| b. Tolls/Parking | Actual expense incurred |
| c. Taxis/Other Ground Transportation | Actual expense incurred |
| d. Meals/Lodging | Actual expense incurred |
| 10. Court Reporting | Actual expense incurred |
| 11. Transcription Fees | Actual expense incurred |
| 12. Reproductions/Outside Reproductions | Actual expense incurred |
| 13. Exhibit Preparation by Outside Providers | Actual expense incurred |
| 14. Expert witness consultants | Actual expense incurred |

EXHIBIT "C"

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination—Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated hereunder.

- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, Vietnam Era Veteran or Special disabled Veteran and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency.
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

- C. Exempted from these requirements are: (State of Kansas)
 - 1. Any contractor, subcontractor, vendor or supplier who has already complied with the provisions set forth in sections pertaining to the State of Kansas by reason of holding a contract with the Federal government, or a contract involving Federal funds.

2. Contracts entered into by a contractor, subcontractor, vendor or supplier who employs fewer than four (4) employees during the term of this contract.
 3. Contracts with the City of Wichita with a cumulative total of five thousand dollars (\$5,000) or less during the fiscal year of the City.
- D. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination – Equal Opportunity/Affirmative Action Program Requirements.
1. The vendor, supplier, contractor or subcontractor shall observe the provisions of the Code of the City of Wichita against discrimination (Section 2.12.900, et seq.) of the Code of the City of Wichita, Kansas) and shall not discriminate against any employee or applicant for employment in the performance of work under the present contract, purchase order or agreement because of race, religion, color, sex, “disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification”, national origin, ancestry or marital status. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination – Equal Employment Opportunity in all employment relations, including but not limited to 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. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation.
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, “disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification”, national origin, ancestry or marital status. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, “Equal Opportunity Employer”, or a similar phrase that is deemed acceptable to the City of Wichita;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the rules, regulations, and will permit access to books, records and procedures concerning employment relations by and for the purpose of investigation to ascertain compliance with Non-Discrimination – Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City of Wichita in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be initiated against such vendor, supplier, contractor or subcontractor;
 4. If the vendor, supplier, contractor or subcontractor is found guilty of a violation of any provision of the Code of the City of Wichita pertaining to and regulating Non-Discrimination — Equal Employment Opportunity under a decision or order of the City of Wichita, Kansas, which has become final, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement, and it may be canceled, terminated or suspended in whole or in part by the

City of Wichita, and such other sanctions and remedies may be imposed as provided by law;

5. The vendor, supplier, contractor or subcontractor shall include every provision of Subsection 1 through 4 inclusive, of this present section in every subcontract, sub-purchase order or sub-agreement so that such provisions will be binding upon each subcontractor, sub-vendor or sub-supplier.

E. Exempted from these requirements are: (City of Wichita)

1. Any contractor or subcontractor, vendor or supplier of the City of Wichita, or any of its agencies, who wishes to enter into a contract, purchase order or agreement shall prior to entering into such contract, purchase order or agreement, submit to the City of Wichita, Kansas, a preliminary report on forms provided by the Board, concerning Non-Discrimination – Equal Employment/Affirmative Action for review and evaluation. Upon review of the preliminary form submitted:
 - a. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City, are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
 - b. These provisions shall not apply to vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reasons of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) days period from the Federal agency involved.
 - c. Those contractors, subcontractors, vendors or suppliers not exempted herein whose preliminary report reveals deficiencies shall be required to submit goals and timetables for correction of such deficiencies in accordance with instruction included with the preliminary report for review, evaluation and acceptance prior to a contract, purchase order or agreement award.

- F. Failure of any contractor, subcontractor, vendor or supplier to report to the “Kansas Human Rights Commission” as required by K.S.A. 44-1031, as amended, or has been found guilty of a violation of the City’s Ordinances, State Statutes, or Federal Statutes, or regulations pertaining to unlawful discrimination, which finding, decision or order has become final, shall be deemed a breach of this contract and said contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

McDonald Tinker, PA
300 W. Douglas, Suite 500
Wichita, KS 67202-2919

March 14, 2018
BP740025

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated March 28, 2017, with your firm ~~{Vendor Code Number – 800001-001}~~ to provide **Legal Services Related to City's Police Claims** {Commodity Code Number – 96149} (Formal Proposal – FP640053) for the Law Department of the City of Wichita. This is to be per your proposal and the specifications of January 9, 2017, and as approved by the City Council on March 28, 2017.

The renewal of this contract shall be for a term from **April 15, 2018 through April 30, 2019**, with options to renew under the same terms and conditions for three (3) additional one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

We ask that a current Certificate of Insurance for your company be submitted to our office. The City of Wichita, 455 N. Main, Wichita, Kansas, 67202, should be listed as the Certificate Holder and also named as an Additional Insured.

The vendor agrees to comply with the Non-Discrimination and Equal Opportunity Statement that is attached and made a part of this contract by reference hereto.

If you are in full agreement with the renewal of this contract, **please have an authorized representative of your company sign and return one copy of this letter to our Purchasing Office.** The second copy should be retained for your files.

Sincerely,

Melinda A. Walker
Purchasing Manager

MAW/JB/ik
Attachment

MCDONALD TINKER, PA

Signature

Print Name

Title (*Authorized Representative*)

Telephone Number

McDonald Tinker, PA
300 W. Douglas, Suite 500
Wichita, KS 67202-2919

April 8, 2019
BP740025
(Revised)

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated March 28, 2017, with your firm ~~{Vendor Code Number – 88881-001}~~ to provide **Legal Services Related to City's Police Claims** {Commodity Code Number – 96149} (Formal Proposal – FP640053) for the Law Department of the City of Wichita. This is to be per your proposal and the specifications of January 9, 2017, and as approved by the City Council on March 28, 2017.

The above named parties hereby agree covenant and contract with each other that the terms of the original contract are hereby reaffirmed and re-executed for and on behalf of these parties except for the following modification:

Rate Increase, Effective May 1, 2019

Rate for Attorney (Partner/Members) @ \$175.00 per Hour
Rate for Attorney (Associate) @ \$150.00 per Hour
Rate for Legal Assistant (Paralegal) @ \$90.00 per Hour
Mileage/Current IRS Rate @ \$0.58 per Mile

The renewal of this contract, at the above listed rates, shall be for a one-year period, from **May 1, 2019 through April 30, 2020**, with options to renew under the same terms and conditions for two (2) additional one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

We ask that a current Certificate of Insurance for your company be submitted to our office. The City of Wichita, 455 N. Main, Wichita, Kansas, 67202, should be listed as the Certificate Holder and named as an Additional Insured.

The vendor agrees to comply with the Non-Discrimination and Equal Opportunity Statement that is attached and made a part of this contract by reference hereto.

McDonald Tinker, PA
April 8, 2019
Page Two

If you are in full agreement with the renewal of this contract, **please have an authorized representative of your company sign and return one copy of this letter to our Purchasing Office with your insurance certificate.** The second copy should be retained for your files.

Sincerely,

Melinda A. Walker
Purchasing Manager

MAW/lk
Attachment

MCDONALD TINKER, PA

Signature

Print Name

Title (*Authorized Representative*)

Telephone Number



RECEIVED
APR 28 2020
PURCHASING

McDonald Tinker, PA
300 W. Douglas, Suite 500
Wichita, KS 67202-2919

April 9, 2020
BP740025

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated March 28, 2017, with your firm [vendor Code Number – 806881-001] to provide **Legal Services Related to City's Police Claims** (Commodity Code Number – 96149) (Formal Proposal – FP640053) for the Law Department of the City of Wichita. This is to be per your proposal and the specifications of January 9, 2017, and as approved by the City Council on March 28, 2017.

The renewal of this contract shall be for a one-year period, from **May 1, 2020 through April 30, 2021**, with options to renew under the same terms and conditions for one (1) additional one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

We ask that a current Certificate of Insurance for your company be submitted to our office. **The City of Wichita, 455 N. Main, Wichita, Kansas, 67202, should be listed as the Certificate Holder and named as an Additional Insured.**

The vendor agrees to comply with the Non-Discrimination and Equal Opportunity Statement that is attached and made a part of this contract by reference hereto.

If you are in full agreement with the renewal of this contract, **please have an authorized representative of your company sign and return one copy of this letter to our Purchasing Office with your insurance certificate.** The second copy should be retained for your files.

Sincerely,

Melinda A. Walker
Purchasing Manager

MAW/HL/am
Attachment

MCDONALD TINKER, PA

Signature

Jennifer Hill

Print Name

Partner / Director

Title (Authorized Representative)

4-27-2020

Telephone Number



McDonald Tinker, PA
300 W. Douglas, Suite 500
Wichita, KS 67202-2919

March 15, 2021
17740025

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated March 28, 2017, with your firm to provide Legal Services Related to City's Police Claims {Commodity Code Number – 96149} (Formal Proposal – FP640053) for the Law Department of the City of Wichita. This is to be per your proposal and the specifications of January 9, 2017, and as approved by the City Council on March 28, 2017.

The renewal of this contract shall be for a one-year period, from **May 1, 2021 through April 30, 2022**, by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

We ask that a current Certificate of Insurance for your company be submitted to our office. The City of Wichita, 455 N. Main, Wichita, Kansas, 67202, should be listed as the Certificate Holder and named as an Additional Insured.

The attached Exhibits A and B are now mandatory addenda to all City Purchasing contacts. They are incorporated into this renewal of the original contract by reference, and acceptance of this contract renewal acts as an acceptance of these additional terms.

If you are in full agreement with the renewal of this contract, **please have an authorized representative of your company sign and return one copy of this letter to our Purchasing Office with your insurance certificate.** The second copy should be retained for your files.

Sincerely,

Jason Brogden
for Melinda A. Walker
Purchasing Manager

MAW/HL/am
Attachment

MCDONALD TINKER, PA

Jennifer Hill

Signature

Jennifer Hill

Print Name

Director

Title (Authorized Representative)

4-20-21

Telephone Number

EXHIBIT A