

#27

SEP 27 2012



Chandler • Arizona
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MEMORANDUM

DATE: September 27, 2012
TO: Mayor and Council
THRU: Rich Dlugas, City Manager *RD*
FROM: Debra Stapleton, Human Resources Director *ds/p*
SUBJECT: Professional Services Agreement

RECOMMENDATION:

The City Council is requested to approve the professional services agreement with the Summit Law Group in an amount not to exceed \$50,000.

BACKGROUND/DISCUSSION:

In FY 13/14, the contracts for Police Officers, Police Sergeants and SEIU will be open for negotiations. Fire is in the second year of a two-year contract with a wage reopener for FY 13/14.

The City has engaged the services of Attorney Bruce Schroeder from the Summit Law Group to provide guidance in matters involving labor relations over the past year. In addition to providing legal services, he also assists public sector organizations with negotiations of labor contracts. Given that the City will be negotiating three full contracts and one wage reopener in FY 13/14, staff recommends that the City engage the services of Bruce Schroeder to assist with the contract negotiations.

MOTION:

Move to approve the professional services agreement with the Summit Law Group in an amount not to exceed \$50,000.

CITY OF CHANDLER

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Summit Law Group, hereinafter referred to as "CONSULTANT".

WHEREAS, the Mayor and City Council of the City of Chandler is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

WHEREAS, CONSULTANT represents that CONSULTANT has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR

1.1. To provide the professional services required by this Agreement CONSULTANT shall act under the authority and approval of Mary Wade, City Attorney, who shall oversee the execution of this Agreement.

2. SCOPE OF WORK: CONSULTANT shall provide those services described in Exhibit A attached hereto and made a part hereof by reference.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Agreement, shall be and remain the property of CITY and shall be delivered to CITY before final payment is made to CONSULTANT.

4. FEE SCHEDULE: For the services described in paragraph 2 of this Agreement, CITY shall pay CONSULTANT a fee not to exceed the sum of Fifty Thousand Dollars (\$50,000) in accordance with the fee schedule attached hereto as Exhibit B and incorporated herein by reference.

5. TERM: The term of this Agreement shall be one (1) year subject to renewal for three (3) more terms upon mutual agreement of the parties

6. TERMINATION:

6.1. Termination for Convenience: CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed for each task detailed in the Scope of Work and the CONTRACTOR's compensation shall be based upon such determination and CONTRACTOR's fee scheduled included herein.

6.2 Termination for Cause: City may terminate this Contract for Cause upon the occurrence of any one or more of the following events:

- 1) If CONSULTANT fails to perform pursuant to the terms of this Agreement
- 2) If CONSULTANT is adjudged a bankrupt or insolvent;
- 3) If CONSULTANT makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONSULTANT or for any of CONSULTANT'S property;
- 5) If CONSULTANT files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONSULTANT disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONSULTANT then existing or which may thereafter accrue.

7. INDEMNIFICATION: . To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Consultant, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Agreement, including

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- 5) If CONSULTANT files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONSULTANT disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
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but not limited to, any injury or damages claimed by any of Consultant's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

8. INSURANCE REQUIREMENTS: CONSULTANT shall provide and maintain the insurance as listed in Exhibit D attached hereto and made a part hereof by reference.

9. ENTIRE AGREEMENT: This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

10. ARIZONA LAW: This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

10.1 Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

10.2 A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

10.3 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

10.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

10.5 The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

10.6 In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran.

10.7 In accordance with A.R.S. §35-391.06 the Contractor hereby certifies that the offeror does not have scrutinized business operations in Sudan.

11. CONFLICT OF INTEREST:

11.1 No Kickback. CONTRACTOR warrants that no person has been employed or

retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to the CITY.

- 11.2 Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice for CITY is received by all other parties, unless the notice specifies a later time (A.R.S. 38-511).
- 11.3 No Conflict.** CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.
- 11.5 Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 11.6 Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 11.7 Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.
- 12. NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.
- 13. Identity of Client.** In providing services to a client which is an entity, CONSULTANT does not thereby also separately represent affiliates or other constituents of the entity, nor does CONSULTANT separately represent the owners, officers, directors, founders, managers, members, partners, fiduciaries, or employees of the entity in their individual capacities or with respect to their individual affairs.
- 14. Return of Files.** After this engagement has ended, City may request the return of its files. If City does not want CONSULTANT to return files the files can be kept by CONSULTANT. Depending on the size of the files, consultant may charge you for the cost of continued storage.

EXHIBIT A

**Contractor Immigration Warranty
To Be Completed by Contractor Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number:		
Name (as listed in the contract):		
Street Name and Number:		
City:	State:	Zip Code:

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Contractor (Employer) or Authorized Designee:



Printed Name: Bruce L. Schroeder

Title: Attorney

Date (month/day/year): 9/14/12

**EXHIBIT B
SCOPE OF WORK**

Perform as City Management representation and lead negotiator for FY 13/14 union negotiations with Police Officers, Police Sergeants, SEIU Local 48 and Fire.

EXHIBIT C

FEE SCHEDULE

<u>Attorney</u>	<u>2011 Billing Rate</u>
Kristin D. Anger	250.00
Denise L. Ashbaugh	225.00
Michael C. Bolasina	250.00
John H. Chun	255.00
Elizabeth R. Kennar	250.00
Otto G. Klein	285.00
Sofia D. Mabee	220.00
Shannon E. Phillips	250.00
Bruce L. Schroeder	285.00
Linda Swanson	105.00
Rodney B. Younker	280.00

In no event shall the fees for this Contract exceed Fifty Thousand Dollars (\$50,000)

EXHIBIT D
INSURANCE REQUIREMENTS

1. General.

A. At the same time as execution of this Agreement, the **Consultant** shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

B. The **Consultant** and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.

C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect **Consultant** from liabilities that might arise out of the performance of the Agreement services under this Agreement by **Consultant**, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the **Consultant** is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the **Consultant** from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

F. Use of SubContractors: If any work is subcontracted in any way, the **Consultant** shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the **Consultant** in this Agreement. The **Consultant** is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

2. Minimum Scope and Limits Of Insurance. The **Consultant** shall provide coverage with limits of liability not less than those stated below.

A. *Commercial General Liability-Occurrence Form.* **Consultant** must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent

contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability:* **Consultant** must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on **Consultant** owned, hired, and non-owned vehicles assigned to or used in the performance of the **Consultant's** work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. *Workers Compensation and Employers Liability Insurance:* **Consultant** must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of **Consultant** employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

D. *Professional Liability.* If the Agreement is the subject of any professional services or work performed by the **Consultant**, or if the **Consultant** engages in any professional services or work adjunct or residual to performing the work under this Agreement, the **Consultant** must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the **Consultant**, or anyone employed by the **Consultant**, or anyone whose acts, mistakes, errors and omissions the **Consultant** is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage must extend for 3 years past completion and acceptance of the work or services, and the **Consultant**, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

3. Additional Policy Provisions Required.

A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the **Consultant** including the City's general supervision of the **Consultant**; Products and Completed operations of

the **Consultant**; and automobiles owned, leased, hired, or borrowed by the **Consultant**.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the **Consultant** even if those limits of liability are in excess of those required by this Agreement.

3. The **Consultant's** insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the **Consultant** and must not contribute to it.

4. The **Consultant's** insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Coverage provided by the **Consultant** must not be limited to the liability assumed under the indemnification provisions of this Agreement.

6. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the **Consultant** for the City.

7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the **Consultant** must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.