

# CITY COUNCIL REPORT



Meeting Date: November 18, 2014  
 General Plan Element: *Provide for the orderly administration of the affairs of the City*  
 General Plan Goal: *Fiscal management*

## ACTION

**Authorize a contract with Struck Wieneke & Love.** Consider adopting Resolution 9963 approving Contract No. 2014-012-COS-A2 for legal services with the law firm of Struck Wieneke & Love for the City's defense of *Clark, et al., v. Spano, et al.*, Maricopa County Superior Court Case No. CV2013-001476, in an amount not to exceed \$525,000.

## BACKGROUND

This case involves a pedicab accident on January 4, 2013. Cody A. Clark and Michael D. Tysver were passengers in a pedicab travelling north on Scottsdale Road approaching Rose Lane when a motor vehicle driven by Joseph Paul Spano collided with the rear of the pedicab. Mr. Clark and Mr. Tysver were injured in the accident. Notices of Claim were filed with the City seeking damages in the amount of forty million dollars (\$40,000,000) for Cody Clark, three million dollars (\$3,000,000) for Sandy Clanton, three million dollars (\$3,000,000) for Todd Clark, and five million dollars (\$5,000,000) for Michael Tysver. The City denies liability in the case. The law firm of Struck Wieneke & Love has been defending the City in this case with the assistance of the City Attorney's Office.

The firm has performed services under contracts 2014-012-COS and 2014-012-COS-A1, which are limited in amount to \$275,000. The City Attorney's Office believes that it is in the best interest of the City to request an increase in this amount so that the firm can continue to provide services in this case.

## ANALYSIS & ASSESSMENT

### Recent Staff Action

Staff from the City Attorney's Office has provided assistance to outside counsel in this case.

### Policy Implications

The policy of the City Attorney's Office is to handle litigation in house except when (a) specialized expertise not available in the Office is required, (b) the Office is precluded from providing representation either because there is a conflict of interest or there is some other reason why it would be detrimental to the City for the case to be retained by the Office, or (c) resources beyond those available to the Office are required. In this circumstance the retention of Struck Wieneke &

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Love falls within the policy parameters for the use of outside counsel because the firm has the resources necessary to defend this case.

### **Significant Issues to be Addressed**

If plaintiffs were to prevail, they might be entitled to a substantial award of damages. As noted above, Plaintiffs filed a Notices of Claim in the amount of fifty-one million dollars (\$51,000,000).

### **Community Involvement**

No community involvement is necessary on this item.

## **RESOURCE IMPACTS**

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### **Available funding**

Funding is available in the Risk Management operating budget.

### **Staffing, Workload Impact**

This case requires significant legal work. Struck Wieneke & Love has provided highly competent and cost effective representation to the City to date in this matter, and its rates are very competitive. An Assistant City Attorney and a paralegal from the City Attorney's Office are also assigned to this case in order to help control costs. To the extent practicable, internal resources are being used in an attempt to control costs.

### **Future Budget Implications**

The cost of this litigation may exceed the contract extension being requested, in which case further Council authorization will be sought.

### **Cost Recovery Options**

None.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution 9963 approving Contract No. 2014-012-COS-A2 for legal services with the law firm of Struck Wieneke & Love for the City's defense of *Clark, et al, v. Spano, et al.*, Maricopa County Superior Court Case No. CV2013-001476 in an amount not to exceed \$525,000.

### **Description of Option B**

Not approve Resolution 9963 and discontinue the services of Struck Wieneke & Love.

### **Proposed Next Steps**

If the contract is approved the law firm of Struck Wieneke & Love will continue to provide legal services in the City's defense of *Clark, et al, v. Spano, et al.*, Maricopa County Superior Court Case No. CV2013-001476.

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Responsible Department(s)

Risk Management  
City Attorney's Office

**STAFF CONTACTS (S)**

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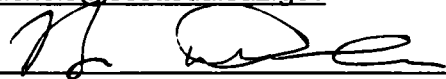
Katherine Callaway, Risk Management, [kcallaway@scottsdaleaz.gov](mailto:kcallaway@scottsdaleaz.gov)  
Bruce Washburn, City Attorney, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

**APPROVED BY**

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\_\_\_\_\_  
Jeff Nichols, City Treasurer  
(480) 312-2364  
[jenichols@scottsdaleaz.gov](mailto:jenichols@scottsdaleaz.gov)

11/4/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
(480) 312-2405  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

11/3/14  
\_\_\_\_\_  
Date

**ATTACHMENTS**

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- 1. Resolution No. 9963
- 2. Contract No. 2014-012-COS-A2

RESOLUTION NO. 9963

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING CONTRACT NO. 2014-012-COS-A2, IN A TOTAL AMOUNT NOT TO EXCEED \$525,000, WITH THE LAW FIRM OF STRUCK WIENEKE & LOVE FOR THE CITY'S LEGAL DEFENSE IN *CLARK, ET AL., V. SPANO, ET AL.*, CASE NO. CV2013-001476, CURRENTLY PENDING IN MARICOPA COUNTY SUPERIOR COURT.

WHEREAS Todd A. Clark and Sandra A. Clanton on behalf of Cody Allan Clark have brought a lawsuit against the City of Scottsdale seeking to recover monetary damages for injuries resulting from an accident occurring January 4, 2013; and

WHEREAS Michael D. Tysver has brought a lawsuit against the City of Scottsdale seeking to recover monetary damages for injuries resulting from this same accident; and

WHEREAS the lawsuit is titled *Clark et al., v. Spano, et al.*, and is filed in the Maricopa County Superior Court, Case No. CV2013-001476; and

WHEREAS the City of Scottsdale needs to fully defend against the claims brought in the lawsuit; and

WHEREAS the law firm of Struck Wieneke & Love has been providing the City with legal representation in the defense of the referenced lawsuit pursuant to Contract Nos. 2014-012-COS and 2014-012-COS-A1; and

WHEREAS it is in the best interest of the City to continue the services of Struck Wieneke & Love; and

WHEREAS the Scottsdale City Council must approve any payments under the contracts referenced herein in excess of the amount of \$275,000; and

WHEREAS the cost of the effective defense of the referenced lawsuit will exceed \$275,000, therefore it is in the best interest of the City to authorize payments above that amount.

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor is authorized and directed to execute Contract No. 2014-012-COS-A2 with the law firm of Struck Wieneke & Love.

Section 2. The amount of payment authorized under Contract Nos. 2014-012-COS, 2014-012-COS-A1 and 2014-012-COS-A2 with the law firm of Struck Wieneke & Love for legal services in the City's defense of *Clark et al., v. Spano, et al.*, Maricopa County Superior Court Case No. CV2013-001476, is increased by Two Hundred Fifty Thousand (\$250,000) to a total amount under all contracts not to exceed Five Hundred and Twenty-Five Thousand Dollars (\$525,000) without first obtaining the approval of the City Council.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 18<sup>th</sup> day of November, 2014.


CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
fol. Bruce Washburn, City Attorney  
By: Eric C. Anderson  
Senior Assistant City Attorney

**CONTRACT FOR LEGAL SERVICES  
CITY OF SCOTTSDALE  
City Attorney's Office**

THIS CONTRACT is made and entered into on this 18<sup>th</sup> day of November, 2014 by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of Struck Wieneke & Love hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to assist in connection with **Clark, et al., v. Spano, et al., CV2013-001476**.

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Scope of Service and Representation. COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing the City. Such legal services shall be carried out in cooperation with the City Attorney's Office who shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL'S recommendations. City will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of City, acting through its City Attorney's Office.

2. Advice and Status Reporting. COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.

3. Compensation. CITY agrees to pay COUNSEL for services rendered hereunder as follows:

- A. Two Hundred Ten Dollars (\$210.00) per hour for Senior Partners.
- B. Two Hundred Dollars (\$200.00) per hour for Junior Partners.
- C. One Hundred Ninety-Five Dollars (\$195.00) per hour for Senior Associates.
- D. One Hundred Eighty-Five Dollars (\$185.00) per hour for Junior Associates.
- E. One Hundred Five Dollars (\$105.00) per hour for Paralegals.
- F. One Hundred Ten Dollars (\$110.00) per hour for Specialized Paralegals.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL'S "runners", but may be billed for messenger service required when COUNSEL'S runner is not available. Total money paid under this contract **shall not exceed Two Hundred and Fifty Thousand Dollars**

**(\$250,000).**<sup>1</sup> Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Term. The term of this Contract shall be for a two (2) year period expiring **November 18, 2016**. CITY reserves the option to extend this Contract for a maximum of two (2) more one (1) year periods, upon the recommendation of the Contract Administrator.

5. Price Adjustment

A. Price increases may only be requested by COUNSEL thirty (30) days prior to the annual anniversary date of this Contract after the initial two (2) year period. Failure to do so may result in the denial of any increase requested.

B. Any increased rate shall be based upon mutual consent of COUNSEL and the Contract Administrator; however, the Contract Administrator shall evaluate COUNSEL's performance, services and records documentation to determine the appropriateness of the increase requested.

6. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

7. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent out to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. On-line database retrieval charges (i.e. Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

8. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g. tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

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<sup>1</sup> The amount stated herein is in addition to amounts stated under contracts 2014-012-COS and 2014-012-COS-A1.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 4 and 5 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the City Attorney's Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the City Attorney's Office contract number **2014-012-COS-A2** and; 4) the unbilled amount remaining on the contract. COUNSEL will use its best efforts to inform the City Attorney's Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

9. Maintenance of Records. In compliance with CITY'S standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY'S expense.

10. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

11. Reporting Requirements

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first/ filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be



interviewed or deposed; experts to be retained; motions to be filed; etc.);

4. An estimate of the cost to defend the case through trial;
5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and,
6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

12. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

13. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL in writing.

14. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the Contract Administrator named below:

City Attorney's Office  
City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: Eric Anderson

Should the Contract Administrator change, CITY will notify COUNSEL in writing.

15. Indemnification For Liability and Professional Liability

To the fullest extent permitted by law COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, 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 COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any

Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL'S and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

16. Insurance Representations and Requirements

General: Counsel agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY'S option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by COUNSEL'S insurer(s) as evidence that policies are

placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City of Scottsdale shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL'S responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability, b) Auto Liability and c) Excess Liability-Follow Form to underlying insurance as required.
2. COUNSEL'S insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

#### Required Coverage

**Commercial General Liability:** COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Complete Operations Annual Aggregate, and a \$1,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

**Professional Liability:** If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

**Workers' Compensation Insurance:** COUNSEL shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL'S employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

17. **Choice of Law.** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

18. **Whole Agreement.** This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

19. **Amendments.** Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

20. **Non-Assignment.** Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney.

21. **Cancellation.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

22. **Independent Contractor Status.** The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

23. **Severability.** Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

24. **Immigration Law Compliance.** Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Contract and may subject the Contractor or subcontractor to penalties up to and including termination of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

25. Lawful Presence in the United States for Persons. Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

PERSONS is defined as all NATURAL PERSONS / INDIVIDUALS / SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations, Limited Partnerships or General Partnerships)*

26. No Preferential Treatment or Discrimination. In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

**City of Scottsdale, a municipal corporation**

By: \_\_\_\_\_  
W.J. "Jim" Lane, Mayor

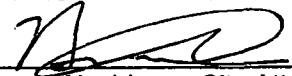
**Struck Wieneke & Love**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**