

LEGAL SERVICES CONTRACT LAW DEPARTMENT

This contract is entered into between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“City”) and the law firm Grant & Eisenhofer P.A. (“Contractor”).

RECITALS

The City Attorney is authorized to engage outside attorneys on behalf of the City to assist the City Attorney’s Office in its representation of the City and its officers and employees.

The City Attorney may seek to assign outside counsel to provide legal representation, support and resources, as well as specialized legal advice to the City.

Contractor is experienced in providing legal representation in the areas of the law deemed necessary by the City Attorney and has the necessary resources to do so.

The parties agree as follows:

SECTION 1. SCOPE OF SERVICES

- A. The City hereby retains and employs Contractor to provide legal representation of the City, its duly authorized officers, employees, and volunteers, as the Contractor’s areas of concentration and experience may allow in connection with pursuing one or more lawsuits, from pre-suit investigation through final appeal, against all those responsible for developing, designing, manufacturing, distributing, marketing, selling, providing, or otherwise facilitating delivery and utilization of firefighter turnout gear known or suspected or believed to contain per- and polyfluoroalkyl substances (“PFAS”) (the “Action”). Contractor will provide legal counsel to, and representation of, the City as set out in Exhibit B – Scope of Representation (“Services”).
- B. Contractor will provide the Services in accordance with the City’s Legal Representation Guidelines, which are attached hereto and incorporated by reference Exhibit A and incorporated herein by this reference.
- C. The Services provided pursuant to the Contract are nonexclusive and the City is not limited by this Contract from entering into other Contracts for legal services with other attorneys.

SECTION 2. TERM

City agrees to retain Contractor from the date of this Contract until the matter is completed. Contractor will undertake to represent the City to the conclusion of each matter assigned, even if the conclusion extends beyond the term of this Contract. The City Attorney is authorized to enter into amendments to extend the Term and time of performance for this Contract and the Attorney Fees paid for this Contract.

SECTION 3. ATTORNEY FEES, COSTS AND EXPENSES

City and Contractor have agreed that City will pay Contractor a contingent fee for representing City in any Action. City and Contractor agree that the contingent fee will be calculated as described in Exhibit C.

- A. Reserved.
- B. It shall be a condition precedent to payment of any invoice from Contractor that it be in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by City as a result of breach or default by Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.
- C. To the extent applicable, no request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the terms of this Contract.
- D. The City is not liable for any obligation incurred by Contractor except as approved under the provisions of this Contract.
- E. Reserved.

SECTION 4. REQUIRED ADDITIONAL TERMS AND CONDITIONS.

Contractor shall comply with the Airport Required Terms and Conditions for Legal Services Contracts attached as Exhibit D and the Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances attached as Exhibit E.

SECTION 5. INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE

Because the Contractor is prohibited under the terms of its professional liability policy from entering a contract that expands the Contractor's duties as attorneys or expands the Contractor's liability for any negligence beyond that dictated by the applicable tort law; and because both parties wish for the Contractor's professional liability coverage to fully cover Contractor for any professional negligence, the parties agree that the Contractor does not hereby undertake to indemnify the City, but rather, Contractor will be fully liable in tort for any damages the City incurs that are proximately caused by the Contractor's professional negligence.

SECTION 6. INSURANCE

- A. The Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, the Contractor shall supply such insurance at the City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Contractor's Self-Insured Retention.

1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an “occurrence” basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Contractual Liability
 - c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000
 - d. No Contractual Liability Limitation Endorsement
 - e. Additional Insured Endorsement, ISO for CG20 10, current edition, or its equivalent
2. Workers’ Compensation Insurance and Employers Liability Policies as required by Missouri law.
3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an “any auto” basis and on an “occurrence” basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.
4. Contractor shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
5. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
6. Technology Professional Liability Errors and Omissions Insurance appropriate to the Contractor’s profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social

engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

- a. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the City in the care, custody, or control of the Contractor. If not covered under the Contractor’s liability policy, such “property” coverage of the Agency may be endorsed onto the Contractor’s Cyber Liability Policy as covered property as follows:
 - b. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- A. All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the City ten (10) days written notice of cancellation in the event that the cancellation is for Contractor’s nonpayment of premiums and thirty (30) days written notice of cancellation to City for all other reasons of cancellation.
- B. The Commercial General and Automobile Liability Insurance Policies specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
- C. All insurance policies must be provided by Insurance Companies that have an A.M. Best’s rating of A-, V or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.
- D. Regardless of any approval by City, Contractor shall maintain the required insurance coverage in force at all times during the term of this Contract. Contractor’s failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to this Section of this Contract. In the event Contractor fails to maintain the required insurance coverage in effect, City may declare Contractor in default.

- E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

SECTION 7. TERMINATION

City may discharge Contractor at any time by written notice effective when received by Contractor. Contractor may withdraw with City's consent, upon written notice to City and court approval, or, if no action is filed for good cause as permitted by the applicable Rules of Professional Conduct. Contractor shall not be entitled to the recovery of any Attorneys' fees or Costs, regardless of the status of the Action, and regardless of whether any amounts of recovery have been or are subsequently received by City.

SECTION 8. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not assign, transfer or delegate any rights, obligations or duties under this Contract, nor shall Contractor subcontract the provision of Services under this Contract, without prior written consent of the City Attorney. If Contractor shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting/associating with co-counsel as a subcontractor as otherwise provided for herein. The City agrees not to unreasonably withhold approval of Contractor associating with co-counsel in the event Contractor deems such association to be in the best interests of pursuing the litigation goals of the City under this contract.

Contractor shall not subcontract any part or all of Contractor's obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor's obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor's services hereunder.

SECTION 9. AMENDMENT AND MODIFICATION

No provision of this Contract will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by the City Attorney and the authorized agents of Contractor.

SECTION 10. GOVERNING LAW

The terms and provisions of this Contract and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of Missouri, without regard to conflict of law principles. Venue to enforce this Contract is in the Missouri state or federal courts.

SECTION 11. CONFLICTS AND MULTIPLE REPRESENTATION

Contractor warrants that it has used due diligence to determine if it has a conflict in representing the City and that it does not except as specifically detailed in a separate document provided to the City Attorney. By executing this Contract, the Contractor and the City have agreed that the representation contemplated in this Contract has been approved by the City and by those clients of the Contractor who must also consent to the representation due to the conflict. During the term of this Contract, the Contractor may not represent a client whose position may be adverse to the City without obtaining the City's prior written consent to the adverse representation in accordance with the Rules of Professional Conduct.

MULTIPLE REPRESENTATION. City understands that Contractor does or may represent other clients with actual or potential PFAS litigation claims. Contractor's representation of multiple claimants at the same time may create certain actual or potential conflicts of interest in that the interests and objectives of each client individually on certain issues may be or become inconsistent with the interests and objectives of the other. Contractor is governed by specific rules and regulations relating to professional responsibility in representation of clients, and especially where conflicts of interest may arise from representation of multiple clients against the same or similar defendants, Contractor must advise clients of any actual or potential conflicts of interest and obtain their informed written consent to representation when actual, present, or potential conflicts of interest exist. City has conferred with the Designated Client Contact and is not deterred from hiring Contractor because of the present risks of conflicts which may occur as the result of Contractor's current and continuing representation of other entities in similar litigation. City expressly reserves its right to be informed as any conflicts arise in the future.

By signing this Contract, City states that (1) it has been advised of the potential conflicts of interest which may be or are associated with Contractor's representation of City and other multiple claimants; (2) it nevertheless wants Contractor to represent City; and (3) City consents to Contractor's representation of others in similar litigation. City remains free to seek other legal advice at any time even after signing this Contract. Contractor represents that, after reasonable inquiry into their records, they are not aware of any conflicts of interest presented by their representation of City.

SECTION 12. INDEPENDENT CONTRACTOR

Contractor is an independent Contractor and not an employee of the City. No permitted or required approval by the City of documents or the Services of the Contractor shall be construed as making the City responsible for the manner in which the Contractor performs the Services or for any negligence, errors or omissions of the Contractor. Such approvals are intended only to give the City the right to satisfy itself with the quality of the Services performed by Contractor and Contractor specifically retains its independence of professional judgment.

SECTION 13. EXCLUSIVE BENEFIT OF THE PARTIES/NO THIRD PARTY RIGHTS

Except as specifically provided in this section, this Contract is not intended to create any rights, benefits, powers or interests in any third party and this Contract is entered into for the exclusive benefit of the City and the Contractor.

SECTION 14. RECORDS

A. For purposes of this section:

1. “City” shall mean the City Auditor, the City’s Internal Auditor, the city’s Director of Human Relations, the city Manager, the City department administering this Contract and their delegates and agents.
2. “Record” shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

C. The books, documents and records of Contractor in connection with this Contract shall be made available to the City Auditor, the City’s Internal Auditor, the City’s Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

SECTION 15. SEVERABILITY

Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

SECTION 16. PROHIBITION AGAINST THIRD-PARTY CONTINGENT FEES

Contractor warrants that no person or entity has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage brokerage or contingent fee.

SECTION 17. NOTICES

All notices required by this Contract shall be in writing sent by regular U.S. mail, postage prepaid, or commercial overnight courier to the following:

City:

Matthew Gigliotti
City Attorney
23rd Floor, City Hall, 414 E. 12th Street
Kansas City, MO 64106
Telephone: 816-513-3153
Fax: 816-513-3133
Email: matthew.gigliotti@kcmo.org

With a copy to:

Tara M. Kelly
tara.kelly@kcmo.org

And

Charlotte Ferns
charlotte.fern@kcmo.org

Contractor:

Grant & Eisenhofer, P.A.
c/o Kyle McGee, Partner
123 Justison Street
Wilmington, DE 19801
Telephone: 302-622-7058
Fax: 302-622-7100
Email: kmcgee@gelaw.com

Either party may, at any time and from time to time, change its representative or address by written notice to the other.

SECTION 18. ENTIRE CONTRACT

This Contract and the accompanying Legal Representation Guidelines constitute the entire Contract between the parties and may only be modified, supplemented or amended by a written Contract signed by both parties. In the event of any inconsistency between the terms of this Contract and the Legal

Representation Guidelines, the terms of this Contract shall prevail; if there is any inconsistency between oral direction and the Legal Representation Guidelines, the Legal Representation Guidelines shall prevail.

SECTION 19. TIME OF ESSENCE

Time is of the essence as to each and every provision of this Contract.

SECTION 20. EMPLOYEE ELIGIBILITY VERIFICATION

If this Contract exceeds five thousand dollars (\$5,000.00), the Contractor shall execute and submit an affidavit, in a form prescribed by the City, affirming that the Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U. S. C. § 1324a(h)(3). The Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm. For those contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. The Contractor shall submit the affidavit and attachments to the City prior to execution of the Contract, or at any point during the term of the Contract if requested by the City.

SECTION 21. AUTHORITY

The Contractor represents and warrants that the person signing this Contract on behalf of the Contractor has all requisite authority to bind the Contractor to the terms and obligations of this Contract.

SECTION 22. TAX COMPLIANCE. If the City's payments to Contractor exceed \$160,000.00 for the period of May 1st through the following April 30th, Contractor shall provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this Contract. Contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a condition precedent to the City making final payment under the Contract.

SECTION 23. INCORPORATION OF AIRPORT REQUIRED TERMS AND CONDITIONS AND CREO ASSURANCES.

The Airport Required Terms and Conditions (Exhibit D) and Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances (Exhibit E) are attached hereto and incorporated herein by reference.

SECTION 24. INCORPORATION OF RECITALS.

The Recitals above are fully incorporated into this Contract as if fully written out herein.

SECTION 25. PURCHASE ORDER. City shall order all services to be provided by Contractor under this Contract by means of a Purchase Order issued by the City's Chief Procurement Officer for which funds have been certified and encumbered by the City's Director of Finance. City shall not have any financial obligations to Contractor under this Contract until the City issues a Purchase Order to Contractor. Contractor shall not provide any services in excess of the dollar amount contained in any Purchase Order and Contractor shall not be entitled to any payment in excess of the dollar amount of the Purchase Orders from City.

KANSAS CITY, MISSOURI

By: _____
Kimiko Black Gilmore
Interim City Manager

Date: _____

CONTRACTOR

By: _____
Jay Eisenhofer
Grant & Eisenhofer P.A.

Date: _____

KANSAS CITY, MISSOURI

By: _____
Procurement Services

Approved as to form:

Assistant City Attorney

EXHIBIT A

LEGAL REPRESENTATION GUIDELINES

LEGAL REPRESENTATION GUIDELINES

These Legal Representation Guidelines (“Guidelines”) set forth the procedures that govern the City Attorney’s Office’s (“City”) relationship with its contracted counsel (“Contractor”) and City’s expectations when retaining Contractor to represent City.

City regards its relationship with each retained attorney and Contractor as personal and contractual. Adherence to these Guidelines is a condition of maintaining that relationship. City expects Contractor to maintain the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct. Nothing contained in these Guidelines is intended to, nor shall it, restrict Contractor’s exercise of professional judgment or infringe upon the attorney-client relationship in any manner.

City expects Contractor, and any para-professionals working on City’s matters, to read and comply with these Guidelines. These Guidelines supersede any previously provided Guidelines.

1. Introduction. Contractor shall become familiar with and adhere to these Guidelines in providing legal services in connection with the matter. The City expects Contractor to provide high quality legal services at reasonable cost, to maintain transparency in billing, and to be mindful of the responsibility to conserve public resources without compromising the quality of the services provided. Contractor will work in conjunction with and at the direction of the City Attorney in the performance of legal services hereunder.

In the event of conflict between these Guidelines and the provisions or terms of the Contract, the provisions and terms that offer the City the most favorable result in the sole opinion of the City Attorney whose decision is final shall govern and prevail.

The services provided pursuant to the Contract are nonexclusive and the City is not limited by this Contract from entering into other contracts for legal services with other attorneys, nor is the City required by this Contract to assign any specific legal matters or volume of legal matters to Contractor.

2. Designated Client Contact.

- a. City Attorney will designate at least one Law Department attorney (the “Designated Client Contact”) to work with Contractor; if no attorney is designated then the City Attorney shall be Designated Client Contact for purposes of these Guidelines. Contractor shall contact the Designated Client Contact for any approvals required by these Guidelines of litigation events or expenses. Contractor should consult frequently with the Designated Client Contact regarding matters Contractor is handling so that the City Attorney will have current information about the status of the matters and can have input on such questions as whether a particular assignment is necessary, a particular deposition is worthwhile, or a particular document production can be completed more economically in-house. As appropriate,

Contractor will schedule periodic meetings and conference calls with the Designated Client Contact to discuss developments and strategy in the matter.

- b. Contractor shall contact the Designated Client Contact at the beginning of the engagement to set up an initial meeting at which relevant names and phone numbers, to the extent then known, can be given to Contractor, and arrangements can be made for the delivery of documentary evidence, including electronic discovery, to Contractor. Whether such a meeting is actually held will be at the discretion of the Designated Client Contact.
- c. Contractor should use its professional judgment in deciding whether to obtain the prior approval of the Designated Client Contact for a litigation event, where such approval is not specifically required by these Guidelines. Litigation Events that are specified in a plan of litigation and/or a budget that was previously submitted to and approved by the Designated Client Contact will ordinarily not need to be re-submitted for approval at the time the litigation event is about to transpire.
- d. All bills submitted by Contractor will be reviewed by and are subject to the approval of the Designated Client Contact.
- e. The designation is intended to establish a clear line of authority and to minimize potential uncertainty but not to preclude communication between Contractor and other representatives of City.

3. **Notifications.** Contractor shall promptly advise the Designated Client Contact in writing of any significant developments in a matter. Unless a court appearance, settlement discussion or other important meeting is scheduled less than 72 hours in advance, Contractor shall notify the Designated Client Contact of such events at least 72 hours in advance (or within such other time as the Designated Client Contact may agree to) to enable Contractor and other representatives of the City to attend or participate. In the event that a court appearance, settlement discussion or other important meeting is scheduled less than 72 hours in advance, Contractor shall notify the Designated Client Contact at as early a time as is practicable.

4. **Settlement Offers or Negotiations.** Contractor shall immediately convey all offers of settlement to the Designated Client Contact. Contractor may not enter into any settlement negotiations or settlements without the prior approval of the Designated Client Contact. The City Attorney will make all determinations concerning such offers of settlement. Contractor shall consult with the Designated Client Contact and obtain the Designated Client Contact's prior written approval for any proposed resolution of the matter Contractor is handling. Contractor will not affect a final compromise of any matter, nor assert any conflict waivers without the prior written approval of the City Attorney.

5. **Copies of Documents.** Contractor shall provide the Designated Client Contact with copies of drafts of all significant pleadings in any litigation or other documents that Contractor intends to provide to, or file with, a court or a government agency that may potentially affect the disposition of a matter, for the Designated Client Contact's review and approval, at least 72 hours before they are filed or submitted (or such other time as the Designated Client Contact may agree to). Contractor

shall also provide the Designated Client Contact with final documents and/or imaged copies of as-filed documents, as the Designated Client Contact may request, as soon as is reasonably practicable. (If no instructions are received from the Designated Client Contact, Contractor shall, at a minimum, provide copies of as-filed documents.)

6. *Copies of documents in electronic form.* In addition to the requirements of Paragraph 5 above, Contractor shall provide the Designated Client Contact with electronic copies, in native file format, of all final memoranda, briefs and other work product produced in the case/matter approximately every six months during the course of the engagement, and at the end of the engagement. Contractor shall provide each case/matter's electronic documents in a format agreed upon in writing and if not agreed upon on read-only DVDs or CDs with labeling, directory structure, file names and other descriptive details, and with an encryption method, all as the Designated Client Contact may reasonably require.

7. *Ownership and Access.* All materials developed, prepared, kept or acquired during the performance of legal services under this Contract, including without limitation, all finished or unfinished documents, research, pleadings, memoranda, briefs, data, studies, surveys, drawings, manuals, maps, models, photographs, and reports (hereinafter collectively called "Documents") shall be available to the City Attorney upon request. Contractor shall not disclose any information gained in the representation without the City Attorney's written permission. Documents shall be the exclusive property of the City and all such materials shall be retained by Contractor for a minimum of five (5) years from the date any and all appeal rights expire or conclusion of the matter. At the end of this retention term, the City Attorney shall be notified and given sixty (60) days to reclaim Documents or each file prior to its destruction by Contractor. At all times, the City Attorney and the Designated Client Contact shall have access to all Documents within 24 hours of a request for access.

8. *Public Information.* Contractor acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Missouri Sunshine Law and may be subject to required disclosure in a publicly-accessible format. Contractor will exercise professional judgment and best efforts when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Missouri Sunshine Law (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). Contractor should mark confidential or privileged attorney-client communications as confidential. This paragraph shall not be interpreted to limit Contractor's duty to provide full disclosure to City and the City Attorney as necessary in Contractor's judgment to represent City with due professional care or as required by applicable law or disciplinary rules.

9. *Conflicts of Interest.* The Rules of Professional Conduct and State and Local Laws may affect whether and under what limitations a public entity may allow a waiver of a conflict of interest in legal representation. To the extent that the Rules and Law in this jurisdiction allow a waiver of a conflict of interest, the waiver must conform to those requirements or the Contractor must forego representing any other party where a conflict exists between that party and the City. In light of this restriction, Contractor shall disclose to the City, as soon as is reasonably practicable, the identity of any client or prospective client the Contractor represents or proposes to represent in any matter involving the City, or being heard by any City agency, with a short description of the matter and the possible adverse

consequences to the City of such representation. Thereafter, Contractor shall take one of the following actions:

- a. obtain the City 's consent, in writing, to waive the conflict. Where appropriate, in the discretion of the City, the City may require, as a condition of such consent, that Contractor implement and maintain, for the duration of the matter, effective screening procedures (an internal "firewall") to prevent the flow of information between the attorneys performing services under this Contract and the attorneys representing the other client or prospective client, and any such firewall shall be subject to the City's approval; or
- b. discontinue (or forego) its representation of the other client.

10. Contact with the Media. Contractor is not authorized to comment publicly on any City matters, to issue statements or press releases or to disclose to the media any facts involving or relating to the matter Contractor is handling without the prior approval of the Designated Client Contact or the City Attorney. Contractor shall cooperate with the Designated Client Contact regarding requests for information and, if requested by the Designated Client Contact, assist in the preparation of documents relating to the matter. If Contractor receives any media inquiries, Contractor shall refer them to the Designated Client Contact.

11. Financial Records and Submission of a Budget. Upon request, Contractor shall provide the Designated Client Contact with a budget. If Contractor is handling multiple matters, then Contractor must submit a budget for each. The budget shall conform to the 'Not To Exceed' provisions of the Contract, if applicable, and include a good faith estimate of the cost of the services, including an identification of each of the various tasks Contractor expects to perform, the projected number of hours of attorney time and paralegal time (if any) estimated to be needed to complete each task, and the fees and costs anticipated to be associated with each task. If, during the course of the representation, it appears that Contractor may exceed the budget for a particular task by 10% or more, Contractor shall notify the Designated Client Contact in advance, provide a written explanation for the anticipated variance from the budget, and obtain the approval of the Designated Client Contact for any such variance. Contractor shall abide by the budget approved by the City for each of the matters it is assigned. Contractor shall report monthly on the status of its approved budget. The City is not responsible for budget overruns unless they have been pre-approved in writing by the City Attorney.

12. Staffing.

- a. Attorneys. Contractor and the Designated Client Contact will agree upon the specific attorney(s) who will have a lead role in providing the legal services. Contractor may not substitute a different attorney for a lead role without the Designated Client Contact's prior approval in writing. Contractor shall submit a staffing profile that identifies the partners, associates and paralegals who will work on the matter. Changes in such staff are subject to the prior approval of the Designated Client Contact. The City reserves the right to request, and to object to, representation by specific attorneys within Contractor's firm. Contractor should minimize staffing changes; however, it is recognized that staffing changes may be necessary from time to time. The City will not pay for learning time

associated with a change in personnel initiated by Contractor, except that, if the change in personnel was made at the request of the Designated Client Contact and not because of poor performance, inaccessibility or lack of cooperation by the original personnel, the City will pay the reasonable costs associated with the review of the file by the new personnel.

- b. In performing the services, Contractor shall select, for each task, an individual suitable for the task and the specific needs of the matter. Each such individual must have appropriate experience in the area in which he or she is performing services and hold all necessary licenses and admissions.
- c. Contractor shall not:
 - 1. overstaff City matters;
 - 2. charge for any services that duplicate the effort of other assigned staff;
 - 3. charge for time of newly assigned lawyers, after a change in personnel, spent to become familiar with the matter, or time spent duplicating work performed by an attorney previously assigned to the matter except in the circumstances permitted in 10.a. above.
- d. Limitation on Hourly Billing for Multiple Attorneys. The City will pay for only one attorney to attend meetings, depositions, hearings, court conferences, and trials, unless expressly and clearly specified in Contractor's litigation plan, or unless otherwise approved in advance by the Designated Client Contact.
- e. Paralegals. Some examples of the kinds of activities that generally should be performed by a paralegal, and not by an attorney, are:
 - 1. Ordering searches such as title or legal records searches;
 - 2. Ordering public records;
 - 3. Organizing and re-organizing files that involve case documents such as separating and cataloguing responses to requests for production of documents;
 - 4. Indexing file material, but only if a degree of professional judgment with respect to categorization is required;
 - 5. Preparing subpoenas or notices for deposition, entry of appearance, substitution of Contractor, requests to produce, jury trial demands, and other routine litigation documents;
 - 6. Summarizing answers to interrogatories;
 - 7. Preparing records requests and subpoenas;

8. Summarizing employment and other records;
9. Abstracting or digesting depositions; and
10. Summarizing document production.

Unless approved in advance by Designated Client Contact, these activities must not be billed at and will not be paid at an attorney rate.

- f. Experts and consultants. The selection and retention of experts, appraisers, consultants, and investigators shall be coordinated with and approved by the Designated Client Contact. Contractor shall itemize charges for any such services on its invoices.

13. Legal Research. The City will pay only for research reasonably necessary to complete the assignment. Contractor shall obtain prior approval from the Designated Client Contact before conducting a legal research assignment that is expected to exceed ten hours. Contractor shall consult, within its own firm and with the Designated Client Contact, prior to conducting legal research, to determine whether similar issues have been previously researched by the firm or by the City Attorney's Office. This is especially true of Notice of Claim, Statute of Limitations and Immunity issues, which are frequently litigated by the City. Contractor is required to use such prior research where possible and applicable, and in such situations may charge the City only for research connected with updating the previously researched issues. Contractor shall not initiate research before it is needed unless the Designated Client Contact expressly approves in advance.

14. Use of Certain City Resources. Where practicable, Contractor should use the City's resources for service of subpoenas unless the Designated Client Contact directs otherwise. Contractor and the Designated Client Contact are expected to determine if City has facilities or contracts for services needed in the course of the representation that may offer cost savings if used; for example, in-house printing, shipping contracts, court reporting services, messenger services, etc. and if available at a cost savings those services must be used unless Designated Client Contact directs otherwise.

15. Intra-Office Conferences. Intra-office conferences may be held for the purpose of discussing strategy and legal issues in the matter if included in the budget. All intra-office conferences for which the City will be billed may be held only as needed, and their length, as well as the number of persons attending, shall be kept to a minimum, included in the budget and approved in advance by Designated Client Contact. The City will not pay for conferences that are supervisory or instructional (including conferences regarding case management). Also, Contractor may not bill for non-substantive internal conferences about City matters. Bills for intra-office conferences shall describe in detail the reason for the conference and the subject matter of the discussion. In the event an intra-office conference is essential to the representation and not approved in advance by Designated Counsel, the Designated Counsel must be notified as soon as practical following the conference as to the reason for the conference, the persons attending and its outcome. The City may agree to pay for the conference if it concludes the reason for it and its cost is fully justified.

16. Reviewing Files. The City will not pay for the review of a file by an attorney who is merely supervising the work of another employee of the firm. Similarly, Contractor shall not bill the City for

file review if an event does not precipitate such review (such as a telephone call or receipt of correspondence) or if the file review does not result in the creation of any tangible work product. The City considers such review to be part of Contractor's overhead and contained in Contractor's hourly rate structure. Any invoice that includes "file review" as an item shall provide details or that item will not be considered for payment by the City.

17. Document or Deposition Summaries. Contractor may not charge for routinely digesting, abstracting, or summarizing documents and depositions, unless the Designated Client Contact has expressly and specifically agreed to such services and they have been included in the budget.

18. Written Status Reports. Contractor may not charge the City for any status report not included in the budget, unless the status report was requested by the Designated Client Contact and the Designated Client Contact has agreed that it is compensable.

19. Communications with City Employees Outside the City Attorney's Office. Before Contractor engages in any substantive communications with City officers or employees outside of the City Attorney's Office, Contractor shall inform the Designated Client Contact of its intention to have such a communication. After the first instance, Contractor is not expected to inform the Designated Client Contact each and every time it has such a communication unless the Designated Client Contact has specifically asked Contractor to provide such information or unless a communication is likely to go or has gone beyond the scope of the communications approved by the Designated Client Contact.

20. Approaching the Not-to-Exceed Amount of the Contract. If applicable, if Contractor's total billings are approaching (i.e., within 10% of) the "Not-To-Exceed" amount specified in the Engagement Letter, Contractor shall inform the Designated Client Contact in writing. The City cannot pay any invoices that contain fees in excess of the Not-To-Exceed amount unless approved in writing by the City Attorney, sufficient funds exist in the budget appropriation for these services, and the Engagement Letter is amended to increase the Not-To-Exceed amount by an amount sufficient to cover such fees and approved by the City Attorney.

21. Reimbursable Expenses. The City will reimburse Contractor for actual, reasonable and necessary out-of-pocket expenses at cost without mark-up. All expenses shall be documented to the satisfaction of the City Attorney. Some examples of expenses for which the City may allow reimbursement, unless excluded by the terms of a particular contract, are the following:

- a. Messenger Services.
- b. Overnight or other expedited delivery services. The City does not expect all documents to be hand-delivered or sent by an overnight or express delivery service, but such services may be used where appropriate under the circumstances.
- c. Photocopying and Bates Labeling. Photocopying and Bates labeling costs are reimbursable if performed for Contractor by an outside photocopying vendor. In such instances, reimbursement will be made at the lower of Contractor's actual cost or an agreed maximum amount per page for routine copies, agreed maximum amount per page for color copies, and agreed maximum amount per page for routine Bates labeling. Whenever Contractor

seeks reimbursement for copying or Bates labeling by an outside photocopying vendor, Contractor shall present to the City a copy of the photocopying vendor's invoice, which shall identify the type of copying (e.g., routine or color), the number of pages of each type copied, the number of pages Bates labeled, and the cost per page for each of these services. In-house copying costs are not reimbursable. When in-house Bates stamping is performed by a paralegal, Contractor will be reimbursed for the time spent Bates stamping at the paralegal's hourly rate. Where productivity software is available to Bates Stamp documents and it is not used, Contractor must provide an explanation for not using the software and the City may adjust the amount of payment based on its estimate of the excess cost attributed to not using the productivity software.

- d. **Lodging and Meals.** Lodging and meals are reimbursable only in the context of non-local travel necessitated by the legal services to be provided under the Contract, and then will be reimbursed at rates no greater than the lesser of the actual cost (without markup) or the maximum amount set forth in *the Meals and Incidental Expense Breakdown of the Federal Travel Regulation in effect on the date the expense was incurred, published at: www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIS*. The City will not reimburse for meals in connection with local travel, meaning travel that is 100 miles or less from the offices of Contractor, unless the contract otherwise expressly provides. In no event will the City pay any broker's fee or finder's fee associated with the rental of any hotel room, apartment or other lodging.
- e. **Travel expenses such as Air Fare, Mileage, Rental Cars, and Taxi Fares.** Contractor shall bill air travel under the contract at no higher than the economy or coach fare. Contractor shall use its best efforts to make airline reservations in advance so as to take advantage of lower air fares. While on non-local travel under the contract, meaning travel that is more than 100 miles from Contractor's offices, Contractor may bill the City for reasonable mileage or for the cost of a rental car when necessary and when the cost of a rental car is less than other forms of ground transportation. If the cost of a rental car is less than the mileage expense, a rental car must be used. Under such circumstances, the City will reimburse only at the rate for small, non-luxury vehicles. Contractor may seek reimbursement for taxi fares when on non-local travel but any requests for reimbursement for taxi fares will be closely scrutinized for necessity and reasonableness.

If Contractor's travel is both for the City and for another client or other activities of Contractor, Contractor may bill the City only for the City's pro rata share of the travel expenses.

22. Travel Time. Contractor may bill the City for travel time for non-local travel when approved in advance at the applicable hourly rate(s) as set forth elsewhere in the contract. If Contractor's travel is both for the City and for another client or other activities of Contractor, the City shall be billed only for the City's pro rata share of such travel time. Non-local travel shall be approved in advance by the Designated Client Contact. Consistent with Paragraph 10.d. of these Guidelines, the City will pay for travel by only one person, unless the Designated Client Contact gives advance approval for travel by more than one person. Travel time for local travel is not authorized and may not be billed or paid.

23. *Non-Reimbursable Expenses.* The City will not pay for the following expenses, without limitation:

- a. facsimile charges other than the long distance charges associated with the transmission.
- b. local telephone expenses.
- c. office supplies.
- d. charges for business meals or refreshments, unless related to out-of-town travel and then only in accordance with these Guidelines.
- e. in-house messenger services.
- f. law books, journals, periodicals, subscriptions, etc.
- g. computer consultants or technical support (this does not apply to the situation where Contractor has engaged a computer, information technology or litigation technology support consulting firm to provide expert consulting services in support of and necessary to the representation).
- h. mobile phone charges.
- i. charges for Lexis, Westlaw, and other such research services.
- j. charges associated with purchasing or renting software or equipment such as copiers, printers, computers, etc.

24. *Non-Reimbursable Services.* The City will not pay for the following services, without limitation:

- a. secretarial, clerical or word processing services (whether ordinary, temporary or overtime).
- b. administrative services (including file creation, file organization and maintenance or closing)
- c. accounting, billing or book-keeping services (this does not apply to the situation where Contractor has engaged an accountant or accounting firm as a subcontractor to provide expert consulting services in support of and necessary to the representation).
- d. the time of summer associates.
- e. the time of law school graduates who are not admitted to the bar, except that, with the prior approval of the Designated Client Contact, such time may be billed at paralegal rates.

- f. the time of librarians.
- g. the time of computer or information technology support staff, or litigation technology support technicians (this does not apply to the situation where Contractor has engaged a computer, information technology or litigation technology support consulting firm to provide expert consulting services in support of and necessary to the representation).
- h. charges associated with creating, maintaining or using an information or case management system.
- i. the time spent reviewing, negotiating or executing this Contract or any amendments to this Contract.
- j. charges associated with preparing bills or negotiating disputes over bills.
- k. redrafting due to substandard work.
- l. the supervision, education or training of attorneys, paralegals, or other staff of Contractor, including assigning such staff on a transient basis to a City matter.
- m. office overhead costs of any kind.

25. Additional Invoicing and Billing Guidelines.

- a. Individuals assigned to work on a matter are expected to perform at high levels of efficiency.
- b. Contractor shall submit invoices for services rendered and/or for expense reimbursement, at a minimum, on a monthly basis. Invoices shall be submitted no more than 30 days after the end of the month in which the services reflected on the invoice were provided. However, any services rendered prior to April 30 of a given year be submitted no later than 10 days after that date; in addition, Contractor must provide an estimate of this invoice (to include all work and expenses that have not been previously billed incurred during the City fiscal year) on or before the last day of the City fiscal year. The City prefers that invoices cover no more than one calendar month, so that no one invoice will show hours billed in different months. There may be situations in which this is not practical, such as where the billing is task-based. If billing questions arise, they can be discussed with the Designated Client Contact.
- c. Where Contractor has been assigned more than one case or matter under a particular contract, and each case or matter has a different case number associated with it, Contractor shall send a separate invoice for each such case or matter.

- d. Each invoice shall contain the following information:
 - 1. The case number.
 - 2. The name or title of the matter.
 - 3. A unique invoice number for the particular invoice.
 - 4. Contractor's taxpayer identification number.
 - 5. The name of the Designated Client Contact.
 - 6. Contractor's billing contact.
 - 7. The time period covered by the invoice.
 - 8. The date of the invoice.
 - 9. For hourly rate billing:
 - i. The specific dates of the services, the names of the persons who performed the services billed, their titles and, where applicable, their respective hourly rates.
 - ii. A full description of each charge. Where attorney client privileged or other confidential matters are subject to disclosure under the Public Records Law, the description should be reasonably full and complete for the City to make an informed decision regarding compliance with these Guidelines and the payment of the charges without disclosing the privileged or confidential information, disclosing the litigation strategy, or harming the City position in the matter. For charges requiring prior approval of the Designated Client Contact, note the date of the approval.
 - iii. Time spent in .10 of an hour increments. (Not applicable in the case of task-based billing.)
 - 10. For task-based billing: A description of each completed task for which payment is sought and the amount billed for the completion of the task.
 - 11. An itemized description of any disbursements and the charge for the disbursements.
 - 12. Time Keeper Summary.
- e. Contractor shall avoid vague or unclear descriptions of services rendered. A vague or unclear invoice is one that does not provide clear and specific information on, in most

instances, the nature of the task, the reason for the task, the individual who performed the task, or the amount of time that was spent on a task. Contractor's invoices shall provide clear, specific information relating to each task. For example, a bill for a telephone conversation shall specify the parties and the purpose of the call. A bill for the drafting or review of any correspondence, pleadings, or other documents shall specifically describe the item in question. A bill for legal research time shall specify the issue(s) researched. Where attorney client privileged or other confidential matters are subject to disclosure under the Public Records Law, the description should be reasonably full and complete for the City to make an informed decision regarding compliance with these Guidelines and the payment of the charges without disclosing the privileged or confidential information, disclosing the litigation strategy, or harming the City position in the matter. The City will seek clarification from Contractor where it finds a particular invoice to be vague or unclear and may reduce the amount of an invoice if a description satisfactory to the City is not provided.

- f. Block billing is not permitted in hourly rate billing. Block billed entries are items that contain a single charge for more than one activity or more than one type of disbursement. Each item of work shall be associated with a discrete charge. An example of unacceptable block billing is the following:

05/12/10 - Drafted letter to plaintiff's counsel; telephone conference call with plaintiff's counsel; discussed conference call with City Attorney's Office. 2 hours

- g. Unless Contractor is otherwise instructed by the Designated Client Contact, Contractor's invoices shall be addressed and submitted to:

Tara M. Kelly
Designated Client Contact
City Attorney's Office
23rd Floor, City Hall, 414 E. 12th Street
Kansas City, MO 64106
816-513-3117
tara.kelly@kcmo.org

And

Charlotte Ferns
Designated Client Contact
601 Brasilia Avenue
Kansas City, Missouri 64153
816-243-3022
charlotte.fern@kcmo.org

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[End of Exhibit A]

EXHIBIT B

Scope of Representation

SCOPE AND DUTIES. City hereby retains Contractor for the provision of legal services to City with respect to damages, compensation, and other relief to which City may be entitled as a result of litigation to be filed by Contractor on behalf of City concerning the design, development, manufacture, distribution, marketing, sales, provision, or other facilitation of delivery and utilization of firefighter turnout gear known or suspected or believed to contain per- and polyfluoroalkyl (“PFAS”). Contractor will investigate and present options for suit against companies responsible for designing, developing, manufacturing, distributing, marketing, selling, providing, or otherwise facilitating delivery and utilization of firefighter turnout gear known or suspected or believed to contain PFAS.

The Contractor will provide legal services in connection with pursuing one or more lawsuits, from pre-suit investigation through final appeal, against all those responsible for any injury or damages suffered by the City pertaining to the design, development, manufacture, distribution, marketing, sale, provision, or other facilitation of delivery and utilization of firefighter turnout gear known or suspected or believed to contain PFAS (the “Claims” and/or “Action”). Contractor shall provide those legal services reasonably required to represent City and shall take reasonable steps to keep City informed of progress and to respond to City’s inquiries. City shall be truthful with Contractor, cooperate with Contractor, and keep Contractor informed of developments.

CITY RETAINS DECISION MAKING AUTHORITY. The Designated City Contact retains complete control of all decisions in the case on behalf of the City. City in no way assigns its discretion to Contractor and retains all of its inherent powers related to discretion, judgment, control and decision making related to the Action.

LEGAL SERVICES SPECIFICALLY EXCLUDED. Unless otherwise agreed in writing by the City and Contractor, Contractor will not provide legal services with respect to (a) defending any legal proceeding or claim against the City commenced by any person unless such proceeding or claim is filed against the City in the Actions or (b) proceedings before any federal or state administrative or governmental agency, department, or board. With City’s permission, however, Contractor may elect to appear at such administrative proceedings to protect City’s rights. If City wishes to retain Contractor to provide any legal services not provided under this Contract for additional compensation, a separate written agreement between Contractor and City will be required.

AUTHORITY OF CONTRACTOR. Subject to consultation with the Designated City Contact, and where needed, her approval, Contractor shall take all steps in this matter deemed by them to be advisable for the investigation and handling of City’s causes of action, including hiring investigators, expert witnesses, and/or other attorneys, and filing any legal action necessary. A decision by Contractor to retain associate counsel shall be subject to the Designated City Contact’s approval, which shall not be unreasonably withheld. The amount of Attorneys’ fees which City pays will not be increased by retention of additional counsel, but instead, such associated co-counsel will be paid by the Contractor out of the Attorneys’ fee delineated in Attachment C, Fees, Costs and Expenses.

DISCLAIMER OF GUARANTEE. Nothing in this Contract and nothing in Contractor’s statements to City will be construed as a promise or guarantee about the outcome of City’s matter. Contractor

makes no such promises or guarantees. Contractor's comments about the outcome of City's matter are expressions of opinion only.

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[End of Exhibit B]

EXHIBIT C
Fees, Costs and Expenses

1. FEES. The City and Contractor have agreed that City will pay Contractor a contingent fee for representing City in any Action. The fee is not set by law but was negotiated between the Contractor and City. Contractor and City agree that the contingent fee will be calculated as set out below.

“Recovery” as used herein means any settlement or judgment paid by a defendant. Recoveries for multiple clients that are achieved via a single settlement agreement are treated as a single settlement for purposes of determining the amount of the recovery below. A recovery for an individual client via a settlement agreement applicable to that client only is treated as a single recovery. City agrees not to require joint settlement agreements solely for the purpose of reducing attorneys’ fees; the intent is to treat multiple client recoveries as a single recovery if there is a mass action or class action resolution.

Resolution before selection of a bellwether (if applicable):

12 percent of any recovery up to and including \$500 million

10 percent of any recovery over \$500 million

Resolution after selection of a bellwether (if applicable) and prior to submission of the first plaintiff’s expert report:

15 percent of any recovery up to and including \$500 million

12 percent of any recovery over \$500 million

Resolution after submission of the first plaintiff’s expert report and prior to submission of a plaintiff’s summary judgment brief:

18 percent of any recovery up to and including \$500 million

14 percent of any recovery over \$500 million

Resolution after completion of summary judgment briefing and prior to the first day of trial:

21 percent of any recovery up to and including \$500 million

16 percent of any recovery over \$500 million

Resolution after the first day of trial:

25 percent of any recovery up to and including \$500 million

20 percent of any recovery over \$500 million

The foregoing fee schedule shall be subject to judicial modification in the event that the Action is litigated and/or resolved in an aggregated fashion. City understands that, at this time, there is no turnout gear MDL or consolidated proceeding, but in the event such consolidated proceeding is created and the Action is included therein, City understands that the above fee schedule may be modified by order of court.

2. COSTS.

A. "Costs" include, but are not limited to, court filing fees, deposition costs, expert, consultant, and investigator fees and expenses, investigation costs, transportation, meals and lodging for out of town travel, messenger service fees, photocopying expenses, and process server fees. Costs shall not include full or part-time employees (e.g. paralegals and law clerks). Instead, Costs shall be specific and confined to representation of the City.

B. Contractor will advance the Costs incurred in connection with Contractor's representation of City under this Contract. Costs will be advanced by Contractor and then paid by City solely from any monetary recovery and only if there is a monetary recovery. If there no recovery is obtained for City, Contractor will not be entitled to any reimbursement for its Costs from City.

C. Except as otherwise provided in this Contract, Contractor will be reimbursed for any unreimbursed Costs before any distribution of fees to Contractor and before any distribution to City. Contractor will bear the risk of any unreimbursed Costs beyond the monetary recovery in the Action. In addition, to the extent permitted by law and to the extent not based on the conduct or decisions of City or the Designated Client Contact, Contractor will bear the risk of any defense costs taxed against City in the event of a court judgment for defendants in the Action.

D. Except as otherwise provided in this Agreement, City authorizes Contractor to incur reasonable Costs and to retain consultants or expert witnesses reasonably necessary in Contractor's and the Designated Client Contact's judgment. There shall be no mark-up attached. As such, Contractor and the City are jointly incentivized to keep Costs to a minimum. Items that are not to be considered Costs, and that must be paid by City without being either advanced or contributed to by Contractor, include, but are not limited to, City's expense incurred in providing information to Contractor or defendants and damages claimed by others in the Action, if any, that City is ultimately required to pay.

E. Contractor and the Designated Client Contact shall meet and confer regarding selection and retention of experts in the Action and the Designated Client Contact shall be informed of the persons chosen and their charges. Retention of experts requires the Designated Client Contact's approval which shall not be unreasonably withheld.

F. Contractor will provide the Designated Client Contact with periodic statements of Costs incurred in the Action at approximately quarterly intervals or at such other frequency as mutually agreed between the Designated Client Contact and Contractor.

3. SHARED EXPENSES. City understands that Contractor may incur certain expenses that jointly benefit multiple clients, including, for example, expenses for travel, experts, and copying. City agrees that Contractor will divide shared expenses either equally, or pro rata among such clients, in Contractor's discretion. Contractor will deduct City's portion of those expenses from City's share of any recovery. Prior City approval is not required for shared expenses.

4. LIEN. City hereby grants Contractor a lien on any and all claims or causes of action that are the subject of Contractor's representation under this Contract. Contractor's lien will be for any sums due

and owing to Contractor at the conclusion of Contractor' services. The lien will attach to any recovery City may obtain, whether by arbitration award, judgment, settlement, or otherwise.

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[End of Exhibit C]

EXHIBIT D

AIRPORT REQUIRED TERMS AND CONDITIONS FOR LEGAL SERVICES CONTRACTS

SECTION 1. GENERAL REQUIREMENTS.

Terms and conditions established in this Airport Required Terms and Conditions shall apply regardless of more permissive language in any other section of this contract.

Changes in contract performance or source of funding may result in the application of additional provisions.

The term Contractor for purposes of this Airport Required Terms and Conditions shall include but not be limited to a company, contractors, subcontractors, consultants, subconsultants, and vendors. The term Contractor is used interchangeably with the term Contracting Party.

SECTION 2. COMPLIANCE WITH APPLICABLE LAW. By executing this Contract, the Contractor affirms that the Contractor and its team members and employees shall comply with all federal, state and local laws, including ordinances and regulations, applicable to the Contract. Contractor shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of its obligations under this Contract.

SECTION 3. DUTIES AND OBLIGATIONS NOT LIMITED. The duties and obligations imposed by this Contract and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

SECTION 4. ACCESS TO RECORDS. The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

SECTION 5. GENERAL CIVIL RIGHTS PROVISIONS. In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor or Contracting Parties and subcontractors from the bid solicitation period through the completion of the contract.

SECTION 6. CIVIL RIGHTS – TITLE VI ASSURANCE

A. TITLE VI Solicitation Notice

As a condition of a grant award, the City of Kansas City, Missouri (“Sponsor”) shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR. part 21) including amendments thereto, the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities, including any amendments or updates thereto. This may include, as applicable, providing a current Title VI Program Plan to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is required for every grant application, unless excused by the FAA. The Sponsor shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin, sex, creed, age, disability, genetic information, in consideration for federal financial assistance. The Department’s and

FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

B. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with and agrees that performance under the agreement shall be governed by and in compliance with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (P.L. 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR Parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681, et seq).

C. Compliance with Nondiscrimination requirements.

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21, including amendments thereto.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Limited English Proficiency. For persons with Limited English Proficiency (LEP), please contact KCAD Airport Communications Center (ACC) at 816-243-4000 for help to obtain interpreters of many different languages.

SECTION 7. RIGHT TO AMEND. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Contract as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Contractor agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

SECTION 8. ADDITIONAL FEDERAL REQUIREMENTS. This Agreement shall be subordinate to and subject to change required by any applicable law, grant, compliance guidance, legal notifications, clause or condition interpretation, or the provisions and requirements of any existing or future agreement between the City of Kansas City and the United States relative to the development, operation or maintenance of the airport, including grant agreements.

This Agreement and all the provisions hereof shall be subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of any City airport, all or a portion of the airport system, or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

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[End of Exhibit D]

EXHIBIT E

Civil Rights and Equal Opportunity Department Civil Rights and Wage Assurances

CREO Form 3 Rev. 3.22.2023

Non-discrimination in Employment. Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Ban the Box in Hiring and Promotion.

(a) Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

(b) Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

(c) This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source.

Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act, Section 3-66, Code of Ordinances or City has granted Contractor an exemption pursuant to the Quality Services Assurance Act.

Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.
- (b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.
- (c) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (d) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by CREO to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

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[End of Exhibit E]