

# **City of Albuquerque**

## **Request for Letters of Interest**

### **Legal Services**



**June 2023**

**City of Albuquerque  
Legal Department  
Legal Administration Division**

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## INTRODUCTION

The City of Albuquerque Legal Department invites attorneys (“offerors”) to submit letters of interest/proposals in accordance with the specifications contained in this Request for Letters of Interest (“Request”). The purpose of this Request is to establish a pool of qualified attorneys available to provide cost-effective, competent representation of the City and other legal services as needed to act as an attorney for the Metropolitan Redevelopment Agency (“MRA”) to provide redevelopment and real estate legal assistance. This attorney will provide a broad range of legal services to MRA including, but not limited to, interpretation and implementation of the Metropolitan Redevelopment Code, contract and development agreement drafting and negotiations, enforcement of contracts, grants, and other agreements, drafting, negotiations, and execution of purchase and sale agreements for acquisitions, litigation, and redevelopment policy development.

Each offeror wishing to provide legal services for the City shall submit a separate proposal for each area of law in which they wish to obtain assignments. The proposals submitted should contain the information and be organized in the format prescribed herein.

The City will select a pool of attorneys available for services to the City whose proposals indicate that they meet all of the minimum qualifications and requirements listed herein. All services will be performed in conjunction and association with the City Attorney who shall assign cases and other legal work to the selected attorneys as needed. Contracts, in substantially the form included herein, will be made with attorneys as the cases and projects are assigned. At the time of entering into a contact with a selected offeror, the City may negotiate an alternative billing method or rates which do not exceed those proposed by the offeror.

Selection of an offeror does not ensure that a contract will be entered into with that offeror or guarantee the assignment of cases or work or the payment of any compensation. The City reserves the right to contract with attorneys who have not submitted proposals pursuant to this process should the need arise.

Proposals submitted pursuant to this Request will be accepted by the City on an ongoing basis until further notice in order to maintain a current listing of pre-qualified firms available to perform services for the City. The City will endeavor to review each proposal and respond to the offeror within thirty (30) days of receipt of the proposal. If a proposer meets all of the City’s minimum qualification and requirements, it will be added to the pool of attorneys available for the assignment of work.

**PART 1**  
**INSTRUCTIONS TO OFFERORS**

The following instructions establish the procedures applicable to the preparation of letters of interest and the requirements for the format and content of proposals:

**1.1 City Contact:** The sole point of contact for this Request for Letters of Interest is the City of Albuquerque Legal Department. Contact the following individual(s) regarding this Request:

- Lauren Keefe, City Attorney, Legal Department  
C/O Krystle Hernandez, Fiscal Manager
- Phone: (505) 768-4500 or E-Mail: [klhernandez@cabq.gov](mailto:klhernandez@cabq.gov)
- Post Office Box 2248, Albuquerque, New Mexico 87103

**1.2 Contract Management:** The contract(s) resulting from responses to this Request for all outside counsel services will be managed by the Legal Department.

**1.2 Submission of Offers:** The offeror's sealed proposal must be in the format outlined in Part 2 of this Request for Letters of Interest and emailed to [klhernandez@cabq.gov](mailto:klhernandez@cabq.gov)

**1.3.1 Separate Proposal:** A separate proposal must be submitted for each area of law in which the offeror wishes to provide services. Each proposal submitted shall consist of a Technical Proposal and a Cost Proposal as outlined in Part 2.

**1.4 Draft Agreement:** A copy of the Draft Agreement to be entered into is attached. Please state that you accept the terms and conditions of the Draft Agreement, or note exceptions.

**1.5 Rejection and Waiver:** The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

**1.6 Insurance Compliance:** Acceptance of offer is contingent upon offeror's ability to comply with the insurance requirements as stated herein. Please include a copy(s) of such certification or statement of compliance in your proposal.

**1.7 Award of Contract:**

**1.7.1 When Award Occurs:** Award of contract occurs when a Purchase Order is issued or other evidence of acceptance by the City is provided to the offeror.

**1.7.2 Award:** Contract(s) shall be awarded to the responsive and responsible offeror(s) whose offer(s) conforming to the Request for Letters of Interest will be most advantageous to the City as services are needed.

**1.7.3 Contract Term:** The contract term shall be for a period of one (1) year from the effective date of execution of the contract and/or final execution by the City. The contract

term may be extended upon mutual written agreement between the City and the Contractor.

**1.7.4 Type of Contract:** Time and expenses.

**1.8 Negotiations:** At the time of entering into a contact with a selected offeror, the City may negotiate an alternative billing method or rates which do not exceed those proposed by the offeror.

**1.9 INSURANCE:**

**1.9.1 General Conditions:** The City will require that the successful offeror, referred to as the Contractor, procure and maintain at its expense during the term of the contract resulting from the Request, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the contract. Upon execution of the contract and on the renewal of all coverage, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. Along with the certificate of insurance, a rider or endorsement designating the City as an additional insured will be required. All coverages afforded shall be primary with respect to operations provided.

**1.9.2 Coverages Required:** The kinds and amounts of insurance required are as follows:

**1.9.2.1 Commercial General Liability Insurance.** N/A

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

**1.9.2.2 Automobile Liability Insurance.** N/A

**1.9.2.3 Professional Liability Insurance.** Professional liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.

**1.9.2.4 Workers' Compensation Insurance.** Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of the contract resulting from this RFP.

**1.9.2.5 Increased Limits:** During the term of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

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**PART 2  
PROPOSAL FORMAT**

**2.1 Technical Proposal Format, Section One**

**2.1.1 Offeror Identification:** State name and address of the offeror or your organization or office and nature of organization (individual, partnership or corporation, private or public, profit or non-profit). Include name and telephone number of person(s) in your organization authorized to execute the Draft Agreement. Submit a statement of agreement of the terms and conditions of the Draft Agreement; state exceptions. Provide a statement or show ability to carry the insurance specified.

**2.1.2 Identification of Lawyers; Legal Assistants/Paralegals:** List the lawyers and any legal assistants/paralegals, if applicable, who would be assigned to City work in the area of law. Indicate next to each lawyer's name the year in which he or she was licensed to practice, licensed to practice in New Mexico, and the number of years of practice in the area of law.

**2.1.3 Management Summary:** Provide the name and telephone number of a contact person who would handle the processing of a contract with the City.

**2.1.4 Experience:** Provide, for each attorney or legal assistant/paralegal listed in the proposal, a separate sheet or sheets containing the following information:

- (a) Name;
- (b) A summary of the attorney's educational background, special training, and awards;
- (c) A summary of the attorney's general litigation experience;
- (d) A summary of the attorney's experience in the selected area of law;
- (e) A summary of the attorney's experience with governmental entity issues;
- (f) For each significant case mentioned in the experience summaries, a reference person who can be contacted regarding the work performed.

**2.1.5 Summaries:** Please note that summaries are requested above rather than the uninformative lists of cases. The information provided should also indicate in detail how item 3 of the Minimum Qualifications, set out in Part 3 of this Request is met. Also provide an updated resume or profile of each attorney and legal assistant/paralegal, if applicable.

**2.1.6 Proposed Approach to Work:**

- (a) Discuss your proposed approach to the providing of legal services to the City

in the selected area of law.

- (b) Describe resources to be drawn from in order to provide legal services to the City.

**2.1.7 Contractor Requirements:** Provide statements indicating that the offeror specifically agrees, or takes exception to, the Contractor Requirements set out below.

**2.1.8 Conflicts of Interest:** Disclose existing or potential conflicts of interest with the City, including but not limited to all matters handled by the offeror involving claims against the City, representation of third parties against the City and the pursuit of administrative remedies through the City.

**2.1.9 Insurance Certificate(s):** Please include a copy(s) of certificate(s) of insurance for coverage which the offeror currently has in effect or a statement of compliance in your proposal.

## **2.2 Cost Proposal Format, Section Two**

**2.2.1 Cost Proposal:** Submit one original and two copies of your Cost Proposal, in a separate binder, or folder distinctly marked with the required information.

**2.2.2 The cost proposal should contain** at least the following information:

### **2.2.2.1 Hourly Rates and Costs:**

- (a) List the hourly rates which will be billed by each lawyer submitting the proposal. State whether or not hourly rates include gross receipts taxes.
- (b) List all costs which would be billed to the City in connection with the performance of legal services and the rates at which they are billed. Do not list items described in Part 3, Section 3.2 of the Contractor's Requirements, which will be billed at set rates.

**2.2.2.2 Alternate Billing Methods:** Describe other possible forms of billing which the offeror is willing to provide to the City, such as per case billing; dedicated lawyer billing (i.e. the rate of having an attorney devote all or a certain portion of his or her time to the City's work); volume or other discounts; and other billing alternatives.

**2.2.2.3 Cost Effective Methods:** Provide a narrative description of the steps routinely taken and procedures routinely used to insure that legal representation is provided on a cost-effective basis. Discuss such matters as settlement strategy, discovery techniques, trial strategy, and the like. This description should include a description of the offeror's definition of a billable hour and the offer's policy with respect to billing for such items as interoffice consultation among lawyers, research, travel, unsuccessful attempt to reach people by telephone, and the like.



**PART 3**  
**MINIMUM QUALIFICATIONS AND REQUIREMENTS**

**3.1 Minimum Qualifications.**

- 3.1.1** Attorneys must be licensed to practice law in the State of New Mexico.
- 3.1.2** Attorneys must have been licensed for at least three years or must be in practice with attorneys who have been licensed for three years.
- 3.1.3** Attorneys must have prior experience in any area of law for which they submit a proposal equal to the following:
  - (a) certified specialization in the area of practice selected;
  - (b) three years of trial, teaching, appellate or other non-trial experience as an attorney in the selected area, acquired during the last five years; or
  - (c) equivalent practical experience as determined by the City Attorney.

**3.2 Contractor Requirements.**

**3.2.1**

Attorneys must agree to bill the City in 0.1 hour billing units and at hourly rates which are no greater than the rates submitted with their Letter of Interest. The hourly rates submitted, which are the maximum rates which may be charged to the City, must remain fixed for a two year period following the receipt of the Letter of Interest in response to this solicitation.

- 3.2.2** Attorneys must state that the rates submitted are not greater than those accorded to any other of the public sector clients. Final contract rates will be negotiated by the City and the selected attorney at the time of assignment of a case or project.
- 3.2.3** Attorneys must agree to obtain advance approval before incurring costs, including but not limited to expenses related to travel, depositions, computer research, expert witnesses, and long-distance telephone calls. The City will reimburse pre-approved items and filing fees at cost, instate mileage at \$0.22/mile and copies at \$0.15/page.
- 3.2.4** Attorneys must agree that billings for costs will not include gross receipts taxes or outside costs for which such taxes have already been paid.
- 3.2.5** Attorneys must agree to comply with all laws, ordinances, rules and regulations, resolutions, policies, etc, in effect during the term of any contract with the City.
- 3.2.6** Attorneys must agree to comply with case budgeting and management guidelines

established by the City Attorney. A copy of Case Management Plan and Case Budget is included with this Request.

- 3.2.7** Attorney must be located in the Greater Albuquerque Metropolitan area, or agree not to bill the City for travel time between its office and Albuquerque, without prior approval.
- 3.2.8** Attorneys must have or agree to provide at the time of assignment of a case or project, adequate insurance to cover the City's exposure under the New Mexico Tort Claims Act considering the risk involved. The type of insurance and liability limits will be negotiated at the time of assignment. In all instances, professional liability coverage and compliance with the workers' compensation act, must be provided. Commercial general liability and auto liability coverage may also be required.
- 3.2.9** Attorneys must agree to comply with the New Mexico Rules of Professional Conduct. In the event counsel are hired as "*conflict*" counsel, each contract will provide for accountability of counsel and maintenance of professional responsibility to the client.
- 3.2.10** Attorneys must agree to provide the City with notice of any client representation which could conflict with the representation of the City during the two year period following receipt by the City of the attorney's letter of interest.
- 3.2.11** Attorneys must agree to provide on request, in order to be considered for the assignment of a case or project, an initial evaluation of the claim, an estimate of the total cost of litigation, including costs and witness fees, and an analysis of the theories for recovery and for defense of the claim. If the case is assigned, this evaluation will serve as a measurement of the attorney's performance for the City's case management review.
- 3.2.12** Attorneys must agree that only those attorneys and legal assistants/paralegals set out in the proposal submitted shall provide services to the City, unless the City approves in writing its request for a change in personnel.
- 3.2.13** Attorney must agree to the following procedural guidelines:
  - (a) use of personnel with the lowest billing rate when their skills are commensurate with the required tasks;
  - (b) billing for only one attorney, unless authorized in advance, if more than one attends a conference or deposition on the City's behalf;
  - (c) no billing of administrative guidance and coordination of secretaries, legal assistants/paralegals, and associates;
  - (d) no billing of partner or attorney rates for routine activities of clerical,

secretarial or legal assistant paralegal personnel conducting “conflict” checks, preparing form letters, setting up files, or other overhead activities;

- (e) billing travel time at no greater than one-half of the traveling party’s billing rate;
- (f) providing regular status reports with bills which include the current status of litigation or the project and summary of the activities undertaken and future activities planned;
- (g) providing quarterly reports and reports of major developments;
- (h) identifying a contact person to handle billing questions and problems;
- (i) monthly or quarterly billing which identifies the billing party, the service provided and the billing rate;
- (j) obtaining prior approval from the supervising Assistant City Attorney and the City Attorney for hiring expert witnesses, scheduling and taking depositions, in-house conferences which will result in billings from several members of the firm, and other extraordinary costs and expenses, including travel.
- (k) keeping travel costs to a minimum; and
- (l) other procedural guidelines implemented by the City Attorney from time to time.

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**PART 4  
DRAFT AGREEMENT**

**CITY OF ALBUQUERQUE  
LEGAL SERVICES AGREEMENT  
BETWEEN  
[FIRM NAME]  
AND THE CITY OF ALBUQUERQUE**

**THIS AGREEMENT** is made and entered into as of the last dated City signature below, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the (“City”)) and \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter referred to as the (“Contractor”).

**RECITALS**

**WHEREAS**, the City desires to engage the Contractor to render legal services for the term of this Agreement and the Contractor is willing to provide such services; and

**WHEREAS**, the City intends that the Contractor will act on behalf of and in service to the City in an official capacity.

**NOW THEREFORE**, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

**1. Scope of Services.** The Contractor shall provide the following legal representation and other legal services (hereinafter the “Services”) in conjunction and association with the City Attorney in the following case:

Representation of \_\_\_\_\_  
In the \_\_\_\_\_  
Cause No. \_\_\_\_\_  
Risk Claim No. \_\_\_\_\_  
Legal Matter No. \_\_\_\_\_

-or-

*[Description of other legal services]*

**2. Time of Performance.** Services of the Contractor shall commence \_\_\_\_\_ and shall continue through \_\_\_\_\_. The Services shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement.

**3. Compensation and Method of Payment.**

**A. Compensation.** The City agrees to pay the Contractor up to the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for Services performed (the “Compensation”), plus reimbursement of expenses as provided in Section 3.C below and any applicable gross receipts taxes on such amounts. Such amounts shall constitute full and complete compensation for the Contractor’s Services under this Agreement.

**B. Method of Payment.** Such amount shall be payable at the following rates for professional services, which are inclusive/exclusive of gross receipts taxes:

_____	\$ _____/hour
_____	\$ _____/hour
_____	\$ _____/hour

[Any applicable gross receipts taxes will be computed and added as a separate item to the billing.]

**C. Reimbursement of Expenses.** The following necessary expenses incurred in connection with the Services provided hereunder shall be reimbursed, if approved by the City in advance and billed at actual cost: motel, hotel, car rental, taxi, other accommodations or modes of transportation; computer research, expert witness fees, and long-distance telephone calls. Copies shall be billed at \$0.15 per page and mileage for approved in-state travel shall be billed at then current IRS mileage rates. Travel time shall be billed as no greater than one-half of the traveling party’s hourly rate. The Contractor shall attach copies of all receipts, bills, statement and charges for which reimbursement is requested to its billing. Any applicable gross receipts taxes will be computed and added as separate item to the billing.

**D. Invoices and Payments.** Compensation and expense reimbursements shall be paid to the Contractor monthly upon receipt by the City Legal Department of a properly documented invoice for payment as determined by the budgetary and fiscal guidelines of the City and in accordance with Subsection E. below, and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

**E. Time Records.** The Contractor shall maintain detailed time records which set forth each service rendered in each matter, the person rendering the such service, the hourly rate, the time expended in rendering such service, and the date such service was rendered. The City has the right to audit billings both before and after payment, to contest any billing or portion thereof. When the Contractor submits billings for payment pursuant to this Agreement, each billing will specify the amount billed for that reporting period and will indicate the total amount billed to that date under the terms of the Agreement.

**F. Appropriations.** Notwithstanding any other provision in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City’s then current fiscal year upon written notice given by the City to the Contractor. Such event

shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

**4. Interest of the Contractor.**

**A.** The Contractor agrees that it presently has no direct or indirect interest and shall not acquire any direct or indirect interest which conflicts in any manner or degree with the performance of the Services required to be performed under this Agreement. The Contractor further agrees that no person have any such conflict of interest will be employed to perform the Services.

**B.** The Contractor hereby agrees to report to the City Attorney in writing, any situation in which the Contractor or member of the Contractor's firm may be asserting a position contrary to that of the City. Such situations include but are not limited to instituting suit against the City, any of its employees or departments, regardless of whether a technical conflict exists under the Canons of Ethics or Disciplinary Rules or whether the subject matter of the litigation to be instituted is related to the Contractor's representation of the City under this Agreement.

Upon notification of such a conflict, the city Attorney will inform the Contractor in writing within 10 (ten) days of receipt of the notification, that the City will or declines to waive the potential conflict. If the conflict is waived, the Contractor or firm may proceed with representation in the conflict situation, informing the City Attorney should any relevant change of circumstances occur. If waiver of the conflict is denied, the Contractor is obligated under the provisions of this Agreement to cease its efforts in the conflict situation.

If the Contractor refuses to cease representation, or if the Contractor fails to notify the City of a potential conflict, the City may terminate this Agreement upon one (1) day's notice. The Contractor agrees to compensate the City for any costs incurred by the City to obtain alternative representation, including but not limited to the cost of paying substitute counsel to become familiar with the case to a level at which the Contractor withdrew from representation and attorneys fees incurred by the City in obtaining the assistance of alternate counsel.

The City is entitled to withhold payment of the final billing submitted by the Contractor to cover the cost of obtaining substitute representation, as provided above. After securing alternate counsel, the City will provide a summary of costs incurred by this counsel and will pay any applicable amounts due to the Contractor.

**5. Records, Pleadings and Case File.** Records, pleadings, legal research, and the case file shall be sent to the City Attorney at the conclusion of the case. Highly confidential documents such as attorney notes and client correspondence need not be returned.

**6. Reports Required.** Within thirty (30) days after entering into this Agreement, the Contractor will provide the City Attorney with a brief analysis of the task to be undertaken and a plan for performing the tasks under the Agreement. With regard to the litigation, this will include an assessment of the relative merits of the parties' positions, and a litigation plan, including a proposed time schedule.

At the time of submission of any billing, the Contractor will also submit to the City Attorney as status report indicating the current status of the litigation or other project which is the subject of this Agreement, a summary of the activities undertaken for which the billing is being submitted, and a plan for future activities under the Agreement which the Contractor intends to perform during the next billing cycle.

**7. Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

**8. Pleadings.** All documents submitted to the Court or opposing counsel shall be copied to the City Attorney. Pleadings other than routine pleadings, such as briefs and motions, will be submitted to the City Attorney for review and approval prior to filing. Failure to submit such pleadings to the City Attorney in advance of filing may constitute grounds for termination of the Agreement or for refusal to compensation the Contractor for all efforts expended in preparation of the pleading. A sample of the signature line for pleadings is:

**CITY OF ALBUQUERQUE**  
Lauren Keefe, City Attorney  
PO Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500

*[FIRM NAME]*  
By: *[Attorney Name]*  
*[Firm Address and Zip code]*  
*[Firm Telephone Number]*  
Attorney for \_\_\_\_\_

**9. Renewals.** Any continuation or renewal of this Agreement shall be the subject of further negotiations between the parties.

**10. Termination by Parties.** This Agreement may be terminated by either of the parties when required by law or upon fifteen (15) days' notice of termination, whichever occurs first, or substitution of counsel. Notice of termination does not nullify obligations already incurred on the part of either party for performance or failure to perform to the date of termination, subject to the limits on total payment to be made as set forth in Paragraph 3 of this Agreement and subject to the

City's entry of substituted counsel as set forth in Paragraph 4.B.

**11. Independent Contractors.** The Contractor, if officers, employees and agents are independent contractors performing services for the City and are not employees of the City or its department, agencies or instrumentalities. The Contractor, its officers, employees and agents, shall not, as a result of this Agreement, accrue any leave, retirement, insurance, bonding, use of City vehicles, or any other benefits available to employees of the City, its agencies or instrumentalities.

**12. Assignment Prohibited.** The Contractor shall not assign or transfer any interest in this Agreement nor assign any claims for money due or to become due under this Agreement without the City's prior written approval.

**13. Subcontracting Prohibited.** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the City's prior written approval.

**14. Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from the performance of professional services for the City in the Contractor's capacity as attorney for the City, and caused by any error, omission or negligent act of the Contractor or any person employed by the Contractor, or of any others for whose acts the Contractor is legally liable. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

**15. Release from Liability.** The Contractor, upon final payment of all amounts due under this Agreement, releases the City, its officers, employees, and servants, the City of Albuquerque, its departments, agencies, and instrumentalities from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

**16. Insurance.** The Contractor shall not commence work under this Agreement until any applicable insurance required in Exhibit A to this Agreement has been obtained and proper evidence of insurance has been submitted to the City.

**17. Discrimination Prohibited.** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as currently enacted, or hereafter amended.

**18. ADA Compliance.** In performing the Services required hereunder, the Contractor agrees to meet all requirements of the Americans with Disabilities Act of 1990, and all applicable rules and regulations (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suite or proceedings of any kind brought against said parties as a result of any acts or omission of the Contractor or its agents in violation of the ADA.



19. **Amendments.** This Agreement shall not be altered, changed, or amended except by written instrument executed by the parties hereto.

20. **Complete Agreement.** This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

21. **Interpretation.** This Agreement shall be interpreted, construed, and governed in accordance with New Mexico law.

22. **Approval Required.** This Agreement shall not become effective or binding until all required signatures have been obtained.

**IN WITNESS WHEREOF,** The City and the Contractor have executed this Agreement as of the date first written above.

**CITY OF ALBUQUERQUE**

**APPROVED BY:**

\_\_\_\_\_  
Lauren Keefe  
City Attorney

Date: \_\_\_\_\_

**CONTRACTOR:**

*[NAME OF FIRM]*

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

Title: \_\_\_\_\_

## EXHIBIT A

**Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

**A. Commercial General Liability Insurance.** NA

**B. Automobile Liability Insurance.** N/A

**C. Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico.

**D. Professional Liability (Errors and Omissions) Insurance.** Professional liability (errors and omissions) insurance in an amount not less than \$2,000,000 combined single limit of liability per occurrence with a general aggregate of \$2,000,000.

**E. Increased Limits.** If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

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**PART 5**  
**CASE MANAGEMENT/CASE BUDGET PLAN**

**INSTRUCTIONS FOR CASE MANAGEMENT PLAN (PLAN)**  
**Due with responsive pleading by Client not later than 45 days**  
**And before any billing to the City of Albuquerque (COA)**

This report is required upon execution of any outside counsel contract with the City of Albuquerque or upon assignment of a case. We realize that it is difficult to obtain information to complete this Report within the required time, but it must be completed and you must give your best estimate and information in response. The City of Albuquerque will provide necessary support of the development of factual information.

The case budget is only an estimate. It should, however, be **evaluated on a quarterly basis**.

It is the City of Albuquerque policy for you as the outside counsel to contact opposing counsel before filling out his Report to evaluate settlement prospects.

The Quarterly Report should be used for all follow-up reports and submitted quarterly with a bill. **The Quarterly Report is used to monitor the approved Case Management Plan.**

**CASE MANAGEMENT PLAN (PLAN)**  
**AND CASE BUDGET (BUDGET)**

**CASE MANAGEMENT PLAN.** Your Case Management Plan should address the following issues. You may also address issues not included in the suggested considerations.

1. Report Date:  
Date of Loss:  
Date of Suit:  
Date Assigned:  
Type Case:
2. Name of Client:
3. Name of Plaintiff(s):
4. Name of Overseeing Attorney:
5. Name of Plaintiff's:
6. Court:
7. Assigned Judge:

8. Assigned Federal magistrate:
9. Jury:
10. Type of Claim:
11. Does a counterclaim or other claim enhance defense (Rules 13 & 14)?
12. What are Plaintiff's legal claims against your client?
13. Give a brief statement of facts giving rise to the claim:
14. What facts are disputed by you client?
15. Are there Rule 12 defenses and objections to the claims?
16. What other defenses are to be pled?
17. Who have you contacted on half of the client?
18. What is the client's position as the settlement vs. defense?
19. What investigation have you made of the Plaintiff's claim?
20. Discovery:
  - a. What discovery will you undertake?
    - Interrogatories:
    - Request for Production:
    - Request for Admissions:
  - b. What witnesses do you anticipate will be deposed?
    - Plaintiffs:
    - Defendants:
  - c. Experts:
21. Settlement
  - a. Have you discussed resolution or settlement with Plaintiff's attorney?
  - b. Should an offer be made on behalf of your client?
  - c. If settlement has not been discussed, please give any reason(s) why it should not be:

- d. What is your evaluation of settlement value?
- e. Is mediation appropriate? Explain.
- f. Should we submit this to binding arbitration (no appeal), and what do you think the Plaintiff's position would be?
- g. Do you anticipate any claims or parties being dismissed by motion? Explain: (See item 15)

22. Evaluation

Verdict if Plaintiff wins (without considering comparative negligence):

High \$ \_\_\_\_\_ Low \$ \_\_\_\_\_

Percent of Liability:

Plaintiff:

Defendant:

Third Party:

Empty Chair:

What is likelihood of total defense verdict?

**CASE BUDGET**

1. Name person(s) in the firm working on this case and state hourly rates(s):

Name: \_\_\_\_\_ Hourly Rate: \_\_\_\_\_

Name: \_\_\_\_\_ Hourly Rate: \_\_\_\_\_

Name: \_\_\_\_\_ Hourly Rate: \_\_\_\_\_

2. Plan Costs

a. Estimated total fees and costs including experts to defend and resolve claim:

Attorney Fess: \$ \_\_\_\_\_ Expert Witnesses: \$ \_\_\_\_\_

Costs: \$ \_\_\_\_\_

b. Estimated attorneys fees only for the current fiscal year (July 1 through June 30)  
\$ \_\_\_\_\_

3. Estimated date to dispose of claim:

4. What expert witness, if any, will be needed? (Give area of expertise):

5. What is your best estimate of total costs of defense? Please elaborate:

6. The Contractor is responsible for obtaining the city Attorney's and Risk Manager's approval of any amendment to the Case Management Plan of the attorney's fees, costs or expert witness fees, prior to exceeding the amounts contained in the Case Management Plan.

**The City Attorney and Risk Manager must pre-approve all costs and expert witness fees.**

Submitted to the City of Albuquerque Legal Department for approval on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FIRM NAME:**

By: \_\_\_\_\_  
Signature of Firm's Representative                      Amount of time billed for preparing this report

**CITY OF ALBUQUERQUE**

Approved By:

\_\_\_\_\_  
Lauren Keefe, City Attorney                      \_\_\_\_\_, Risk Manager

Date: \_\_\_\_\_                      Date: \_\_\_\_\_

**PART 6**  
**GUIDELINES FOR OUTSIDE LEGAL COUNSEL**

**CITY OF ALBUQUERQUE**

*LEGAL DEPARTMENT*



*GUIDELINES FOR OUTSIDE LEGAL COUNSEL*  
*Revised April 23, 2014*

## **A. INTRODUCTION AND PURPOSE**

These Guidelines for Outside Legal Counsel are provided to all outside legal counsel retained by the City of Albuquerque Legal Department and supersede any previously issued guidelines. It has been prepared by the Legal Department for the purpose of explaining our policies and billing procedures in connection with the retention of the outside legal counsel. These Guidelines are an integral part of the terms of the outside contracts under which you are retained. We recognize that some of the procedures in these Guidelines may require a departure from your standard practices and we appreciate your cooperation. Any questions that you may have with respect to the matters contained in these Guidelines should be referred to the City Attorney. With respect to any litigation-specific issues, please refer to paragraph I of these Guidelines. Compliance with these Guidelines and the terms of any contract with the City is required and should result in savings of attorney time and expenses while maintaining quality representation for the City.

## **B. RELATIONSHIP BETWEEN THE LEGAL DEPARTMENT AND OUTSIDE LEGAL COUNSEL**

The Legal Department has ultimate responsibility for the management of all legal assignments. Therefore, the City Attorney must approve all significant decisions associated with these matters. (For Workers' Compensation cases, the Legal Department's authority has been delegated to the Risk Management Division.)

You should not consult City personnel outside the Legal Department for decisions or guidance involving legal issues or strategy, even though you may be in contact with City personnel from our client departments. In those cases where the Legal Department approves your direct contact with other City personnel, it is essential for you to keep us timely advised of all significant communications and developments as they occur. To ensure proper coordination of the assignment, outside legal counsel shall provide to the Legal Department copies of all documents and correspondence sent to other City personnel

The relationship between outside legal counsel and the City shall be that of Attorney-Client. Any information and other data developed or acquired by or furnished to outside legal counsel in the performance of the contract shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of the City Attorney.

THE CITY OF ALBUQUERQUE AND ITS CITY ATTORNEY RECOGNIZE THAT ATTORNEYS MUST EXERCISE INDEPENDENT JUDGMENT AND ACT ACCORDING TO THEIR LEGAL AND ETHICAL OBLIGATIONS WHEN REPRESENTING THE CITY. ALTHOUGH THESE GUIDELINES PROVIDE A RECOMMENDED APPROACH TO CASE MANAGEMENT, WE RECOGNIZE THAT AN ATTORNEY MAY DETERMINE THAT CERTAIN ACTIVITIES SHOULD BE PERFORMED THAT MAY BE CONSTRAINED BY, OR INCONSISTENT WITH, THESE GUIDELINES. IN THE EVENT AN ATTORNEY MUST DEVIATE FROM THE GUIDELINES S/HE SHOULD CONTACT THE SUPERVISING ASSISTANT CITY ATTORNEY TO DISCUSS THE ACTIVITY OR ACTION BEFORE IT IS PERFORMED.



### **C. CONFLICTS**

We expect that your representation of the City will be free of any conflicting interests. Any actual or potential conflict (including any adverse representation by your law firm) must be discussed with, and disclosed in writing to, the City Attorney as soon as you recognize the existence of or potential for such a situation. The City reserves the right to decide whether a conflict of interest exists. If a potential or actual conflict does exist, the issue must be resolved to our satisfaction. If a waiver is requested, any such request must be in written form and must disclose all relevant factors. A decision about any requested waiver is within the exclusive authority of the Legal Department and will be communicated to you as soon as possible.

### **D. NEWS MEDIA**

Any inquiries from the news media should be forwarded to the City Attorney. Outside legal counsel shall not make statements to the news media regarding City matters that they are handling without the prior express authority of the City Attorney.

### **E. STRATEGY AND BUDGET**

At the outset of each assignment we will work with you to define the objectives to be achieved and to mutually agree upon your role and the duties expected of you in order to successfully conclude the matter. At that time, we would also expect to agree upon staffing.

Within thirty (30) days after acceptance of a case or project assignment, outside legal counsel shall provide the City Attorney with a case management plan and a case budget for preparing the tasks under the contract. The case budget should address all possible and probable costs likely to be incurred in the handling of a case. The Supervising Assistant City Attorney (“ACA”) must approve the case budget and case management plan within forty-five (45) days of receipt of the case budget and management plan. With regard to litigation, the case management plan will include an assessment of the relative merits of the parties’ positions, and a litigation plan, including a proposed time schedule.

The case budget, at a minimum, must include assumptions with regard to (a) anticipated staffing, strategies and the City’s objectives; (b) significant phases of the assignment; (c) the approximate amount of time the assignment will take; and (d) the cost of each phase of the assignment. Periodic updates will be requested in order to assist us in preparing the City’s annual budget. If circumstances dictate any significant change in strategy or adjustment of the budget, you should identify these issues and notify the City Attorney as soon as you determine that any such situation exists. We will work together in order to address and resolve any such concerns affecting the budget or agreed-upon strategies.

### **F. OPENING A FILE**

Neither these Guidelines nor outside legal counsel’s submission of a letter of interest constitute a grant to outside legal counsel of any right to handle any specific number of cases or any work of a

particular type. When outside legal counsel services are requested for a particular case, the contracting firm or attorney will be supervised by a Supervising ACA or in some cases by the City Attorney. Before work may commence on an outside legal counsel contract, written notice to proceed must be obtained from the City Attorney.

All requests, correspondence, and approvals, other than routine pleadings, must go through the Supervising ACA.

1. Risk Liability No.

The City will give all cases involving risk matters assigned to outside legal counsel a Risk Liability No.. Outside legal counsel must include the Risk Liability No., case name and case number on all correspondence and billing relating to the case.

2. Supervision and Reporting Requirements

After the assignment of a case, outside legal counsel shall contact the Supervising ACA, acknowledge representation, and proceed with filing the Entry of Appearance and other necessary legal documents. An initial meeting should be set up between the outside legal counsel, the Supervising ACA, and other City Attorney or Risk Management personnel as is necessary, to discuss the case and potential strategy.

## **G. CASE MANAGEMENT AND COST CONTROL**

In order to avoid over-working cases, unnecessary expenses, and other high costs, the City Attorney expects outside legal counsel to manage cases in a cost-effective manner. You are expected to minimize expenses wherever possible and, when applicable, to continually keep the settlement option in mind, especially when a case can be settled for less than it would cost to defend. We do not expect charges to be increased or decreased because of the size of a transaction or the outcome of the representation. Outside legal counsel are expected to adhere to the following policies:

1. We have retained you in part because of your expertise and overall knowledge of the law. In some instances, you have been retained because you specialize in a particular area of law. Therefore, we do not expect to be billed for any basic legal research to educate your lawyers in the basic field of the lawsuit, or your specialty. Consequently, all legal research you intend to bill to the City must be specifically requested and authorized in advance by the Supervising ACA. When legal research is accomplished, please be sure we receive a copy of that research, regardless of whether it is in form of handwritten notes or a formalized memorandum of law.
2. Cases are to be assigned to individual attorneys and support staff within the outside legal counsel's firm or office. If additional attorneys or staff are needed, the assigned attorney must contact the Supervising ACA for authorization before any work is done by another attorney or additional staff member except as may otherwise be approved in the case budget and case management plan.

3. Whenever an assigned attorney leaves a law firm, the Supervising ACA shall be notified immediately so that s/he may determine whether the firm should continue to handle the case or whether the case should be reassigned.
4. All documents submitted to a Court or opposing counsel shall be copied to the Supervising ACA. Pleadings, other than routine pleadings, will be submitted to the Supervising ACA for review and approval prior to filing. Outside legal counsel shall consult with the City Attorney's Office to determine the procedure for pleadings and documents for a particular case or project assigned. Failure to submit such pleadings to the Supervising ACA in advance of filing may constitute grounds for termination of the contract and/or a denial of compensation for outside legal counsel's time for preparation of the unauthorized pleading. A sample of the signature line for pleadings is:

CITY OF ALBUQUERQUE  
Laruen Keefe, City Attorney

---

Assistant City Attorney  
Post Office Box 2248  
Albuquerque, New Mexico 87103  
(505) 768-4500

FIRM NAME

By: \_\_\_\_\_  
Esq.

Address  
City, State, Zip Code  
Telephone Number

Attorneys for City of Albuquerque

5. Outside legal counsel shall forward to the City Attorney's Office all opposing parties' requests for payment of attorney fee bills and costs unless instructed otherwise by the City.
6. Outside legal counsel will provide a list every quarter to the City Attorney's Office of all cases that have been closed during that quarter. Information will include, case name, number, Risk Liability No., brief synopsis of the case, disposition, amount paid by the City and a breakdown of the amounts paid, if any. Outside legal counsel will also provide copies of all closing documents which include: Settlement Agreement and Release, Judgment, Order Granting Motion for Summary Judgment, Motion and Order of Dismissal, settlement check, etc.

## H. BILLINGS

It is the policy of the City Attorney's Office to review outside legal counsel's bills in order to evaluate the cost-effectiveness of defenses and to compare the cost-effectiveness of contractors. Outside legal counsel is encouraged to propose alternative billing arrangements.

Therefore, outside legal counsel shall follow these billing procedures:

1. Outside legal counsel shall include Risk Liability Nos. on all billings and status reports. The City Attorney's Office will return all billings that are submitted without file numbers unpaid.
2. Outside legal counsel shall itemize bills in a manner that allows the City Attorney to compare and evaluate costs. Different activities (e.g., conferences, research) and costs (e.g., telephone calls, travel) shall be separately itemized and shall not be aggregated for billing purposes.
3. Outside legal counsel shall obtain prior written approval from the Supervising ACA and the City Attorney for the following:
  - a. hiring expert witnesses;
  - b. scheduling and taking depositions;
  - c. in-house conferences that will result in billings from several members of the firm;
  - d. all extraordinary costs and expenses including travel. (Outside legal counsel are expected to keep travel expenses to a minimum.); and
  - e. legal research.
4. No partner or shareholder "bonus" or "fee" for opening a file will be paid. Partner time billed to open a file should represent activities actually performed by the partner, and no partner rate may be charged for routine activities of clerical or paralegal personnel conducting "conflict" checks, preparing form letters, physically setting up the new file and other activities that should be considered "overhead" costs.
5. Outside legal counsel must use the lowest billing rate personnel when their skills are commensurate with the required tasks. Simple discovery, scheduling, and administration of forms should be performed by the lowest billing personnel. Law Clerks and paralegals may be used as long as they are listed in the contract between the City and the outside legal counsel. Addenda for these purposes may be made at any time, with the approval of both parties. Outside legal counsel must submit

requests for such addenda and they shall include resumes and indicate the hourly rate at which you intend to bill any such person's time.

6. Outside legal counsel must provide the City Attorney the billing rates of each of the attorneys, paralegals and others who will work on the assignment. These rates will not be subject to change without the prior express approval of the City Attorney. **THE HOURLY RATE CHARGED FOR ANY MATTER REFERRED BY THE CITY MUST NOT EXCEED THE LOWEST RATE CHARGED TO ANY OTHER OF YOUR PUBLIC SECTOR CLIENTS.** In establishing your billing rates, we suggest that the following factors be considered: the number of City assignments offered to your firm; the growing competitiveness of law firms as to quality and rates; and the assurance that your invoices will be promptly paid. There shall be no standard minimum charges for any services performed such as telephone calls, file review, etc. Only the actual time expended shall be charged.
7. In the event of a conference between multiple attorneys in your office, only one person may bill time for that conference. If a file transfer is made within outside legal counsel's office or firm, it must be approved in advance by the City Attorney. The City Attorney reserves the right to refuse to pay any time billed by the new attorney for "getting up to speed" on a newly transferred file.
8. Administrative guidance and coordination of secretaries, paralegals and associates should not be billed unless a substantive aspect of the file is being developed. Repeat conferences with associates or paralegals to direct activity; review and revise pleadings or to provide assistance on routine matters may be questioned as "training time," and must be critically reviewed by and deleted by outside legal counsel before the fee bill is sent to the City Attorney's Office.
9. Bills are to be rendered on a monthly basis. If you are representing more than one City department or if you are engaged in multiple matters, you should prepare a separate bill for each matter and designate each matter with the applicable charges individually noted. Each bill must be reviewed and approved by the attorney within your firm who is responsible for the assignment.
10. At the time of submission of any billing, outside legal counsel will also submit to the City Attorney a status report indicating the current status of the litigation or other project which is the subject of the contract, a summary of the activities undertaken for which the billing is being submitted and a plan for future activities under the contract which outside legal counsel intends to perform during the next billing cycle. Irrespective of the billing cycle, you must provide quarterly reports at a minimum and shall always provide reports whenever any major developments occur.
11. Accurate time records shall be kept by all time billing personnel and these records shall be submitted with any and all reports and bills. These records shall include a detailed description of each service rendered, the person rendering the services, the

hourly rate, the actual time expended in rendering such services, and the date such services were rendered. Minimum billing units shall not be recorded in any unit larger than ¼ of an. All confidential, privileged and work product information should be included in the report and not in the bill. The bill is public record and will be subject to disclosure under applicable law.

12. The City expects that your hourly billable rate has been calculated to include all overhead and internal charges associated with your practice. UNLESS OTHERWISE AGREED UPON IN ADVANCE AND IN WRITING, THE CITY WILL NOT PAY FOR ADDITIONAL OVERHEAD OR NORMAL FIRM COSTS SUCH AS:
  - √ administrative or clerical services, including secretary, docket, word processing, accounting, library or other clerical staff and/or any overtime;
  - √ “opening file” or “closing file” administrative charges, including time spent; preparing an engagement letter or conflict waivers;
  - √ photocopying charges in excess of \$.15 per page;
  - √ telephone charges for local calls and long distance telephone charges in excess of the rates charged by the service provider;
  - √ charges for incoming telecopy/facsimile and charges for any outgoing fax;
  - √ computer or automation services other than computerized legal research specifically authorized in advance and rates not to exceed the cost charged by the services provider;
  - √ time charges for preparation of bills;
  - √ charges for attorney travel time in excess of one-half the attorney’s billable rate. Also, attorney travel time is chargeable to the City only to the extent that work for other clients is not performed during travel.
13. Authorization for overnight travel should be obtained in advance from the Legal Department. Charges for air travel will be reimbursed at coach rate only. Unless authorized in advance, the City will not reimburse outside legal counsel for travel by more than one attorney on an assignment . It is expected that expenses for lodging, meals and transportation shall be at reasonable rates and that outside legal counsel will exercise prudence in incurring such expenses. The City will closely scrutinize such expenses.
14. Each bill for services and costs should be submitted directly to the Legal Department in a form that includes, at a minimum, the following information:

### Legal Fees

Date of Service	Description of Service	Person Who Performed Service	Time Spent x Hourly Rate = Cost
-----------------	------------------------	------------------------------	------------------------------------

When different services are performed in one day (e.g., research, drafting, meetings, etc.), list each such service separately. The description of service should permit us to perform a meaningful analysis of the services provided. For example, “legal research” or “telephone conference” is not an acceptable description of services. The subject matter of a telephone call or the research performed and the purpose thereof must be specified.

### Disbursements

Itemize all travel by Attorney, Date, Transportation Cost, Lodging, and Meals.

Itemize all other cash disbursements incurred for our account.

Itemize all other charges being billed to use as costs.

Subtotal Costs

Total Fees and Costs

In certain practice areas and in certain circumstances, we will ask that you provide additional billing information. If you have been retained with respect to litigation-specific issues, please refer to Section I of these Guidelines.

Invoices from court reporters and other outside service firms, if paid by you, should be available as support for your bills to us. If you prefer, we can directly pay separate invoices from these service firms, and in such cases, your approval of the charge should be noted on the invoice when sent to us for payment.

Only bills which include the information set forth above, will be processed for payment. Non-conforming bills will be returned to you unpaid with the deficiencies noted.

## **I. LITIGATION PROCEDURES FOR OUTSIDE LEGAL COUNSEL**

We have been quite successful in both the defense and prosecution of litigation cases, but we have found this to be expensive. Accordingly, we ask our outside legal counsel to cooperate with us to provide excellent representation. At the same time, we ask that you continue to use good judgment to avoid duplicative or unnecessary efforts and costs.

In achieving this balance, we subscribe to the policies stated above, and in addition, the following special rules shall apply to cases in litigation:

1. Supervising ACA. As stated above, a Supervising ACA will be assigned to each case to work with you. The Supervising ACA is accountable for the outcome and cost of the case you have been retained to prosecute or defend; therefore, your retention is subject to our direct supervision and control.
2. Settlement/Alternative Dispute Resolution. We shall discuss with you the advisability of obtaining settlement or pursuing alternatives to traditional litigation to resolve the dispute at very early stages of each litigation matter. However, you should not undertake any discussions in this regard (or indirectly imply any interest in settlement) without our prior approval. Further, no offer for or acceptance of settlement may be made without the express consent of the Supervising ACA.
3. Correspondence & Pleadings. All important decisions with respect to the litigation must be made with our involvement, concurrence and direction. Consequently, the Supervising ACA must review drafts of all correspondence and pleadings and must be copied on all final correspondence and pleadings.
4. Discovery. We take an aggressively defensive posture towards most discovery requests. Therefore, we need the maximum lead-time to help you answer them. Please coordinate responsibilities regarding completion of these requests with the Supervising ACA. When submitting discovery requests, please indicate your recommendations for objective and proposed responses.
5. Experts. Retention of outside consultants and experts is subject to our prior approval.
6. Staffing. We expect you to use good judgment in staffing our cases to provide excellent representation without incurring unnecessary expense. We assume that basic research, collating of documents, summarizing of testimony and the like will be done by junior lawyers and/or paralegals. We expect that generally only one attorney from your office will attend meetings, arguments and depositions, although we recognize you may need a "second chair" for trials and major hearings.
7. Required Reports. We expect you to submit a status report to the responsible Supervising ACA when you submit your monthly bill. Additionally, you will be requested to submit a litigation plan and budget for each case assigned within 30 days or sooner of entering into the contract or being assigned a new case under the existing contract.

## **J. SETTLEMENT OR DISMISSAL PROCEDURES AND AUTHORITY**

Pursuant to Section 2-8-1-2 ROA 1994, the City shall not settle or request a dismissal of any suit alleging the invalidity or unconstitutionality of any City ordinance, resolution or other Council



action where the effect of such settlement or dismissal would be to compromise the terms of such ordinance, resolution or other Council action or to compromise the provisions of the Zoning Code, except in accordance with the procedures set out below.

Procedure for a settlement or request for dismissal shall be as follows:

1. Outside legal counsel shall prepare a report for the City Attorney on every case where settlement or a request for dismissal is recommended including the designation of each case by name and number, settlement and the reason why the settlement or dismissal is recommended.
2. No settlement of any case or controversy shall be final without the prior approval of the Risk Manager of the City of Albuquerque, provided that:
  - a. The City Attorney may approve any settlement not exceeding \$2,500, provided that if the claim or controversy exceeds \$1,000, the client department shall be consulted prior to any approval of the settlement. If the client department objects to the settlement, the settlement may be submitted to the CAO for her/his approval. No settlement offer exceeding \$1,000 shall be approved by the City Attorney unless the “client” (department to which the settlement will be charged or allocated) has completed a written report setting forth the nature of the controversy; or
  - b. If the claim exceeds \$10,000, the City’s Risk Management Review Board (a/k/a Claims Review Board) must be consulted, and must, by majority vote, approve any settlements of Risk Management cases or claims in excess of \$10,000. Even with such authority, outside legal counsel may not approve case settlement without the specific concurrence of the City’s Risk Manager.
3. The Chief Administrative Officer must approve any settlement or request for dismissal that may result in the entry of an order or written findings, which either prohibits a city officer or employee from performing some act or which orders a city officer or employee to perform some act.
4. If settlement or request for dismissal of a case involves a decision made by the City Council in an appeal, settlement of the case shall require majority vote of the City Council.
5. If settlement or request for dismissal of a case involves a plan adopted by the City Council for urban development and conservation as specified in Section 14-13-1-1, et seq. ROA 1994, and the City Council has adopted that plan, settlement of the case shall require a majority vote of the City Council.
6. If settlement of a case involves making a special agreement to delay or not enforce City Council-adopted zoning or subdivision regulations, settlement or request for dismissal of the case shall require a majority vote of the City Council.

7. In cases of proposed settlement or request for dismissal of a case if the policy of an ordinance will be substantially affected by the proposed settlement or dismissal, the City Attorney shall confer with the Director of the City Council Services Department or her/his authorized representative prior to finalizing any such settlement.
8. The Settlement Advisory Committee, pursuant to Section 2-8-1-4 ROA 1994, shall be constituted on an ad hoc basis for cases which required Council approval for settlement.

**K. CLOSING A FILE/TERMINATING REPRESENTATION**

1. Pursuant to the outside legal counsel contract, the contract may be terminated by either of the parties when required by law or upon fifteen (15) days notice of termination, whichever occurs first, or upon substitution of counsel. Notice of termination does not nullify obligations already incurred on the part of either party for performance or failure to perform.
2. Upon termination of the contract for any reason or upon completion of contract, outside legal counsel shall return to the City promptly any and all information and/or other data developed or acquired by or furnished to you in the performance of the contract.
3. Upon termination of a contract, outside legal counsel agrees to provide the Legal Department a file that shall be available for public review.