

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT**

**THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (“First Amendment”) made effective this 16 day of April, 2018 by and between McAfee & Taft, P.C., and the City of Broken Arrow, Oklahoma, an Oklahoma Municipal corporation (hereinafter “City”). Terms used and not otherwise defined in this First Amendment shall be defined in the August 15, 2017, Professional Services Agreement.

**WITNESSETH:**

**WHEREAS**, on August 15, 2017, McAfee & Taft, P.C. and the City of Broken Arrow entered into an Agreement (hereinafter referred to as “Original Agreement”) whereby the City set forth the terms and conditions of McAfee & Taft’s engagement; and

**WHEREAS**, the City of Broken Arrow and McAfee & Taft desire to continue the relationship, but modify some of the terms set forth in the Original Agreement; and

**WHEREAS**, modifications to said Original Agreement are reasonable and proper.

**NOW, THEREFORE**, in consideration of the covenants and mutual obligations set out herein and in the Original Agreement, and other good and valuable consideration, the sufficiency of which the parties hereto hereby covenant and agree to the following Amendments:

**ARTICLE A  
AMENDMENT TO ORIGINAL AGREEMENT**

A.1 **Amendment to Section V, Fees and Expenses, of the Original Agreement:** Section V, Fees and Expenses, is hereby amended to read as follows:

City agrees to pay Outside Counsel an hourly fee based on the following hourly rates:

	<u>Employment/ Labor Law</u>	<u>Sovereignty Law</u>
Shareholders:	\$305.00 per hour maximum	\$305.00 per hr maximum
Associates:	\$205.00 per hour maximum	\$215.00 per hr maximum
Paralegals:	\$105.00 per hour maximum	\$95.00 per hr maximum
Arbitration:	\$250.00 per hour maximum	N/A

The maximum fees and costs and expenses shall not exceed \$150,000.00.

City will pay Outside Counsel’s out-of-pocket costs and expenses reasonably incurred in these matters as follows:

- Out-of-pocket necessary copying costs
- Out-of-pocket long distance telephone charges
- Out-of-pocket automated research costs
- Out-of-pocket postage charges
- Courier and messenger services
- Other items necessary if City Attorney approves prior to expenditure.

The following types of expenditures will not be paid by City:

- Administrative overhead, including time spent copying, filing, docketing or calendaring deadlines, attending internal firm meetings for planning or status updates, reviewing or processing this Agreement or invoices for services or expenses rendered under this Agreement, or any clerical or secretarial work,
- Air conditioning and electricity for overtime work,
- Client entertainment,
- Local and suburban telephone calls,
- Refreshments during meetings,
- Meals during meetings or any other time unless associated with pre-approved overnight travel,
- Fees for telecopying other than out-of-pocket long distance telephone charges associated therewith, and
- Off-duty hours while traveling (not to include travel to or from the location of a meeting or hearing by counsel)

**ARTICLE B**  
**CONTINUING TERMS OF ORIGINAL AGREEMENT**

B. 1 Except as amended hereby, all terms of the Original Agreement shall remain in full force and effect without modification or change. The Original Agreement, as amended by this First Amendment, is in all respects ratified and confirmed, and the Original Agreement, as so amended, shall be read, taken and construed as one and the same instrument.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this First Amendment to Original Agreement to be executed and to take effect as of the date first above written.

CHARLIE PLUMB, ATTORNEY AT LAW  
McAFEE & TAFT, P.C.

By: \_\_\_\_\_  
Charlie Plumb

STEPHEN BUGG, ATTORNEY AT LAW  
McAFEE & TAFT, P.C.

By: \_\_\_\_\_  
Stephen Bugg

CITY OF BROKEN ARROW, a municipal corporation

By: \_\_\_\_\_  
Craig Thurmond, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

**AFFIDAVIT OF CLAIMANT**

STATE OF OKLAHOMA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The undersigned person, of lawful age, being first duly sworn on oath, says that all invoices to be submitted pursuant to this agreement with the City of Broken Arrow will be true and correct. Affiant further states that the work, services or materials furnished will be completed or supplied in accordance with the plans, specifications, orders, requests or contract furnished or executed by the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the City of Broken Arrow or of any public trust where the City of Broken Arrow is a beneficiary, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted. Affiant further certifies that (s)he has complied with all applicable laws relating to equal employment opportunity.

**CHARLIE PLUMB, ATTORNEY AT LAW  
McAFEE & TAFT, P.C.**

By: \_\_\_\_\_  
Charlie Plumb

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

My commission number: \_\_\_\_\_

**THIS SIGNED AFFIDAVIT MUST BE RETURNED WITH THE AGREEMENT**

**AFFIDAVIT OF CLAIMANT**

STATE OF OKLAHOMA     )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The undersigned person, of lawful age, being first duly sworn on oath, says that all invoices to be submitted pursuant to this agreement with the City of Broken Arrow will be true and correct. Affiant further states that the work, services or materials furnished will be completed or supplied in accordance with the plans, specifications, orders, requests or contract furnished or executed by the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the City of Broken Arrow or of any public trust where the City of Broken Arrow is a beneficiary, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted. Affiant further certifies that (s)he has complied with all applicable laws relating to equal employment opportunity.

STEPHEN BUGG, ATTORNEY AT LAW  
McAFEE & TAFT, P.C.

By: \_\_\_\_\_  
Stephen Bugg

Subscribed and sworn to before me this \_\_\_\_\_day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

My commission number: \_\_\_\_\_

**THIS SIGNED AFFIDAVIT MUST BE RETURNED WITH THE AGREEMENT.**