

PROFESSIONAL SERVICE AGREEMENT

This Professional Service Agreement (Agreement) is made and entered into by and between the City of Broken Arrow, a municipal corporation (City), and Kivell, Rayment & Francis, Triad Center, 7666 East 61st Street, Suite 550, Tulsa, Oklahoma 74133 (Outside Counsel).

I. PURPOSE OF REPRESENTATION

City has retained Outside Counsel to provide counsel and legal advice to the City of Broken Arrow regarding title opinions and property law.

II. OUTSIDE COUNSEL REPORTS TO CITY ATTORNEY

Outside Counsel agrees to keep City informed of the status of the matters covered by this Agreement by:

- A. communicating orally with the City Attorney's designated representative as needed and as requested by City;
- B. providing timely copies of all pleadings, discovery, and correspondence to City Attorney (unless correspondence is protected by attorney-client privilege as asserted by the Employees/Employee) to the City Attorney; and
- C. submitting to the City Attorney a detailed monthly statement identifying by separate entries:
 - 1. each date work was performed under the Agreement,
 - 2. the amount of time billed for the work,
 - 3. the attorney or paralegal billing for the entry,
 - 4. the hourly rate of the attorney or paralegal billing the entry,
 - 5. a description of the work performed, and
 - 6. the dollar amount billed for the entry.

All written communications required by this Agreement should be sent to Beth Anne Wilkening, Esq., City Attorney, City of Broken Arrow, City Hall, 220 South 1st Street, Broken Arrow, Oklahoma 74012.

III. CONFLICT OF INTEREST

Outside Counsel must conduct a conflicts check covering potential and actual conflicts of interest before representing the defendants. Outside Counsel must promptly notify the City Attorney in writing of all actual or potential conflicts. Outside Counsel must disclose past or present representation of a client associated directly, indirectly, actually, or potentially with the subject of the representation.

IV. TIMELY ACTION BY OUTSIDE COUNSEL

By executing this Agreement, Outside Counsel agrees to act in a timely manner in conducting work under this Agreement.

V. FEES AND EXPENSES

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

Partners:	\$200.00 per hour maximum
Associates:	\$175.00 per hour maximum
Paralegals:	\$ 90.00 per hour maximum

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,
- Local mileage or parking,
- Reasonable travel expenses if travel is required and approved by City Attorney in advance of travel, and
- Other items as 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)

VI. SETTLEMENT

Settlement possibilities should be identified and considered early and at subsequent stages in the proceedings. Outside Counsel must promptly report settlement overtures to the City Attorney or her designated representative. Cases may be settled only with the prior approval of the City Attorney and appropriate City officials. The City is prohibited from paying any amount in excess of the limits provided in 51 O.S. §§ 154 and 162.

VII. MALPRACTICE INSURANCE

Outside Counsel shall maintain professional liability insurance acceptable to the City Attorney with appropriate and adequate coverage. Upon request, Outside Counsel shall submit a certificate from its insurance carrier that provides that written notice will be provided to the City Attorney before cancellation of the insurance is effective. Outside Counsel shall promptly advise the City if its insurance is canceled or lapses.

VIII. RIGHT TO AUDIT

The City shall have the right by use of internal or external resources to audit Outside Counsel's time records and billings, upon reasonable notice provided in writing to Outside Counsel. Outside Counsel will cooperate with an audit request by providing reasonable access to appropriate records and personnel necessary to conduct an audit.

IX. ACCEPTANCES

This Agreement constitutes the entire agreement between the City and Outside Counsel and supersedes all prior agreements, written or oral, relating to the subject matter. Any change must be made or confirmed in writing, duly executed by both parties.

X. ASSIGNABILITY OF AGREEMENT

This Agreement is personal in nature and may not be assigned by Outside Counsel.

XI. INDEPENDENT CONTRACTOR.

Outside Counsel agrees and acknowledges that during the existence of this Agreement, it acts in the capacity of an independent contractor and that Outside Counsel is not an employee of the City of Broken Arrow.

XII. APPLICABLE LAW AND VENUE.


This Agreement and its incorporated documents shall be governed by and construed in accordance with the laws of the State of Oklahoma. The venue of any suit brought concerning this Agreement or its incorporated documents is fixed in any court of competent jurisdiction in Tulsa County, Oklahoma.

XIII. TERM

This Agreement shall commence on the date below and shall remain in full force and effect through June 30, 2017, unless the term of this Agreement is extended by agreement of the parties.

IN WITNESS WHEREOF, this Agreement has been executed in multiple copies and is effective as of THIS 15 day of June, 2016.

KIVELL, RAYMENT & FRANCIS

By:  _____
Managing Partner **JOE Francis**

CITY OF BROKEN ARROW, a municipal corporation


ATTEST:

By: _____
Craig Thurmond, Mayor

City Clerk

Date: _____

APPROVED:


 _____
Assistant City Attorney

AFFIDAVIT OF CLAIMANT


STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

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.

KIVELL, RAYMENT & FRANCIS

By: 
Managing Partner Joe Francis

Subscribed and sworn to before me this 15 day of June, 2016.


Notary Public

My commission expires: May 10, 2019

My commission number: 11004314



THIS SIGNED AFFIDAVIT MUST BE RETURNED WITH THE AGREEMENT