

AMENDED ATTORNEY ENGAGEMENT AGREEMENT

This Attorney Engagement Agreement (Agreement) is made and entered into by and between the City of Broken Arrow, a municipal corporation (City), and Tammy K. Ewing, 751 W. 150th Street, Glenpool, Oklahoma 74033 ("Outside Counsel").

Whereas, on May 31, 2018, Outside Counsel and the City of Broken Arrow entered into an Attorney Engagement Agreement to prosecute municipal court cases as identified in the agreement; and

Whereas, Outside Counsel and the City of Broken Arrow desire to modify some of the terms as set forth in the Agreement; and

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

I. PURPOSE OF REPRESENTATION

- i. City has retained Outside Counsel to represent City, and Outside Counsel agrees to provide legal services to City on an as-needed and as-assigned basis, which may include prosecution of Municipal Court cases, representation in State Court litigation, and review of contracts and drafting of ordinances and other documents.

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 or her designated representative as needed and as requested by City; and
- B. submitting monthly invoices by the 30th of each month.

III. TIMELY ACTION BY OUTSIDE COUNSEL

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

IV. FEES AND EXPENSES

City agrees to pay Outside Counsel an hourly fee of \$125.00. The maximum fees and costs and expenses shall not exceed \$35,000.00.

The parties recognize that the City is a political subdivision of the State of Oklahoma and cannot make payments for services rendered unless funds have been encumbered for such

services. City shall not be responsible for any fees or expenses related to this matter until this Agreement is duly executed by the City Manager.

The City agrees to only pay for Outside Counsel's time spent providing legal services to City. The following types of expenditures will not be paid by City:

- Travel time;
- Administrative overhead, including time spent docketing or calendaring dockets, reviewing or processing this Agreement or invoices for services rendered under this Agreement, or any clerical or secretarial work; and
- Refreshments or meals.

V. CONFLICTS OF INTEREST

Outside Counsel must conduct a conflicts check covering potential and actual conflicts of interest before representing the City. Specifically, Outside Counsel shall not defend any criminal cases involving any case investigated by the Broken Arrow Police Department. Outside Counsel further agrees not to bring any suit against the City during the term of this agreement.

VI. 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.

VII. ASSIGNABILITY OF AGREEMENT

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

VIII. INDEPENDENT CONTRACTOR.

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

IX. 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.

X. TERMINATION

The City, by written notice, may terminate this Agreement, in whole or in part, when services are no longer needed or such action is in the best interest of City. Outside Counsel, by 21 days written notice, may terminate this Agreement, subject to the applicable rules of professional conduct.

If this Agreement is so terminated, City shall be liable only for payment for services rendered and allowed costs and expenses incurred prior to the effective date of termination.

XI. ARBITRATION OF DISPUTE

In the event of a dispute concerning the amount or payment of fees and expenses, the City and Outside Counsel mutually agree that any such dispute will be submitted to mandatory binding arbitration to be held in Tulsa County, Oklahoma, and conducted in accordance with procedures established by the State Bar of Oklahoma. The decision of the arbitrator(s) will be final and binding on the parties. Judgment on any arbitration award may be entered in accordance with the provisions of the Uniform Arbitration Act, as adopted in 12 O.S. § 1851, et seq., of the Oklahoma Rules of Civil Procedure.

XII. ACCEPTANCE

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

XIII. TERM

This Agreement shall commence on September 4, 2018, and shall remain in full force and effect through October 4, 2018, 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 _____ day of _____, 2018.

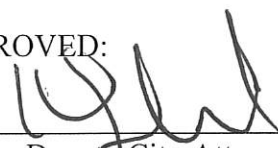
By:  CITY OF BROKEN ARROW, a municipal corporation
Tammy K. Ewing

By: _____
Craig Thurmond, Mayor

City Clerk

Date: _____

APPROVED:


Acting Deputy 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.

By: Tammy K. Ewing
Tammy K. Ewing

Subscribed and sworn to before me this 30th day of August, 2018.

Laurel Ouellette
Notary Public

My commission expires: Oct 26, 2018

My commission number: 10008982



THIS SIGNED AFFIDAVIT MUST BE RETURNED WITH THE AGREEMENT