

11/15/24

THIS AGREEMENT made and entered by and between the **CITY OF ATLANTIC CITY**, a Municipal Corporation of the State of New Jersey, 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, hereinafter "**CITY**", and **JENNA COOK, ESQ.**, located at 1201 New Road, Suite 230 Linwood, New Jersey 08221 hereinafter "**COUNSEL**".

WHEREAS, the City requires the services of Counsel to represent the City in such legal matters assigned by the Chief Municipal Prosecutor's Office, in the area of Conflict Cases; and

WHEREAS, Counsel has the necessary qualifications and expertise to perform such services for the City.

NOW, THEREFORE, pursuant to Resolution No. 169 of February 21, 2024, duly approved, by City Council the parties agree as follows:

**SECTION ONE
SCOPE OF SERVICES**

COUNSEL shall act as the Conflict Municipal Prosecutor to address all matters assigned and as requested by the Office of the Municipal Prosecutor. As the Conflict Municipal Prosecutor, COUNSEL shall be responsible for handling all phases of the defense of assigned indigent defendants in Atlantic including but not limited to discovery, de minimis motions, pre-trial and post-trial motions, trials, and other collateral functions reasonably related to the client's defense.

**SECTION TWO
CONTRACT PERIOD**

City retains the services of Counsel for a period of nine (9) months commencing on March 1, 2024 through December 31, 2024. Services will be rendered as requested and assigned by the Chief Municipal Prosecutor during the Agreement period.

**SECTION THREE
ATTORNEYS FEES**

City will pay Counsel for legal services at a rate of **THREE HUNDRED FIFTY DOLLARS (\$350.00) PER SESSION OR TWO HUNDRED DOLLARS (\$200.00) PER CASE**. A session is either 9:00 am to 1:00 pm or 1:30 pm to 4:30 pm. City will pay Counsel by the session when called in to cover court in the absence of the Municipal Prosecutor due to illness or vacation. City will pay Counsel \$200 when a case is forwarded because of cross complaints, multiple defendants or if there is a conflict with the Municipal Prosecutor's Office.

The aggregate amount of this Agreement shall not exceed **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)**.

**SECTION FOUR
COSTS OF ACTION**

All costs in connection with the services to be provided by Counsel under this Agreement shall be paid by the City. These costs shall include, but are not limited to out-of-pocket, filing fees, or investigation costs. Specifically excluded from reimbursable expenses are mileage, travel, parking fees, tolls, telephone, and meal reimbursement. Photocopying costs will be at a rate of ten cents (.10 ¢) per page. Costs shall not be incurred without the prior written approval of the Municipal Chief Prosecutor.

Administrative support is considered part of the Counsel's overhead and is built into the rate structure. Moreover, purely clerical, or secretarial tasks should not be billed at a paralegal or attorney rate regardless of who performs them.

**SECTION FIVE
ASSIGNMENT**

Counsel cannot assign its rights or obligations under this Agreement without the prior written consent of the City. Counsel recognizes and agrees that this Agreement is entered into in reliance upon the personal and professional skills of named firm attorneys of Counsel and agrees that all services to be rendered in fulfillment of this Agreement shall be provided personally by Counsel or by such attorneys associated with Counsel as shall be approved by the Chief Municipal Prosecutor. The City reserves the right to select trial counsel on its behalf in any matter in which the City is a party, which selection shall be made by the Public Defender.

**SECTION SIX
REPORTING REQUIREMENTS & BILLING PROCEDURE**

Counsel shall submit to the City Solicitor itemized billing by the 15th day of the month following the month in which any authorized services are rendered. Billings shall be paid by the City, upon the approval of the City Solicitor.

All billings shall be in itemized form. The billings shall provide such detail as the City Solicitor shall require, including but not limited to the setting forth in detail of the date of the services provided, the nature of the services, the name of the attorney providing the service, the time expended in providing the service rounded off to the nearest tenth of an hour, and the name of the case or matter under which services were provided. Each bill shall include a recapitulation showing the total amount billed by case or matter for that billing period.

Each monthly billing shall include a brief statement showing the original amount of the Agreement, any increases established by amendment to the Agreement, the amount previously billed under the Agreement, and the total amount of unbilled funds remaining available under the Agreement, after deduction of the most recent amount billed. Attorneys shall not bill for attending City Council Meetings.

**SECTION SEVEN
CONFIDENTIALITY**

All matters assigned to Counsel shall be handled in accordance with the usual standard of confidentiality under the Code of Professional Conduct. Counsel shall make no public comment on cases or matters in Counsel's care. Counsel shall report on the conduct, status, prospects, and recommended resolution of all matters directly and exclusively to the Municipal Prosecutor's Office as requested.

**SECTION EIGHT
CONFLICT OF INTEREST**

Counsel shall not, while representing the City, file any suit on behalf of anyone against the City, nor represent anyone before the City on any of its boards or agencies.

**SECTION NINE
TERMINATION**

The City Solicitor shall have the right to terminate this Agreement at any time in his sole discretion. In the event of said termination Counsel shall be entitled to the amount due for services rendered up to the date of termination.

**SECTION TEN
CERTIFICATION OF COMPLIANCE**

Counsel represents that it is in compliance with all the laws of the State of New Jersey, all Ordinances of the City of Atlantic City, including Ordinance No. 24 of 1993, Executive Order No. 1 of 1993, and Exhibit "A" attached hereto and made a part hereof, involving Affirmative Action and minority business participation and will remain so for the term of this Agreement. Failure to continue in compliance shall be deemed a breach of this Agreement.

**SECTION ELEVEN
LAW TO GOVERN CONTRACT**

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Jersey and the City of Atlantic City. Any dispute that arises under this Agreement shall be initiated in the courts of Atlantic County and no other.

**SECTION TWELVE
ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind shall be binding only if in writing signed by each party or an authorized representative of each party.

**SECTION THIRTEEN
MODIFICATION OF AGREEMENT**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

Counsel acknowledges that he/she cannot commence or continue to represent the City or any named individual or incur any expenses that would cause the contract amount to be exceeded without first receiving prior written authorization from the City Solicitor. Additionally, the City requires a 30-day notice including a case status report setting forth an estimate of the fees and costs anticipated whenever a request is made for a Change Order that would cause the contract amount to be exceeded.

Further, the City will not accept invoices representing time and expenses that were performed or incurred outside or beyond the contract end date.

Any work not specifically authorized by the City may be rejected for payment at the discretion of the City.

**SECTION FOURTEEN
CONTRACT TITLES**

The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

**SECTION FIFTEEN
CONTINGENCY**

It is understood that this Agreement is contingent upon the availability of funds in the City's 2024 budget. In the event said funds are not appropriated for this Agreement, the Agreement shall become null and void. The Contract Request Form is hereby approved. However, this approval does not extend to any litigation contesting actions of the State of New Jersey or any of its agencies or authorities. Prior to participating in any such actions, prior written approval of the Director of the Division of Local Government Services shall first be obtained by the City. Additionally, please be advised that the approved vendor must comply with the City's ordinance prohibiting contributions exceeding \$300 from Counsel or certain of its equity partners to any candidates for office in City and to certain other campaign committees and organizations. A violation of this ordinance will result in the approval of this Agreement being rescinded.

**SECTION SIXTEEN
EFFECT OF ILLEGALITY**

If any provision of this Agreement is determined to be illegal or against public policy or to violate any provisions of law or code by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby.

SECTION SEVENTEEN INSURANCE

Before commencing work, and as a condition precedent for payment, the Counsel shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement. This insurance will provide a defense and indemnify the City against any such claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Counsel's operations under this Agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to Counsel, any of its contractor's, officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless, caused by the sole negligence of the City.

Proof of this insurance shall be provided to the City before work commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of work, be deemed a waiver by the City of the Counsel's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this section deny coverage to the City, the Counsel will defend and indemnify the City at the Counsel's expense.

The Counsel must obtain the required insurance with the carrier rated A-VIII or better by A. M. Best. In the event the Counsel subcontracts any part of this project, these insurance requirements must apply to all subcontractors.

The Counsel shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

\$ 1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)

\$ 2,000,000.00 General Aggregate
\$ 2,000,000.00 Products/Completed Operations Aggregate
\$ 1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification shall be included in the policy. The General Liability and Umbrella/Excess Liability policy Aggregate Limits shall apply separately to the project/location as defined in Section Two, Scope of Services. As an alternative, the Counsel may provide Commercial General Liability Insurance with no aggregate.

Comprehensive Automobile Liability Insurance

\$ 1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Counsel.

Umbrella Liability Insurance

\$ 4,000,000 per Occurrence
\$ 4,000,000 Aggregate

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

Workers' Compensation and Employers' Liability Insurance

\$ 500,000.00 Each Accident
\$ 500,000.00 Each Employee for Injury by Disease
\$ 500,000.00 Aggregate for Injury by Disease

If the Counsel is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law.

Other Conditions

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Contractor's Commercial General Liability Policy, Business Auto Liability and Excess Policy all of which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage (s) procured by the Counsel, any of its contractor's, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to the General Liability, Excess Liability, Automobile Liability and Professional Liability policies in favor of the City and this clause shall apply to the City's elected or appointed officials, officers, agents, and employees. It should also apply to the Counsel's Worker's Compensation policy if allowed by state law.

Prior to commencement of work, Counsel shall submit a Certificate of Insurance in favor of the City and an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.

In any and all claims against the Additional Insureds by any employee of the Counsel, anyone directly or indirectly employed by the Counsel or anyone for whose acts the Counsel may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Counsel under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

The Counsel shall maintain in effect all insurance coverages required under this Agreement at the Counsel's sole expense and with a carrier(s) rated A-VIII or better by A. M. Best. In the event the Counsel fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Counsel, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the insurance carrier(s) will provide 30 days advance notice of the cancellation or non-renewal.

**SECTION EIGHTEEN
INDEMNIFICATION**

The Counsel shall indemnify, defend and hold harmless the City from and against any claim (including any claim brought by employees of Counsel), liability, damage or expense (including attorneys' fees) that such City may incur relating to, arising out of or existing by reason of (i) Counsel's performance of this Agreement or the conditions created thereby (including the use, misuse or failure of any equipment used by Counsel or its subcontractors, servants or employees) or (ii) Counsel's breach of this Agreement or the inadequate or improper performance of this Agreement by Counsel or its subcontractors, servants or employees.

**SECTION NINETEEN
STATUS OF COUNSEL**

It is expressly understood and agreed by and between the parties hereto that the status of the COUNSEL and its employees, officers, and agents shall be that of independent contractors. It is not intended, nor shall it be construed, that the COUNSEL or any of its employees, officers and agents is an employee or officer of the City for any purpose whatsoever.

**SECTION TWENTY
POLITICAL CONTRIBUTION DISCLOSURE**

This Agreement has been awarded to **JENNA COOK, ESQ.**, based on the merits and abilities of **JENNA COOK, ESQ.** to provide the goods or services as described herein. This Agreement was awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4 et seq. Nevertheless, the undersigned does hereby attest that **JENNA COOK, ESQ.**, their subsidiaries, assigns or principals controlling in excess of 10% of the company have neither made a contribution that is reportable pursuant to the Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-8 or 19:44A-16, in the one (1) year period preceding the award of the Agreement that would, pursuant to P.L. 2004,

c.19, affect its eligibility to perform this Agreement, nor will it make a reportable contribution during the term of the Agreement that would affect its ability to perform under the Agreement.

This agreement is effective as of the date of the complete execution hereof.

ATTEST:

Paula Geletei
Paula Geletei, City Clerk

CITY OF ATLANTIC CITY

Marty Small, Sr.
Marty Small, Sr., Mayor

DATE: 4/3/2024

DATE: 4-3-24

WITNESS: Francene A. Kern

JENNA COOK, ESQ.

BY: [Signature]

Dated: _____

The Agreement is approved as to form and execution.

Date: 4/3/24

By: [Signature]
Peter T. Sallata, Esquire
Assistant City Solicitor

Resolution of the City of Atlantic City

No. 169

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

City Solicitor/s/ Michael Perugini

Prepared by City Solicitor's Office

Council Members RANDOLPH, SHABAZZ & CROUCH present the following Resolution:

RESOLUTION TO APPROVE AN AGREEMENT WITH JENNA COOKE, ESQ., FOR MUNICIPAL CONFLICT PROSECUTOR IN THE AMOUNT OF SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)

WHEREAS, the City of Atlantic City has a need to retain legal counsel for **MUNICIPAL CONFLICT PROSECUTOR** and the City has advertised for and received Qualifications for Conflict Prosecutor matters under a fair and open process; and

WHEREAS, the purchasing agent has determined and certified in writing that the value of the acquisition will not exceed \$17,500; and

WHEREAS, the anticipated term of this contract is from March 1, 2024, to December 31, 2024; and

WHEREAS, the **JENNA COOKE, ESQ.**, has indicated she will provide legal services as the **MUNICIPAL CONFLICT PROSECUTOR**; and

WHEREAS, the **JENNA COOKE, ESQ.**, has completed and submitted a Business Entity Disclosure Certification which certifies that **JENNA COOKE, ESQ.**, has not made any reportable contributions to a political candidate or committee in the City of Atlantic City and/or City Council in the previous one year, and that the contract will prohibit the **JENNA COOKE, ESQ.**, from making any reportable contributions through the term of the contract; and

WHEREAS, the Business Disclosure Entity Certification and the Determination of Value shall be placed on file with this resolution; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Atlantic City that the Mayor is duly authorized to execute and the City Clerk to attest a contract to be approved as to form and execution by the City Solicitor, which contract shall provide for the purchase of legal services in the area of **MUNICIPAL CONFLICT PROSECUTOR** from **JENNA COOKE, ESQ.**, at **THREE HUNDRED FIFTY DOLLARS (\$350.00)** per court session in an amount not to exceed **SEVENTY-FIVE THOUSAND DOLLARS (\$7,500.00)** to be drawn upon with invoices, and subject to State approval.

BE IT FURTHER RESOLVED that a Certificate from the Chief Financial Officer has been attached to this Resolution, showing the availability of funds and specifying the line item appropriation from the 2024 Budget to satisfy the aforesaid Agreement, and that pursuant to N.J.A.C. 5:30-14.5, the award of the above Agreement is contingent upon the passage of the 2024 Temporary and Permanent Budgets and, in the event said funds are not appropriated for this Agreement, this award will have no effect and will then be null and void.

BE IT FURTHER RESOLVED that Public Notice of this Resolution shall be published in THE PRESS at least once pursuant to the requirements of N.J.S.A. 40A:11-1, et seq., as amended.

February 21, 2024

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
CROUCH	X					X	SHABAZZ	X				X	
DUNSTON	X						TIBBITT	X					
KURTZ	X						WEEKES	X					
MARSHALL	X						ZIA	X					
RANDOLPH, COUNCIL PRESIDENT								X					
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: FEBRUARY 21, 2024

Paula Geletei

/s/ Paula Geletei, City Clerk