

A-1048/ew

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 the law offices of **TRACEY S. COSBY, P.C.** located at 134 Evergreen Place, East Orange, NJ 07018, hereinafter "**COUNSEL**".

WHEREAS, the City requires the services of **COUNSEL** to represent the **CITY** in such legal matters as shall be assigned by the City Solicitor including but not limited to the area of **MUNICIPAL DEFENSE MATTERS**; and

WHEREAS, **COUNSEL** has the necessary qualifications and expertise to perform such services for the **CITY**;

NOW, THEREFORE, pursuant to Resolution No. 33 duly approved on January 1, 2024, the parties agree as follows:

SECTION ONE SCOPE OF SERVICES

City employs Counsel to represent and advise City in matters assigned by the City Solicitor, in the area of **MUNICIPAL DEFENSE** matters and other legal matters as directed and assigned by City.

Further, representation of the City shall include but not be limited to claims filed by or against the City, its employees, officials and agencies in matters including but not limited to the following:

Municipal Defense Matters
1983 Actions
Constitutional Rights Violations
Excessive Force
Slip and Fall
Automobile Accidents
Discrimination Actions
Breach of Contract
Title 40 and 40A Actions

SECTION TWO CONTRACT PERIOD

City retains the services of Counsel for a period of one (1) year commencing on January 1, 2024 through December 31, 2024. Services will be rendered as requested by the City Solicitor during the contract period.

**SECTION THREE
ATTORNEY'S FEES**

Counsel agrees to provide such legal services at a rate of **ONE HUNDRED THIRTY DOLLARS (\$130.00)** for **EACH HOUR** expended by an attorney for civil actions and **THIRTY-FIVE DOLLARS (\$35.00)** for **EACH HOUR** expended by a paralegal on behalf of the City.

The aggregate amount of this Agreement shall not exceed **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**. Existing cases assigned to Counsel from other law firms shall be subject to the fees set forth in those contracts unless amended by the City Solicitor.

**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 is 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 approval of the City Solicitor.

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 City Solicitor. 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 City Solicitor.

**SECTION SIX
REPORTING REQUIREMENTS & BILLING PROCEDURE**

After a case has been assigned to Counsel, Counsel shall be required to provide an Initial 30 Day Report, Quarterly Supplemental Reports and a Post Litigation Report to the City Solicitor.

The Initial 30 Day Report shall be provided at the 30 day mark and shall include a brief description of the facts; the potential defenses to be raised and a brief analysis of the likelihood of a successful defense; an initial opinion on the settlement value and jury verdict potential; a brief outline of what investigation and courses of action should be taken in defense of the litigation; an anticipated timetable for the various stages of the litigation; and an estimated defense budget, broken down into various phases of litigation; i.e., initial stages, summary judgment motions, discovery and trial preparation.

The Quarterly Supplemental Reports should be submitted every 90 days and should update the previous report, not merely report information. The Quarterly Supplemental Reports should address whether anything has happened since the last report to change the attorney's assessment of the file, whether the attorney anticipates the need for any type of expert witness, and what remains to be done on the file.

It should be noted that whenever anything of significance occurs, that cannot wait until the next regularly scheduled report, the City Solicitor should be immediately advised of that information via correspondence.

Counsel shall submit a Post Litigation Report within five (5) working days after completion of litigation, whether the case was settled, dismissed or tried to verdict. Counsel shall set forth the final terms of resolution, and whether anyone will appeal, if a verdict, and his/her recommendations for handling.

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 City Solicitor or his delegate, except as otherwise directed in writing by the Mayor, Business Administrator, City Solicitor or as required by the Code of Professional Conduct.

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 Attached 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 arises under this Agreement shall be initiated in 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 Agreement 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 Agreement amount to be exceeded.

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

Any work not specifically authorized in writing 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 of Atlantic City's ordinance prohibiting contributions exceeding \$300 from Counsel or certain of its equity partners to any candidates for office in Atlantic 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 the 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 as 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 WAIVER AND RENUNCIATION

No waiver or renunciation by either party to this Agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

**SECTION TWENTY
POLITICAL CONTRIBUTION DISCLOSURE**

This Agreement has been awarded to **TRACEY S. COSBY, PC** based on the merits and abilities of **TRACEY S. COSBY, PC** 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 **TRACEY S. COSBY, PC**, 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.

**SECTION TWENTY-ONE
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.

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

ATTEST:

CITY OF ATLANTIC CITY

Paula Geletei
Paula Geletei, City Clerk

BY: Marty Small, Sr.
Marty Small, Sr., Mayor

DATE: 2/5/2024

DATE: 2-5-24

WITNESS:

TRACEY S. COSBY, P.C.

Carlos Morrow
1/24/2024
Dated:
Carlos Morrow, Esq.
Atty at Law; NJ

BY: Tracey Cosby
Tracey Cosby, President

The within Agreement approved as to form and execution.

Date: 1/29/24

BY: Peter T. Sallata
Peter T. Sallata, Esquire
Assistant City Solicitor

STATE OF

COUNTY OF

I CERTIFY that on _____, 2024, the Secretary or Assistant Secretary of the Corporation, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the secretary or assistant secretary of (the corporation named in this document);
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors and;
- (d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on

1/24 2024



Tracy Cook
~~Secretary or Asst. Secretary~~
e President



Notary Public of New Jersey
Attorney at Law, NJ
(Seal attached)
Carlos Morrow, Esq.

Resolution of the City of Atlantic City

No. 033

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

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Michael J. Perugini /s/ City Solicitor

Prepared by City Solicitor's Office

Council Member RANDOLPH presents the following Resolution:

A RESOLUTION TO AWARD A CONTRACT TO TRACEY S. COSBY, ATTORNEY AT LAW, P.C. FOR MUNICIPAL DEFENSE IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)

WHEREAS, the City of Atlantic City has a need to retain legal counsel for Municipal Defense matters and the City has advertised for and received Qualifications for Municipal Defense 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 exceed \$17,500; and,

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

WHEREAS, TRACEY S. COSBY, ATTORNEY AT LAW, P.C. have indicated their firm will provide legal services for Municipal Defense and other legal matters as directed by the City Solicitor; and

WHEREAS, the 2023 contract to provide Municipal Defense shall be amended to increase the contract in the amount of **FOUR THOUSAND DOLLARS (\$4,000.00)** for a new total contract of **ONE HUNDRED FOUR THOUSAND DOLLARS (\$104,000.00)**; and

WHEREAS, the vendor must comply with the New Jersey Campaign Contribution and Expenditures Reporting Act, codified at N.J.S.A. 19:44A-1 et seq., and N.J.S.A. 19:44A-20.5.

NOW, THEREFORE, BE IT RESOLVED 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, including but not limited to matters in the area of Municipal Defense and liability matters, from the **TRACEY S. COSBY, ATTORNEY AT LAW, P.C.**, at the rate of **ONE HUNDRED THIRTY DOLLARS (\$130.00)** for **EACH HOUR** expended by an attorney for civil actions pursuant to Resolution No. 225 of 2014, and **THIRTY-FIVE DOLLARS (\$35.00)** for **EACH HOUR** expended by a paralegal on behalf of the City, for a term not to exceed (1) year, commencing January 1, 2024 and ending December 31, 2024 for Municipal Defense and other legal matters assigned by the City Solicitor for a total amount not to exceed the sum of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**.

BE IT FURTHER RESOLVED by the Council of the City of Atlantic City that the Mayor is hereby authorized to execute and the City Clerk to attest to an **AMENDATORY AGREEMENT** with **TRACEY S. COSBY, ATTORNEY AT LAW, P.C.** in the amount of **FOUR THOUSAND DOLLARS (\$4,000.00)**.

BE IT FURTHER RESOLVED that a Certificate from the Chief Financial Officer is attached to this Resolution, showing the availability of funds, and specifying the line-item appropriation from the 2023 Budget to satisfy the aforesaid Amendatory Agreement.

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:30-14.5, the award of the aforesaid Agreement is contingent upon the availability of sufficient funds in the 2024 Temporary and Permanent Budgets specifying the line-item appropriation 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.

January 9, 2024 9:33 AM

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						SHABAZZ	X				X	
DUNSTON	X						TIBBITT	X					
KURTZ	X						WEEKES	X					
MARSHALL	X					X	ZIA	X					
							RANDOLPH; 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: JANUARY 1, 2024

Paula Geletei
 /s/ Paula Geletei, City Clerk