# City of Benson
# City Council Communication

**Regular Meeting** **November 25, 2013**

To: Mayor and Council Agenda Item # 3

From: Bradley J. Hamilton, P.E. Interim City Manager/Director of Public Works/City Engineer

Subject:

Contract for City Attorney Services between the City of Benson, Arizona and Mesch, Clark & Rothschild, P.C.

Discussion:

The City of Benson advertised for a Request for Proposal (RFP) for Municipal Legal services with the submission due August 16, 2013. Seven qualified firms submitted proposals with 1 firm withdrawing their submission. The Council interviewed the 6 remaining applicants. At the Council meeting held on October 28, Council voted to direct Staff to ask for a contract from Mesch, Clark & Rothschild, PC that could be voted on. Attached is the contract for Council action.

Staff Recommendation:

Council pleasure

# CONTRACT FOR CITY ATTORNEY SERVICES

# BETWEEN CITY OF BENSON, ARIZONA

# AND

# MESCH, CLARK & ROTHSCHILD, PC

THIS AGREEMENT is made and entered into by and between the City of Benson, an Arizona municipal corporation, hereinafter referred to as "City," and Mesch, Clark & Rothschild, PC, an Arizona professional corporation, hereinafter referred to as "Contractor."

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain contract conditions, and to set the working conditions for Contractor and City; and

WHEREAS, City desires to secure the services of Contractor as Benson City Attorney as set forth herein;

WHEREAS, it is anticipated by the Parties that the representation hereunder will require approximately ten hours per week of attorney time, although the City makes no warranty of any minimum time; and

WHEREAS, Contractor desires to act as City Attorney for the City of Benson.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows;

## AGREEMENT

## 1. GENERAL DUTIES AND OBLIGATIONS OF CONTRACTOR.

**1.1** Contractor shall perform the duties specified under state law and in accordance with the City Code of the City of Benson and as further set forth in the approved job description for the position of City Attorney, and shall perform such other legally permissible and proper duties and functions as appropriate for the City Attorney. Contractor shall work at the direction of the City Manager, and toward this end shall work directly with the City Manager and other City Staff to protect the legal interests of the City, and to implement the policies set forth by the Mayor and Council of the City.

**1.2** Contractor's duties shall include (i) the services of the office of City Attorney, as an Officer of the municipal corporation, and (ii) civil representation of the City, including but not limited to open meeting issues, election issues, oversight of and representation in litigation against and on behalf of the City, negotiation and preparation of contracts.

**1.3** Contractor shall be responsible for assigning particular tasks within Contractor's firm, however, in the event City is dissatisfied with the services of any particular personnel of Contractor, staff shall be reassigned to the satisfaction of City.

**1.4** City acknowledges that there are certain areas of law which are not practiced by Contractor, and City agrees that this work will be contracted to other attorneys or law firms. These areas include any area which Contractor decides, in its sole and absolute discretion, should be undertaken by another attorney, including but not limited to, water law and municipal bond law. Contractor is not responsible for the performance of due diligence in those transactions.

**2. GENERAL DUTIES AND OBLIGATIONS OF THE CITY.**

**2.1** The City agrees to compensate Contractor for the services rendered, as set forth herein, within (30) days of receipt of an invoice or other notice of payment due.

**2.2** The City agrees that it will be candid and cooperative with Contractor, provide Contractor with factual information and documents relating to the matters Contractor is handling for the City, keep Contractor informed of developments, be available to confer with Contractor as necessary, and make decisions as required to assist Contractor in the progress of its representation. If City has questions or concerns about Contractor's work or bills, City will bring them up promptly so that they may be addressed promptly.

**3. TERM.** Contractor agrees to commence activity pursuant to this Agreement on December 1, 2013, and to continue as Benson City Attorney until November 30, 2014, unless this Agreement is terminated as provided herein.

**4.** **TERMINATION.** Contractor may terminate this Agreement for any reason upon sixty (60) days' written notice. The City may terminate this Agreement at any time for any reason.

**5.** **REMUNERATION.** In consideration of Contractor providing the services described herein, the City shall pay to Contractor a monthly fee as follows:

**5.1** All services performed by Contractor on any matter related to the City shall be compensable at the rates shown in the Rate Schedule attached as Exhibit A.

**5.2** City acknowledges that the fees set forth in this Agreement are well below Contractor's usual and customary rates for service, and as such, agrees that any services undertaken by Contractor on behalf of the City, which will be paid by an outside source, such as an applicant for annexation or a community facilities district, and the like, shall be billed at the Contractor's usual and customary rates. In the event said fees are not paid by the outside source, the work performed by Contractor in connection with such services will be considered as part of Contractor's regular work performed for the City and shall be billed at the rate set forth in Section 5.1.

**5.3** The City will be charged for travel time at one-half Contractor's applicable hourly rate. The City will not be charged for telephone conversations with City officers and employees which last for 18 minutes or less. However, multiple telephone conversations *on the same subject matter which occur on the same day* will be charged if collectively they exceed 18 minutes.

**5.4** City shall reimburse Contractor for its out-of-pocket costs and other reasonable costs and expenses that Contractor incurs in connection with the representation of City, so long as those costs and expenses are not part of Contractor's general costs of doing business. City shall not be charged for costs for postage, in-house copying (absent an extraordinary charge), long-distance telephone calls, or other ordinary overhead expenses. Should the City enter into any litigation, expenses associated with that litigation will be charged to the City. These include costs for filing and service of court documents, hiring of court reporters or expert witnesses, appeal bonds, and other similar charges. In addition, City shall reimburse Contractor for any fees charged by governmental agencies, investigation services or similar

agencies, whose services are incurred in connection with Contractor's work for the City, except for fees for business licenses and the like.

**6.** **INDEPENDENT CONTRACTOR STATUS.** The parties stipulate and agree that Contractor is not an employee of City and shall not be entitled to receive any of the fringe benefits associated with employment, and will not be subject to the merit system rules and regulations. Contractor is performing its duties hereunder as an Independent Contractor, supplying its own employees, maintaining its own insurance, deciding on work priorities and scheduling, and handling all of its own internal accounting. Contractor is responsible for payment of all federal, state and local taxes associated with the compensation received by Contractor from City.

**7.** **CONFLICT OF INTEREST WAIVER.**

**7.1** Contractor is a well-established law firm in Southern Arizona, and represents many other governmental entities, companies and individuals. It is possible that some of Contractor's present or future clients will have transactions or disputes with City during the term of this Agreement that are unrelated to the work Contractor is handling for City. Therefore, as a condition to Contractor undertaking this engagement for City, City agrees that Contractor may continue to represent existing or new clients in any matter that is not substantially related to Contractor's work for City, subject to Arizona's Rules of Professional Conduct applicable to attorneys.

**7.2** Contractor occasionally has clients that are law firms, or may be represented by another firm in an unrelated matter. City understands that Contractor does not believe such relationships create any conflicts, even if such a firm also represents an entity whose interests are opposed to City in either a litigation or transactional setting, if, however, City would have any concerns about whether such a relationship exists between Contractor and the law firm that represents a client whose interests are adverse to City's in connection with this representation, City may ask Contractor whether there is any such relationship, and Contractor will address City's concerns. Otherwise, it is agreed that Contractor may represent, or be represented by, lawyers or law firms that also represent clients whose interests are adverse to City's.

## 8. MISCELLANEOUS PROVISIONS.

**8.1** **INDEMNIFICATION/INSURANCE.** The City shall defend, hold harmless and indemnify Contractor against any claim, demand or other action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and in the performance of Contractor's duties as City Attorney. Indemnification shall not extend to any acts or omissions occurring outside of Contractor's duties or the scope of his/her relationship as contract City Attorney. Contractor shall maintain, for the term of the Agreement, errors and omissions insurance of at least three million dollars ($3,000,000.00).

**8.2** **EXECUTION OF ADDITIONAL INSTRUMENTS.** Each party agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations and to carry out the intent of this Agreement.

**8.3** **NOTICES.** Notice shall be effectively given when (i) served personally, on the day it is delivered, or (ii) forwarded by registered mail, on the day the postal receipt is acknowledged by the receiving party.

**8.4** **APPLICATION OF ARIZONA LAW.** This Agreement and its application and interpretation shall be governed exclusively by its terms and by the laws of the State of Arizona. All parties agree to abide by all the laws of the United States and of the State of Arizona. Unless otherwise agreed to by the parties, any dispute that arises hereunder shall be resolved exclusively in the courts of the State of Arizona, with venue in Cochise County, and the parties submit themselves to the jurisdiction of those courts for such purposes.

**8.5** **CONFLICTS OF INTEREST.** All parties are on notice that this Agreement is subject to the terms of A.R.S. § 38-511, the provisions of which are incorporated herein by reference.

**8.6** **ATTORNEYS' FEES.** If any legal proceeding is brought for the enforcement of this Agreement, or because of an alleged breach, default, or misrepresentation in connection with any provision of this Agreement or other dispute concerning this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs

incurred in that arbitration or proceeding, in addition to any other relief to which it may be entitled.

**8.7** **SEVERABILITY.** If any provision of this Agreement or the application thereof to any person or circumstance shall be held by any court of competent jurisdiction to be unenforceable to any extent, the remaining provisions, and this Agreement and the application thereof, shall not be affected and shall be valid, legal and enforceable to the fullest extent permitted by law.

**8.8** **HEADINGS, NUMBER, GENDER AND PERSONS.** The headings of the Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of the Agreement or any provision hereof. Furthermore, words in the singular shall include the plural and vice versa, words of gender shall include all genders, and words importing persons shall include individuals, corporations, trusts, and other legal or business entities.

**8.9** **EXTENSIONS; WAIVER.** The parties may extend the time for, or waive the performance of, any of the obligations of any parties, waive any inaccuracies in the representations or warranties of any parties, or waive compliance by any parties with any of the covenants or conditions contained in this Agreement. However, any such extension or waiver shall be in writing and signed by all of the parties hereto. No such waiver shall operate or be construed as a waiver of any subsequent act or omission of any party hereto.

**8.10** **RIGHTS AND REMEDIES CUMULATIVE.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

**8.11** **NON-ASSIGNABLE.** This is a personal service contract between Contractor and the City. Contractor's duties and obligations under this Agreement are non-transferable. The parties stipulate and agree that this is a Contract Agreement for Professional Attorney Services, and that as a part of the consideration of this Contract Agreement, City has taken into account the experience and expertise of Contractor. Therefore, except as

otherwise provided herein, this Agreement is not assignable by Contractor, in whole or in part, without prior written approval of the City. Assignments may be withheld at the sole discretion of the City, provided that such approval shall not be unreasonably withheld.

**8.12** **SUCCESSORS AND ASSIGNS.** Contractor and all successors, executors, administrators and assigns of Contractor's interest in the work or the compensation herein provided shall be bound to the City to the full legal extent to which Contractor is bound with respect to each of the covenants of this Agreement.

**8.13** **MODIFICATIONS AND AMENDMENTS.** This Agreement may not be modified nor amended except by the unanimous written agreement of the Parties.

**8.14** **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by it, and overrides any prior understanding or agreement, oral or written, with respect thereto. The parties shall not be bound by any understanding, agreement, promise, or representation, whether expressed or implied, which is not specified in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date that a motion approving and adopting this Agreement is approved by the City Council of the City of Benson.

Date: _____

CITY OF BENSON,
an Arizona municipal corporation

By: _____

Attest:

_____

Mesch, Clark & Rothschild, PC,
an Arizona professional corporation

By: _____

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# Exhibit A

# Areas of Legal Services and Corresponding Rates

***HOURLY RATES***

**Administrative Law**

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

**Bankruptcy (Litigation/Adversary Proceedings)**

| | | | |
|---|---|---|---|
| Partner | $ | 325 | /hr |
| Associate | $ | 250 | /hr |
| Paralegal | $ | 110 | /hr |

**Bankruptcy (Representing Creditor Claims)**

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

**Constitutional Law**

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

**Eminent Domain**

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

**Employment and Labor Law and/or Personnel Issues and Litigation (Incl. Discrimination)**

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

# Areas of Legal Services and Corresponding Rates

## Engineering, Architectural and Construction Contracting Issues and Litigation

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

## Environmental Issues and Litigation

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

## Municipal Law

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

## Open Meeting and Public Records Law

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

## Planning, Zoning, Real Estate, Development and Land Use Issues and Litigation

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

## Police Legal Support and Issues

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

# Areas of Legal Services and Corresponding Rates

## Public Utility Law

| | | | |
|---|---|---|---|
| Partner | $ | 175 | /hr |
| Associate | $ | 135 | /hr |
| Paralegal | $ | 110 | /hr |

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