

**CINCINNATI METROPOLITAN HOUSING AUTHORITY
&
LEGAL SERVICES PROVIDER**

**LEGAL SERVICES ENGAGEMENT AGREEMENT
General Terms and Conditions**

This Professional Services Agreement (the “Agreement”) is entered into by and between the Cincinnati Metropolitan Housing Authority (“CMHA”) a body corporate and politic, organized and existing under the laws of the State of Ohio and Contractor for the purposes of Contractor providing Legal Services for Construction, Real Estate, and Development Activities on behalf of CMHA. Hereinafter, CMHA and Contractor are collectively referred to as the “Parties”.

RECITALS

WHEREAS, CMHA published Request for Proposals RFP No. 2018-4004 seeking to competitively procure the services of a qualified Contractor to provide Legal Services for Construction, Real Estate, and Development Activities;

WHEREAS, CMHA awarded the Contract to Contractor based on Contractors Response to CMHA’s Request for Proposals and pursuant to CMHA’s Procurement Policy;

WHEREAS, Parties agree that CMHA and Contractor’s contractual relationship is subject to all applicable state, local and federal requirements and additional terms and conditions are required including, but not necessarily limited to, terms mandated by the United States Department of Housing and Urban Development; and

WHEREAS, Contractor represents that it is qualified and authorized to perform all services as set forth in the RFP No. 2018-4004 and as set forth in Proposer’s Fee Submission Form, or Best and Final Offer, if applicable;

WHEREAS, Parties agree that the following Agreement contains the General Terms and Conditions of the Agreement and said terms and conditions shall not be subject to further negotiation, modification or amendment.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties mutually agree as follows:

***LEGAL SERVICES ENGAGEMENT AGREEMENT
GENERAL TERMS AND CONDITIONS***

1. **Purpose:** This document sets out the general terms and conditions of the relationship between Contractor and CMHA. Details regarding the particulars of the matter and the fee arrangement are set forth in CMHA Solicitation RFP No. 2018-4004, and incorporated herein by reference.
2. **Contract Term:** This Agreement shall become effective upon CMHA issuing a notice of contract commencement to Contractor and shall remain in effect for a term of one year. However, CMHA retains four one-year options to renew and may, in its sole discretion, exercise said option(s) upon the expiration of this Agreement. However, at no time, may the term of this Agreement exceed five years. The notice of contract commencement may be delivered in the form of a letter, copy of signed contract or contract acknowledgement.
3. **Scope of Services and Duties:** Contractor is engaged to provide CMHA with legal services as described in the Scope of Work contained within RFP No. 2018-4004 as may be amended by a supplemental agreement and express written consent of both Parties. Contractor will diligently provide the legal services reasonably required to represent CMHA in the matters described, and will take all reasonable steps to keep CMHA informed of progress and to respond to CMHA's inquiries. CMHA will truthfully advise Contractor of relevant facts, and reasonably cooperate with Contractor.
4. **Mandatory HUD Terms:** Parties acknowledge and agree that *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* contains the mandatory terms prescribed by the United States Department of Housing and Urban Development and that said terms are incorporated into this Agreement and may not be modified or amended. Any term hereinafter, including without limitation any provisions contained in Contractor's Solicitation Response, that conflict with the terms set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* is void and unenforceable.

HUD Form 5370-C Section 1-5 is clarified by 2 CFR 200.315, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (F), and 37 CFR Part 401. Rights in Data refer to data and records which are the products produced under the contract and the only part in which CMHA has ownership rights. CMHA does not have rights in the existing software systems of the contractor.

5. **Mandatory Housing Authority Terms:** Parties acknowledge and agree that the *Cincinnati Metropolitan Housing Authority Legal Services Engagement Agreement General Terms and Conditions* contain mandatory terms as set-forth by CMHA and said terms shall not be modified or amended without the express written approval of CMHA's Contracting Officer and without such approval the terms as forth in the *Cincinnati Metropolitan Housing Authority Legal Services Engagement Agreement General Terms and Conditions* are in full force and effect. Any term(s) hereinafter, including without limitation any provisions contained in Contractor's Proposal that conflict with the terms as set forth in *Cincinnati Metropolitan Housing Authority Legal Services Engagement Agreement General Terms and Conditions* is void and unenforceable. Any Provision(s) contained within the *Cincinnati Metropolitan Housing Authority Legal Services Engagement Agreement General Terms and Conditions* that is similar to a Provision(s) or has the same or similar heading of any Provision(s) of *Form HUD-5370-C General Conditions for Non-Construction*

Contracts Section I shall be considered supplemental provisions and are binding. Any Conflict in the language is unintentional and the HUD Provision(s) will be applicable.

6. **Subject to Appropriation of Funds:** CMHA's funds are contingent upon the availability of lawful appropriations by the United States Congress and the United States Department of Housing and Urban Development. If the United States Congress and/or the United States Department of Housing and Urban Development fail at any time to continue funding for the payments or obligation due hereunder, the Work under this Agreement that is affected by the lack of funding will terminate and CMHA will have no further obligation to make payments and will be released from its obligations on the date funding expires.
7. **Conflicts of Interest:** Contractor shall be vigilant in identifying conflicts or potential conflicts of interests and the appearance of such conflicts. Contractor must discuss any existing or potential conflict with CMHA at the onset of the representation or as soon as the conflict becomes apparent. All existing and potential conflicts must be resolved to the satisfaction of CMHA before the representation may begin or continue.
8. **Confidentiality:** Contractor shall ensure that the attorney-client privilege, the work product doctrine, and other applicable privileges are fully retained for the benefit of CMHA.
9. **Files and Records:** Contractor should provide final copies of all research, strategy, and other analytical memos, substantive correspondence, transaction discovery, written discovery and court filings to CMHA.
10. **Contractor Obligations to HUD:** Contractor has an obligation not to and shall not, interfere with, disrupt, or inappropriately delay or hinder any authorized monitoring, review, audit, or investigative activity of HUD, the General Accounting Office, or the officers and employees of HUD and the General Accounting Office. Contractor shall comply with all applicable regulations pertaining to access to books, documents, papers, and records. Nothing contained herein shall limit or diminish Contractor's professional and ethical duty to CMHA.
 - 10.1. Contractor shall make available for inspection and copying, by HUD, the General Accounting Office, and the officers and employees of HUD and the General Accounting Office all invoices, detailed billing statements, and evidence of payment thereof relating to Contractors engagement except that Contractor shall have no duty to take any action it deems a violation of the applicable professional rules of conduct.
11. **Email:** Contractor will use discretion in all email communications. All privileged email communications should be prominently labeled as confidential.
12. **Legal Fees, Statements, Costs and Adjustments**
 - 12.1. **Legal Fees:** CMHA agrees to pay for legal services on a basis set forth in the Contract Documents within approximately 30 days of receipt of properly completed invoices or

acceptance of deliverable, whichever is later. If services are to be billed at an hourly rate specified only for the principal attorney, other attorneys and law clerks in the firm will be billed at rates proportionate to that of the principal attorney and commensurate with their experience and skills. Quoted hourly rates are good for the term of the Contract.

12.2. Legal Research: It is frequently necessary to investigate facts or pursue legal theories. CMHA will be billed for all hours reasonably expended on its behalf. Contractor shall obtain prior authorization for more than eight (8) hours of legal research on a single issue. Copies of memoranda prepared as a result of any research charged to CMHA shall be promptly provided to CMHA. Research memoranda should be accurate, organized and readily comprehensible.

12.3. Statements, Payments and Interest. All invoices must include the purchase order number and the date the invoice was sent to CMHA. Invoices shall not be backdated; the date on the invoice shall match the date the invoice is submitted to CMHA or the date the invoice is placed in the mail. Invoices which are not dated in accordance with this section will be rejected and the Contractor will need to submit a revised invoice to receive payment. If Contractor performs services without a Purchase Order, CMHA shall not be required to pay Contractor for those services. In addition, the billing statement must include a detail and summary portion as follows:

12.3.1. Detail Portion of Statement: The detailed portion must include: an itemized dated and detailed description of each legal service performed; the name and bill rate of the person performing the service; the amount of time spent performing the service; an itemized statement of expenses.

12.3.2. Summary Portion of Statement: The summary portion of the statement must include total hours worked during the billing period by each attorney and paralegal; any sums outstanding from prior invoices; a summary of all fees and expenses incurred from the inception of the matter through the end of the billing period

12.3.3. Collective Matters: If Contractor is working on multiple matters for CMHA, the invoices may be submitted collectively. However each page of the invoice must include the Contractor's name and the specific matter addressed on that page.

12.3.4. Invoices shall be submitted to Accounts Payable monthly either via e-mail to accounts.payable@cintimha.com or via mail to Cincinnati Metropolitan Housing Authority, Attention: Finance, 1635 Western Avenue, Cincinnati, Ohio 45214.

13. Case Management:

13.1. Contractor is authorized to take all actions which it deems advisable within the scope of representation, except to settle or otherwise dispose of any particular case. Contractor will

notify CMHA of all significant developments and consult with CMHA in advance as to any significant decisions, except in emergencies where it is imperative a decision must be made without advance consultation.

- 13.2. The assertion of any defenses or affirmative claims is dependent upon Contractor's investigation and conclusion that such defenses or claims are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.
- 13.3. Contractor shall delegate the work in a manner that ensures the most efficient and productive combination of expertise and economy.
- 13.4. Collaboration With CMHA: CMHA is best served by a close and collaborative relationship with its Legal Service Providers. CMHA looks to Contractor for its expertise, as well as its judgment, skills and creativity. To facilitate collaboration, Contractor shall keep CMHA fully and timely apprised of all significant developments and consult with CMHA on all significant decision concerning legal tactics and strategy.
- 13.5. Throughout the course of representation, Contractor will send CMHA pleadings, documents, correspondence, and other information pertinent to its representation of CMHA.
- 13.6. When services conclude, including by reason of withdrawal or termination, Contractor, upon CMHA's request, will deliver the files along with any of CMHA's funds or property remaining in Contractor's possession.
- 13.7. Any funds Contractor holds in trust for CMHA shall be placed in a separate interest bearing account or in an IOLTA account.

14. Warranties and Representations: Contractor represents and warrants that its services provided for under the terms of this Agreement will be of good quality and consistent with the professional skill and care ordinarily provided by professionals performing the same or similar service and such services and materials shall be provided in accordance with generally accepted industry standards. Additionally, Contractor represents and warrants the following:

- 14.1. Contractor has the right to enter into this Agreement.
- 14.2. All services provided for under this Agreement are provided in accordance with the sound professional standards and the requirements of this Agreement and without any material defect.
- 14.3. No services or materials provided for by Contractor under this Agreement will infringe upon the intellectual property rights of any third party.

- 14.4.** All services provided for hereunder are merchantable and fit for the particular purpose described in this Agreement.
- 14.5.** Contractor will observe and abide by all applicable federal, state and local laws, rules, regulations, ordinances and codes and obtain any license(s), permit(s) or the like required to provide the services and materials under this Agreement.
- 14.6.** Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Agreement.

If any services of Contractor or any materials or products provided for by Contractor fail to comply with these representations and/or warranties, and Contractor is so notified in writing, Contractor shall either 1) correct such failure with all due speed, or 2) shall refund the amount of compensation paid for the services, materials or products. Contractor shall also indemnify CMHA for any direct damages and claims by third parties based upon a breach of these warranties.

- 15. Non-Exclusivity:** This Agreement is a non-exclusive agreement. Either Party may perform or enter into agreements to perform the services and/or to provide any materials or products similar to those provided for herein so long as such agreements do not impede either Party's ability to perform under this Agreement.
- 16. Limitations on Representation.** Contractor shall have no duty to take actions on CMHA's behalf which violate court rules or professional standards of ethics. During the pendency of this Agreement, Contractor shall not, without approval of CMHA and the United States Department of Housing and Urban Development, represent any officer or employee of CMHA, in his or her individual capacity, in connection with potential civil liability or criminal conduct issues related to CMHA operations.
- 17. Indemnification:** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless CMHA and its, instrumentalities, officers, directors, agents, and employees from and against all claims, damages, losses, and expenses of third parties imposed on them by a court of competent jurisdiction including, but not limited to, attorney's fees, which arise out of, relate to or result from (1) any breach of any representation or warranty of Contractor contained in the Contract Documents, (2) any breach of any covenant or other obligation or duty of Contractor under this Agreement or applicable law, (3) for fraud, negligence or willful misconduct of Contractor.
- 18. Insurance:** Contractor shall obtain and maintain during the performance of any services under this Agreement the following insurance and the amount of such coverage shall be in an amount to cover all indemnity obligations and shall include, but not necessarily be limited to, the following:
- 18.1.** Commercial general liability insurance, including a contractual liability endorsement, in an amount not less than: \$2,000,000 each occurrence; \$4,000,000 general aggregate; \$50,000 damage to premises and fire damage; and \$5,000 medical expenses for any one person.

- 18.2.** Professional liability and/or “errors and omissions” coverage with a limit not less than \$3,500,000.
- 18.3.** Automobile Liability Insurance with CMHA named as an additional insured with minimum limits as follows: \$1,000,000 combined single limit; \$50,000/\$100,000 for vehicles utilized during the contract when not owned by the Contractor; \$5,000 medical pay.
- 18.4.** Workers’ Compensation Insurance as required by state statute and Employer’s Liability Insurance covering all of Contractor’s employees acting within the course and scope of this Contract.
- 18.4.1.** Excess Liability Insurance (Umbrella Policy): may compensate for a deficiency in general liability or automobile insurance coverage limits.
- 18.5.** The coverages provided to CMHA shall be primary and not contributing to or in excess of any existing CMHA insurance coverages.
- 18.6.** The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days’ notice to CMHA and stating that the carrier will waive all rights of recovery, under subrogation or otherwise, against CMHA, its office, agents, employees or Board of Commissioners.
- 18.7.** Contractor shall provide certificates evidencing the coverage required under this Provision 18 of this Agreement to CMHA upon execution of this Agreement and annually thereafter evidencing renewals thereof. At any time during the term of this Agreement, CMHA may request, in writing, and the Contractor shall thereupon within 10 days supply to CMHA evidence satisfactory of compliance with the provision of this section.

19. Limitation of Liability: Notwithstanding any limitation provisions contained in the Contract Documents and materials incorporated by reference, the Parties Agree as follows:

- 19.1.** In no event shall CMHA be liable for any indirect, incidental, or consequential loss or damage of any kind, including but not necessarily limited to lost profits, even if CMHA had been advised, knew or should have known of the possibility of such damages.

20. Amendments: No amendment or modification of this Agreement will be effective unless it is in writing and signed by both Parties. At no time shall an amendment or modification be effective that conflicts with any mandatory provisions set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I*.

21. Publicity: Contractor agrees to submit to CMHA all advertising and publicity related matter relating to this Agreement wherein CMHA’s name is mentioned or language used from which the connection of CMHA’s name may, in CMHA’s judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of CMHA.

22. Non-Waiver of Rights: If either party does not seek compensation for breach or insist upon strict performance of any provision of this Agreement, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision. Failure of CMHA to take any action or assert any right hereunder shall not be deemed a waiver of such right.

23. Remedies:

23.1. Actual Damages: Contractor is liable to CMHA for all actual and direct damages caused by Contractor's default. In the event Contractor fails to provide services or material as provided for in the Contract Documents, CMHA may substitute the services and/or material from a third party. CMHA may recover the costs associated with acquiring substitute services and/or materials, less any expense or costs saved by Contractor's default, from Contractor.

23.2. Deduction of Damages from Contract Price: Upon prior written notice being issued to the Contractor, CMHA may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on this Agreement.

24. Contractor Suspension: If Contractor fails to perform any one of its obligations under the Contract Documents it will be in default and CMHA, at its sole discretion, may suspend rather than terminate this Agreement when CMHA believes that doing so would better serve its interest. In case of a suspension, the amount of compensation due to Contractor will be determined in the same manner as provided for in the Termination for Convenience provision set forth in *Form HUD-5370-C General Conditions for Non-Construction Contracts Section I* less any damage to CMHA resulting from Contractor's breach or other default.

25. Additional Services/Purchases by Other Public Agencies ("Piggy-Back"): Contractor acknowledges that other Public Agencies may seek to "Piggy-Back" under the same terms and conditions, during the effective period of Agreement. The services and/or purchases being offered in the Contract Documents, Fee Submission and/or Best and Final Offer and for the same prices and/or terms proposed therein. Contractor has the option to agree or disagree to allow contract Piggy-Backs on a case-by-case basis. Before CMHA permits another Public Agency to Piggy-Back any contract, CMHA shall first obtain the awarded Contractor's approval. Without the Contractor's approval, CMHA cannot permit the requesting Public Agency the right to Piggy-Back. In the event the awarded Contractor allows another Public Agency to join the CMHA Contract, it is expressly understood that CMHA shall in no way be liable for the joining Public Agency obligations to the awarded Contractor in any manner whatsoever.

26. Federal Requirement: The Work to be performed under this Agreement may be paid for in part by federal funds and therefore is subject to federal statutes, rules, regulations, laws, orders and directives applicable to work paid for by federal funds. In the event an applicable federal requirement conflicts with any provision of the Contract Documents, the federal requirement shall prevail and take precedence over and against such conflicting provisions. Federal requirements may include, but is not limited to:

- 26.1. Executive Order 11061, as amended which directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds;
 - 26.2. Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance.
 - 26.3. Title VIII of the Civil Rights Act of 1968;
 - 26.4. The Age Discrimination Act of 1975;
 - 26.5. Anti-Drug Abuse Act of 1988
 - 26.6. HUD Bulletin 909-23.
27. **Survivorship:** All provision hereunder relating to payment, confidentiality, warranties, limitations on damages, publicity, and indemnity shall survive the termination of this Agreement.
28. **Governing Law:** This Agreement shall be governed and construed exclusively by its terms and by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the court of appropriate jurisdiction in Hamilton County, Ohio.
29. **Force Majeure:** Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
30. **Severability:** If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of the provisions of this Agreement and the Contract Documents will remain enforceable to the fullest extent permitted by law.
31. **Ownership and Use of Documents:** All documents, materials, data, and records generated as a result of this Agreement shall remain the property of CMHA. If this Agreement results in any material to be copyrighted, the author may copyright the work. However, CMHA and the HUD will have the right to a royalty free, not exclusive and irrevocable license to reproduce, publish, use and authorize others to use the work for government purposes.
32. **Order of Precedence:** The term “Contract Documents” shall include the documents listed in this Provision. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be:
- 32.1. Applicable Federal and State of Ohio statutes and regulations
 - 32.2. Form HUD-5370-C General Conditions for Non-Construction Contracts
 - 32.3. This Agreement
 - 32.4. The Request for Proposal No. 2018-4004, including all addenda and attachments
 - 32.5. The Contractor’s Fee Submission and/or Best and Final Offer
 - 32.6. Contractor’s Proposal subject to any limitations set forth in this Agreement

- 32.7. Contractor form of Agreement, if applicable
- 32.8. Other Documents incorporated by reference (if applicable)

33. Additional Terms and Conditions: Unless expressly provided for herein, no additional terms and conditions included with Contractor's Response shall be evaluated or considered and any and all such additional terms and conditions shall have no force and effect and are inapplicable to this Agreement. If submitted either purposefully through intent or design or inadvertently appearing separately in transmitting letters, specifications, literature, price lists (with the exception of the Fee Submission Proposal or Best and final Offer), or warranties, it is understood and agreed the general terms and conditions set forth herein are the only conditions applicable to this Agreement and the Proposer's authorized signature affixed to the proposal attests to this.

If Contractor, in the ordinary course of its business, requires any type of or form of agreement that provides for Contractor's general terms and conditions and such term(s) and condition(s) are contrary to or conflict with any term(s) or conditions(s) provided for herein, Parties unequivocally acknowledge and agree that the term(s) and condition(s) provided for herein shall take precedence and prevail including, but not limited to, instances when 1) the Contractor's form of agreement is signed subsequent to Contractor's Proposal submission and/or 2) the Contractor's form of agreement expressly states that its terms and provisions take precedence and/or supersedes all other Contract Documents. Such terms and conditions will effectively be void and unenforceable. Although, such terms and conditions may remain in Contractor's form of agreement, Parties acknowledge and agree that said terms and conditions have no effect, are void and are hereby expressly rejected.

34. Contract Award/Commencement: Upon submittal of its response to CMHA's Solicitation, Contractor is accepting the terms of this Agreement. Upon issuance of award to Contractor, CMHA is accepting Contractor's offer contained in the Fee Submission and/or Best and Final Offer. No **other contractual documents will be necessary or accepted** unless specifically expressed in the notification of contract commencement. The Contract commences upon CMHA's issuance of a notice of contract commencement, which may or may not be in the form of a copy of the Contract Documents, unless said noticed expressly states otherwise, in those instances, Contract Commencement occurs in accordance with the notification.