

**CITY CLERK  
ORIGINAL**

C-8408  
03/26/2012

MILLER, PITT, FELDMAN  
& McANALLY, P.C.

**HARALSON, MILLER, PITT,  
FELDMAN & McANALLY P.L.C.**

GERALD MALTZ  
T. PATRICK GRIFFIN  
THOMAS G. COTTER  
LINDSAY BREW  
JOSÉ DE JESÚS RIVERA  
PETER T. LIMPERIS  
JEFFREY A. IMIG  
NATHAN J. FIDEL  
NATHAN B. WEBB  
AARON M. HALL

2800 N. CENTRAL AVENUE, SUITE 840  
PHOENIX, ARIZONA 85004 1069  
TEL (602) 266-5557  
FAX (602) 266-2223

[www.hmpfmilaw.com](http://www.hmpfmilaw.com)

March 18, 2013

DALE HARALSON, P.C.  
DALE HARALSON

STANLEY FELDMAN, P.L.C.  
RICHARD L. McANALLY  
JANICE A. WEZELMAN  
GRACE McILVAIN  
PHILIP J. HALL  
NINA J. RIVERA  
OF COUNSEL

ROBERT F. MILLER  
DONALD PITT  
G. EUGENE ISAAC  
RETIRED

BARRY N. AKIN  
(1939-1988)

Honorable Jerry Weiers and  
City Council Members  
c/o Brent Stoddard  
City of Glendale  
5850 West Glendale Avenue  
Glendale, AZ 85301

RE: Agreement of Retention

Dear Mayor Weiers and Council Members:

This will confirm your decision to retain the law firm of Haralson, Miller, Pitt, Feldman & McAnally, PLC (HMPM) on behalf of the City of Glendale to conduct an internal investigation. HMPM is retaining the Law Office of A. Bates Butler III LLC (Butler), Fidelity Forensics Group, LLC (FFG) and Evidence Solution, Inc. (ESI) to aid in the internal investigation (together "counsel").

I. Fees

Work will be provided to the City of Glendale at the following rates:

A. HMPM

1. José de Jesús Rivera \$400.00 per hour  
Lindsay Brew \$300.00 per hour  
Nathan Fidel \$250.00 per hour  
Paralegal/Law Clerk \$100.00 per hour
2. HMPM further agrees to a 10% reduction on their monthly billing statement.
3. Any conference where more than one HMPM attorney is present, the City will be charged for the time of only one attorney. The rate will be determined by the duties performed.

TUCSON

PHOENIX

FLAGSTAFF

- B. BUTLER
  - A. Bates Butler III                      \$400.00 per hour
  
- C. FFG
  - Mark Jenkins                              \$275.00 per hour
  - Christopher B. Meadors                \$275.00 per hour
  - Dale Hogue                                \$275.00 per hour
  
- D. ESI
  - Scott Greene                              \$300.00 per hour

II. Costs and Billing

The City of Glendale will be responsible for any costs or expenses generated on behalf of the City of Glendale.

Billing will be generated monthly by HMPM on behalf of HMPM, Butler, FFG and ESI and any other independent contractor deemed necessary. Any additional contractors will be required to be pre-approved by the City of Glendale.

III. Termination

At the sole discretion of the Glendale City Council, the City of Glendale may terminate this Agreement at any time, or may terminate all or any portion of the Services not then completed by giving the other party written notice of termination. Upon receipt of notice of termination, Counsel, unless the notice requires otherwise, shall discontinue performance of the services on the date and to the extent specified in the notice, except those services necessary to preserve and protect the work product of the services already performed, and otherwise minimize costs to the City. Payment for services already completed or in the process of completion shall be adjusted between Counsel and the City of Glendale, in a fair and reasonable manner, but such payment shall exclude any allowance of unperformed services or anticipated profits. Such payment for services already completed or in the process of completion shall be the total compensation due to counsel for Termination at will by either party.

The City of Glendale may declare this Agreement cancelled for default by notifying Counsel in writing should Counsel at any time:

- i) violate any part of this Agreement;
- ii) fail to supply sufficient properly skilled personnel, material, or equipment of the quality or quantity to properly perform the services; or,
- iii) fail to provide services in the most cost effective manner.

//

IV. Insurance

Counsel shall be responsible for providing appropriate public, professional, and, automobile liability insurance for Counsel and its employees in connection with the performance of the services under this Agreement. The insurance will be at least a minimum amount of one million dollars. The City of Glendale may request Counsel to provide additional insurance. Counsel agrees to provide such additional insurance upon request.

Counsel shall provide the City of Glendale with a valid Certificate of Insurance after receiving a letter of retention. Counsel shall provide the City of Glendale with updated Certificates of Insurance documenting any changes in policy or coverage (e.g. renewal, change in carrier, loss of policy, etc.) within 10 days of the change.

Counsel and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the contractor, his agents, representatives, employees or subcontractors.

The insurance requirements are minimum requirements for this contract and in no way limit the indemnity covenants contained in this Contract. The City of Glendale in no way warrants that the minimum limits contained are sufficient to protect the contractor from liability s that might arise out of the performance of the work under this contract by the Contractor, its agents, representative, employees or subcontractors, and contractor is free to purchase additional insurance.

Counsel shall furnish to the City of Glendale separate certificates and endorsements for each subcontractor.

V. Indemnification

Counsel shall indemnify, defend, save and hold harmless the City of Glendale, its departments, agencies, boards, commissions, and its officers, officials, agents and employees ("indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) ("claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of contractor or any of its owners, officers, directors, agents, employees or subcontractors. The indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Counsel to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the indemnitee shall, in all instance, except for Claims arising solely from the negligent or willful acts or omissions of the indemnitee, be indemnified by Counsel from and against any and all claims. It is agreed that Counsel will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Counsel agrees to waive all rights of subrogation against

the City of Glendale, its officers, officials, agents and employees for losses arising from the work performed by the contractor for the City of Glendale. Exception: the waiver of subrogation claims set forth in the preceding sentence shall not apply to claims covered by attorneys' Professional Liability (Errors and Omissions) insurance policies. This exception shall not apply to any other claims or types of insurance policies.

VI. Business Associate Agreement Provisions

In connection with the conduct of the investigation Counsel may have access to emails and computer files that may contain identifiable confidential health information. This access, to the extent that it occurs, is necessary to insure the integrity of the information that Counsel receives in the conduct of the investigation. In this regard the following Business Associate Agreement applies to counsel.

1. Definitions.

a. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean all parties identified in the first paragraph of this contract other than the City of Glendale and any employees of any of them.

b. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean the City of Glendale.

c. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate.

The Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;

(c) Report to covered entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

(e) Make available protected health information in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

3. Permitted Uses and Disclosures by Business Associate.

(a) Business Associate may not use or disclose protected health information except as specifically permitted by law or as necessary to perform the services provided for in this Agreement.

(b) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

4. Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate shall destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

If this meets with your approval, please sign, and return back to us. We look forward to working with you.

Sincerely,

José de Jesús Rivera  
HARALSON, MILLER, PITT,  
FELDMAN & McANALLY, P.L.C.

In agreement by

On behalf of  
City of Glendale

3.27.13

Date

Approved as to form:

Craig Tindall  
TUCSON City Attorney PHOENIX

ATTEST:

City Clerk

FLAGSTAFF