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GILA COUNTY

www.gilacountyaz.gov

PROFESSIONAL SERVICES CONTRACT NO. 112613 BETWEEN GILA COUNTY AND JOHN PERLMAN, ATTORNEY AT LAW

THIS AGREEMENT, made and entered into this 12TH day of DECEMBER, 2013, by and between the Gila County Board of Supervisors, a political subdivision of the State of Arizona, hereinafter designated the **COUNTY**, and John S. Perlman, Attorney at Law of the City of Globe, County of Gila, State of Arizona, hereinafter designated the **CONTRACTOR**.

WITNESSETH: That the **Contractor**, for and in consideration of the sum to be paid him by the **County**, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE I – SCOPE OF SERVICES: **Contractor** shall serve as an independent contractor as Attorney for Gila County Public Fiduciary and shall be charged with the responsibility for generating pleadings pertinent to Guardianship, Conservatorship and Probate matters as they relate to the services of the Gila County Public Fiduciary office, Court appearances and case presentation before the Courts having jurisdiction over the wards of the Public Fiduciary. Contractor shall also be responsible for providing general advice, correspondence, review of accountings and inventories, conferences and various other tasks as may be required by the Public Fiduciary office.

ARTICLE II – CONTRACTOR'S FEE: In consideration for Contractor's time and expertise, County shall compensate Contractor at the rate of \$115.00 per hour for the provision of his services. County shall compensate Contractor for travel time incurred at the rate of \$85.00 per hour. County shall compensate Contractor for the provision of paralegal services at the rate of \$75.00 per hour. Total annual compensation is not to exceed \$30,000.00. Contractor shall demand payment at various times pursuant to Gila County Demand for Payment forms and County shall make timely payment to Contractor for his services. Contractor shall serve as an independent contractor and shall be responsible for any taxes resulting from income as a result of employment with Gila.

Contractor may advance fees on behalf of the Public Fiduciary office at various times, and County shall reimburse Contractor for any fees advanced.

ARTICLE III – TERM: This contract commences on the date it is signed by the County Manager and remains in effect for a period of two years from that date, unless terminated earlier pursuant to this contract. The parties may agree to renew the contract for as many as two additional one year periods.

ARTICLE IV – CONFIDENTIALITY: Both County and Contractor shall maintain appropriate levels of confidentiality with regards to any information which may be deemed private or in confidence, or which may be in the interests of wards of the Public Fiduciary, County or Contractor. Any information which may be protected by attorney/client privilege shall be held as protected and the Public Fiduciary, County, Contractor or wards of the Public Fiduciary may raise said privilege.

ARTICLE V – NON-RESTRICTIVE AGREEMENT: County agrees that within the confines of Arizona Supreme Court Rule 42, Arizona Rules of Professional Conduct, that Contractor shall have complete discretion over other employment which Contractor may assume, whether with individuals, businesses or government agencies or otherwise, and nothing in this agreement shall in any way restrict Contractors ability to work as an attorney or in any other capacity for any other clients. Contractor shall have unimpaired discretion with regards to employment of staff within his office, as well as office location and infrastructure.

ARTICLE VI – RELATIONSHIP OF PARTIES: Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. It is further agreed by Contractor that he shall obey all state and federal statutes, rules and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

ARTICLE VII – NON-APPROPRIATIONS CLAUSE: Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure.

ARTICLE VIII – HOLD HARMLESS/INDEMNIFICATION CLAUSE: Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, Contractors' fees, and costs of claim processing,

investigation and litigation) (hereinafter referred to as "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. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor 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 instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that the Contractor 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 Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

ARTICLE IX – ENTIRE CONTRACT CLAUSE: The Contractor and the County have read this contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties.

ARTICLE X – NON-WAIVER OF ENFORCEABILITY: Failure of the County to enforce, at any time, any of the provisions of this contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contractor or any part hereof, or the right of the County to enforce each and every provision.

ARTICLE XI – GOVERNING LAW: Both parties agree that this contract shall be governed by the laws of the State of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this contract shall be the Superior Court of the State of Arizona. The parties agree that even if this contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this contract by this reference as though they were specifically listed herein.

ARTICLE XII – CANCELLATION PURSUANT TO A.R.S. §38-511: this contract is subject to the cancellation provisions of §38-511.

ARTICLE XIII – EARLY TERMINATION: The parties agree that this Contract may be terminated without cause with 60 days written advance notice to the other party.

ARTICLE XIV – TERMINATION OF PREVIOUS CONTRACTS: The parties agree that upon approval of this contract, any and all previous contracts or agreements between the parties regarding the provision of attorney services for the Gila County Public Fiduciary shall expire, and that from the date of the approval of this contract until its termination, the terms of this contract shall govern the relationship between the parties.

ARTICLE XV – LEGAL ARIZONA WORKERS ACT COMPLIANCE: **Contractor** hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to **Contractor’s** employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). **Contractor** shall further ensure that each subcontractor who performs any work for **Contractor** under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of **Contractor** and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.

Any breach of **Contractor’s** or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting **Contractor** to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, **Contractor** shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of **County’s** rights, and the subcontractor’s obligations, under this Article by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor’s employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that **County** may inspect the Subcontractor’s books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of **Contractor**. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of **Contractor’s** approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which **Contractor** shall be entitled to an extension of time, but not costs.

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BETWEEN GILA COUNTY AND JOHN PERLMAN, ATTORNEY AT LAW**

GILA COUNTY:



Don E. McDaniel, County Manager *12/13/13*

JOHN S. PERLMAN:



Signature of Contractor



Print Name

APPROVED AS TO FORM:



Bryan B. Chambers, Deputy Attorney Principal
for Bradley D. Beauchamp, County Attorney