

PROFESSIONAL SERVICES AGREEMENT

CIVIL CONTEMPT DEFENSE SERVICES

THIS AGREEMENT, made and entered into this *17* day of *April* 2013, by and between the Gila County, a political subdivision of the State of Arizona, hereinafter designated the County, and Polsinelli Shugart PC, One East Washington Street, Suite 1200, Phoenix, Arizona, hereinafter designated the Firm.

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

ARTICLE I – SCOPE OF SERVICES: The Firm agrees to provide Civil Contempt Defense Services in the civil contempt proceedings against Respondent Chief Deputy Gila County Attorney Shawn C. Fuller in the criminal case of State of Arizona vs. Daniel A. Denuzzi, CR2011-00643 in the Superior Court of the State of Arizona in and for the County of Gila. In the performance of these duties under the provisions of this agreement, it is mutually understood and agreed that the Firm, its agent(s), and employee(s), are at all times acting and performing as an independent contractor.

The Firm agrees to obtain and keep current any and all State of Arizona licenses/certifications. If at any time during the term of the contract the Firm's licenses/certifications are revoked or rendered invalid, this Contract shall be terminated.

The Firm is an independent contractor of the County and agrees that it shall obey all state and federal statutes, rules and regulations which are applicable to provisions of the services of the agreement. Neither the Firm nor any employee of the Firm shall be deemed an officer, employee, or agent of the County.

DUTIES AND RESPONSIBILITIES

The Firm shall provide duties as follows:

Represent Chief Deputy Gila County Attorney Shawn C. Fuller in the civil contempt proceedings against him in the in the criminal case of State of Arizona vs. Daniel A. Denuzzi, CR2011-00643 in the Superior Court of the State of Arizona in and for the County of Gila.

ARTICLE II – FEES: For the services provided by the Firm under this agreement, financial compensation from the County will be as follows:

The Firm shall receive \$350.00 per hour for its attorney work in this matter and \$175.00 per hour for paralegal work in this matter. Total compensation to the firm shall not exceed \$14,000.00 without the prior written approval of Gila County.

ARTICLE III – TERMINATION: This Agreement shall terminate thirty (30) days after written notice is received by either party to the other. Upon receipt of the notice, work in progress will be completed and any summaries and/or status reports shall be prepared and submitted, all within thirty (30) days. The County's financial obligation shall cover only the work performed up to the notice to terminate plus thirty (30) days, and not work completed thereafter.

ARTICLE IV - INDEMNIFICATION CLAUSE: The Firm agrees to defend, indemnify, and hold harmless Gila County from all losses, liability, claims or expenses (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of the Firm, except to the extent same are caused by the negligence or willful misconduct of the County. It is the intent of this section to require the Firm to indemnify the County to the extent permitted under Arizona Law.

ARTICLE V – INSURANCE REQUIREMENTS: The Firm agrees to take out and keep in force during the term of this agreement at his expense, professional liability insurance and general liability insurance The Firm agrees to provide the County with certificates evidencing the coverage specified.

ARTICLE VI – ASSIGNMENTS AND SUBCONTRACTS: No rights or obligations of the Firm under this agreement shall be assigned. No rights or obligations of the Firm under this agreement shall be subcontracted by the Firm without prior approval of the County. All subcontracts shall incorporate the laws, rules, and regulations governing this agreement. The approved subcontracts shall forward copies of such to the County Office of Health and shall retain originals on file.

ARTICLE VII – LEGAL ARIZONA WORKERS ACT COMPLIANCE: Pursuant to A.R.S. § 41-4401, Firm hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Firm’s employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the “State and Federal Immigration Laws”). Firm shall further ensure that each approved subcontractor who performs any work for Firm under this Agreement likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Firm and any approved subcontractor performing services under this Agreement in order to verify such party’s compliance with the State and Federal Immigration Laws.

Any breach of Firm’s or any approved 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 Agreement subjecting Firm to penalties up to and including suspension or termination of this Contract. If the breach is by an approved subcontractor, and the subcontractor is suspended or terminated as a result, Firm 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 an approved replacement subcontract as soon as possible so as not to delay completion of Firm’s obligations.

Firm shall advise each approved 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.”

ARTICLE VIII – LAWS AND ORDINANCES: This Agreement shall be enforced under the laws of the State of Arizona. Firm shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Firm. The Firm shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

ARTICLE IX – ANTI-TERRORISM WARRANTY: Pursuant to A.R.S. § 35-393.06(B) and A.R.S. § 35-391.06(A) the Firm certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration act and not on the Excluded Parties List.

ARTICLE X – CANCELLATION: This agreement is subject to cancellation pursuant to A.R.S. § 38-511. If the Agreement is terminated, the county shall be liable only for payment for services rendered by the County before the effective date of termination.

ARTICLE XI – TERM: The term of the contract shall commence on April 12, 2013 and continue in full force and effect up through and including June 30, 2013, unless terminated, canceled or extended as otherwise provided herein.

ARTICLE XII – PAYMENT: Firm shall be paid fees stated in Article II of this agreement, but in no event shall payment exceed \$ 14,000.00 for the contract term without prior written approval from the County.

Gila County employs a "Net 15" payment term for professional services meaning the payment will be issued fifteen (15) days from the date the County receives the invoice from the Firm. Purchase orders sent to the Firm reflect these terms and conditions and they apply to all invoices received by the County.

The Firm shall have a current I.R.S. W-9 form on file with the County unless not required by law. The County shall not remit payment if the Firm does not have a current W-9

Invoices

All invoices shall be submitted to Gila County Accounts Payable at 1400 E. Ash St., Globe, Arizona 85501, and contain the purchase order number, contract number, and description of services performed.

ARTICLE XIII-FIRM'S LEGAL CONFLICTS

County acknowledges, that the parties have discussed the situation presented by the Firm representing the County in various matters and the potential of conflicts in the future on other matters in which the County may be involved. This Article specifically addresses the Firm's ability to continue to represent the County in an ethical and appropriate manner and at the same time enable the Firm to also represent other clients on unrelated matters.

The firm represents many other companies, individuals and government agencies throughout the country. In that context, it is possible that during the time that the Firm is representing the County, some of our other present or future clients will have disputes or transactions with the County. For example, although the Firm will represent the Chief Deputy Gila County Attorney in this matter, the Firm currently has or may have clients whom the Firm represents in connection with economic development projects, tax appeals, real estate development and other similar matters that come before the County's boards, commissions or offices for review and/or approval. As such, the Firm acknowledges in that context that inherent conflicts of interest can arise in those situations between the Firm's separate, respective client relationships.

The Rules of Professional Conduct, as adopted in Arizona require certain steps be taken with respect to representation of clients where an existing, or potential, conflict of interest arises. The purpose of this Article is to ensure that the County is advised of and consents to this conflict. Under the Rules of Professional Conduct the Firm is permitted to undertake this representation if both interested parties agree.

Given the structure of the county government and the unique nature of each board, commission or office of the County as well as the unique nature of current and future clients and their respective matters, the Firm does not believe the proposed representation of other clients' interests in these separate contexts would adversely affect the Firm's representation of Chief Deputy Gila County Attorney Shawn C. Fuller. Correspondingly, Firm's involvement with separate matters of the County would not adversely impact Firm's responsibilities to Firm's other clients.

Through further execution of this Agreement, County hereby agrees and consents that the Firm may continue to represent and/or undertake further representation of existing or new clients in any matter

that is not substantially related to our work for the County outside of this matter, even if the interests of such client in those other matters are directly adverse to the County. The Firm agrees, however, that the County' prospective consent to such conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of the Firm's representation of the County, the Firm has obtained proprietary or other confidential information of a non-public nature or is so extraordinary, that, if known to such other client, could be used in any manner by that client to the County's material disadvantage.

The Firm will institute the following procedures within the firm to assure that confidential information regarding the County's matter remains protected:

- (a) an ethical wall will be established between the lawyers, paralegals and support staff working on the County's matter from the lawyers, paralegals and support staff who will provide legal assistance to conflicting new or existing clients;
- (b) communications between the two sets of lawyers, paralegals and support staff will be prohibited with respect to the respective matters they are handling concerning the County and conflicting new or existing clients;
- (c) files on the relevant matters maintained by the two sets of lawyers, paralegals and staff will be isolated and segregated to prevent access by the other group.

By signature of the Gila County Manager to this Agreement, Gila County acknowledges having read this Article and understanding it. Gila County further acknowledges that it has had the opportunity to consult with counsel of my choice other than the Firm, and either has done so or decided not to at its own discretion.

By signing this Agreement, the Gila County Gila County Manager is giving the County's consent to the Firm to allow it to undertake the above-described representation.

IN WITNESS WHEREOF, two (2) identical counterparts of this agreement, each which shall include original signatures and for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

GILA COUNTY MANAGER

Polsinelli Shughart PC

Don E. McDaniel Jr.

Date _____



Signature

Edward F. Novak

Print Name

4/17/13

Date _____

APPROVED AS TO FORM:

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