Item 13

# CITY COUNCIL REPORT

Meeting Date: November 10, 2026
Charter Provision: ***Provide for the orderly administration of City affairs***
Objective: ***Fiscal Management***

## ACTION

**Request to Adopt Resolution No. 13830 to authorize Contract No. 2026-190-COS with the law firm of Osborn Maledon, P. A. for providing legal representation of the City defendants in the lawsuit captioned *David N. Smith v. City of Scottsdale*, Case No. CV2026-034518, currently pending in the Maricopa County Superior Court, and further authorize Osborn Maledon, P.A. to represent the City in any related appeal or to pursue an appeal on behalf of the City, if necessary.**

## BACKGROUND

On May 18, 2004, the Scottsdale electorate authorized a special transaction privilege and use tax for a period of thirty years at a rate of 0.15% ("2004 Preserve Sales Tax"). On November 18, 2018, Scottsdale voters approved Proposition 420, which limited the use of the 2004 Preserve Sales Tax. The specific uses of the 2004 Preserve Sales Tax were incorporated in the Scottsdale City Charter at Article 8, Sections 12 and 13.

On August 18, 2026, Plaintiff filed a complaint, *David N. Smith v. City of Scottdale*, CV2026-034518, in the Superior Court of Maricopa County seeking (1) a declaration that further collection of the 2004 Preserve Sales Tax is illegal; (2) injunctive relief prohibiting the City from collecting the 2004 Preserve Sales Tax and requiring the City Council to suspend the tax; (3) injunctive relief prohibiting the City from spending accumulated preserve funds for unlawful capital projects; and (4) attorney's fees and expenses.

The City retained, in an informal contract, the law firm of Osborn Maledon, P.A. to provide legal services for the City in that lawsuit, and in said informal contract, the attorney fees were capped at Fifty Thousand Dollars ($50,000). The need for legal services in this matter may result in attorneys' fees and costs in excess of that amount.

## ANALYSIS AND ASSESSMENT

### Recent Staff Action

The City will be represented in these proceedings by outside counsel and assisted by the City Attorney's Office. The City Attorney's Office has been working closely in collaboration with attorneys from Osborn Maledon, P.A. in order to effectively manage the proposed litigation and conserve costs to the extent possible.

Action Taken _____

## Policy Implications (Internal)

The policy of the City Attorney's office is to handle litigation in-house except when (a) specialized expertise not available in the office is required, (b) the office is precluded from providing representation either because there is a conflict of interest or there is some other reason why it would be detrimental to the City for the case to be retained by the office, (c) sharing the cost of counsel with other parties would be beneficial to the City, or (d) resources beyond those available to the office are required. Pursuant to the City Attorney's outside counsel policy, outside counsel with additional expertise and resources is recommended for this matter.

## Significant Issues to be Addressed

The City requires additional resources to defend the Scottsdale transactional privilege tax rate approved by the voters. The law firm of Osborn Maledon, P.A. is highly competent to provide this specialized representation.

## Community Involvement

The matter is in litigation and does not involve community outreach.

# RESOURCE IMPACTS

## Available funding

The City Attorney's operating budget currently has funds in its outside counsel budget to pay for this contract. The City Attorney's Office will assist as needed to minimize cost to the City.

## Staffing, Workload Impact

Representatives of the City Attorney's Office are assigned to assist with this case to assist as needed.

## Future Budget Implications

Currently, there is funding available in the City Attorney's operating budget. Additional funding may be necessary in the future depending on the course of the litigation. Plaintiff seeks to eliminate the 2004 Preserve Sales Tax which would have significant budget implications over the next 30 years.

# OPTIONS & STAFF RECOMMENDATION

## Recommended Approach

Adopt Resolution No. 13830

### Proposed Next Steps

If the contract is approved, the law firm of **Osborn Maledon, P. A.** will be paid for providing legal services for legal representation of the City in the *David N. Smith v. City of Scottsdale* lawsuit.

## RESPONSIBLE DIVISION(S)

City Attorney's Office

## STAFF CONTACT(S)

Luis E. Santaella, City Attorney, LSantaella@scottsdaleaz.gov

## APPROVED BY

Luis E. Santaella, City Attorney
City Attorney's Office
(480) 312-2405
LSantaella@scottsdaleaz.gov

10/27/2026
Date

## ATTACHMENTS

1. Resolution No. 13830
2. Contract No. 2026-190-COS

**RESOLUTION NO. 13830**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING CONTRACT 2026-190-COS WITH OSBORN MALEDON, P.A. FOR LEGAL SERVICES RELATED TO THE REPRESENTATION OF THE CITY IN THE LAWSUIT *DAVID N. SMITH V. CITY OF SCOTTSDALE*, CASE NO. CV2026-034518, CURRENTLY PENDING IN THE MARICOPA COUNTY SUPERIOR COURT, AND AUTHORIZING THE CITY ATTORNEY OR HIS DESIGNEE TO PROSECUTE ALL CLAIMS AND APPEALS TO THE BENEFIT OF THE CITY.

WHEREAS, a lawsuit has been filed in the Maricopa County Superior Court against the City, *David N. Smith v. City of Scottsdale*, Case No. CV2026-034518;

WHEREAS, the City retained, in an informal contract, the law firm of Osborn Maledon, P.A. to provide legal services for the City in that lawsuit, and in said informal contract, the attorney fees were capped at Fifty Thousand Dollars ($50,000);

WHEREAS, the need for legal services in that matter may result in attorneys' fees and costs in excess of $50,000;

WHEREAS, the City Council has determined that it is in the best interest of the City to approve a formal contract with Osborn Maledon, P.A. to continue its representation of the City in the lawsuit; and

WHEREAS, in the handling of this matter, it may be necessary for the City to assert claims and/or prosecute appeals in order to protect the City's interests.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Contract No. 2026-190-COS with the Osborn Maledon, P.A. law firm for legal services related to the lawsuit *David N. Smith v. City of Scottsdale*, Case No. CV2026-034518, currently pending in the Maricopa County Superior Court.

Section 2. That the City Council hereby authorizes the City Attorney or his designee(s) to prosecute all claims and appeals necessary to protect the City's interests to the benefit of the City in this lawsuit.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this __ day of November, 2026.

CITY OF SCOTTSDALE, an Arizona municipal corporation

ATTEST:

Lisa Borowsky, Mayor

Ben Lane, City Clerk

APPROVED AS TO FORM:

Luis E. Santaella, City Attorney

**CONTRACT FOR LEGAL SERVICES**
**CITY OF SCOTTSDALE**
**City Attorney's Office**

THIS CONTRACT is made and entered into on this ____ day of _____, 2026, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **OSBORN MALEDON, P.A.**, hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to provide the CITY with representation in matters that may result in litigation, and

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Scope of Service and Representation. COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court or administrative proceedings, in representing CITY **relating to the lawsuit filed in the Maricopa County Superior Court, *David N. Smith v. City of Scottsdale*, Case No. CV2026-034518**. Such legal services shall be carried out in cooperation with the City Attorney's Office which shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or administrative proceedings, in whole or in part, shall be made without the prior approval of the City Attorney's Office. All offers of compromise made by another party shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL's recommendations. CITY will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter offer. Except in exigent circumstances, no appeals will be taken from judgments or other orders in any litigation without prior approval of CITY, acting through its City Attorney's Office.

2. Advice and Status Reporting. COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL considers appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.

3. Compensation. CITY agrees to pay COUNSEL for services rendered hereunder as follows, pursuant to COUNSEL'S 2026 Government Billing Rates, effective January 1, 2026:

A. Seven Hundred Eighty Dollars and 00/100 cents ($780.00) per hour for Member Eric Fraser.

B. Four Hundred Five Dollars and 00/100 cents ($405.00) per hour for Member Matthew Stanford.

C. Between Four Hundred Twenty Dollars and 00/100 cents and Nine Hundred Forty-Five Dollars and 00/100 cents ($420.00-$945.00) per hour for Members.

D. Between Three Hundred Forty Dollars and 00/100 cents and Four Hundred Dollars and 00/100 cents ($340.00-400.00) per hour for Associates.

E. Between Two Hundred Forty Dollars and 00/100 cents and Two Hundred Ninety Dollars and 00/100 cents ($240.00-$290.00) per hour for Paralegals.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. The total attorneys' fees and expenses billed per individual case or matter under this contract and the prior informal contract **shall not exceed One Hundred Thousand Dollars and 00/100 cents ($100,000.00) in total without written approval given by the City Attorney or Contract Administrator**. COUNSEL shall notify CITY promptly when the total attorneys' fees and expenses incurred for any individual case or matter exceed or within the next billing cycle may exceed Eighty Thousand Dollars and 00/100 cents ($80,000). Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

COUNSEL UNDERSTANDS THAT IT SHALL NOT INCUR MORE THAN $100,000 ON A MATTER WITHOUT FIRST HAVING GIVEN THE CITY NOTICE AS PROVIDED ABOVE AND OBTAINING WRITTEN APPROVAL FROM THE CITY ATTORNEY OR CONTRACT ADMINISTRATOR TO EXCEED $100,000. THE CITY SHALL HAVE NO OBLIGATION TO PAY ATTORNEYS' FEES INCURRED IN EXCESS OF $100,000 WITHOUT SAID PRIOR WRITTEN APPROVAL.

4. Term. The term of this Contract shall be for a two (2) year period commencing on the effective date of this Contract. CITY may extend this Contract for a maximum of three (3) additional one (1) year periods upon the approval of the City Attorney.

5. Price Adjustment.

A. Price increases may only be requested by COUNSEL thirty (30) days prior to the annual anniversary date of this Contract. Failure to do so may result in the denial of any increase requested.

B. Any increased rate shall be based upon mutual consent of COUNSEL and the Contract Administrator; however, the Contract Administrator, in conjunction with the City Attorney, shall evaluate COUNSEL's performance, services and records documentation to determine the appropriateness of the increase requested.

C. Price increases will become effective only after approval by the City Attorney.

D. The percentage increase in the unit pricing may not exceed 5% per year.

6. Travel. Approval for travel shall be obtained through the City Attorney's Office prior to departure. Reimbursement shall be made for expenses incurred but shall not exceed the reimbursement amounts listed for travel by the U.S. General Services Administration (www.gsa.gov/travel-resources) unless prior approval has been received from the Contract Administrator to utilize a different method for reimbursement. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. Unless required by extenuating circumstances and approved in writing in advance by the Contract Administrator, no first-class travel shall be allowed. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

7. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost. All copying charges shall be billed at no more than fifteen cents ($0.15) per page. To the extent practical, large photocopying tasks will be sent to an outside copy service in an effort to further reduce photocopying costs. The City shall not be billed for telephone, facsimile or on-line database retrieval charges (i.e., Lexis, Westlaw, CompuServe, Dialogue, etc.).

8. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g., tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3)).

B. Secretarial, word processing or other overtime shall not be billed (e.g., docketing; preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance. If COUNSEL believes it necessary to have a staff member, paralegal or more than one attorney present for a deposition, hearing, oral argument, or trial, and intends to bill the CITY for that person's time, permission must be obtained from the Contract Administrator in advance to justify the additional expense.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 7 and 8 above. The CITY may, in its sole discretion, choose to engage said consultants, experts, or subcontractors directly.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be **paid by the City Attorney's Office**. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the unbilled amount remaining on the contract.

COUNSEL will use its best efforts to inform the Contract Administrator eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

9. Maintenance of Records. In compliance with CITY's standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY's expense.

10. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY that are not adverse to the CITY's legal interests in her professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

11. Reporting Requirements.

A. Upon request of the Contract Administrator, COUNSEL shall provide CITY with a written evaluation containing the following:

1. A summary of the case facts and issues;

2. An evaluation of the potential exposure;

3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);

4. An estimate of the cost to defend the case through trial;

5. A cost/benefit analysis, including recommendations as to settlement or offers of judgment; and

B. COUNSEL shall furnish to CITY, through the City Attorney's Office copies of all pleadings, motions, filings in administrative proceedings, disclosure statements, investigative reports, and correspondence (other than routine transmittal letters). Depositions, deposition summaries (if created), and answers to interrogatories shall be furnished to CITY through the City Attorney's Office. When, in COUNSEL's opinion, events occur which significantly affect the merits of the lawsuit or exposure of CITY, those events promptly will be made known to CITY through the Contract Administrator.

C. At the request of the City Attorney or Contract Administrator, when a case is complete, COUNSEL shall provide to the City Attorney or Contract Administrator COUNSEL's recommendations for policy or other changes identified through the litigation, and if requested, to meet with CITY staff to discuss the case as it pertains to CITY staff's assigned responsibilities.

12. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

13. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as judged by the Contract Administrator and City Attorney, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular proceedings or lawsuits to which it applies, and any matter not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL upon ten (10) days written notice.

14. Notices. When notice or correspondence related to a case or otherwise required herein is required to be sent to CITY, it shall be sent to the following:

City Attorney's Office
City of Scottsdale
3939 N. Drinkwater Blvd.
Scottsdale, Arizona 85251
Attn: Lori S. Davis, Chief Deputy City Attorney

15. Conflicts. COUNSEL may, upon referral of a lawsuit, decline to defend the lawsuit if it would be ethically improper for him/her to do so. COUNSEL also may withdraw from representation of CITY or any agency, officer, agent or employee thereof, when it would be ethically improper to continue to do so and upon the Court granting a motion permitting withdrawal. In the event COUNSEL must withdraw from a case, COUNSEL shall immediately notify CITY in writing to the City Attorney and Contract Administrator.

16. Expert Witnesses. Expert witnesses shall be hired only after consultation with and approval of CITY through the City Attorney's Office or Contract Administrator.

17. Appeals. Except in exigent circumstances, no appeals will be taken from judgment in lawsuits referred to COUNSEL without prior approval of CITY, acting through its City Attorney's Office.

18. Lack of Appropriated Funds. If funds are not appropriated by the City Council to continue this Contract and for the payment of charges hereunder, CITY may terminate this Contract at the end of the current fiscal period. CITY agrees to give written notice of termination to COUNSEL at least thirty (30) days prior to the end of its current fiscal period and will pay to COUNSEL all charges incurred through the end of such period.

19. Insurance Representations and Requirements.

General: COUNSEL agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, COUNSEL shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A – VII or above or an equivalent qualified unlicensed insurer by the State of Arizona

(non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY's option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three (3) year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by COUNSEL's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, CITY shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. Such certificates shall identify the Contract work number and be sent to the designated CITY Contract Administrator. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

1. CITY, its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability; b) Auto Liability; and c) Excess Liability-Follow Form to underlying insurance as required.

2. COUNSEL's insurance shall be primary insurance as respects performance of subject contract.

3. All policies, except Professional Liability insurance and worker's compensation insurance, waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.

4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

20. Required Coverage.

Commercial General Liability: COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate, and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability: If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of $1,000,000 each claim and $2,000,000 aggregate claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

Vehicle Liability: COUNSEL shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each accident on COUNSEL's hired and non-owned vehicles assigned to or used in the performance of the COUNSEL's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Workers' Compensation Insurance: COUNSEL shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

21. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

22. Whole Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

23. Amendments. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

24. Non-Assignment. Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney and Contract Administrator.

25. Contract Administrator. The Contract Administrator for CITY shall be the City Attorney or designee. The Contract Administrator shall oversee the execution of this Contract, assist COUNSEL in accessing the organization, audit billings and approve payments. COUNSEL shall channel reports and special requests through the Deputy City Attorney or Assistant City Attorney(s) assigned to COUNSEL's matter(s).

26. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of CITY's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. § 38-511).

27. Independent Contractor Status. The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

28. Effective Date. The effective date of this agreement shall be the date on which the agreement is executed by the CITY and supersedes any prior contract in effect between CITY and COUNSEL.

29. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

30. Immigration Law Compliance. COUNSEL understands and acknowledges the applicability to it of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. COUNSEL agrees to comply with these laws in performing this Contract and to permit CITY to verify compliance.

Under the provisions of A.R.S. §41-4401, COUNSEL warrants to CITY that COUNSEL and all its subcontractors will comply with all Federal immigration laws and regulations that relate to its employees and that COUNSEL and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by COUNSEL or any of its subcontractors will be considered a material breach of this Contract and may subject COUNSEL or subcontractor to penalties up to and including termination of this Contract or any subcontract. COUNSEL will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. COUNSEL's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by CITY.

CITY retains the legal right to inspect the papers of any employee of COUNSEL or any subcontractor who works on this Contract to ensure that COUNSEL or any subcontractor is complying with the warranty given above.

CITY may conduct random verification of the employment records of COUNSEL and any of its subcontractors to ensure compliance with this warranty. COUNSEL agrees to indemnify, defend and hold CITY harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

CITY will not consider COUNSEL or any of its subcontractors in material breach of this Contract if COUNSEL and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract COUNSEL enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. COUNSEL will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. COUNSEL's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by CITY.

31. Lawful Presence in the United States for Persons. Arizona Revised Statute § 1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

PERSONS is defined as NATURAL PERSONS/INDIVIDUALS/SOLE PROPRIETORSHIPS as indicated by your W9 Filing. *(This law does not apply to LLP's, LLC's, PLLC's, Corporations, Limited Partnerships or General Partnerships)*

32. No Preferential Treatment or Discrimination. In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

33. Boycott of Israel. COUNSEL certifies that it is not currently engaged in, and for the duration of this Agreement agrees not to engage in, boycott activities as proscribed by A.R.S. § 35-393.

34. Forced Labor of Ethnic Uyghurs Prohibition. COUNSEL certifies that they do not currently and agrees for the duration of the contract that it will not use forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by said forced labor, or any contractors, subcontractors or suppliers that use said forced labor as defined and required in A.R.S. § 35-394. Pursuant to that statute, COUNSEL agrees that if it becomes aware that it is not in compliance with this certification during the term of this contract, that it shall comply with the notice and remedy provisions of A.R.S. § 35-394.

IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor, this _____ day of _____, 2026.

**City of Scottsdale**, a municipal corporation

By:_____
Lisa Borowsky, Mayor

**OSBORN MALEDON, P.A.**

By:_____

Its:_____

ATTEST:

_____
Ben Lane, City Clerk

APPROVED AS TO FORM:

_____
Luis E. Santaella, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**