

**RETAINER AGREEMENT FOR LEGAL SERVICES FOR DEFENSE
OF WORKERS' COMPENSATION CLAIMS**

THIS AGREEMENT is made and entered into this 8th day of June, 2021, by and between the City of Lawton, Oklahoma, a municipal corporation, hereinafter referred to as "City", and the law firm of Walker, Ferguson and Ferguson, hereinafter referred to as "Firm".

Whereas, the City has for many years retained an outside legal counsel to represent the City in defense of workers' compensation claims filed against the City in the Workers' Compensation Court of Existing Claims and the Workers' Compensation Commission in Oklahoma City; and,

Whereas, the Firm has agreed to provide legal counsel to represent the City in defense of workers' compensation claims filed against the City; and City and Firm desire to enter into a retainer agreement.

Now, therefore, in consideration of the mutual covenants and agreements hereinafter set forth, it is mutually agreed by and between the parties as follows:

ARTICLE I. COMMENCEMENT AND TERMINATION

- 1.01 This Agreement shall become effective July 1, 2021, and shall expire on June 30, 2022.
- 1.02 This Agreement may be terminated by mutual consent of the parties, or by either party, with or without cause, by one party giving written notice to the other party at least sixty (60) days in advance of termination.
- 1.03 Firm shall continue to represent the City on claims assigned to Firm prior to the expiration or termination date of this Agreement. Compensation for the continuing legal services will be at the rates as specified in Article III of this Agreement.

ARTICLE II. LEGAL SERVICES

- 2.01 Firm agrees to provide the following legal services:
 - A. Defending any workers' compensation claims contested by the City or for which permanent disability or disfigurement compensation is sought, suits, or other proceedings brought under the Workers' Compensation Act against the City; appearing before the Workers' Compensation Court of Existing Claims, Workers' Compensation Commission, Court En Banc, and the appellate courts of the State of Oklahoma;
 - B. Preparation of all necessary pleadings and forms for submission to the Workers' Compensation Court of Existing Claims, Workers' Compensation Commission, Court En Banc and state appellate courts;

- C. Preparation for defense of workers' compensation claims; including investigations and depositions, and such other preparation felt necessary in the professional judgment of the Firm, and arranging for documentary and testimonial evidence in cooperation with the City's Workers' Compensation Administrator (Administrator) and the City of Lawton Safety and Risk Officer. With the exception that the claimant will be routinely deposed for claims contested by the City, Firm shall obtain the approval of the City Attorney prior to taking other depositions;
 - D. Preparation of all trial and appellate briefs, and presenting oral arguments before appellate courts as required;
 - E. Negotiating or otherwise effecting the settlement of workers' compensation claims or suits. Firm's authority to effect settlement will be subject to approval of the City Attorney;
 - F. Firm shall use their professional judgment and discretion on behalf of the City's best interest regarding their legal services, and shall confer and cooperate with the Administrator on matters relating to pending claims;
 - G. Firm agrees to assist the City Attorney and the City of Lawton in developing new ideas to further limit the City's obligations and exposure to workers' compensation claims, including reduction in legal fees;
 - H. Firm agrees to submit clear and accurate statements to the Administrator on a timely basis for all services rendered pursuant to this Agreement.
- 2.02 Firm agrees to cooperate in the following manner with the City of Lawton and the Administrator or its successor, if any:
- A. Assisting the Administrator in the preparation of all documents for payments of compromise settlements and orders;
 - B. Assisting the Administrator in the preparation of reports to the City regarding workers' compensation claims;
 - C. Assigning the Administrator and the City Attorney's office of the City in the processing of all documents required by the City for authorization of judgments or payments;
 - D. Assisting the Administrator in conducting and directing investigations deemed necessary for the defense of such workers' compensation claims.

ARTICLE III. FEES

- 3.01 The parties mutually agree the fees for said legal services shall be at the rate(s) shown on the attached Exhibit 1, and at a rate of not more than Forty-Five Dollars (\$45.00) per hour for "windshield time" for each round trip travel between Lawton and Oklahoma City, including payment for mileage and toll fees. Firm also agrees not to bill more than three (3) hours "windshield time" for any round trip between Lawton and Oklahoma City. Firm agrees that if more than one case on a given day involves travel between Lawton and Oklahoma City, that only one case will be billed for the travel time. Reimbursement for expenses is compensable at the rates shown on the fee schedule in Exhibit 1. All long distance telephone calls are to be reimbursed at the actual rate charged by the telephone company. Furthermore, Firm shall recover for out-of-pocket expenses including but not limited to medical reports, records, and medical examinations. Firm will submit its bill for its services to the Administrator.

ARTICLE IV. MALPRACTICE INSURANCE

- 4.01 Firm agrees to furnish to the Safety and Risk Officer certificates of malpractice insurance on forms approved by the State Insurance Commissioner.

ARTICLE V. INDEPENDENT CONTRACTOR AND INSURANCE

- 5.01 Firm is an independent contractor and is not an employee of the City.

ARTICLE VI. ERRORS AND OMISSIONS

- 6.01 No accidental errors or omissions upon the part of either party shall relieve the other party of its responsibilities under this Agreement, provided such errors or omissions are rectified as soon as possible after discovery.

ARTICLE VII. HOLD HARMLESS

- 7.01 The Firm shall defend, indemnify and save harmless the City from any and all claims and causes of action against the City, its officials and employees for damages or injury to any person or property arising out of or in connection with the negligent performance or negligent acts of the Firm or employees under the terms of this Agreement.

CITY OF LAWTON, OKLAHOMA
A Municipal Corporation

By: _____
STANLEY BOOKER, Mayor

ATTEST:

TRACI L. HUSHBECK, City Clerk

WALKER, FERGUSON & FERGUSON

By: *James C. Ferguson*
FOR THE FIRM

STATE OF OKLAHOMA)
) ss
COUNTY OF Oklahoma

Before me, the undersigned, a Notary Public within and for said County and State, on this 27 day of May, 2021, personally appeared James C. Ferguson, to me known to be the identical person who executed the within and foregoing instrument, and he acknowledged to me that he executed the same as the free and voluntary act and deed of the Law Firm of Walker, Ferguson and Ferguson.

Given under my hand and seal this 27 day of May, 2021.



April Bee
NOTARY PUBLIC

My Commission Expires:
7/29/2023

My Commission Number:
11006885

Approved as to form and legality for the City of Lawton, Oklahoma, this _____ day of _____, 2021.

JOHN M. RATLIFF, City Attorney

FEES AND EXPENSE SCHEDULE

FEE:

1. Firm will bill City at the rate of \$125.00 per hour for all legal services.
2. The only "unit" time Firm will charge is a 1.5 hour charge for the opening of a new file. This charge includes a review of all file material, preparation and filing of an Entry of Appearance, requesting medical authorizations and making initial recommendations to the company on the handling of the case.
3. Firm will charge an hourly rate of \$125.00 for all unrepresented joint petition cases that result in settlement, up to a maximum of five hours; i.e. said fee will not exceed \$625.00 for any one unrepresented joint petition settlement case.

EXPENSES:

The following expenses are billed directly to the City through its Administrator:

1. Actual telephone expenses for long distance calls.
2. Photocopy expenses at \$.15 per page.
3. \$2.00 per page for facsimile expenses (NOTE: the facsimile is used on a limited basis or as requested by the client. Firm will not use the facsimile in substitution of regular mail). This charge is for sending facsimiles only. Firm will not charge for receiving facsimiles.
4. In town mileage: No Charge.
5. Postage: No charge with the exception of Certified Mail or Express Mail.
6. Filing fees and court costs are billed directly to the City through its Administrator.
7. Travel fees will be charged for legal services for travel from Oklahoma City to Lawton and will begin at the onset of travel. This Firm understands the City's policy of reimbursing only \$45.00 per hour with a maximum of three (3) hours for a round trip to and from Lawton. Firm understands that mileage will not be paid as that is included in the \$45.00 per hour travel rate. Firm will not bill for any mileage for travel to and from Court or for deposition trips within the corporate limits of Oklahoma City.