

## **AGREEMENT FOR PROVISION OF LEGAL SERVICES**

This AGREEMENT FOR PROVISION OF LEGAL SERVICES (“Agreement”) is entered into as of January 1, 2020 by and between LEWIS BRIBOIS, a professional corporation, (“Attorney”) and CITY OF FULLERTON, a public agency (“Client”).

### **1. Scope of Agreement**

Client retains Attorney to provide certain legal services with respect to the defense of tort or federal civil rights litigation and related issues as requested by Client. Client designates Dana A. Fox, a partner of Attorney, as Client’s Counsel to provide legal services under this Agreement as lead counsel, and he shall have the discretion to utilize the services of other partners, associates, or staff of Attorney upon Client approval in connection with services to be undertaken pursuant to this Agreement. In no event, however, shall Attorney subcontract with any other firm, entity, or person to perform any of Attorney’s services required hereunder without Client’s express written consent, nor shall Attorney assign or transfer any interest in this Agreement to any such firm, entity, or person without Client’s prior written consent.

Attorney recognizes that the City of Fullerton has a contract with its City Attorney and other attorneys, who for the convenience of the Client, provide counsel and services to Client as requested.

Attorney shall perform all services required hereunder as an independent contractor of Client, and shall remain at all times as to Client a wholly-independent contractor with only such obligations as are consistent with that role. Attorney acknowledges and agrees that this agreement does not represent an exclusive agreement with Client to provide legal services and that Client does currently and shall continue to utilize the services of other firms to provide similar services. Those matters for which Attorney is retained by Client to provide legal representation shall be subject to individual mutual agreement by Attorney and Client.

### **2. Duties of Attorney and Client**

Attorney shall provide those legal services required to represent Client in the matters described in Paragraph 1 of this Agreement, including but not limited to preparation of answers to complaints, motions, demurrers, and other court documents, preparation of draft responses to discovery requests, review of Client documents, legal research, attendance at court conferences and hearings, depositions, Client conferences or City Council meetings as needed, and meetings with third parties when requested by Client, as well as other activities necessary to the litigation process. Attorney shall take reasonable steps to keep Client informed of significant developments and to respond to Client’s inquiries. Attorney agrees to abide by the Independent Cities Risk Management Authority Litigation Management Guidelines attached hereto as Attachment 1 and with regard to matters requiring reporting to Client’s insurers, with all policies and procedures required by such insurers or joint powers authorities through which Client obtains insurance.

Client shall cooperate with Attorney, keep Attorney informed of all developments, documents, or facts that may affect the provision of Attorney's services described in Paragraph 1 of this Agreement, perform all obligations Client has agreed to perform pursuant to this Agreement, and pay in a timely manner all of Attorney's statements for services performed and costs incurred.

### **3. Terms and Conditions**

- A. Client will compensate Attorney for the performance of negotiation or legal services at the following rates: Lead Attorney Dana Fox \$275 per hour; Other Partners \$250 per hour; Associates \$225 per hour; Paralegals \$125 per hour. Attorney will charge for services performed in increments of one-tenth of an hour.
- B. Attorney shall not be obligated to advance costs on behalf of Client; however, for the purposes of convenience and in order to expedite matters, Attorney reserves the right to advance costs on behalf of Client with Client's prior approval in the event a particular cost item exceeds \$200.00 in amount, and without the prior approval of Client in the event a particular cost item totals \$200.00 or less. Typical cost items include, by way of example and not limitation, document preparation and word processing, fax/telecopy charges (at \$1.00 per page), copying charges (at \$0.20 per page), appearance fees, messenger fees, bonds, witness fees, deposition and court reporter fees, transcript costs, expert witness fees, investigative fees, etc.
- C. Attorney shall not bill Client for travel, meal or lodging expenses for travel to or within Orange County or Los Angeles County. Other travel expenses shall be excluded unless pre-approved by Client.
- D. A detailed description of the attorney work performed and the costs advanced by Attorney will be prepared on a monthly basis as of the last day of the month and will be mailed to Client on or about the first of the following month. Payment of the full amount due, as reflected on the monthly statements, will be due to Attorney from Client by the last day of each month, unless other arrangements are made.
- E. Client agrees to review Attorney's monthly statements promptly upon receipt and to notify Attorney, in writing, with respect to any disagreement with the monthly statement. Failure to communicate written disagreement with Attorney's monthly statement within sixty (60) days of Client's receipt thereof shall be deemed to signify Client's agreement that the monthly billing statement accurately reflects: (a) the legal services performed; and (b) the proper charge for those legal services.
- F. Client agrees to fully cooperate with Attorney in connection with the Attorney's representation of client, including but not limited to attending mandatory court hearings and other appearances and providing necessary information and documentation to enable Attorney to adequately represent Client.
- G. Client has the right, at any time, and either with or without good cause, to discharge Attorney as Client's attorneys. Attorney and Client shall each execute any documents

reasonably necessary to complete Attorney's discharge or withdrawal. Attorney shall, upon demand therefor by Client, deliver Client's file to Client at or after the termination or conclusion of Attorney's services; provided, however, that in such event Client shall pay the normal charges incurred by Attorney to obtain one complete copy of the file. In the event of such a discharge of Attorney by Client, however, any and all unpaid attorneys' fees and costs owing to Attorney from Client shall be immediately due and payable.

H. Attorney reserves the right to discontinue the performance of legal services on behalf of Client upon the occurrence of any one or more of the following events:

- i. Upon order of Court requiring Attorney to discontinue the performance of said legal services;
  - ii. Upon a determination by Attorney in the exercise of its reasonable and sole discretion, that state or federal legal ethical principles require it to discontinue legal services for Client;
  - iii. Upon the failure of Client to perform any of client's obligations hereunder as respects the payment of Attorney's fees and costs advanced; or
  - iv. Upon the failure of Client to perform any of client's obligations hereunder as respects cooperation with Attorney in connection with Attorney's representation of client.
- I. In the event that Attorney ceases to perform legal services for Client, as herein above provided, Client agrees that client will promptly pay to Attorney any and all undisputed unpaid fees or costs advanced, and retrieve all of client's files, signing a receipt therefore. Further, Client agrees that, with respect to any litigation where Attorney has made an appearance in Court on his behalf, Client will promptly execute an appropriate Substitution of Attorney form.

#### **4. Business License**

A business license is required of every person or firm located outside the City who conducts business on more than an occasional or incidental basis (three days or less in any year) in the City (FMC Sec. 4.06.030). Attorney shall obtain a City of Fullerton business license within three months of the inception of this agreement and shall maintain a current license throughout the term of the agreement.

#### **5. Disclaimer of Guarantee**

Attorney has made no representations, promises, warranties or guarantees to Client, express or implied, regarding the outcome of any Client's matter, and nothing in this Agreement shall be construed as such a representation, promise, warranty, or guarantee.

#### **6. Insurance and Indemnification**

Attorney shall procure and maintain throughout the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Attorney, his agents, representatives, or employees. Attorney shall provide current evidence of the required insurance in a form acceptable to Client and shall provide replacement evidence for any required insurance which expires prior to the expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way the Indemnification and Hold Harmless clause contained herein or the extent to which Attorney may be held responsible for payments of damages to persons or property.

A. Minimum Scope and Limits of Insurance

(1) Professional Liability Insurance. Attorney shall maintain professional liability insurance appropriate to Attorney's profession with a limit of not less than one million dollars (\$1,000,000).

(2) Commercial General Liability Insurance. Attorney shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 001 ED. 11/88, with a limit of not less than one million dollars (\$1,000,000) each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

(3) Workers' Compensation and Employers' Liability Insurance. Attorney shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than one million dollars (\$1,000,000) each accident.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by Client.

C. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

(1) Commercial General Liability and Professional Liability

This insurance shall be primary insurance as respects Client, its officers, employees, and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by Client, its officers, employees, and volunteers shall be excess of this insurance and shall not contribute with it.

(2) Professional Liability

If the Professional Liability policy is written on a “claims made” form, Attorney shall maintain similar coverage for one year following expiration or termination of Agreement and shall thereafter submit annual evidence of coverage. Additionally, Attorney shall provide certified copies of the claims reporting requirements contained within the policies.

(3) Workers’ Compensation and Employers’ Liability Insurance

Insurer shall waive their right of subrogation against Client, its officers, employees, and volunteers for work done on behalf of Client.

(4) All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to Client.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to Client with current Best’s ratings of no less than B+, Class X. Workers’ compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of Client, insurance provided by nonadmitted or surplus carriers with a minimum Best’s rating of no less than A-, Class X, may be accepted if Attorney evidences the requisite need to the sole satisfaction of Client.

E. Verification of Coverage

Attorney shall furnish Client with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Attorney shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Client before work commences. Client reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. Indemnification

Attorney shall defend, indemnify, and hold harmless Client, its elected officials, officers and employees from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys’ fees, for injury to person(s) for damages to property (including property owned by Client), arising out of the intentional misconduct or negligent errors and omissions committed by Attorney, its officers, employees, and agents, in its performance under this Agreement, except to the extent of such loss as may be caused by Client’s own negligence or that of its officers or employees.

7. **Integration**

This Agreement and the Litigation Management Guidelines referenced herein and included as Attachment 1 represent the entire understanding of Attorney and Client as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement. This agreement may not be modified, altered, or amended except in writing by Attorney and Client.

**LEWIS BRISBOIS**

**CITY OF FULLERTON**

By: \_\_\_\_\_  
**Dana A. Fox**  
**Partner**

By: \_\_\_\_\_  
**Kenneth Domer**  
**City Manager**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to form:**

**ATTEST:**

  
\_\_\_\_\_  
**Richard D. Jones, City Attorney**

\_\_\_\_\_  
**Lucinda Williams, City Clerk**



INDEPENDENT CITIES  
RISK MANAGEMENT  
AUTHORITY

[www.icrma.org](http://www.icrma.org)

# Litigation Management Policies and Procedures

## Liability and Workers' Compensation

July 1, 2018

## Change Record

Date	Description
7/2003 (LP)	<ul style="list-style-type: none"> <li>• Revisions to Liability Litigation Management Policies and Procedures</li> </ul>
8/2007 (WC)	<ul style="list-style-type: none"> <li>• Creation of Workers' Compensation Management Policies and Procedures</li> </ul>
11/2013 (LP)	<ul style="list-style-type: none"> <li>• Added provision that hourly rates for Associates should be no greater than 80% that of existing approved rates for Partner rate charged.</li> </ul>
4/2015 (LP)	<ul style="list-style-type: none"> <li>• Require pre-trial reports 120 days before trial</li> <li>• Require status reports every 60 days</li> <li>• Claims reasonably expected to reach 50% of the member retained limit must have defense counsel assigned within 60 days of the receipt of the claim</li> <li>• Reduced the number of attorneys and paralegals that may work on a claim without pre-approval</li> <li>• Added hourly rates for Of Counsel and paralegals</li> <li>• Clarified the \$300 appellate rate applies to partners only if an appellate law specialist is utilized for the appeal</li> <li>• Increased defense panel insurance requirements from \$1 million to \$2 million</li> <li>• Added language regarding biannual litigation management meetings and annual attorney audit</li> <li>• Added language clarifying that attorneys, not firms, are added to/removed from the Approved Panel Counsel</li> <li>• Require use of Approved Panel Counsel for all litigated claims except at the discretion of the Governing Board</li> <li>• Added language that the member or adjuster shall discuss the attorney assignment with the Liability Program Manager before the engagement letter is sent</li> <li>• Added language that an arbitrator must be approved by the ICRMA Liability Program Manager</li> </ul>
11/2015 (WC)	<ul style="list-style-type: none"> <li>• Updated language: Typographical and Grammar, Clarifying, Practice, and Modernization.</li> </ul>
12/2016	<ul style="list-style-type: none"> <li>• Added language to clarify the definition of conflicts of representation for ICRMA defense counsel, effective immediately.</li> <li>• Revised the travel billing provision. Billing for travel may be no greater than 50% of the normal hourly rate (effective March 1, 2017).</li> </ul>
7/2018	<ul style="list-style-type: none"> <li>• Combined Liability and Workers' Compensation LMPP documents</li> <li>• Increased insurance requirements for WC attorneys from \$1M to \$2M to be consistent with liability requirements</li> </ul>



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## **Litigation Management Policies and Procedures**

The Independent Cities Risk Management Authority (ICRMA) has adopted Liability and Workers' Compensation Litigation Management Policies and Procedures which represent a reasonable and effective path for the management of litigated matters. These guidelines ensure consistency in claim litigation management and define the expectations of claims defense counsel to achieve the best result in an efficient and cost-conscience manner consistent with ethical obligations. It is the intent of the ICRMA to allow Members to select their own defense counsel, while at the same time recognizing that it is in the best interests of all Members to ensure the professional, competent, and cost-effective handling of litigation. Pursuant to ICRMA's Memorandum of Coverage, Members and retained counsel shall comply with these Litigation Management Policies and Procedures ("Procedures") for all claims required to be reported to ICRMA.

If any provision of this document conflicts with the ICRMA's Memoranda of Coverage, the then current MOC governs whenever approved. Likewise, detail contained in the MOC should be used to clarify implementation of these policies and procedures.

### **1. DEFENSE COUNSEL**

#### **A. Approved Panel Counsel**

Attorneys must meet and agree to the following provisions in order to be approved for, and maintain their membership on, the approved panel:

1. **Nomination.** The attorney must be nominated, in writing, by one of the current ICRMA Members, Third Party Administrator (TPA) or by ICRMA. The Governing Board shall have the responsibility of approving the panel of defense attorneys and the authority to add or delete individual counsel from time to time pursuant to recommendations from the Member or Executive Director.
2. **Application.** Upon application to ICRMA, the attorney shall provide a resume setting forth his/her experience as applicable to the handling of ICRMA claims and his/her areas of expertise. As part of the process, the attorney shall affirmatively agree to all provisions of this Litigation Management Policies & Procedures in order for his/her application to be considered by the ICRMA Board of Directors.
3. **Experience.** The attorney on an ICRMA claim must have at least five years of civil litigation practice, which includes substantial and significant defense experience in the area of public sector litigation in California, unless otherwise approved by ICRMA.
4. **Insurance.** The attorney must carry liability insurance appropriate to the legal profession, and in an amount not less than \$2,000,000 per claim.

#### **B. Selection**

1. Defense counsel shall be selected by the Member, its TPA or its designated claims adjuster. The selection shall be based on the

nature and complexity of the case, the experience and ability of the attorney, as well as other relevant factors.

2. For Liability Exposures, ICRMA's Liability Program Manager serves as a valuable resource to the members and protects the pool's assets, thus the member or adjuster shall discuss the selected attorney with the Liability Program Manager before the engagement letter is sent. Claims reasonably expected to reach 50% of the member retained limit must have defense counsel assigned within 60 days of the receipt of the claim.
3. Members must retain defense counsel on ICRMA's Approved Panel Counsel to defend a claim. However, at the request of a Member, in extraordinary circumstances, such as a special expertise of proposed counsel not available from any Approved Panel Counsel, the Governing Board in its discretion may approve selection of counsel other than Approved Panel Counsel, on such conditions as may be set forth by the Governing Board.
4. Regardless of the selection process, the Member shall bear the financial responsibility of the defense expenses, including fees, until its retained limit is exhausted. The attorney must agree that the hourly rate charged by the firm shall not exceed the current approved rates for partners and associates.

#### **C. Attorney Client Relationship**

Defense counsel has an attorney-client relationship with any Member and/or individual covered party(ies) who are being defended and also with ICRMA as to the defense of the claim.

#### **D. Compliance with the LMPP**

Defense counsel agrees to comply with the LMPP as it exists today or as amended.

#### **E. Removal from the Panel**

Any defense counsel may be removed from the Approved Panel Counsel list for failure to adhere to or satisfy these policies and procedures.

The nominating Member or liability program manager may also seek removal of defense counsel from the Approved Panel Counsel list.

ICRMA's administrative team may also remove defense counsel from the Approved Panel Counsel list for clerical reasons (e.g., counsel deceased, has left the jurisdiction, has been disbarred).

Any defense counsel removed from the Approved Panel Counsel list shall not be permitted to apply for reinstatement until three years from the conclusion of the legal action that gave rise to the conflict.

## **2. POLICIES REGARDING LEGAL SERVICES**

All counsel assigned to ICRMA claims agree to the following:

### **A. Engagement Letter**

All legal services performed, shall be initiated by an engagement letter sent by the Member's TPA on its behalf and copied to ICRMA in the form set forth in the exhibits. No work shall be performed and billed unless such work has been undertaken pursuant to the engagement letter.

Liability for any failure of the engagement letter to properly reflect these policies and procedures shall accrue to the Member. If any provision of the engagement letter conflicts with ICRMA's Memoranda of Coverage, the then current MOC governs whenever approved.

### **B. Evaluation of Attorneys and Firms**

The performance of each pre-approved attorney will be evaluated annually by the Governing Board. The Governing Board reserves the right to remove any attorney from the panel.

### **C. Monitoring Counsel**

ICRMA has the right to retain monitoring counsel, whose fees will be paid by ICRMA. The fees and costs for this shall not be applied against the Member's self-insured retention as long as counsel acts only as monitoring counsel. Defense counsel shall fully cooperate with monitoring counsel.

### **D. In-House Counsel**

A Member has the right to utilize its own in-house City Attorney as counsel to represent the Member in any litigation. However, the in-house counsel shall satisfy and comply with these Procedures. If the attorney is a city employee, his or her salary shall not be considered a defense cost nor will it count toward satisfying the member retained limit.

The ICRMA Member is likewise bound to satisfy and comply with all policies and procedures in this document.

### **E. Conflicts**

The defense counsel selected and the law firm of which he/she is a member must certify that they have no ethical or legal conflicts that would disqualify them from representing any of the Members. In addition, (i) defense counsel shall certify that they will refrain from initiating or maintaining any legal action against any Member, either by way of complaint or cross complaint, during the time that they are included on the panel and accepting defense work from a Member and/or ICRMA; and (ii) they shall agree to disclose any special facts that would or could potentially disqualify them from representation of a Member at the time of the case assignment, or immediately upon discovery. The prohibition from initiating or maintaining any legal action against any Member is deemed to apply to tort

claims or lawsuits for damages by a third party against a Member. The prohibition shall not be deemed to apply to a complaint or cross-complaint against a Member which arises out of a third party claim or lawsuit against a Member, where the complaint or cross-complaint: (1) seeks or alleges indemnity, contribution, reimbursement, comparative fault and/or declaratory relief; (2) does not otherwise affirmatively seek damages; and (3) is approved in writing by the Liability Program Manager as being appropriate as part of the overall strategy of defending a third party suit against the Member. The approval of the Litigation Manager is subject to review by the Claims Committee at the request of any Member against which such a complaint or cross-complaint is brought or proposed. The request for review shall be made in writing to the Executive Director within ten business days of receipt of the written approval by the Liability Program Manager.

#### **F. Biannual Litigation Management Meetings**

Defense counsel shall participate in litigation management meetings, at least biannually, between the Member, TPA, and ICRMA Liability Program Manager.

### **3. CASE ANALYSIS AND STRATEGY**

#### **A. Initial Case Analysis.**

Within sixty (60) days following assignment of a case, defense counsel shall complete and return a case analysis to the Member, its TPA, and ICRMA's Program Manager in the form attached in the exhibits. The case analysis should include a comprehensive evaluation of the case and litigation plan, including the following:

1. Evaluation of the allegations and legal liability.
2. Defense plan and strategy, including the anticipated course of action to be taken and the prospect for success (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, and trial).
3. The facts or elements which must be proved or disproved and the discovery necessary to establish these.
4. The necessity for and timing of the discovery, filing of motions, negotiations, or other objectives.
5. A description of how the work will be distributed among those who will be working on the case.
6. The tactics to be used in defending the case and the advantages to be gained by use of these tactics.
7. Evaluation of settlement status and availability of ADR.
8. Investigation, which includes identification of any additional information or documentation that is needed to disprove the plaintiff's claims or to establish defenses in the action. Whenever possible, this investigation and information-gathering shall be done by the Member or the Member's claims adjustor.

## **B. Budget**

1. In addition to and submitted at the same time as the Initial Case Analysis, Counsel shall provide an accurate estimate of defense costs for all litigated cases as set forth in the exhibits. Defense Counsel is expected to stay within the estimated case budget throughout the litigation and to report on fees expended in relation to the budget as requested by the Member, its TPA and/or ICRMA's Program Manager.
2. All case budgets must be sent to the Member with a copy to the TPA and ICRMA's Program Manager. Budgets must be approved by ICRMA's Program Manager.
3. Budgets will be required in workers' compensation litigation at the discretion of the Member or ICRMA's Program Manager.
4. Approved Revisions to Case Budget. Changes can occur in any case that will affect the defense litigation plan and consequently alter estimated defense costs. As soon as it is reasonably foreseeable that a revision to the budget is required, an updated litigation budget shall be completed with defense counsel's recommendation for a budget increase. Approval of the Member, its TPA and ICRMA's Program Manager shall be required for all revised budgets.

## **C. Reporting**

1. Defense counsel shall provide the following written status reports: After initial case analysis, defense counsel shall provide mandatory written status reports at sixty (60) day intervals setting forth all substantive developments. The defense attorney handling the claim should prepare the status reports. Defense counsel shall report only on new developments since the last report. It is not necessary to repeat the case facts or information previously reported. Status Reports should be as straight-forward and as objective as possible to allow the Member, its TPA adjustor and ICRMA's Program Manager to meaningfully analyze the case and to determine the course of action to be taken. Status reports should include the following:
  - The ongoing strategy for defense or resolution of the case, including factual and legal analysis of issues related to liability and damages;
  - A description of planned discovery with a time table for completion;
  - A brief synopsis of the discovery completed since the last report and significant information obtain through discovery;
  - Court dates, including, but not necessarily limited to, mandatory settlement conferences, trial setting conferences, arbitration and trial dates, and other hearings, and

- New settlement demands and the status of any efforts with regard to ADR.

Case developments that have a significant impact on litigation should be reported immediately by defense counsel.

2. Pre-trial report: No later than 120 days prior to trial, the defense trial attorney will provide a trial report (or binding arbitration report if applicable) which shall include:
  - An assessment of liability for all defendants;
  - An assessment of plaintiff's damages;
  - An assessment of the legal defenses and probability of prevailing;
  - The verdict value assuming liability including a survey of jury verdicts and comparable cases;
  - An appraisal of settlement value, considering verdict value and chances of prevailing and a status of efforts regarding ADR;
  - Evaluation of expert witnesses and their expected testimony for both plaintiff and defense, and
  - The defense fees and costs to date, along with a trial budget as set forth in the exhibits.

It is expected that cases will proceed to trial as expeditiously as possible. Defense counsel shall obtain the approval of the Member, its TPA and the ICRMA Liability Program Manager prior to continuing the trial date set by the court.

#### **4. COMMUNICATION**

##### **A. Correspondence and pleadings**

Copies of all correspondence and pleadings shall be promptly provided by defense counsel to the Member, its TPA claims adjustor, and ICRMA's Program Manager. Defense counsel will promptly respond to all written correspondence or phone calls and will keep the Member, its claims adjustor and ICRMA's Liability Program Manager fully advised of the progress in each case.

##### **B. Depositions, Trials, Arbitrations and Hearings**

Immediately upon receipt, defense counsel shall send notice of all depositions, trials, arbitrations, mediations and hearings to the Member, its TPA claim adjuster and ICRMA's Program Manager. Defense counsel will coordinate scheduling with the member and ICRMA Liability Program Manager prior to scheduling. The selected arbitrator must be approved by ICRMA's Program Manager.

#### **5. SETTLEMENT AUTHORITY**

Defense counsel shall not settle any claim or lawsuit or make a settlement offer in any amount without prior authorization from ICRMA when the settlement

requires contribution from ICRMA.

## **6. POLICIES REGARDING FEES, EXPENSES AND REIMBURSEMENTS**

### **A. Attorney Hourly Rate**

The hourly rate charged shall not exceed the approved rates as listed in the exhibits, unless the Member agrees to pay any difference between the maximum allowed rate and the actual rate charged. ICRMA must be notified in writing if the Member agrees to exceed the maximum allowed rate. Regardless of the amount paid to defense counsel, whether it is ICRMA's maximum hourly rate, or such additional amount as the Member may agree to pay, for purposes of computing the Member's retained limit, ICRMA's approved hourly rate shall be utilized. If the matter exceeds the Member's retained limit, ICRMA shall only pay the amount invoiced up to a maximum of the fees listed in the exhibits.

### **B. Counsel Billable Activities**

No more than two attorneys, and no more than one partner or one Of Counsel, shall be assigned to a matter without prior approval by the City's TPA and ICRMA's Liability Program Manager. No more than one attorney's time should be billed for depositions, hearings, motions, or internal conferences or meetings unless advance approval has been obtained from ICRMA's Program Manager.

### **C. Reimbursable Expenses/Disbursements**

Reasonable and customary expenses incurred in the case are reimbursable. Counsel shall include all individual items of expense and disbursement in the regular billings. Reasonable and customary expenses include travel costs, filing fees, court reporter fees, witness fees, and photocopying costs. All expenses and/or disbursements in excess of \$500 shall be approved in advance.

### **D. Travel Costs**

Reasonable and necessary travel costs are reimbursable expenses and must be approved in advance upon submission of the estimated travel expenses. Travel hours shall be billed at 50% of the normal hourly rate.

### **E. Non-Reimbursable Expenses**

Expenses such as staff overtime, word processing or other secretarial or administrative functions, overhead expenses, special publications, or attendance at continuing legal education seminars shall not be reimbursable.

### **F. Defense Experts**

Prior to engaging the services of any defense expert, defense counsel shall obtain the approval of the Member TPA and ICRMA's Program Manager.

### **G. Other Expenditures**

Defense counsel shall obtain the approval of the Member TPA and ICRMA's Liability Program Manager for the following expenses:

1. Independent medical examinations



2. Outside investigators
3. Retention of associate counsel, local counsel, or consultant
4. Filing of cross-complaints or counter-claims
5. Legal research projects expected to exceed four hours
6. Research for the preparation of and filing of all motions or other projects expected to exceed \$500
7. Voluntary settlement conferences or ADR methods
8. Expenses expected to exceed \$500, including copying expenses
9. Fees for trial support services
10. Video-taping of depositions

## **7. BILLING PROCEDURES**

### **A. Billing Statement**

A complete statement for services rendered shall be submitted every thirty (30) days.

### **B. Legal Fees**

Legal services should be described in detail. Block billing will not be accepted. Any billing statement not in conformity with these rules will be returned to counsel. All charges for expenses shall be based on actual costs. No blanket charge for office expenses, administrative charges or the like shall be accepted for payment. Copying and facsimile charges are limited to no more than .10 cents per page and subject to pre-approval if expected to exceed \$500. Use of couriers for same day delivery of documents or court filings is discouraged unless absolutely necessary. A descriptive statement should set forth the following:

1. Date the services were rendered;
2. A description of services including a description of each task performed;
3. Identity of the person(s) rendering the services described;
4. Rate at which the person(s) rendering the services is billed;
5. Amount of time expended by each person for the services described;
6. Calculated fee for that particular billing entry; and
7. The total amount paid to date.

This provision applies regardless of the attorney relationship with the ICRMA member including but not limited to employment at the Member, in-house counsel, or other retainer agreements.

### **C. Billing Reimbursable Expenses and Disbursements**

Reimbursable expenses incurred and disbursements made, with supporting documentation for expenses in excess of \$25, are to be itemized and adequately described. All vendor statements shall be attached to the firm's legal bill.

### **D. Final Disposition of Case**

Upon final disposition of a case (e.g., settlement, dismissal, etc.), counsel shall

immediately contact all experts and vendors. Counsel must seek the return of any confidential documents provided in the case. Counsel shall request a final billing from all vendors and experts, and submit his or her own final bill within 60 days. All final billing statements must be clearly marked “Final Billing Statement”. **Once ICRMA’s file is closed, ICRMA will not pay for any services rendered after file closure.**

## **8. TRIAL REPORT**

At the conclusion of all trials, a brief summary trial report should be directed to the Member and ICRMA’s Program Manager outlining the trial results and lessons learned that may assist in future ICRMA litigation or risk management.

## **9. FINAL REPORTS**

### **A. Closing Report**

At the conclusion of the case, a short summary report shall be prepared and directed to the Member, TPA, and ICRMA’s Program Manager. Court orders and a fully executed settlement agreement shall be submitted to the TPA and ICRMA’s Program Manager when received.

### **B. Evaluation of Counsel**

ICRMA’s Program Manager shall periodically review these evaluations, as well as the performance and the initial case analysis and, if necessary, make periodic recommendations to ICRMA concerning the continued status of a particular defense counsel on the approved panel counsel list.

### **C. Audit of Defense Firms**

ICRMA may, upon a schedule determined by the Claims Committee, review all defense panel counsel. The purpose of the audit will be to ensure attorneys are consistently following the Litigation Management Policies and Procedures, review subjective data such as closing ratios, legal expense ratios, and total legal expenses, and to report attorney performance to the members.

## **10. DISPUTES BETWEEN PARTIES**

### **A. Arbitration**

Any dispute between defense counsel and the Member or between defense counsel and ICRMA pertaining to these Procedures shall not be subject to any court action, but shall instead be submitted to binding arbitration.

### **B. Selection of Arbitrator**

Arbitration shall be conducted pursuant to the California Code of Civil Procedure. Arbitration shall be conducted by a three-person panel. Each party shall select one arbitrator and the two arbitrators shall then select a third arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with the ICRMA or any party to the dispute.

**C. Arbitration Time Limits**

The selection of arbitrators shall take place within twenty (20) calendar days from the receipt of the request for arbitration. Unless mutually agreed otherwise, the arbitration hearing shall commence within forty-five (45) calendar days from the date of the selection of the arbitrators.

**D. Cost of Arbitration**

Each party shall pay the cost of its selected arbitrator and one-half the cost of the third selected arbitrator. In addition, each party shall be responsible for its own costs, expenses and legal fees of arbitration.

**E. Arbitration Procedure**

Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the “parties” and the arbitrator(s) relating to the subject of the arbitration other than at oral hearings. The procedures set forth in California Code of Civil Procedure Section 1293.05 relating to depositions and discovery shall apply to any arbitration pursuant to this Section. Except as provided otherwise above, arbitration shall be conducted as provided in Title 9 of the Code of Civil Procedure (commencing with Section 1280). The decision of the arbitrators shall be final and binding, and shall not be subject to appeal.

AGREEMENT TO COMPLY WITH PROCEDURES

I AGREE TO ABIDE BY THE ICRMA'S LITIGATION MANAGEMENT POLICIES AND PROCEDURES. I UNDERSTAND THE CITY AND ICRMA HAVE THE RIGHT TO ENFORCE THE TERMS OF THIS AGREEMENT AS TO THE UNDERSIGNED ATTORNEY.

Dated:

\_\_\_\_\_  
[Attorney's Law Firm]

By: \_\_\_\_\_  
[Signature of Individual Attorney]

\_\_\_\_\_  
[Print Name]

### Exhibit A - ICRMA Rate Schedule

Liability: The hourly not-to-exceed rate for ICRMA liability defense panel attorneys is established as follows:

Type of case	Position	Rate
General Civil Litigation (including fire, police, premise liability, and dangerous condition of public property)	Partner	\$225
	Of Counsel	\$215
Civil Rights & Employment Practices Litigation	Partner	\$250
	Of Counsel	\$240
Appellate Work	Partner	\$300*

The hourly rate for Associates shall be no greater than 80% that of existing approved rates, or the actual Partner rate charged, whichever is less. Associates working appeals may only charge 80% of the hourly rate noted above, not 80% of the rate for appellate work.

The hourly rate for Paralegals shall be \$100.

The rates shown are subject to change only with ICRMA Governing Board's approval.

\*The \$300 rate applies to partners only if an appellate law specialist, as certified by the State Bar, is being utilized for the appeal. If an appellate law specialist is not utilized, the rate listed above for the special type of claim instead applies.

**Workers' Compensation**: The hourly not-to-exceed rate for ICRMA workers' compensation defense panel attorneys is \$150 per hour. Paralegal or non-attorney professional work shall not exceed \$100 per hour. Charges for legal assistant work shall not exceed \$80 per hour. Ranges for hourly rates are not acceptable.

## Exhibit B – Engagement Letter

[INSERT DEFENSE COUNSEL NAME]

[Date]

Re: Name of Claim \_\_\_\_\_  
Date of Loss: \_\_\_\_\_  
Date Claim Made: \_\_\_\_\_  
Our File No.: \_\_\_\_\_

Dear Mr./Ms. \_\_\_\_\_:

This correspondence confirms that you have agreed to undertake the defense of the City in the above-captioned matter, and that you will be the attorney responsible for this matter. The City is a member of the Independent Cities Risk Management Authority (“ICRMA”) which provides pooled self-insurance for the defense and indemnity of this claim pursuant to the Memorandum of Coverage between the City and ICRMA. The ICRMA program year for this claim is [enter year] and the city has a self-insured retention of \$[enter SIR amount]. The Memorandum of Coverage provides as follows:

“The MEMBER acknowledges and agrees that its defense counsel has an attorney-client relationship with any COVERED PARTY who is being defended and also with ICRMA as to the defense of the CLAIM. MEMBER acknowledges and agrees that its defense counsel shall comply with ICRMA’s Litigation Management Policies and Procedures (LMPP).”

This provision applies to your defense of this Claim. As a condition to this engagement, you agree to comply with all of the requirements of the LMPP which is available at <http://www.icrma.org/Programs/Liability.aspx>. As provided in the LMPP, your Initial Case Analysis and Budget are due on [enter date]. Comprehensive status reports are due every 60 days thereafter. As a further condition, you certify that the firm has appropriate insurance as outlined in the LMPP. Please review the LMPP regarding other reporting requirements and contact me with any questions.

Your primary contact at the City shall be [enter name]. As provided in the LMPP, copies of all correspondence, pleadings, and reports should be sent to me, the City, and ICRMA’s Program Manager. All statements for legal fees and costs should be sent to me.

Thank you for accepting this new case subject to the terms set forth in this Agreement. We look forward to working with you on this matter. Kindly countersign this engagement letter and return a signed copy to me [alternative: kindly respond to this email to acknowledge your agreement].

Very truly yours,

\_\_\_\_\_  
TPA Adjuster

Copy: City  
ICRMA Program Manager

I AGREE TO THE TERMS OF THIS ENGAGEMENT AND AGREE TO ABIDE BY ICRMA’S LITIGATION MANAGEMENT POLICIES AND PROCEDURES. I UNDERSTAND THE CITY AND ICRMA HAVE THE RIGHT TO ENFORCE THE TERMS OF THIS AGREEMENT AS TO THE UNDERSIGNED ATTORNEY.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name of Attorney’s Law Firm]

By: \_\_\_\_\_

\_\_\_\_\_  
[Individual Attorney]

## **Exhibit C – Case Analysis**

Caption of Lawsuit: \_\_\_\_\_

Court: \_\_\_\_\_

Case Number: \_\_\_\_\_

Date Suit Filed: \_\_\_\_\_

Date of Service: \_\_\_\_\_

Fast Track? \_\_\_\_\_ Yes \_\_\_\_\_ No

Date of Loss: \_\_\_\_\_

### **I. PARTIES**

A. Plaintiffs:

B. City and City-Related Defendants:

C. Third-Party and Other Defendants:

### **II. TRIAL DATE AND OTHER IMPORTANT DATES**

### **III. JURISDICTION AND EVALUATION**

### **IV. TRIAL JUDGE AND EVALUATION**

### **V. EVALUATION OF COUNSEL**

A. Plaintiff's Attorney's Name and Evaluation:

B. City's Defense Attorney's Name:

C. Co-Defendants' Attorneys' Names and Evaluations:

### **VI. STATEMENT OF FACTS**

### **VII. INJURIES**

### **VIII. SPECIAL DAMAGES**

A. Medical Expenses:

1. Past:
  2. Future:
- B. Loss of Earnings:
1. Past:
  2. Future:
- C. Other (specify);

IX. LIABILITY ALLEGATIONS

- A. Plaintiff's Contentions:
- B. Defenses:
1. Legal Defenses:
  2. Factual Defenses:
- C. Plaintiff's Expert Witnesses and Opinions:
- D. Defense Expert Witnesses and Opinions:

X. VERDICT EXPOSURE

- A. Chances of Defense Verdict:
- [Note: a percentage number shall be provided.]
- B. Gross Verdict Range as to all Defendants:
- C. Potential Offsets and Credits:
- D. Net Verdict Range to City after Offsets, Credits and Allocation of Fault:
- E. Plaintiff's Attorney's Fees (if applicable)
- F. Punitive Damages (if applicable)



XI. SETTLEMENT HISTORY

- A. Last Demand:
- B. Last Offer:
- C. History of Settlement Negotiations:

XII. RECOMMENDATIONS OF COUNSEL

- A. Reasonable Settlement Value:
- B. Proposed Litigation Strategy:
- C. Other Recommendations:

XIII. MISCELLANEOUS

- A. Does Complaint Conform to the Tort Claim Filed?  
(If not, specify differences)
- B. Is Indemnification or Contribution Available?  
(If so, specify by whom, and in what amounts)

DEFENSE FIRM:

I have read and will comply with ICRMA's Litigation Management Policies and Procedures and I affirm that there are no known legal or ethical conflicts in our representation of the defendant(s) in this case:

Prepared by: \_\_\_\_\_  
Print Name

Signature: \_\_\_\_\_

Date Prepared: \_\_\_\_\_

## Appendix D – Litigation Budget

Case Name: \_\_\_\_\_ ICRMA Member: \_\_\_\_\_

Case Caption: \_\_\_\_\_ Venue \_\_\_\_\_

Defense Firm: \_\_\_\_\_ Partner in Charge: \_\_\_\_\_

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Instructions: 1. Estimate the hours each attorney and paralegal will bill for each activity.  
2. Total the hours for each person. 3. Multiply the hours by the hourly rate to project the per person fees. 4. Add all of the projected fees to obtain the pre-trial fees total.

### Part I: Pre-Trial Budget/Pre-Trial Fees

#### A. Case Assessment, Development and Administration:

ACTIVITY	PARTNER HOURS	ASSOCIATE HOURS	PARALEGAL HOURS
1. Fact Investigation, _____ Development & Admin.	_____	_____	_____
2. Case Analysis/Strategy _____	_____	_____	_____
3. Other Case Assessment, _____	_____	_____	_____
4. Development & Admin. _____	_____	_____	_____

#### B. Pre-Trial Pleadings & Motions:

ACTIVITY	PARTNER HOURS	ASSOCIATE HOURS	PARALEGAL HOURS
1. Demurrer _____	_____	_____	_____
2. Answer/Cross-Complaint _____	_____	_____	_____
3. Other Pleadings _____	_____	_____	_____
4. Dispositive Motions _____	_____	_____	_____
5. Other Legal Research _____	_____	_____	_____
6. Other Written Motions _____	_____	_____	_____
7. Court Mandated Conf. _____	_____	_____	_____

#### C. Discovery:

ACTIVITY	PARTNER HOURS	ASSOCIATE HOURS	PARALEGAL
1.Written Discovery	_____	_____	_____
2.Document Production	_____	_____	_____
3.Depositions	_____	_____	_____
4.Expert Discovery	_____	_____	_____
5.Discovery Motions	_____	_____	_____
6.Other Discovery	_____	_____	_____
<b>Est. Total Pre-Trial Hrs.</b>	_____	_____	_____
<b>Hourly Rate</b>	_____	_____	_____
<b>Hours x Hourly Rate =</b>	_____	_____	_____
<b>Estimated Pre-Trial Fees</b>			
<b>Total Estimated Pre-Trial Fees:</b>			<b>\$</b> _____

**Part II: Pre-Trial Budget Costs**

Name of Expert or Cost	Indicate Type (expert, expert fee, or other cost)	Total Cost

**Total Estimated Pre-Trial Costs:** \$ \_\_\_\_\_  
**Total Estimated Pre-Trial Fees & Costs:** \$ \_\_\_\_\_

**Part III: Alternative Dispute Resolution**

ADR RECOMMENDED (Y/N)	EST. FEES	EST. COSTS	TOTAL
A. Mediation ( )	_____	_____	_____
B. Non-binding Arbitration ( )	_____	_____	_____
C. Binding Arbitration ( )	_____	_____	_____
D. Other _____	_____	_____	_____

**Part IV: Trial Preparation and Trial**

Note: An updated pre-trial budget must be submitted with a pre-trial report 120 days before trial is set to begin.

**A. Trial Fees****1. Witness Preparation**

i. Fact Witnesses \_\_\_\_\_ Fee: \$ \_\_\_\_\_  
 \_\_\_\_\_ Fee: \$ \_\_\_\_\_

ii. Expert Witnesses \_\_\_\_\_ Fee: \$ \_\_\_\_\_  
 \_\_\_\_\_ Fee: \$ \_\_\_\_\_

**2. Written Motions (itemize separately)**

Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_ Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_  
 Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_ Motion: \_\_\_\_\_ Fee: \$ \_\_\_\_\_

3. Jury Verdict & Other Required Submissions \_\_\_\_\_

4. Other Trial Preparations & Support \_\_\_\_\_

5. Trial and Hearing Attendance \_\_\_\_\_

6. Post-trial Motions & Submissions \_\_\_\_\_

**Total Estimated Trial Fees: \$** \_\_\_\_\_

**B. Trial Costs**

1. Witness Fees \_\_\_\_\_

2. Trial Transcripts \_\_\_\_\_

3. Trial Exhibits \_\_\_\_\_

**Total Estimated Trial Costs: \$** \_\_\_\_\_

**Total Estimated Trial Preparation, Fees & Costs:** \_\_\_\_\_

**Part V: Appeal**

	EST. FEES	EST. COSTS	TOTAL
A. Appellate Motions and Submissions	_____	_____	_____
B. Appellate Briefs (Itemize Separately)	_____	_____	_____
C. Oral Argument			
1. Preparation	_____	_____	_____
2. Attendance at Argument	_____	_____	_____

**Total Estimated Appeal Fees & Costs: \$** \_\_\_\_\_

**TOTAL recommended litigation budget (Parts I, II, III, IV & V): \$** \_\_\_\_\_

**PROJECTED COMPARISON --- SETTLEMENT AND  
DEFENSE COSTS AT EACH STAGE OF LITIGATION**

Settlement/Jury Value Range	Stage of Litigation	Anticipated Defense Costs & Fees at each stage
\$ _____ to \$ _____	Now	\$ _____
\$ _____ to \$ _____	Through ADR (Including any discovery necessary for ADR)	\$ _____
\$ _____ to \$ _____	Through Discovery	\$ _____
\$ _____ to \$ _____	Through Pre-Trial/Settlement Conference	\$ _____
\$ _____ to \$ _____	Through Trial	\$ _____

In executing and returning this analysis, you are warranting that you have read and will comply with ICRMA's Litigation Management Policies and Procedures regarding defense litigation management and that there are no legal or ethical conflicts in your representation of defendant in this case. If more space is required to respond to any requested information, please asterisk the same and attach an additional sheet or sheets to the analysis.

Prepared by: \_\_\_\_\_