

# PENDING APPROVAL

**REQUISITION SHEET MUST BE ATTACHED**

**(Applies when agenda item requires a specific payment)**

**OKLAHOMA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM REQUEST SHEET**

For the: June 08, 2010 Agenda  
(Day of Meeting) (Date and Year of Meeting)

DEPT.: EH&S BY: Dan Matthews EXT. X 2194  
(Department Requesting this item) (Contact person for this Item) (Contact's extension)

SUBJECT: Renew Contract for Legal Services

NAME OF FUND: General

AGENDA ITEM DESCRIPTION: Discussion and possible action to renew contract retainer agreement for Legal Services for Defense of Workers' Compensation claims with Walker, Ferguson & Ferguson

(ALL NECESSARY DOCUMENTATION MUST BE ATTACHED FOR APPROVAL)

APPROVED BY D.A.  
(If Applicable)

\_\_\_\_\_  
Assistant District Attorney

APPROVED BY PURCHASING  
(If Applicable)

\_\_\_\_\_  
Purchasing Agent

APPROVED BY MIS  
(If Applicable)

\_\_\_\_\_  
MIS Director

APPROVED BY ENGINEER  
(If Applicable)

\_\_\_\_\_  
County Engineer

Number of ORIGINAL DOCUMENTS you have attached: \_\_\_\_\_. **NOTE:** The County Clerk will keep one original and will return the remaining originals to you. If you provide only one original, the Board Secretaries will return one photocopy to you. However, if you have special circumstances that require the County Clerk to (*check one*): \_\_\_\_ keep more than one original; or \_\_\_\_ return all originals to you, please describe them for the County Clerk's consideration: \_\_\_\_\_

Special Instructions: Contract attached and approval by D.A.

**REQUEST FOR DISTRICT ATTORNEY LEGAL SERVICES**

THIS FORM IS TO BE USED TO REQUEST ADVICE AND/OR REPRESENTATION FROM THE DISTRICT ATTORNEY'S OFFICE REGARDING THE COUNTY OF OKLAHOMA, COUNTY OFFICIALS AND EMPLOYEES AS REQUIRED BY SECTIONS 215.4, 215.5, 215.25 AND 215.26 OF TITLE 19 OF THE OKLAHOMA STATUTES.

IF ADVICE IS SOUGHT, THE REQUEST MUST BE SIGNED BY AN ELECTED COUNTY OFFICER. THIS FORM MUST BE FILLED OUT AND SUBMITTED TO THE CIVIL DIVISION OF THE OKLAHOMA COUNTY DISTRICT ATTORNEY'S OFFICE IN A TIMELY MANNER. ALL RESPONSES TO REQUESTS FOR ADVICE WILL BE IN WRITING.

IF THE REQUEST IS FOR LEGAL REPRESENTATION UNDER 19 O. S. SECTION 215.25, THE REQUEST MUST BE SUBMITTED IN WRITING EARLY ENOUGH TO PERMIT THE DISTRICT ATTORNEY'S OFFICE ADEQUATE TIME TO COMPLETE A THOROUGH "GOOD-FAITH-AND-COURSE-OF-EMPLOYMENT" INVESTIGATION AS CONTEMPLATED BY 19 O.S. SECTION 215.26.

**DATE OF REQUEST:** 05/03/09

**COUNTY DEPARTMENT MAKING REQUEST:** Human Resources/Health & Safety

**STATE WITH SPECIFICITY, WHAT THE REQUEST IS AND WHY THE ASSISTANCE OF THE DISTRICT ATTORNEY'S OFFICE IS NEEDED:**

Authorization of Renewal of Contract for 2010-2011 for Legal Services with Walker, Ferguson & Ferguson.

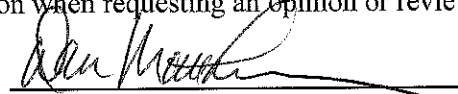
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**ATTACH ADDITIONAL DOCUMENTS AS APPROPRIATE.** (NOTE: Advice, reviews and approvals as to "form and legality" are based on the documentation and information provided to the District Attorney's Office. Please provide all relevant information when requesting an opinion or review from the District Attorney's Office).

  
\_\_\_\_\_  
**COUNTY OFFICER**

.....  
**DATE RECEIVED BY DISTRICT ATTORNEY:** 5-5-10

**REPLY BY DISTRICT ATTORNEY:** Reviewed -

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RECEIVED

MAY 05 2010

CIVIL DIVISION  
DISTRICT ATTORNEY

DAVID W. PRATER  
DISTRICT ATTORNEY

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

# PENDING APPROVAL

## AGREEMENT FOR LEGAL SERVICES FOR DEFENSE OF WORKERS' COMPENSATION CLAIMS

**THIS AGREEMENT** is made and entered by and between the Board of County Commissioners of the County of Oklahoma, hereinafter referred to as "County", and the law firm of Walker, Ferguson and Ferguson, hereinafter to as "Firm".

Whereas, the County desires to retain Firm to represent the County in defense of workers' compensation claims filed against the County; and

Whereas, the Firm has agreed to provide legal counsel to represent the County in defense of workers' compensation claims filed against the County; and County and Firm desire to enter into an 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**

- 1.1 This Agreement shall become effective July 1, 2010, and shall expire on June 30, 2011.
- 1.2 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.
- 1.3 Firm shall continue to represent the County on claims assigned to Firm prior to the expiration or termination date of this agreement if requested by the County. Compensation for the continuing legal services will be at the rates as specified in Article III of this Agreement.
- 1.4 This Agreement may be extended, by mutual consent, in writing, by both parties for not more than three one year terms at the same hourly rate and expenses as shown at Exhibit 1 and fee rates specified in Article III.
- 1.5 In the event Firm's representation of County is terminated at any time and for any reason, Firm agrees to cooperate in all ways reasonably requested by County in the transfer of pending matters to successor legal counsel.

### **ARTICLE II. LEGAL SERVICES**

- 2.1 Firm agrees to provide the following legal services.

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- A. Defending any worker's compensation claims contested by the County or for which permanent disability or disfigurement compensation is sought, suits, or other proceedings brought under the Workers' Compensation Act against the County; appearing before the Workers' Compensation Court, 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, 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 County's Worker's Compensation Administrator (Administrator) and the Oklahoma County Director of Environmental Health and Safety (Director). With the exception that the claimant will be routinely deposed for claims contested by the County, Firm shall obtain the approval of the Director 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 Oklahoma County Board of Commissioners;
  - F. Firm shall use their professional judgment and discretion on behalf of the County's best interest regarding the use of such legal services, and shall confer and cooperate with the Administrator and the Director on matters relating to pending claims';
  - G. Firm agrees to assist the Administrator and Oklahoma County in developing new ideas to further limit the County'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.
- 2.2 Firm agrees to cooperate in the following manner with Oklahoma County 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;

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- B. Assisting the Administrator in the preparation of reports to the County regarding workers' compensation claims;
- C. Assisting the Administrator and the Director in the processing of all documents required by the County 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.

## ARTICE III. FEES

- 3.1 The parties mutually agree the fees for said legal services shall be at the rate(s) shown on the attached Schedule A, and at a rate of not more than Forty-five Dollars (\$45.00) per hour for "windshield time, including payment for mileage and toll fees. Firm also agrees not to bill more than three (3) hours "windshield time" for any round trip. Firm agrees that if more than one case on a given day involves travel, that only one case will be billed for the travel time.
- 3.2 Reimbursement for expenses is compensable at the rate shown on the fee schedule in Schedule A.
- 3.3 Firm shall recover for out-of-pocket expenses including, but not limited to, medical reports, records, and medical examinations, all long distance telephone calls are to be reimbursed at the actual rate charges by the telephone company.
- 3.4 Firm will submit its bill for its services to the County on a monthly basis. Firm shall provide legal services during the contract period and shall bill for those services monthly as rendered. Each statement will contain a disclosure of time expended by each person on a daily basis, a brief description of the services rendered, a description of expenses advanced, together with true and complete photo copies of invoices from the third parties.
- 3.5 In no instance will the Firm be entitled to more than **Thirty Thousand Dollars** (\$30,000.00) for defense of workers' compensation cases; inclusive of postage, mileage, hourly rate totals, copy fees, facsimile fees, telephone costs or any other allowable fee during the contract term; provided, however, if, any time, Firm determines that Firm's work or expenses under this contract will exceed the aforementioned dollar amount, Firm agrees to immediately notify the Board of County Commissioners of the County of Oklahoma in writing to allow the Board to encumber additional public funds. **FIRM ACKNOWLEDGES THAT COUNTY CANNOT, BY LAW, PAY FIRM ANY AMOUNT IN EXCESS OF THE AMOUNT ENCUMBERED BY COUNTY. IF**

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FIRM PERFORMS WORK OR ADVANCES EXPENSES THAT EXCEED THE ENCUMBERED DOLLAR AMOUNT OF THIS CONTRACT TO BE EXCEEDED, SUCH EXCESS CANNOT AND WILL NOT BE PAID BY COUNTY, BUT WILL REMAIN THE RESPONSIBILITY AND LIABILITY OF FIRM.

## **ARTICLE IV. AUDIT AND RECORDS CLAUSE**

- 4.1 As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such times are in written form, in the form of computer data or in any other form. In accepting this contract with the County, the Firm agrees any pertinent State or Federal agency will have the right to examine and audit all records relevant to the execution of the resultant contract.
- 4.2 Firm is required to retain all records relative to this contract for the duration of the contract term and a period of three years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records is started before the end of the three-year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

## **ARTICLE V. INDEPENDENT CONTRACTOR AND INSURANCE**

- 5.1 Firm represents that all attorneys working pursuant to this contract are licensed to practice in Oklahoma.
- 5.2 All attorneys working pursuant to this contract are covered by at least One Million Dollars (\$1,000,000.00) in malpractice insurance. Firm agrees to furnish to County certificates of malpractice insurance on forms approved by the State Insurance Commissioner. The insurance required under this contract shall be maintained in full force and effect during the term of this contract.
- 5.3 Firm is an independent contractor and is not an employee of the County.

## **ARTICLE VI: DEBARMENT AND SUSPENSION**

- 6.1 The applicant/provider Firm certifies that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency; and

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- B. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- C. Are not presently indicted of or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subparagraph B of this certification; and
- D. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

Where Firm is unable to certify to any of the statements in this certification, it shall submit an explanation together with this contract to County.

## **ARTICLE VII. ERRORS AND OMISSIONS**

7.1 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 discover; provided that Firm shall be held accountable for any deliberate or willful failure to carry out instructions of the County with respect to a specific matter.

## **ARTICLE VIII. HOLD HARMLESS**

8.1 The firm shall defend, indemnify and save harmless the County from any and all claims and causes of action against the County, 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.

## **ARTICLE IX. CONFLICTS WITH COUNTY**

9.1 Firm represents and warrants that it has not and will not represent any person at any time in a claim or lawsuit naming as defendant the Board of County Commissioners of the County of Oklahoma; any Oklahoma County Commissioner; the Court Clerk, County Clerk, Treasurer, Assessor, or Sheriff of

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Oklahoma County, either in the officer's official or individual capacity, in a any case brought under the Governmental Tort Claims Act in Title 51, section 151 et seq. of the Oklahoma Statutes, or under the Civil Rights Act in Title 41 of the United States Code.

## ARTICLE X. CONTINGENT FEES PROHIBITED

10.1 Firm warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Firm, to solicit or secure this contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Firm any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract. In the event of a breach of this provision, the COUNTY shall have the right to terminate this Contract without further liability, and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of the Contract.

## ARTICLE XI. ENTIRE AGREEMENT

11.1 This Agreement and the attached schedule contain the entire agreement between County and Firm, and are binding on both parties. Any deletions, additions or changes must be evidenced by a written agreement expressly modifying this document and signed by County and Firm.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the respective dates as to each signature.

WALKER, FERGUSON & FERGUSON

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

  
For the Firm

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STATE OF OKLAHOMA )  
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public within and for said County and State, on this 28 day of May, 2010, 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 28 day of May, 2010.

April Bee  
NOTARY PUBLIC



My Commission Expires: 7-17-11

License No. 07006438

APPROVED by the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY, OKLAHOMA this \_\_\_\_\_ day of \_\_\_\_\_, 2010

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

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

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

ATTEST: \_\_\_\_\_  
Oklahoma County Clerk

APPROVED as to form and legality this 7 day of May, 2010

By: [Signature]  
Assistant District Attorney

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## SCHEDULE A

### FEES AND EXPENSE SCHEDULE

#### FEE:

1. Firm will bill County at the rate of \$95.00 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.

#### EXPENSES:

The following expenses are billed directly to the County 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 County through its Administrator.
7. Travel fees will be charged for legal services for travel and will begin at the onset of travel. This Firm understands the County's policy of reimbursing only \$45.00 per hour with a maximum of three (3) hours for a round trip. 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 limits of Oklahoma County.



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Renewal of Policy#: 47450

## DECLARATIONS

### OKLAHOMA ATTORNEYS MUTUAL INSURANCE COMPANY

A MUTUAL INSURANCE COMPANY

Post Office Box 5590, Edmond, Oklahoma 73083-5590

LAWYERS PROFESSIONAL LIABILITY POLICY (THIS IS A CLAIMS-MADE POLICY-READ CAREFULLY)

Item 1. Name of Insured (See Endorsement) N O. 49912

Office Address WALKER FERGUSON & FERGUSON, PC 941 E BRITTON RD OKLAHOMA CITY OK 73114

Item 2. Policy Period: From October 22, 2009 to October 22, 2010 12:01 a.m. Standard time at the address of Named Insured as stated herein.

Item 3. Limits of Liability \$ \$1,000,000 all claims arising out of same, related, or continuing professional services; after Claims Expense Allowance is exhausted, claims expense reduces limits of liability \$ \$1,000,000 aggregate

Item 4. Deductible \$ \$2,500 The Deductible applies per claim and will be subtracted from the limit of liability to determine the amount payable by the Company Amount (including claims expense allowance and indemnity)

Item 5. Claims Expense Allowance \$ \$100,000

Item 6. Premium Schedule (Rate # ) 3 7

Classification	Number	Rate	Premium
Lawyers			
Less			
Total Policy Premium			

Item 7. Endorsement Description See Attached

In witness whereof, Oklahoma Attorneys Mutual Insurance Company has caused this policy to be signed by its President and Secretary.

OKLAHOMA ATTORNEYS MUTUAL INSURANCE COMPANY

*Mark Tisdal*  
Secretary

*Phillip D. Drain*  
President

Doc. 9/15/97

10-28-2009