

CITY OF DELRAY BEACH, FLORIDA
CITY ATTORNEY LEGAL SERVICES AGREEMENT

The City of Delray Beach, Florida, a municipal corporation, with its principal place of business at 100 N.W. First Avenue, Delray Beach, Florida 33344 (the "City") and Conrad & Scherer, LLP, with offices located at 633 S. Federal Highway, Ft. Lauderdale, Florida 33301, (the "Firm") for and in consideration of the mutual covenants contained in this City Attorney Legal Services Agreement (the "Agreement") and other good and valuable consideration, mutually agree as follows:

WHEREAS, the City requires the retention of an Interim City Attorney during the time it recruits for a City Attorney replacement; and

WHEREAS, the City desires to employ the services of the Firm as Interim City Attorney as further specified herein; and

WHEREAS, Attorneys at the Firm have previously served as City Attorney and Assistant City Attorney to the City, and as such, are aware of the City's legal needs and priorities; and

WHEREAS, the City and Firm desire to engage in a stable and flexible short term contractual relationship whereby the City can achieve pricing efficiencies for legal services and the Firm is available to provide service as City Attorney as required by the City Charter, as well as additional authorized legal services on as as-needed basis in a thoughtful and effective manner, and

WHEREAS, the City agrees, subject to City personnel rules and policies, to continue to employ and make available as a resource to the interim City Attorney the existing staff and professionals currently employed in the City Attorney's Office

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The forgoing recitals are true and correct and incorporated into this Agreement herein as if set forth in full.

2. **SELECTION OF FIRM.** The Firm will provide legal services as the City Attorney to the City as required by the City Charter of Delray Beach (the "City Charter") and as described herein. For purposes of this City Attorney Agreement, the primary attorney to serve as City Attorney shall be Noel Pfeffer with Michael Dutko, Jr. serving as his alternate or backup in the event of Mr. Pfeffer's unavailability, if and when needed (the "Designated Attorneys"). As such, the Designated Attorneys from the Firm shall serve as City Attorney for the City pursuant to and in accordance with the City Charter and the Code of Ordinances. Mr. Pfeffer previously served as City Attorney and Mr. Dutko as Assistant City Attorney. The Firm was selected based upon the Firm's substantive knowledge of governmental law, the City's legal priorities and needs, to retain and have available institutional knowledge, and to provide continuity and stability to the Office of the City Attorney.

3. **PROFESSIONAL LEGAL SERVICES.** The Firm shall perform such services customarily associated with the City Attorney, and the Office of the City Attorney, excluding litigation matters, as more specifically set forth in Exhibit A attached hereto and made a part hereof, and, excluding litigation matters, such other services as may be directed or requested by the City Commission or City Manager.

4. **COMPENSATION, TERMS, AND CONDITIONS.** The Firm shall perform the City Attorney Legal Services set forth in Exhibit A for a monthly non-refundable flat fee retainer of \$20,000 per 30 day period, payable in full on the 10th day of each month. The monthly fee shall be prorated in the event this Agreement is terminated effective before the end of any given 30 day period. If the monthly flat fee payment is not timely received the Firm shall have the right to immediately terminate this Agreement, or suspend the provision of all legal services until payment is made. The Firm's right to terminate for failure to timely pay the monthly flat fee to the Firm shall not be subject to the termination provision set forth in Section 5 below. The Firm will be compensated for Special Legal Services, when authorized, at a blended special governmental hourly rate of \$250, as set forth in Exhibit B.

5. **DURATION AND TERMINATION.** This City Attorney Legal Services Agreement (the "Agreement") is effective as of July 13, 2016. Designated Attorneys through the Firm, shall provide City Attorney legal services as required by this Agreement and may not be substituted without the consent of the City. This Agreement may be terminated at the will of the City or by the Firm upon giving thirty (30) days prior written notice of the termination of this Agreement. The term of this Agreement shall not exceed 120 days, and may be terminated sooner as provided for herein.

6. **ADMINISTRATION.** For ease and convenience of administration and to the extent not in conflict with the City Commission or City Charter, the City hereby designates the City Manager to provide policy direction and instructions to the Designated Attorneys in the administration of the duties and professional legal service set forth herein, and to manage and administer the terms and provision of this Agreement on behalf of the City.

7. **INSURANCE.** The Firm shall maintain in full force and effect professional liability insurance in an amount not less than \$1,000,000 per claim and shall, upon the request of the City, provide evidence of such coverage.

8. **NOTICES.** All notices under this Agreement shall be in writing and shall be provided to City at 100 N.W. First Avenue, Delray Beach, Florida 33344, Attention City Manager, and to City Attorney and Firm at 633 S. Federal Highway, Ft. Lauderdale, Florida 33301.

9. **SEVERABILITY.** If any provision or portion of this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or any portion thereof, shall be deemed to be severable and shall remain in full force and effect.

10. **NON-LIABILITY FOR COSTS AND EXPENSES.** The City shall defend the actions of the Firm in performing legal services on behalf of the City. The Firm shall not be liable for actual, incurred costs or expenses that are reasonable and necessary, and shall be reimbursed by City for any actual reasonable and necessary expenses paid by the Firm in connection with the carrying out its duties hereunder. The City is

responsible for all such costs incurred on the City's behalf. These items are separately itemized on our statements as "costs advanced" or "disbursements" and will be itemized and billed to you periodically, usually on a monthly basis, depending upon activity, and are due within 15 days. To the extent practical, the Firm will utilize the photocopier of the City Attorney's office to minimize costs. Unless otherwise agreed in writing, the City shall be liable for all fee bills rendered pursuant to this Agreement.

11. **APPOINTMENT**. Pursuant to the City Charter, the City hereby appoints the Designated Attorneys, through the Firm, as City Attorney for the City of Delray Beach, Florida. The City Manager is directed and authorized to use and consult with the Firm for City Attorney Legal Services and Special Legal Services when and if authorized as more specifically set forth on Exhibits A and B.

12. **CONFLICT OF INTEREST**. By executing this Agreement, the Firm covenants it has no public or private interest, direct or indirect, and shall not acquire directly or indirectly and such interest which shall conflict in any manner with the performance of Firm's services any obligations under this Agreement except as disclosed herein. The Firm discloses that, prior to entering into this Agreement, the Firm provided legal advice to a potential client with respect to the zoning regulations for tattoo establishments within the City. The Firm does not currently have an attorney/client relationship with that individual; however, pursuant to the Rules Regulating the Florida Bar, the Firm is prohibited from representing the City with respect to tattoo establishment regulation. By executing this Agreement, City waives any conflict and Firm agrees it shall perform no legal services in connection with this subject matter.

13. **PUBLIC RECORDS**. The Firm shall maintain files, available for inspection by the City Manager or his designee, containing documentation costs and fees incurred in connection with this Agreement. In accordance with Chapter 119, Florida Statutes, any documents of any nature produced pursuant to this Agreement shall be public record to the extent required by law. Neither the Firm nor any individual employed under this Agreement shall have any proprietary interest in any product(s) delivered under this

Agreement. The reasonable cost of preparing and photocopying the documents for the City may be charged for said services.

14. **AGREEMENT AS INCLUDING ENTIRE AGREEMENT.** This agreement is the sole agreement covering the Firm's representation of Client in this matter and supersedes any prior agreements or understandings, whether written or oral. Any modification of this agreement must be in writing, signed by both parties. If any part of this Agreement shall for any reason be found unenforceable, the parties agree that all other portions shall nevertheless remain valid and enforceable. It is understood that we do not guarantee the accomplishment of any result but agree to give our best efforts on your behalf. The City understands that all expressions about the outcome are only opinions.

15. **POWERS CONFERRED ON ATTORNEY.** The Firm, through Designated Attorney's has the authority to file any papers necessary and proper in any action which it is authorized pursuant to the terms of this Agreement to prosecute and defend on behalf of the City and the right and authority to do any and all things necessary and proper to protect the interest of the City. Any attorney employed by the Firm may provide legal support services or representation for monthly retainer services or as specifically authorized with respect to Special Legal Services under this Agreement.

16. **CITY ATTORNEY CLIENT.** Only the City of Delray Beach, Florida, acting by and through its City Commission, as a collegial body, shall be considered the Firm's client.

17. **APPLICABLE LAW, VENUE AND WAIVER OF JURY TRIAL.** The laws of the State of Florida will govern the interpretation of this agreement, including all rules or codes of ethics which may apply to the provision of services by us. Further, by executing this Agreement, you agree that the County or Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida shall have jurisdiction over you and shall be the only venue for any dispute concerning this agreement or the services rendered herein to the exclusion of all other venues including Federal Court, even if the matters described in the Scope of Work above is based in another jurisdiction.

WAIVER OF JURY TRIAL: CLIENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR CONRAD & SCHERER, LLP's ACCEPTING REPRESENTATION OF CLIENT.

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IN WITNESS WHEREOF, the parties have caused this City of Delray Beach, Florida Legal services Agreement to be executed this ____ day of July, 2016.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Cary Glickstein, Mayor

Approved as to Form:

City Attorney

WITNESSES:

CONRAD & SCHERER

Print Name: _____

By: _____
Noel Pfeffer, Partner

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification.

Signature of Person Taking Acknowledgment

Name Typed, Printed or Stamped

EXHIBIT A
CITY ATTORNEY LEGAL SERVICES

1. The Firm will provide legal services as City Attorney consistent with the Charter of the City. For purposes of this Agreement, Noel Pfeffer and Michael Dutko, Jr. through Conrad & Scherer shall be Designated Attorneys pursuant to Section 2 of the Agreement.

2. The City Attorney retainer services described herein are to be provided in concert with the City Commission, designated officials and staff of the City including the City Manager, Department and Division Directors. Such legal Services, as enumerated below, are to be provided as City Attorney Legal Services. Additional Special Counsel Legal Services may also be provided by the Firm on an hourly basis, as specified in Exhibit B, or as otherwise approved by the City Commission or City Manager.

3. City Attorney Legal Services shall encompass the following:

(a) Attend and participate in agenda review staff meetings, prepare for and attend City Commission meetings, workshops, and attorney client sessions, if and when deemed necessary, or any other special meetings convened by the City Commission.

(b) Review and approve as to form ordinances, resolutions and contracts presented to the City Commission.

(c) Manage and oversee the staff, attorneys, and work of the Office of the City Attorney.

(d) Participate in standing weekly conference calls at a time mutually agreed to by City Manager, City Attorney and, if applicable, City staff to identify and discuss outstanding legal issues, share information associated with services to be provided by the Firm, and address the means to serve the City's legal issues.

(e) Provide legal advice to the City Commission members and participate in individual conference calls in order to provide advice regarding City Commission agenda items or ethics inquiries.

(f) Maintain on-site office hours of no less than 8 hours per week for the Office of the City Attorney management, operations, and any other needs consistent with this Agreement. Participate in conference calls on an as needed basis with employees of the City attorney's office.

(g) Meetings with City Manager and City staff, if and when necessary

(h) Monitor and report on the progress of services handled or represented by outside legal counsel.

(i) Prepare a RFP for the recruitment of a permanent City Attorney. Such RFP shall be subject to the review and approval of the City Commission before advertised.

4. Special Legal Services. Before undertaking any legal services not contemplated above.

5. Costs and Expenses. The Firm shall only charge for actual costs and expenses incurred and invoiced by the Firm on behalf of this engagement.

6. Billing and Payment. The Firm shall bill the City on a monthly basis for services rendered and any expenses incurred in connection with the Firm's representation of the City.

EXHIBIT B
CITY ATTORNEY LEGAL SERVICES

Special Legal Services. Before undertaking any legal services which are in addition to and not contemplated in Exhibit A, the Firm shall obtain the consent of the City Commission or written consent of the City Manager. Special Legal Services which are in addition to, and not contemplated by Exhibit A, excluding litigation services, shall be provided at a discounted blended governmental hourly rate of \$250 of attorney time,