

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") made and entered into this 9th day of April, 2013 (the "Effective Date"), by and between the City of Panama City Commission (the "Commission"), Nevin J. Zimmerman, as the appointed City Attorney ("Zimmerman") and Burke Blue Hutchison Walters & Smith, P.A. ("Burke-Blue") as the "Associated Firm" as that term is used in RFP No. PC 13-116;

WHEREAS, the Commission issued RFP No. PC 13-116 ~ Legal Services and City Attorney ~ February 13, 2013 for the purposes of seeking a City Attorney and an Associated Law Firm to provide legal services to the Commission;

WHEREAS, Zimmerman meets the qualifications of Article VIII Section 105 of the Charter of the City of Panama City;

WHEREAS, the Commission by Resolution No. 4092013.1, appointed Zimmerman as the City Attorney;

WHEREAS, RFP No. PC 13-116 ~ Legal Services and City Attorney ~ February 13, 2013 requires that Zimmerman be a member of a firm with at least one additional attorney who has a minimum of three (3) years of local government experience and is able to perform the functions found in the "Scope of Services" under the supervision of the City Attorney;

WHEREAS, Burke-Blue meets the requirements of RFP No. PC 13-116 ~ Legal Services and City Attorney~ February 13, 2013 stated above; and,

WHEREAS, Nevin J. Zimmerman is employed by the law firm of Burke Blue Hutchison Walters & Smith, P.A.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and agreements herein expressed, do agree as follows:

1. Purpose. The purposes of this Agreement are: 1) for Zimmerman and Burke-Blue to provide the legal services set forth herein; and, 2) to set forth the terms and conditions under which Zimmerman and Burke-Blue will render legal services to the Commission from the Effective Date, until terminated as provided in Paragraph 6 hereof.

2. Qualifications. At all times material hereto Zimmerman and Burke-Blue shall maintain the requisite qualifications to be the City Attorney and Associated Firm, including, but not limited to, the requirements of Article VIII Section 105 of the Charter of the City of Panama City. In the event that either Zimmerman or Burke-Blue fail to meet the requisite qualifications to be the City Attorney and Associated Firm, respectively, then they shall immediately notify the Commission in writing. Zimmerman shall immediately notify in writing the Commission if (i) he is charged with any crime or (ii) is sued in a civil or administrative action related to the services herein.

3. Legal Services. Acting as the City Attorney, Zimmerman or the Commission approved designate(s) from Burke-Blue shall provide the traditional legal services required by the Commission which include the following:

- (a) Attending all meetings of the Commission and its required functions, including meetings of various advisory boards or commissions;
- (b) Rendering oral and written legal opinions to the Commission;
- (c) Drafting and reviewing resolutions of the Commission;
- (d) Drafting and reviewing ordinances of the Commission;

- (e) Drafting and reviewing contracts and agreements to which the Commission is a party or has an interest;
- (f) Representing the Commission, prosecuting and defending all complaints, suits and controversies in which the City is a party except where the City's defense is provided either by contract or law by a third party or when the Commission appoints Speciality Counsel as provided in Paragraph 11 herein;
- (g) Representing the Commission in financing matters, including, but not limited to, bonds and other financing instruments, as Issuer's Counsel and Disclosure Counsel when in the best interests of the Commission and to work with the Speciality Bond Counsel as provided in Paragraph 11 herein;
- (h) Preparing a proposed budget for the City Attorney Department to be submitted to the City Manager, or his designee, as part of the Commission's annual budget process;
- (i) Providing the legal services described in the Scope of Services RFP No PC 13-116 ~ Legal Services and Zimmerman and Burke-Blue ~ February 13, 2013; and,
- (k) Providing such other legal services as the Commission or other persons authorized to provide directions to Zimmerman pursuant to paragraph 3 hereof may from time to time direct.

The parties intend that Zimmerman and Burke-Blue shall provide only legal services and not administrative or managerial services, except such administrative or managerial services which are directly related to services provided by other counsel employed by the Commission. Therefore, the Commission and the other persons authorized to provide directions to the Zimmerman and Burke-Blue pursuant to paragraph 8 hereof shall refrain from directing Zimmerman and Burke-Blue to provide services other than legal services and Zimmerman and Burke-Blue shall refrain from providing any services other than legal services, except as otherwise stated herein.

The initially approved designate for Zimmerman from Burke-Blue is Michael Burke.

4. Directions to Zimmerman and Burke-Blue. Zimmerman and Burke-Blue shall accept directions only from the Commission; provided, however, that Zimmerman and Burke-Blue shall also provide legal advice to the City Manager, the various departments, divisions and agencies under the jurisdiction of the Commission, and other boards or commissions when so directed by the Commission, and perform the other duties provided for in this Agreement.

5. Payment. The Commission shall pay Burke-Blue for the fees of both Zimmerman and the other employees of Burke-Blue a discounted hourly rate as determined by the Rate Schedule attached hereto as Exhibit A and made a part hereof. Burke-Blue shall each month invoice the Commission a Monthly Bill.

6. Term. Unless earlier terminated pursuant to Paragraph 7 herein, the term of this Agreement shall be for a period of April 1, 2013 through and including September 30, 2018 and may be renewed at the same prices, terms and conditions for one (1) additional one-year term or as approved by the City, Zimmerman and Burke-Blue, by mutual agreement.

7. Termination. This Agreement may be terminated at any time by either party without cause upon sixty (60) days advance written notice to the other party. In the event that Zimmerman fails to be an active employee of Burke-Blue then both Zimmerman and Burke-Blue will notify the Commission in writing. Upon such notification of termination, the parties shall cooperate to provide for an orderly transfer of responsibilities from Zimmerman and Burke-Blue to their successor pursuant to the following procedure:

(a) The Commission may remove the designation of “City Attorney” and hire an attorney or attorneys to serve as replacements (the “Replacement City Attorneys”) for Zimmerman and Burke-Blue on or before the date the termination of Zimmerman and Burke-Blue becomes effective, and in that event the Replacement Attorneys and Zimmerman and Burke-Blue shall work together during a period of transition (the “Transition Period”) as follows:

(i) If it is in the best interest of the Commission, then the Replacement City Attorneys and Zimmerman and Burke-Blue shall arrange for the transfer of responsibility for existing litigation from Zimmerman and Burke-Blue to the Replacement Attorneys;

(ii) All new litigation, which is any matter that arises after the notice of termination is given, shall be the responsibility of the Replacement City Attorneys;

(iii) Zimmerman and Burke-Blue shall complete any existing bonds or special projects, if agreeable to the Commission;

(iv) The Replacement City Attorneys shall be responsible for any new bonds or new special projects;

(v) Zimmerman and Burke-Blue shall cooperate with the Replacement City Attorneys to provide legal services over a three (3) month period with the Replacement Attorneys assuming greater responsibility with the passage of time during such Transition Period;

(vi) Zimmerman and Burke-Blue shall be compensated for all services rendered during the Transition Period at the same rates as were in effect when the notice of termination was given, with the Monthly Retainer prorated to cover the entire Transition Period.

(b) If the Commission has not hired attorneys to serve as replacements for Zimmerman and Burke-Blue on or before the date the termination of Zimmerman and Burke-Blue becomes effective, the procedures set forth in 7(a) above shall not commence until such time as such Replacement Attorneys have been hired by the Commission;

Provided that, in no event shall Zimmerman and Burke-Blue be contractually obligated to render services to the Commission pursuant to this Agreement for a period greater than one-hundred and eighty (180) days after the date the termination of Zimmerman and Burke-Blue becomes effective.

8. Transition from Bryant & Higby, Chtd. ("Bryant-Higby") to Burke-Blue. Rowlett Bryant ("Bryant") has served the Commission as City Attorney for over 40 years. Bryant's experience and expertise will be a valuable asset during the transition from Bryant to Zimmerman. Additionally, Bryant-Higby is involved with several matters of litigation, financing and other projects which they shall conclude on behalf of the Commission.

The Commission agrees to retain Bryant-Higby as special counsel to the Commission for the purpose of providing for the transition of services from Bryant-Higby to

Zimmerman and Burke-Blue. Bryant-Higby shall submit bills to the Commission and the Commission shall pay the bills directly to Bryant-Higby.

9. Insurance. Zimmerman and Burke-Blue shall maintain such insurance coverage as they deem appropriate; provided, however, that at a minimum they shall maintain malpractice insurance with a minimum Two Million Dollar (\$2,000,000) per claim coverage level. Zimmerman and Burke-Blue shall demonstrate compliance with this section upon request by the Commission or its employees.

10. Conflicts. The Commission acknowledges that Zimmerman and Burke-Blue have other clients that may have matters that are in conflict with the Commission. In the event of such a conflict, Zimmerman, on behalf of the Commission and with its prior approval, will assign the matter to another attorney or law firm, including, but not limited to Speciality Counsel as set forth in section 11 of this Agreement, that is qualified to represent the interests of the Commission. Additionally, Zimmerman and Burke-Blue shall refrain from providing legal advice on the matter which creates the conflict to the client of Zimmerman and Burke-Blue whose interests are adverse to the Commission. Whether or not a matter is a “conflict” shall be determined by the Rules Regulating the Florida Bar.

11. Retention or Selection of Speciality Counsel. From time to time, the Commission may encounter issues or litigation which require the retention of counsel with a specialized knowledge in a particular area of practice. In such event, Zimmerman and Burke-Blue shall have the authority to retain Speciality Counsel on behalf of the Commission, subject to the Commission’s approval or ratification at the next available Commission meeting.

The Commission expressly approves and directs the use of Cliff Higby of Bryant & Higby, Chtd., as Speciality Counsel under this Agreement for all litigation purposes, Gwen Adkins of Coppins Monroe Adkins & Dincman as Speciality Counsel under this Agreement for

all matters dealing with the Police Department, and Chauncey W. Lever, Jr. as Speciality Bond Counsel under this agreement for all bonds and loans until otherwise directed by the Commission. It shall not be necessary for Zimmerman and Burke-Blue to seek prior approval or ratification of the Commission in order to assign tasks to Cliff Higby, Gwen Adkins and Chauncey W. Lever, Jr., but prior approval of the Commission shall be required to assign tasks to other attorneys or law firms in the speciality areas designated for each Speciality Counsel and the Specialty Bond Counsel.

12. Independent Contractor. It is understood that Zimmerman and Burke-Blue are independent contractors and are not employees, agents, partners or representatives of the Commission, except in its official capacity as legal counsel to the Commission, and shall not hold themselves out to the public as employees, agents, partners or representatives of the Commission, except in their official capacity as legal counsel to the Commission. As independent contractors Zimmerman and Burke-Blue are responsible to secure, at their sole cost, workers' compensation insurance, disability benefits insurance, and any other insurance as may be required by law.

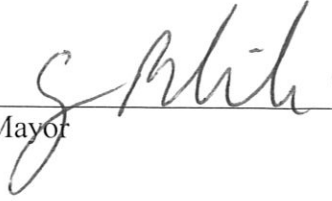
The Commission will not provide, nor will it be responsible to pay for, any benefits for Zimmerman and Burke-Blue and Zimmerman and Burke-Blue shall secure and pay for all such benefits for itself and/or its staff, including, but not limited to, health insurance, paid vacation, paid holidays, sick leave or disability insurance coverage of whatever nature.

13. Agreement Not Assignable. Zimmerman and Burke-Blue shall not assign any interest in the Agreement or transfer any interest in same without prior written consent of the City.

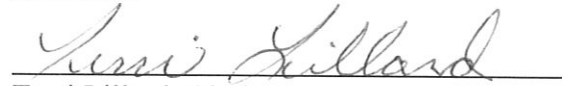
IN WITNESS WHEREOF, the parties hereunto have set their hands and seals the date and year first above written.

CITY OF PANAMA CITY CITY
COMMISSION


By: _____
Its: Mayor

A handwritten signature in cursive script, likely belonging to the Mayor, written over a horizontal line.

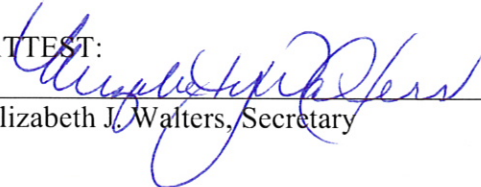
ATTEST:


Terri Lillard, Clerk

BURKE, BLUE, HUTCHISON,
WALTERS & SMITH, P. A.

By: 
Les W. Burke, President

ATTEST:


Elizabeth J. Walters, Secretary

NEVIN J. ZIMMERMAN, as appointed
City Attorney

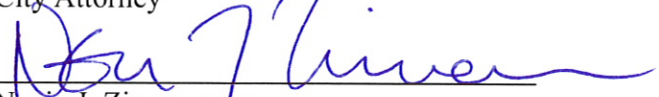

Nevin J. Zimmerman

EXHIBIT A
DISCOUNTED GOVERNMENT RATES
FEE SCHEDULE
CITY OF PANAMA CITY FY 2012-2013

<u>ATTORNEY</u>	<u>RATE PER HOUR</u>
Les W. Burke	\$275
Rob Blue, Jr.	\$275
Edward A. Hutchison, Jr.	\$275
Elizabeth J. Walters	\$275
Douglas L. Smith	\$275
<u>Nevin J. Zimmerman</u>	<u>\$250</u>
<u>Michael S. Burke</u>	<u>\$250</u>
M. Todd Burke	\$250
William S. Henry	\$250
<u>William C. Henry</u>	<u>\$250</u>
Joy Marler	\$200
J. Christopher Barr	\$175
<u>Dustin N. Dailey</u>	<u>\$150</u>
Clark T. Rogers	\$150
Legal Assistants/Paralegal Fees	\$ 85

Bold indicates attorneys primarily responsible for representation of the Commission.

Time shall be kept and bills shall be submitted in increments of 1/10th (.1) per hour.