

PROFESSIONAL SERVICES AGREEMENT CONFLICT COUNSEL

This Professional Agreement is made between the Department of Public Health and Social Services, Health Professions Licensing Office, a line agency of the government of Guam ("HPLO") whose address is 209 Terlaje Professional Bldg., 194 Hernan Cortez Avenue, Hagåtña, Guam, and Minakshi V. Hemlani ("ATTORNEY") whose address is Suite 285 Farenholt Ave., Suite C-312, Tamuning, Guam 96913.

RECITALS

WHEREAS, HPLO intends to engage the professional services of ATTORNEY to provide general conflict counsel to the BOARDS and COMMISSIONS served by the HPLO as provided by Title 10, Div. 1, Chapters 12, Articles 2 – 24; Chapters 15 and Chapter 18; and Division 4, Chapter 84, Guam Code Annotated; and

WHEREAS, the services to be rendered are of a special and temporary nature which have been determined to be in the best public interest to be performed under contract by professional personnel other than employees in the service of HPLO and the Office of the ATTORNEY GENERAL; and

WHEREAS the procurement officer for the HPLO, the General Services Administration, has provided adequate public announcement of the need for such services through a request for quotes describing the type of services required and specifying the type of information and date required of each offeror; and

WHEREAS, ATTORNEY has submitted a statement of qualifications, an interest in providing such services, and a proposed bid quotation; and

WHEREAS, the award of this contract to ATTORNEY is made pursuant to a written finding by the procurement officer that ATTORNEY is the lowest responsible bidder whose bid meets the requirements and criteria set forth in the request for quotes;

AGREEMENT

In consideration of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Scope of Services.

Attorney agrees to fully and competently perform the following scope of services as may be required by any one or more of the HEALTH PROFESSIONS LICENSING BOARDS AND COMMISSIONS provided for by Title 10, Div. 1, Chapters 12, Articles 1 – 24; Chapters 15 and Chapter 18; and Division 4, Chapter 84, Guam Code Annotated:

- (a) Serve as conflicts counsel to individual HEALTH PROFESSIONS LICENSING BOARDS AND COMMISSIONS in the investigation and

Professional Services Agreement with Minakshi V. Hentlani

prosecution of administrative (disciplinary) proceedings and related litigation in which the HEALTH PROFESSIONS LICENSING BOARDS AND COMMISSIONS, their officers, agents, employees, representatives, successors and assigns may be a party or otherwise interested;

- (b) Represent the HEALTH PROFESSIONS LICENSING BOARDS and COMMISSIONS as conflict counsel in connection with legal matters before the Legislature, administrative, regulatory and licensing boards, and other agencies of the Government of Guam or of the United States as well as the courts of Guam and the United States when requested and approved by the ATTORNEY GENERAL;
- (c) Serve as conflict counsel for the HEALTH PROFESSIONS LICENSING BOARDS AND COMMISSIONS in whatever matters as may be deemed appropriate when requested and approved by the ATTORNEY GENERAL;
2. **Conflict of Interest.** ATTORNEY agrees that in no instance shall it represent the interest of any person, natural or legal against any of the various individual Health Professions Licensing Boards or Commission in any administrative matter or court action while doing work under this agreement. In the event of a conflict of interest in representing a licensing board or commission, ATTORNEY shall notify that Board or Commission and withdraw, unless the Board or Commission, with the approval of the ATTORNEY GENERAL, waives the conflict in writing.
3. **Personnel.** ATTORNEY designates **Minakshi V. Hentlani** as the primary conflict counsel for HPLO, but any and all members of ATTORNEY's law office may assist in discharging the duties of ATTORNEY.
4. **Contract Term.** Subject to the Termination Clause of this Agreement, the Contract shall terminate one year from the date of execution.
5. **Compensation.**
- (a) **Contract Price:** The HPLO shall compensate ATTORNEY for time spent on each of the services provided in the cost proposal at a single hourly rate of Two Hundred Twenty Five and no/100 (\$225.00) per hour plus an additional 5.263% GRT equivalent (which may be adjusted to reflect any changes in the Guam Business Privilege Tax) and plus reimbursable expenses; provided, however, the maximum amount paid under this Agreement shall not exceed Twenty Four Thousand Four Hundred Dollars (\$24,400.00). The time spent rendering Services shall be billed to the tenth of an hour within any single workday. The HPLO shall not be charged for any other time expended by ATTORNEY during travel, overnight stays, or the like associated with the performance of the Services.

04/09/2020

4/13/2020

- (b) **Expenses:** The HPLO agrees to reimburse ATTORNEY for actual, necessary and reasonable out-of-pocket disbursements and expenses, including filing fees, court costs, commercial messenger and delivery services (at cost), expert witnesses, consultants, mediators, investigative services, long distance telephone calls, and transcript or deposition costs. However, any such necessary and reasonable out-of-pocket expenses over \$500 must be preapproved in writing by the HPLO in consultation with the ATTORNEY GENERAL prior to ATTORNEY incurring such expense. The hiring of any expert witnesses must be preapproved in writing by the ATTORNEY GENERAL. Where the ATTORNEY GENERAL or HPLO has an existing agreement or arrangement with an expert witness or other third-party vendor, the ATTORNEY GENERAL and HPLO reserve the right to directly hire such expert or vendor in the matter for which ATTORNEY has been engaged. The HPLO shall not reimburse ATTORNEY for any overhead related expenses, including, but not limited to, duplicating, secretarial, facsimile (other than long-distance telephone line charges), clerical staff, library staff, proofreading staff, meals and on Guam transportation costs or expenses unless they are otherwise pre-approved by the HPLO. ATTORNEY shall be reimbursed for reasonable expenses for transportation, specifically excluding first class and business class airfare, parking and reasonable lodging and meals associated with interstate travel as approved in advance by the HPLO.

6. **Monthly Billing.**

- (a) ATTORNEY shall submit for payment its billing statements for conflict counsel services and costs to HPLO on a monthly basis, or more often as may be necessary.
- (b) Vouchers and receipts or other proof of costs are required for all expenses, together with a brief explanation of such expenses incurred on behalf of HPLO.
- (c) Billing generally: Billings shall be separated by case in matters involving litigation in local (territorial) or federal courts, or appearances before administrative tribunals, and assigned separate matter identifiers.
- (d) In the event that two or more attorneys within ATTORNEY's law firm determine it is necessary to consult with one another, ATTORNEY will bill only for time of the most senior attorney, and not for the time of both or all attorneys. This limitation does not apply to time spent by the attorneys in court. In matters other than routine status conferences, e.g., motion practice, trial and appellate proceedings, the attendance of two attorneys though not required, will be considered reasonable.

- (e) ATTORNEY shall bill HPLO only for time reasonably and necessarily incurred to service HPLO's legal needs in accordance with this Agreement. Time attributable to billing itself or to resolving issues related to billing is not billable.

7. Payment by HPLO.

- (a) Nothing in this Agreement shall be construed to mean that payment by the HPLO will occur prior to its receiving services.
- (b) ATTORNEY shall submit invoices to HPLO and the ATTORNEY GENERAL on a monthly basis or as may be necessary. The monthly invoice shall include (i) the ATTORNEY's name, address, contract number and date of invoice; (ii) an itemized description of the services and costs provided in sufficient detail to justify payment of the amount requested in the invoice; and (iii) the ATTORNEY's federal tax identification number. If HPLO agrees to the payment of any expenses, vouchers and receipts or other proof of costs are required for all expenses. The HPLO in consultation with the ATTORNEY GENERAL shall review the invoices promptly and shall use its best efforts to process and forward the invoices immediately for payment unless the HPLO objects to an item or expense. If any item or expense is found objectionable, the HPLO shall promptly bring the item or expense to the attention of the ATTORNEY. For the purpose of the Prompt Payment Act (Title 5 of the Guam Code Annotated, Chapter 22, Article 5), an invoice shall not be considered received by the HPLO unless all identifying information is provided.
- (c) Final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed under this Agreement. Prior to final payment, and as a condition precedent thereto, the ATTORNEY shall execute and deliver to the HPLO and the government of Guam a release, in a form approved by the HPLO, of claims against the HPLO and the government of Guam arising under and by the virtue of this Agreement. A general release does not extend to claims which the ATTORNEY does not know or suspect to exist in its favor at the item of executing the release, which if known by it must have materially affected its settlement with the HPLO of the government of Guam.
- (d) The contractual obligations of both parties to this Agreement are subject to the appropriation of and availability of funds. If the funds which are designated for this Agreement become unavailable for any reason, then as soon as the HPLO learns of the unavailability of funds, it shall immediately

notify the ATTORNEY whereupon this Agreement shall be deemed automatically terminated. If such automatic termination for unavailability of funds occur, the ATTORNEY will be paid for services rendered or provided up to the point of automatic termination.

- (e) Notwithstanding the length of the term of this Agreement or of a renewal term, if any, the certification of funds may be in intervals shorter than the term if convenient for the HPLO. The inability of the HPLO to verify funds for any full term or interval, if less than a full term, shall be cause for automatic termination of this Agreement.
 - (f) The provisions of the Prompt Payment Act (Title 5 of the Guam Annotated, Chapter 22, and Article 5) shall apply to all payments due from the HPLO to the ATTORNEY.
8. **Paperless Documentation.** Whenever possible, in lieu of "hard copy" or paper documentation, ATTORNEY shall provide HPLO and the ATTORNEY GENERAL electronically scanned copies of all final correspondence, pleadings and other filings or communications to third parties in .pdf format.
 9. **Reporting.** In addition to providing copies of court and administrative filings, and correspondence or other communications with third parties, ATTORNEY shall keep the HPLO and the ATTORNEY GENERAL or her designee informed of the status all matters in judicial or administrative litigation or projects being performed under this agreement by providing a summary of the status of such matters at a minimum every sixty (60) days. ATTORNEY may bill no more than one hour for time preparing the first status report, and no more than half hour for monthly updates thereafter.
 10. **Compliance with Laws.** In performing the work provided for herein, ATTORNEY agrees to fully comply with any and all applicable laws, rules, and regulations adopted or promulgated by any government agency or both territorial and federal regulatory body. ATTORNEY assumes full responsibility for the payment of all contribution's payroll taxes, or territorial or federal assessments, and further agrees to meet all requirements that may be specified under regulations of administrative officials or bodies charged with enforcement of any territory or federal laws on this subject
 11. **Final Payment and Release of Claims.** The final monthly payment shall be made upon delivery of all services as herein specified and performed under this agreement. Prior to the final monthly payment, as a condition precedent thereto, ATTORNEY shall execute and deliver to HPLO a release, in a form approved by HPLO, of claims against HPLO arising by virtue of this agreement.

12. **Independent Agent.** For the purpose of the Government Claims Act, the ATTORNEY shall not be considered an agent of HPLO, Licensing Boards or Commission, or the Office of the ATTORNEY GENERAL of Guam with respect to any acts performed by it in connection with the discharge of the duties of this agreement, There shall be no employee benefits provided under this contract, such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by HPLO. ATTORNEY contracts herein with HPLO as an independent contractor, and is neither an employee nor an agent of DLM for the purpose of performing the services hereunder. Therefore, the ATTORNEY GENERAL and HPLO assume no responsibility or liability for the acts of ATTORNEY that are performed in its independent and professional capacity.

13. **Scope of Agreement.** This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to retaining of ATTORNEY by HPLO and contains all of the covenants and agreements between the parties with respect to such retainer in any manner whatsoever. Each party to this agreement acknowledges that no representation, inducement, promises or agreements orally or otherwise have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement statement, or promises not contained in this agreement shall be valid or binding. Any modification of this agreement will be effective only if it is in writing signed by the party to be charged. For the purpose of this paragraph and of the entire agreement, the signature of the Governor is the only signature that will bind HPLO.

14. **Responsibility of ATTORNEY.** ATTORNEY shall be responsible for the professional and technical accuracy of all work and materials furnished under this agreement. ATTORNEY shall, without additional cost to HPLO.

HPLO's and the ATTORNEY GENERAL's review, approval, acceptance of, and payment of fees for services required under this agreement shall not be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of ATTORNEY's failure to perform under this agreement, and ATTORNEY shall be and remain liable to HPLO for all costs of any kind which may be incurred by HPLO as a result of ATTORNEY's negligent performance of any of the services performed under this agreement.

15. **Assignment of Agreement.** ATTORNEY may not assign this agreement, or any sum becoming due under the provisions of this agreement, without the prior written consent of HPLO and the ATTORNEY GENERAL.

16. **General Compliance With Laws.** ATTORNEY shall be required to comply with all Federal and territorial laws applicable to this work. ATTORNEY shall have

provided to HPLO a copy of an appropriate business or professional license or a statement of exemption from the Department of Revenue and Taxation.

17. **Access to Records and Other Review.** ATTORNEY shall maintain all books, documents, papers, accounting records and other evidence relating to costs incurred and to make such materials available at their respective offices at all reasonable times during the agreement period and for six (6) years from the date of the final payment under the agreement, for inspection by HPLO and the ATTORNEY GENERAL. Each subcontract by ATTORNEY pursuant to this agreement shall include a provision containing the conditions of this section.
18. **Ownership of Documents.** All briefs, memoranda and other incidental work of ATTORNEY or materials furnished hereunder shall be and remain the property of HPLO, including all publication rights and copyright interests, and may be used by HPLO without any additional costs to HPLO.
19. **Indemnity.** ATTORNEY agrees to save and hold harmless HPLO, its officers, agents, representatives successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought from or on account of any injury, death, or damage arising or growing out of the acts or omissions of ATTORNEY, its officers, agents, servants or employees under this agreement.
20. **Changes.** HPLO may at any time, by written order, make any changes in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this agreement, or in the time required for this performance, an equitable adjustment shall be made and the agreement shall be modified in writing accordingly.
21. **Severability.** If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions.
22. **Governing Law.** The laws of Guam shall govern the validity of the agreement and any of its terms and provisions as well as the rights and duties of the parties to this agreement.
23. **Authority Not Liable.** HPLO assumes no liability for any accident or injury that may occur to ATTORNEY, its agents or employees, or personal property while en route to, from or within this territory or during travel mandated by the terms of this agreement.

24. **Attorney as Special Assistant Attorney General.** ATTORNEY acknowledges that each of its individual licensed ATTORNEYS might be appointed as a Special Assistant ATTORNEY GENERAL by the ATTORNEY GENERAL for purposes of rendering legal services under this agreement. The ATTORNEY GENERAL remains the Chief Legal Officer for HPLO as an instrumentality of the government of Guam and nothing herein shall be construed to delegate or waive the ATTORNEY GENERAL's legal authority and ethical relationship with the government of Guam under 48 U.S.C. §1421g(d)(1), or any other Federal or local law, rule or regulation.

ATTORNEY shall *not* issue any legal opinion having the status of an ATTORNEY GENERAL opinion under this agreement, whether to HPLO or on behalf of HPLO, any Licensing Boards or Commission, or otherwise. ATTORNEY may issue to HPLO internal opinion letters not having the status of an ATTORNEY GENERAL opinion, but shall provide a copy of such letter promptly to the Office of the ATTORNEY GENERAL for review.

The objectives of litigation shall be determined in consultation with the HPLO, the Licensing Boards or Commission, and the ATTORNEY GENERAL. ATTORNEY shall keep the ATTORNEY GENERAL and HPLO informed of all matters in judicial or administrative litigation under this agreement by providing a monthly summary of the status of such matters. When requested, on a case-by case basis, ATTORNEY shall serve the ATTORNEY GENERAL with copies of pleadings or any other documents filed in litigation. Nothing herein shall prevent the ATTORNEY GENERAL from joining as co-counsel in any legal matter where ATTORNEY is performing legal services under this agreement. ATTORNEY shall not commit HPLO or the ATTORNEY GENERAL to any settlement without the prior consent of the ATTORNEY GENERAL.

The ATTORNEY GENERAL shall designate Deputy or Assistant ATTORNEYS General as his liaison and the person to whom all matters that require the ATTORNEY GENERAL's prior approval should be addressed or noticed. The ATTORNEY GENERAL may change the designated liaison at any time.

25. **Covenant Against Contingent Fees.** ATTORNEY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ATTORNEY to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the ATTORNEY any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, HPLO shall have the right to annul this contract without liability, or, in its discretion to deduct from the contract price of consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

26. **Warranty Against Employment of Sex Offenders.** As required by Public Law 28-98:2, ATTORNEY warrants that no person providing services on behalf of ATTORNEY has been convicted of a sex offense under the Provision of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry.

If any person providing services on behalf of ATTORNEY is convicted of a sex offense under the Provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will immediately be removed from working at HPLO and HPLO shall be informed of such within twenty-four (24) hours of such conviction.

27. **Prohibition Against Gratuities and Kickbacks.** ATTORNEY represents that it has not knowingly influenced and promises that it will not knowingly influence a Government employee to breach any of the ethical standards and represents that it has not violated, is not violating, and promises that will not violate the prohibition against gratuities and kickbacks.

28. **Termination.** HPLO shall have the authority to unilaterally terminate this agreement, with or without cause, in writing delivered to ATTORNEY at any time, in which event HPLO shall also notify the ATTORNEY GENERAL immediately. ATTORNEY's status as a Special Assistant ATTORNEY GENERAL shall cease upon termination of this agreement by HPLO.

The ATTORNEY GENERAL shall also have the authority to unilaterally terminate the ATTORNEY's status as a Special Assistant ATTORNEY GENERAL at any time when the ATTORNEY GENERAL deems it necessary or appropriate.

ATTORNEY shall have the authority to terminate this agreement upon thirty days written notice to both the ATTORNEY GENERAL and HPLO.

Notwithstanding the foregoing, the cessation of legal representation in pending litigation shall be contingent upon the filing of a substitution of counsel, or the granting of a motion to withdraw as counsel, or both, as the case may be, and HPLO and the ATTORNEY GENERAL will cooperate with the Special Assistant ATTORNEY GENERAL and take all reasonable and necessary steps to file the substitution of counsel or motion to withdraw as counsel.

Upon notice of termination as a Special Assistant ATTORNEY GENERAL, ATTORNEY shall return to the HPLO or the ATTORNEY GENERAL all files,

Professional Services Agreement with Minakshi V. Hemlani

documents, recordings and other property of whatever kind arising from ATTORNEY's legal representation of any entity under this agreement. ATTORNEY shall issue to the ATTORNEY GENERAL and HPLO a written memorandum detailing the status of ATTORNEY's legal representation just prior to ATTORNEY's termination regardless of the party initiating termination.

29. Notices. Notices to either party shall be delivered to:

Health Professionals Licensing Office,
Department of Public Health
and Social Services,
209 Terlaje Professional Bldg.,
194 Hernan Cortez Avenue
Suite 213
Hagåtña, Guam, 96910
(671) 735-7405

Karl Espaldon
Deputy Attorney General
Office of the Attorney General
590 S. Marine Corps. Drive,
Suite 802
Tamuning, Guam 96913
(671) 475-3324

and

Minakshi V. Hemlani, Esq.
285 Farenholt Avenue, Suite C-312
Tamuning, Guam 96931
(671) 588-2030

20-0112

Professional Services Agreement with Minakshi V. Hemlani

IN WITNESS WHEREOF, the parties have entered into this agreement on the date indicated by their respective signatures:

CONTRACTOR/ATTORNEY:

Minakshi V. Hemlani

MINAKSHI V. HEMLANI

Representative

Minakshi

DATE: 2/11/2020

HEALTH PROFESSIONAL LICENSING OFFICE:

Linda Unpingco Denorcer

LINDA UNPINGCO DENORCER, MPH

Director, Department of Public Health and Social Services

DATE: 2/17/2020

CERTIFIED FUNDS AVAILABLE:

Tommy Taitague

TOMMY TAITAGUE

Administrative Services Officer, Department of Public Health and Social Services

DOCUMENT #: C20-1700-033

ACCOUNT#: 5100A201700GA008230

NOT TO EXCEED: \$24,400.00

FEB 17 2020

DATE: _____

APPROVED:

Edward Birn

EDWARD BIRN

Director, Department of Administration

DATE: 3/6/20

APPROVED:

Lester L. Carlson, Jr.

**CLEARED PER
BBMR'S REVIEW**

LESTER L. CARLSON, JR.

Director, Bureau of Budget and Management Research

DATE: FEB 28 2020

APPROVED AS TO LEGALITY AND FORM:

Leevin Taitano Camacho

LEEVIN TAITANO CAMACHO

Attorney General of Guam

DATE: 5/27/20

DPHSS 20-0112

RECEIVED

4:20 PM

FEB 18 2020

Bureau of Budget and Management Research

APPROVED:

Lourdes Leon Guerrero

LOURDES LEON GUERRERO

Governor of Guam

DATE: 6/4/2020

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ra MAR 06 2020 15:35
DEPT. OF ADMINISTRATION
DIRECTOR'S OFFICE

DEPARTMENT OF ADMINISTRATION
DIVISION OF ACCOUNTS

Registration Date 06/18/2020

Registration No. C20010850

Vendor No. L001058

Registered By: R. Oblato

RECEIVED
MAR 10 2020
OFFICE OF THE ATTORNEY GENERAL
SOLICITORS DIVISION

CERTIFICATION OF FUNDS

Contract Title: Professional Services Agreement Conflict Counsel between Department of Public Health and Social Services, Health Professionals Licensing Office and Minakshi V. Hemlani, Esq.

Contractor / Vendor:
Authorized Representative
Name & Title

Government of Guam:
Authorized Representative
Name, Title & Department

Minakshi V. Hemlani
MINAKSHI HEMLANI
Attorney

Arthur U. San Agustin
ARTHUR U. SAN AGUSTIN, MHR
DPHSS Acting Director

Oct 19, 2020
Date

12-02-2020
Date

Certification of Funding Availability:

Approved:

Tommy C. Taitague
TOMMY C. TAITAGUE
Certifying Officer
Name & Signature

Lester L. Carlson, Jr.
LESTER L. CARLSON, JR.
Director
Bureau of Budget &
Management Research

CLEARED FOR
BBMR'S REVIEW

DEC 01 2020
Date

DEC 11 2020
Date

Account No.: 5100A211700GA008230
Amount: 9,100.00
Document No.: C21-1700-001
Vendor No.: L0015588

RECEIVED

DEC 10 2020
21.6.17.0013
Bureau of Budget and
Management Research

Certification Period: October 1, 2020- June 3, 2021

DEPARTMENT OF ADMINISTRATION
DIVISION OF ACCOUNTS
Registration Date 12/11/2020
Registration No. C200600851
Vendor No. L001558 CFF INCREASE
Registered By: R. [Signature]

C200600851