

# **OUTSIDE LEGAL COUNSEL FOR THE REPRESENTATION OF BALTIMORE POLICE DEPARTMENT OFFICERS IN TORT ACTIONS**

**DECEMBER 1, 2021**

**Mayor and City Council of Baltimore**

## **I. REQUEST FOR PROPOSALS**

### **A. OVERVIEW**

The Mayor and City Council of Baltimore (the “City”), acting through its Law Department (“Department”), is issuing this request for proposals (“RFP”) to select outside legal counsel (“Police Counsel”) to represent sworn law enforcement officers of the Police Department of Baltimore City, an agency and instrumentality of the State of Maryland (“BPD”) who are named as defendants in civil actions alleging that they committed torts within the scope of their official duties. This RFP excludes lawsuits involving motor vehicle accidents. Firms or attorneys who have represented or currently represent plaintiffs against City law enforcement agencies or Baltimore City police officers are not eligible for consideration.

Police Counsel shall provide all legal services necessary for defense of sworn law enforcement officers named as defendants in up to 15 civil actions. Police Counsel is responsible for representation from the assignment by the City Solicitor’s Office, until final resolution at the trial level, regardless of when the case resolves, at no additional fee and at no additional caseload credit in subsequent years.<sup>1</sup> Upon request, Police Counsel shall also advise the City Solicitor’s Office regarding: (1) liability trends in relevant legal contexts, (2) development of strategies to reduce incidents giving rise to claims, including recommendations for “teachable moments” training or policy recommendations concerning recurring liability, and (3) other reasonable requests in the City Solicitor’s discretion.

The Maryland legislature has authorized the holding of a referendum in Baltimore City that may result in the reorganization of BPD as an agency of the Mayor and City Council of Baltimore rather than an independent state agency. The engagement of outside counsel would continue in the event of such a reorganization.

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<sup>1</sup> For example, a case assigned to Police Counsel in September 2022 counts as one of 15 cases for 2022, but does not count as a case assigned in 2023 even if the case continues into 2023. Correspondingly, if the Police Counsel contract has terminated, Police Counsel must continue to represent the officers in the cases assigned until conclusion of the matter in the trial court at no additional fee.

## **B. BACKGROUND**

The BPD is an entity covered by the Local Government Tort Claims Act (“LGTCa”). *See* Md. Code Ann., Cts. & Jud. Proc., §§ 5-301, *et seq.* Section 5-302(a) of the LGTCa requires BPD “to provide for its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government.” *See* Md. Code Ann., Cts. & Jud. Proc. § 5-302(a)(emphasis added). Moreover, Section 16-13 of the Public Local Laws of Baltimore City authorizes the Commissioner of BPD, at his sole discretion, to reimburse certain costs incurred by a sworn BPD member who is a defendant in a civil suit and who is alleged to have committed a tort while acting within the scope of his or her employment. *See* Public Local Laws of Baltimore City, Article 4, Md. Code of Public Local Laws. Finally, the collective bargaining agreement between the BPD and the Fraternal Order of Police<sup>2</sup> states “legal counsel will be provided in any civil case when the plaintiff alleges that an employee should be held liable for acts alleged to be within the scope of his employment and/or his official capacity.” Art. 15. The collective bargaining agreement also specifies that in cases where the City is requested to authorize a monetary settlement or pay a judgment for money damages, the member or member’s counsel “shall provide documents or transcripts produced in the Court proceedings to the office of the City Solicitor upon its request.” *Id.*

### **1. Scope of Employment**

The City is fiscally responsible for the majority of BPD’s budget, including its budget for the defense of BPD law enforcement officers who are accused of committing torts within the scope of employment.

The fact that a lawsuit alleges that a sworn BPD law enforcement officer has committed a tort within the scope of his or her employment is not a final determination on whether the law enforcement officer has, in fact, acted within the scope of his or her employment. The final determination of whether a sworn BPD officer has acted within the scope of his or her employment rests solely with the City. Nothing in this RFP (or any contract that is awarded pursuant to this RFP) limits the authority of the City to determine if a defendant BPD officer has acted within the scope of his or her employment. Likewise, nothing in this RFP (or any contract that is awarded under this RFP) creates any legal obligation for the City or BPD to indemnify a sworn law enforcement member, where that member has committed a tort that is outside the scope of his or her employment.

### **2. Disclosure Concerning Incumbent Contracts**

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<sup>2</sup> Memorandum of Understanding between the Baltimore City Police Department and the Baltimore City Lodge No. 3, Fraternal Order of Police, Inc., Units I & II.

The 2018 contracts for outside counsel services is for a fixed annual fee for representation in a maximum of up to 20 cases. The actual number of cases assigned to each of two outside counsel firms in 2018 averaged 13 cases, in 2019 16.5 cases, in 2020 11 cases, and in 2021 year to date, 8 cases have been assigned to each firm.

## **C. GENERAL SCOPE OF SERVICES**

### **Annual Fixed Fee for Normal Legal Representation**

Police Counsel will provide legal services/representation at the trial level to any BPD police officer named as a defendant in a civil case alleging that the officer committed a tort while performing his/her official duties as a police officer (excluding motor vehicle accidents) and referred by the City Solicitor's Office.

For an annual fixed fee, Police Counsel will provide representation in up to a maximum of 15 cases per year. For an additional per case fee (1/15<sup>th</sup> of the annual fixed fee), upon request, Police Counsel will handle cases in excess of the applicable maximum.

The City may determine that certain particularly complex cases be treated as "breakout cases" and billed on an hourly rate basis. Responses must include blended average hourly rates for staffing break-out cases assigned during the term of the Contract. Those hourly rates for break-out cases shall not be increased during the initial term of the Contract.

## **D. INQUIRIES**

All inquiries concerning this RFP shall be made by email and shall be submitted to: Darnell E. Ingram, Deputy City Solicitor at [DarnellE.Ingram@baltimorecity.gov](mailto:DarnellE.Ingram@baltimorecity.gov), with a copy to Stephen Salsbury, Chief of Staff at [stephen.salsbury@baltimorecity.gov](mailto:stephen.salsbury@baltimorecity.gov).

Questions will be answered in a timely manner. In an effort to provide a fair process and complete information, all submitted questions and their responses will be provided to anyone to whom the Department has provided an RFP.

## **E. SUBMISSION OF THE RESPONSE**

The response (the "Response") shall consist of the Description and the Price Proposals (as defined below). Please submit the Response via email to:

Darnell E. Ingram, Deputy City Solicitor  
[DarnellE.Ingram@baltimorecity.gov](mailto:DarnellE.Ingram@baltimorecity.gov)  
Stephen Salsbury, Chief of Staff  
[stephen.salsbury@baltimorecity.gov](mailto:stephen.salsbury@baltimorecity.gov)  
City Hall, Room 101

100 Holliday Street  
Baltimore, Maryland 21202  
Telephone: 410-396-3297

All responses to this RFP must be delivered to the above email addresses on or before <b><u>Friday, December 31, 2021 at 5:00 pm, Eastern Standard Time.</u></b> Late responses will not be considered.
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The Response must include in the email subject line “2022 Outside Counsel, BPD Officers RFP.”

#### **F. CONTRACT AND LENGTH**

The selected Respondents will enter into a contract with the City (the “Contract”) which shall consist of the following: this RFP, the Response, and an engagement letter/agreement, all of which shall be binding. The Contract Term begins February 1, 2022 and expires January 31, 2024, or as of the second anniversary of the commencement of the contract if later than February 1, 2022.

The City has the right to extend the contract for two one-year options on the same terms and conditions, provided it gives Police Counsel notice of its intent to renew on or before one month before the Contract expires.

The Contract requires Police Counsel to follow the City’s Counsel Guidelines, as amended from time to time, for expenses, billing, etc., to bill the annual fee on at least a quarterly basis, to bill any per case fee on a monthly basis, and to bill break-out cases on a monthly basis, itemizing for the break-out cases the services performed by date, time required, and the attorney or legal staff performing the services. The Contract will include Counsel Guidelines substantially in the form of **Exhibit A** attached. The Counsel Guidelines may be amended by agreement of the Parties, or in nonmaterial ways by the City Solicitor in his sole discretion or may be waived in whole or in part by the City Solicitor. The Contract will require Police Counsel to follow the Updated Police Department Litigation and Settlement Policies as provided by the City Solicitor’s Office.

#### **G. FINANCIAL RESPONSIBILITY**

The City has no financial responsibility for any costs incurred by a Respondent in responding to this RFP.

#### **H. ORAL PRESENTATIONS**

The City reserves the right to follow up the RFP with additional questions. The City reserves the right to conduct oral interviews and/or follow-up as it deems appropriate in its sole discretion.

**I. SELECTION IN SOLICITOR'S DISCRETION/SERVICES TO BE PROVIDED**

The City will select the Respondent that is offering, in the sole discretion of the City Solicitor, the best combination of service, expertise, and price. **The City expects a high level of service under the Contract.**

**J. EFFECTIVE PERIOD OF RESPONSES**

Responses must remain in effect until the Respondent withdraws the Response in writing, a contract is executed, or the RFP is canceled, whichever occurs first.

**K. RIGHT OF REJECTION; WAIVER**

Notwithstanding any other provisions of this RFP, the City reserves the right to reject any or all Responses in its sole discretion, to waive any irregularity or informality in a Response, and to accept or reject any item or combination of items, when to do so would be in the City's interest.

**L. PUBLIC INFORMATION**

Proposals are subject to disclosure pursuant to the provisions of the Maryland Public Information Act, Section 10-611 *et seq.* of the State Government Article of the Annotated Code of Maryland. Each Respondent must identify specifically those portions of its Response, if any, which it deems to contain trade secrets or confidential or proprietary information and must provide justification why such materials should not, upon request under the Public Information Act, be disclosed by the City.

**M. DETAILED SCOPE OF SERVICES**

**1. Trial**

Police Counsel will handle all aspects of representation at the trial level of a civil action, including but not limited to motions practice, pre-trial discovery, settlement recommendations, trial, post-trial motions, and filing a timely notice of appeal (if necessary).

**2. Responsible Partner/Lead Counsel**

Police Counsel shall identify the individual within the firm who will bear the ultimate responsibility for the services provided under this Contract, ensuring adequate staffing for

each case and the quality of representation (the “Responsible Partner”). Police Counsel shall also indicate whether that individual, or another partner or partner-level attorney(s) within the firm, will be the lead attorney on each case who at the very least oversees and guides the services provided under this Contract on a day-to-day basis (“Lead Counsel”). The Responsible Partner will ensure the counsel assigned to cases have adequate support for these services.

### **3. Initial Review**

Within sixty (60) days of receipt of a matter, Police Counsel’s Lead Attorney shall provide the Solicitor and/or his or her designee with a case assessment and evaluation, which should summarize the factual allegations and legal theories asserted by the plaintiff(s), address any unique features of the case, and identify key issues which may impact liability or valuation. The comprehensive case assessment and evaluation should be updated every six (6) months. The update should include any changes to initial assessment and, as the case progresses, updated case status and procedural posture, development of evidence, identification of key fact and expert witnesses, identification of key physical evidence, and assessment of damages and overall risk.

Police Counsel’s Lead Counsel shall perform an initial review of all cases and review files with assigned Chief or Assistant Solicitor at least monthly.

### **4. Availability**

Police Counsel will maintain an office in downtown Baltimore or otherwise be available at short notice to meet in person with the Law Department. If Police Counsel is not located in downtown Baltimore, it must be available at short notice and may not charge for any time or mileage spent in travel to or from the Law Department or to meet with sworn officers it is representing under the Contract.

- 5.** Police Counsel shall identify and document suspected fraud or false claims and notify the City of these cases. Police Counsel will identify and document suspected police misconduct that is separate and apart from allegations evident on the face of the complaint and notify the City Solicitor of such findings.
- 6.** Police Counsel shall be available for informal consultation with the Law Department about interpretation and application of new or complex case law.
- 7.** Police Counsel must cooperatively and proactively work with the Law Department throughout the litigation of a claim to bring the case to a favorable litigated or settlement conclusion. Police Counsel will identify to the assigned Assistant or Chief Solicitor any arguments asserted by Police Counsel on behalf of their client(s) that may apply to defendants represented by the Law Department.

## **8. Procedure**

For each case assigned:

- a. the Responsible Partner shall complete and send an initial acknowledgment to the Law Department within 24 hours of receipt of referral;
- b. the Responsible Partner shall expeditiously identify to the Law Department who will staff the case. The Responsible Partner shall ensure there is adequate staffing and support to staff assigned to the case.

## **9. Appeal**

The Law Department will handle any appeals, unless it determines that the BPD law enforcement officer did not act within the scope of his or her employment when committing the tort. In the case where the Law Department declines to represent a BPD law enforcement officer on appeal, upon the Law Department's request, Police Counsel will continue to represent the BPD law enforcement officer as a break out case or for a fixed fee negotiated at the time of referral. The City is not obligated to refer any appeal to Police Counsel.

## **10. Break-Out Cases**

The City Solicitor has the sole authority to determine which case is a break-out case. Factors relevant to the Solicitor's discretionary designation of break-out status include, but are not limited to the following:

- a. Whether the Complaint or initial pleading alleges that the Defendant BPD officer(s) committed a tort resulting in the death of another person;
- b. Whether the civil action involves complex or novel legal issues;
- c. Any other extraordinary factor which indicates that the defense of the civil action should be deemed a "break out" case.

The presence of one or more of these factors does not require that a case be designated as break-out. The fact that a case will proceed in federal court, that the plaintiff alleges large monetary damages, or that expert testimony will be required does not suggest that break-out status is appropriate.

Break-out status will be granted only in extraordinary cases, will be designated only prospectively, and only after disposition of motions for summary judgment. The City is not obligated to refer any or all break-out cases to Police Counsel under this Contract. Once the Solicitor has designated a case as break-out, the case may be reassigned away from Police Counsel, or to other firms acting as Police Counsel or counsel to the City, at the Solicitor's sole discretion. Requests for break-out status should be submitted to Chief, Legal Affairs Unit of the City Department of Law, copy to the City Solicitor.

## **11. Collection of Data and Periodic Reporting**

Police Counsel will collect data and information on the status of all civil cases that are handled under any contract that is awarded pursuant to this RFP, and Police Counsel will provide monthly reports to the Baltimore City Law Department in a substantive form and format dictated by the City Solicitor.

Except for the case summary prepared for the Board of Estimates and the summary prepared for the City website, all reporting requirements and/or recommendations for settlements will be deemed protected by the “Attorney Client and/or Attorney Work Product” privilege and will not be disclosed to the public.

## **12. Media**

Police Counsel will not speak to the media about its representation of police officers and will refer all media inquiries to the City Solicitor. While the individual police officer represented by Police Counsel is the actual client in a particular case, Police Counsel is representing the officer under contract with the Law Department. In addition, BPD officers are prohibited by BPD General Order from making media statements without the Commissioner’s advance approval.

Police Counsel shall not independently disclose any report or settlement recommendation to any member of the public.

## **13. Settlement**

Police Counsel shall provide written recommendations for settlements to the Baltimore City Law Department in a substantive form and format directed by the City Solicitor. The City Solicitor expressly reserves the right to change the reporting and settlement recommendation process at any point during the contract period. While Police Counsel may engage in settlement discussions with the opposing party, all settlement authority must be approved by the City Solicitor or, by his delegation, the Law Department’s Settlement Committee. If the City Solicitor approves a recommendation for settlement, Police Counsel will settle the civil matter on the terms and conditions set by the Solicitor as generally set forth in the City’s standard settlement agreements. Settlement recommendations in the amount of \$25,000 and over must be presented by the Law Department to the Baltimore City Board of Estimates (BOE) for consideration of approval. Police Counsel will be available to answer questions to the Settlement Committee and BOE members.

## **14. Indemnification and Insurance**



Police Counsel will agree to indemnify, defend and hold harmless the City and the BPD from any and all third-party claims or contentions, damages, costs, liability and attorneys' fees as a consequence or result of any claim or lawsuit related, in any way, to the City or BPD's legal obligations under the LGCTA in connection with Respondent's representation of BPD sworn officers under the contract. Police Counsel will maintain in full force and effect comprehensive professional liability insurance in accordance with Section II.D.13 below.

**15. Police Counsel Database Accessible to the City Solicitor's Office.**

Police Counsel will establish and maintain an online repository, accessible by the City Solicitor's Office, that contains non-privileged case documents (docket entries, transcripts, discovery materials, etc.) and certain case memoranda, status reports and relevant case information including but not limited to billing activity for Police Counsel, engagements of experts and their associated billings.

## **II. THE RESPONSE**

This section states the terms and conditions governing the Response.

### **A. Cover Letter and Identification**

Respondent should include a cover letter of not more than two pages with the name and contact information of the person or persons authorized to represent the Respondent regarding all matters related to the Response. The Respondent's name and address should be on each page of the Response.

### **B. Format Required**

Conformance to format requirements is critical for the evaluation team to be able to locate the materials needed for the evaluation. The response package must include the following information and documents in the following order. The Respondent's name and address should be on each page of the Response.

### **C. Format Specifications**

1. Table of contents
2. Executive summary. The summary shall contain an outline of the Respondent's general approach together with a brief statement of the significant points of the Response, and a description of the major sections of the Response.
3. Respondent may include standard promotional material; however, that material may not substitute for providing the specific information requested by this.

## **D. Required Information and Qualifications**

ANSWER EACH QUESTION IN THE ORDER ASKED

1. Include Respondent's agreement to be bound by the terms of the Response without modification.
2. Identify the individual within the firm who will bear the ultimate responsibility for the services provided under this Contract, ensuring adequate staffing and resources for each case and the quality of representation (the "Responsible Partner").
3. Identify the partner or partner-level attorney(s) (individually or collectively, the "Lead Counsel") within the firm who will be the lead attorney on each case who at the very least oversees and guides the services provided under this Contract in cases for which they are responsible on a day-to-day basis.
4. Describe how the Responsible Partner plans to address the City's desire for a high level of service under any Contract awarded pursuant to this RFP. Also indicate the degree to which the Responsible Partner will be able to commit the firm's resources to the City and to the defense of sworn BPD law enforcement officers.
5. Include a resume detailing the background and qualifications and position within the law firm of the designated Lead Counsel.
6. Describe the other commitments of Lead Counsel designated and how those commitments might impact the Lead Counsel's ability to implement any Contract that is awarded under this RFP.
7. Briefly describe your firm's Responsible Partner's and the Lead Counsel's participation in civil litigation, including each's role in that litigation and win/loss record. The Law Department requires a minimum of ten (10) years of experience in civil litigation, including federal court civil litigation involving claims under 42 U.S.C. §§ 1983, 1985(3) and 1986. At least five (5) years of the civil litigation experience must involve representing police officers, similar law enforcement personnel, or other relevant experience. If you are an incumbent firm, please describe with specificity the cases handled for the City, including settlement results, outcomes at trial and on dispositive motions.
8. Include any other information important to the evaluation of the Lead Counsel's and the firm's experience and capabilities in general civil litigation and in representing police officers.
9. Provide a staffing plan detailing each professional within the firm who is expected to perform work under any Contract awarded under this RFP. Please also include a resume

explaining the background and qualifications of each professional listed in the staffing plan. If the professional is an attorney, please list all jurisdictions (state and federal) where the attorney is admitted to practice law. Please provide a description of each professional's role and responsibilities under the Contract, as well as state the normal hourly rate for the professional. If the hourly rate for any professional will be different for break-out cases, please so state.

10. Describe your firm's commitment to diversity and inclusion in your workforce and the community over the past several years including specific actions taken in this regard by your firm. Identify all minority or female attorneys who will work on this contract and the anticipated level of activity.

11. State separately the number and percentage of your firm's minority partners, female partners, minority associates, and female associates.

12. Please include a separate statement that your firm and the professionals listed in the staffing plan do not have or anticipate having a potential conflict of interest with the City or BPD, or identify any potential firm conflicts of interest. Describe in detail any legal work by your firm in which you represent individuals, business entities, community groups, or any other type of organization against the BPD, police officers, the City or any other municipal/state/federal government entity. Include all criminal defense work.

13. Include a statement binding your firm, if selected as Police Counsel, to maintain in full force and effect full comprehensive professional liability insurance (the "Insurance") of a sufficient amount to cover all potential claims arising as a result of the firm's representation on behalf of the City. Such insurance coverage shall be no less than Ten Million dollars (\$10 million) per claim and Twenty Million dollars (\$20 million) in the aggregate. This insurance must be effective during the total term of the Contract (including any options thereunder) and all years thereafter necessary to cover (i) any continued activities of your firm to complete its representation under the Contract and (ii) any claims made within the applicable statute of limitations. Provide a description of the coverage and amount of the Insurance and proof of such insurance. Acknowledge that if selected as Police Counsel, your firm will provide the City proof of such Insurance immediately upon request at any time during the contract. List any pending claims or disputes against your insurance relating to prior civil litigation.

14. Include a statement binding your firm, if selected as Police Counsel, to indemnify, defend and hold harmless the City and the BPD from any and all third party claims or contentions, damages, costs, liability and attorneys' fees as a consequence or result of any claim or lawsuit related, in any way, to the Respondent's representation of BPD sworn officers under the contract, and further a statement that your firm will maintain General and Professional Liability Insurance ("Insurance") in an amount satisfactory to the City and BPD to fulfill its obligations under this Release and Indemnification Agreement.

- E.** Flag in large red letters any proprietary information that you do not wish to be publicly disclosed. Do not claim that your entire response is proprietary or confidential. The City shall not be responsible for inadvertent disclosure or for disclosure required under the Maryland Public Information Act.

**F. REFERENCES**

The City reserves the right to request references after submission of the Response.

**G. PRICE PROPOSAL**

Provide price proposals for this Contract (the "Price Proposal") based upon fifteen (15) flat-fee cases per year. Innovative price proposals are welcome. The City will be receptive to proposals that differentiate cases based on their complexity (provided that the criteria for such distinctions are objective) within the flat fee model and with respect to additional cases over the maximum. The Price Proposal should be as short as possible, preferably no more than two pages. Fixed annual fee, per case fees for cases over the maximum, and break out case fees, do not include expenses eligible for reimbursement such as outside expert fees, deposition and transcript costs, and filing fees. See Counsel Guidelines. The City is not obligated to assign either cases over the maximum or break out cases to Police Counsel.

For both normal cases and break-out cases, provide a breakdown of the percentage of the services you expect to be performed by the Responsible Partner, what percentage by specified other partners, and what percentage by specified other professionals. For each identified professional specify their hourly rate for break-out cases.

**H. PRESENTATIONS**

The City may request a Respondent(s) to come in for an Interview or to make a Presentation; however, the City is not obligated to do so. The Respondent cannot use the presentation to change or negotiate any portion of its proposal. The City will not discuss or disclose other Respondent's submittals but will limit discussion to the particular Respondent's Response.

**I. NEGOTIATIONS AND BEST AND FINAL**

1. This solicitation will result in the submission of responses (not Bids), and the evaluation and award process will be based on the overall technical and price response scoring, and not only the proposed price. Therefore, the City may, at its sole discretion, enter into negotiations with Respondents that receive sufficiently high and acceptable overall evaluation scores to make them eligible for award, and to invite "best and final offers" as deemed to be in the best interest of the City.

2. The City reserves the right to negotiate a change in any element of the Contract or any part of this RFP.
3. The City is not obligated to negotiate and may make an award based on either the initial evaluation or negotiated “best and final offers” as determined by and at the City’s sole discretion as being in the City’s best interest.
4. If an agreement cannot be reached with a recommended Respondent, negotiations will be attempted with the other Respondents.

### **III. EVALUATION CRITERIA**

#### **A. CRITERIA**

The factors to be used in evaluating the responses will include the following:

1. Level of service, the expertise of the firm, and the price. The City is seeking the highest level of service combined with the requisite expertise and the best possible value.
2. Experience representing law enforcement officers who have been named as defendants in civil cases alleging that they have committed torts within the scope of employment, including experience in handling claims under 42 U.S.C. §§ 1983, 1985(3) and 1986.
3. Inclusion of minority and female attorneys in the group of attorneys to be involved in the representation.
4. Prior representation of the City or any police or other public safety department.
5. Quality of references, if requested.

#### **B. METHOD OF EVALUATION**

The City Solicitor will select the Response that meets the City’s objectives as outlined by this RFP. Evaluations will be conducted by an evaluation team selected by the City Solicitor in his sole discretion. **The City Solicitor is not required to select the low-cost Respondent.** Experience of attorneys and quality of representation will be important considerations.

#### **C. RESERVATION OF RIGHTS**

The City reserves the right to negotiate a change in any element of the Contract or any part of this RFP.