

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
CECIL B. PATTERSON**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of October 14, 2015, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Cecil B. Patterson, an individual (the "Reviewer").

RECITALS

A. After a competitive procurement process, the City of Scottsdale, Arizona ("Scottsdale") entered into Contract No. 2014-202-COS, dated December 2, 2014 (the "Scottsdale Contract"), for the Reviewer to review and determine ethics complaints for Scottsdale on an as-needed basis. A copy of the Scottsdale Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to purchase such services under the Scottsdale Contract, at its discretion and with the agreement of the awarded Reviewer, and the Scottsdale Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Reviewer desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Scottsdale Contract and this Agreement, (ii) establishing the terms and conditions by which the Reviewer will conduct an initial review of an ethics complaint against a council member, interview both parties, and within 15 days issue a report of findings and conclusions (the "Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Reviewer hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until February 13, 2016, unless terminated as otherwise provided in this Agreement or the Scottsdale Contract.

2. Compensation. The Town shall pay Reviewer an amount not to exceed \$3,500.00 for the Services at the rate set forth in the Scottsdale Contract, attached hereto as Exhibit A.

3. Payments. The Town shall pay the Reviewer upon submission and approval of an invoice at the conclusion of the Services. The invoice shall document and itemize the work completed. The invoice statement shall include a record of time expended and work performed

in sufficient detail to justify payment. The contract number and the Scottsdale Contract must be referenced on the invoice.

4. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

5. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

6. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scottsdale Contract and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Scottsdale Contract (collectively, the “Unauthorized Conditions”), other than the Town’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Scottsdale Contract shall not alter such terms and conditions or relieve Reviewer from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

7. Rights and Privileges. To the extent provided under the Scottsdale Contract, the Town shall be afforded all of the rights and privileges afforded to Scottsdale and shall be the “City” (as defined in the Scottsdale Contract) for the purposes of the portions of the Scottsdale Contract that are incorporated herein by reference.

8. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Attn: Grady E. Miller, Town Manager

With copy to: GUST ROSENFELD, P.L.C.
 One East Washington Street, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire, Esq.

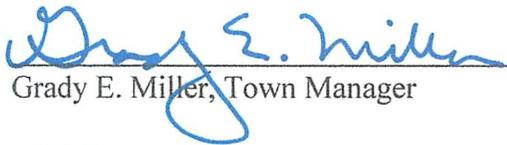
If to Reviewer: Cecil B. Patterson
 P.O. Box 10867
 Tempe, Arizona 85284

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

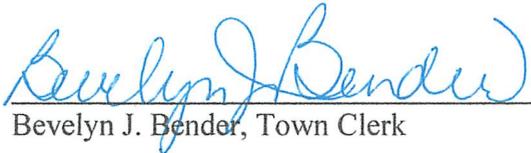
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation


Grady E. Miller, Town Manager

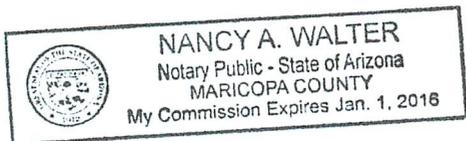
ATTEST:


Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On October 14, 2015, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



(Affix notary seal here)


Notary Public

“Reviewer”

CECIL B. PATTERSON,
an individual

By: Cecil B. Patterson Jr.

Name: Cecil B. Patterson Jr.

Title: Ethics Officer

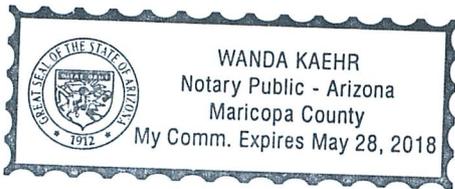
(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On Oct 15, 2015, before me personally appeared CECIL B. PATTERSON, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document.

Wanda KaeHR
Notary Public

(Affix notary seal here)



**EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
CECIL B. PATTERSON**

[Scottsdale Contract]

See following pages.

**PROFESSIONAL SERVICES CONTRACT
OUTSIDE PROFESSIONAL LEGAL SERVICES-ETHICS**

This contract ("Contract"), made and entered into this 2nd day of December 2014, by and between the City of Scottsdale, a municipal corporation of the State of Arizona hereinafter referred to as "City", and Cecil B. Patterson, hereinafter referred to as "Reviewer", collectively referred to as the "Parties".

RECITALS

WHEREAS, the City desires to contract with retired judges, members of the law school faculties from the University of Arizona or Arizona State University, or local attorneys for professional/legal services to act as ethics reviewers on an as needed, or matter-by-matter basis, to serve as independent, non-city personnel to handle ethics complaints, as provided by the City of Scottsdale Code of Ethical Behavior (SRC §§ 2-47 et seq.); and

WHEREAS, the City Attorney has issued a Request for Statement of Qualifications for Outside Professional/Legal Services—Ethics and the Reviewer has responded to the Request, and it has been determined that the Reviewer is qualified to perform the requested services.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Contract, the Parties agree as follows:

TERMS

1.0. Services to be provided.

1.1. The City of Scottsdale will engage the services of the Reviewer, on an as needed, matter-by-matter basis, to serve as an independent ethics reviewer. Independent ethics reviewers will serve on three-member panels to determine ethics complaints lodged against the mayor, or members of the city council. Independent ethics reviewers may also be called upon to determine ethics complaints filed against a member of a city board, commission, committee, task force, or other appointed advisory group, if the city attorney would have a conflict of interest in handling that complaint.

1.2. The City's independent ethics officer will select independent ethics reviewers for specific three-member panels from the existing pool of eligible individuals, which pool will include the Reviewer. The authority for the services of independent ethics reviewers is Scottsdale Revised Code (SRC) Section 2-57, a provision of the City of Scottsdale Code of Ethical Behavior, passed and adopted as City of Scottsdale Ordinance No. 3675, May 2, 2006, codified as SRC §§2-47 through 2-58, and 2-243.

2.0. Compensation.

2.1. The Reviewer will be compensated at an hourly rate of Two Hundred Seventy-Five Dollars (\$275.00) for services performed, pursuant to this Contract. Compensation will not be paid for travel time or mileage, however, and no costs or additional expenses will be paid, except as may be otherwise mutually agreed in writing.

2.2. All time spent performing services pursuant to this Contract shall be recorded and submitted to the Contract Administrator, as designated in Section 9.5, below. All time shall

be kept and recorded based on each one tenth (0.10) of any hour times the Reviewer's hourly rate. The Reviewer shall maintain all books, papers, documents, accounting records and other evidence pertaining to time billed and to costs incurred and make such materials available for audit as may be required by the City from time to time. The Reviewer shall maintain all such records for a period of at least three (3) years after this Contract has terminated. All payments for services rendered must be approved by the Contract Administrator prior to payment.

3.0. Term and extension.

The term of this Contract shall be for two (2) years, commencing on the date it has been executed by both Parties, which is the date first written above. The term of this Contract may be extended for two (2) additional one (1) year periods, upon the written mutual agreement of the Parties.

4.0. Termination.

4.1. This Contract may be terminated by either Party, for cause or convenience, upon giving thirty (30) days prior written notice of termination to the other Party, as provided in section 8.0, below. In the event of such termination, the Reviewer shall immediately stop all work hereunder. As compensation in full for services performed to the date of such termination, the Reviewer shall receive payment for the time spent providing services and yet unpaid up to the time of termination plus any costs approved but unpaid. This final payment shall be in the amount to be mutually agreed upon by the Reviewer and the City and based on actual time spent and unpaid at the time of termination. The City shall pay this final billing within thirty (30) days after the Reviewer has delivered to the Contract Administrator the last of any partially completed work.

4.2. In the event the Reviewer is in violation of any federal, state, county or City law, regulation or ordinance, the City may terminate this contract immediately upon giving notice to the Reviewer.

5.0. Funds appropriation.

If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice, pursuant to Section 4.1, of termination of this Contract to the Reviewer at least thirty (30) days prior to the end of its current fiscal period and will pay to the Reviewer all approved charges incurred through the end of such period.

6.0. Independent contractor.

6.1. The services the Reviewer provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. City shall not withhold income tax as a deduction from contractual payments. As a result of this, Contractor may be subject to I.R.S. provisions for payment of estimated income tax. Contractor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements.

6.2. The Reviewer shall be solely responsible for any and all tax obligations that may result out of the Reviewers performance of this contract. The City shall have no obligation to pay

any amounts for taxes, of any type, incurred by the Reviewer. Prior to receiving any payment under this Contract, the Reviewer must provide the Contract Administrator with a completed IRS W-9 Form—Request for Taxpayer Identification Number and Certification.

7.0. Insurance and indemnification.

No insurance or indemnification will be required of independent ethics reviewers. Scottsdale Revised Code Section 2-57(a) provides that: "Individuals who serve as the city's independent ethics reviewers shall do so as the city's agents and enjoy the city's full liability protection and immunity as allowed by law".

8.0. Notices.

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Reviewer:

To the mailing address provided by the Reviewer to the Contract Administrator upon execution of this Contract. The Reviewer's mailing address shall be maintained as confidential and shall not be disclosed pursuant to a public records request.

In the case of City:

Bruce Washburn, City Attorney
City of Scottsdale
3939 N. Drinkwater Boulevard
Scottsdale, Arizona 85251

Notices shall be deemed received on the date delivered, if delivered by hand, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Notice by email or facsimile shall not be considered adequate notice as required by this Contract.

9.0. General terms.

9.1. Entire agreement. This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives of each party.

9.2. Applicable law. This Contract shall be governed and interpreted according to the laws of the State of Arizona and the City of Scottsdale.

9.3. Amendments to Contract. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. The City Attorney, or designee, as Contract Administrator, shall have the authority to enter into amendments on behalf of the City.

9.4. **Non-assignability.** Services covered by this Contract are personal in nature and non-assignable by the Reviewer.

9.5. **Contract administrator.** The Contract Administrator for the City shall be the City Attorney, or City Attorney's designee. The Contract Administrator shall oversee the performance of this Contract. The City's independent ethics officer, however, as necessary, will assist the Reviewer in accessing the organization, audit billings and submitting billings to the Contract Administrator for the approval of payments. The Reviewer shall channel reports and special requests through the independent ethics officer.

9.6. **Attorney's fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

9.7. **Interests adverse to City.** The Reviewer shall not engage in or carry on any legal activity on behalf of any client, which is in any way directly adverse to the City, or its interests, without the specific prior written consent and waiver of the City Attorney.

9.8. **Conflict of interest.** The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a Reviewer to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. §38-511).

9.9. **Immigration Law Compliance.** Under the provisions of A.R.S. §41-4401, COUNSEL warrants to the CITY that COUNSEL and all its Subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that COUNSEL and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by COUNSEL or any of its Subcontractors will be considered a material breach of this Contract and may subject COUNSEL or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The CITY retains the legal right to inspect the papers of any employee of COUNSEL or any Subcontractor who works on this Contract to ensure that COUNSEL or any Subcontractor is complying with the warranty given above.

The CITY may conduct random verification of the employment records of COUNSEL and any of its Subcontractors to ensure compliance with this warranty. COUNSEL agrees to indemnify, defend and hold the CITY harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The CITY will not consider COUNSEL or any of its Subcontractors in material breach of this Contract if COUNSEL and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract COUNSEL enters into with any and all of its Subcontractors who provide services under this Contract or any subcontract. "Services" are defined as the furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. COUNSEL will take appropriate steps to assure that all Subcontractors comply with the requirements of the E-Verify Program. COUNSEL's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the CITY.

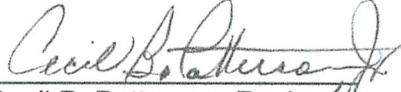
9.10. Affidavit Demonstrating Lawful Presence in the United States. Individuals contracting with the City to provide services are required by ARS § 1-502 to complete an affidavit demonstrating lawful presence in the United States and to provide at least one form of identification specified by the statute.

9.11. Captions. The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

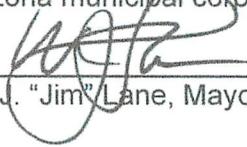
9.12. Severability. If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

9.13. Recitals. The Recitals set forth at the beginning of this Contract are made a part hereof by this reference.

IN WITNESS WHEREOF, the Parties have executed this Contract on the date first written above.


Cecil B. Patterson, Reviewer

CITY OF SCOTTSDALE, an
Arizona municipal corporation


W. J. "Jim" Lane, Mayor

ATTEST:


Carolyn Jagger, City Clerk

APPROVED AS TO FORM:


Bruce Washburn, City Attorney

REVIEWED BY:


Katherine Callaway, Risk Management Director

RESOLUTION NO. 9964

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NOS. 2014-197-COS, 2014-198-COS, 2014-199-COS, 2014-201-COS, and 2014-202-COS WITH FIVE RETIRED STATE JUDGES, TO SERVE AS INDEPENDENT ETHICS OFFICERS.

WHEREAS, the Scottsdale City Council adopted the Public Service Ethics Program and Code of Ethical Behavior for City Officials Public Officers on May 2, 2006; and

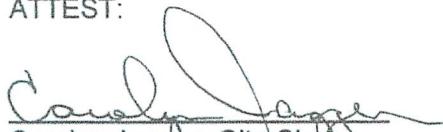
WHEREAS, section 2-57 of the Scottsdale Revised Code, a section of the Code of Ethical Behavior for City Officials, requires the formation of a pool of ten to twelve retired state or federal judges, or law school faculty members, who can serve as independent ethics reviewers; and the city attorney has conducted a process and has identified five retired state judges, who are qualified to serve in this capacity.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

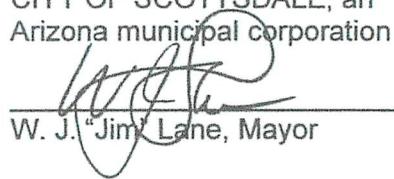
Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City of Scottsdale, contracts for legal services, with five retired state judges, to serve as independent ethics officers, as follows: 2014-197-COS (Kenneth L. Fields); 2014-198-COS (William J. Schafer, III), 2014-199-COS (Noel Fidel), 2014-201-COS (Robert D. Myers), and 2014-202-COS (Cecil B. Patterson).

PASSED AND ADOPTED by the City Council of the City of Scottsdale, Arizona, this 2nd day of December, 2014.

ATTEST:


Carolyn Jagger, City Clerk

CITY OF SCOTTSDALE, an
Arizona municipal corporation


W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:


Bruce Washburn, City Attorney