

**INDEPENDENT CONTRACTOR AGREEMENT
FOR CITY ATTORNEYS**

THIS AGREEMENT, made and entered into as of the 9th day of December, 2010, by and between **THE CITY OF EVANSVILLE**, whose mailing address is Civic Center Complex, Room 302, 1 Martin Luther King, Jr. Boulevard, Evansville, Indiana 47708 ("City") and **JONES · WALLACE, LLC**, whose mailing address is 420 Main Street, Suite 1600, P.O. Box 1065, Evansville, Indiana 47706 ("Contractor").

WHEREAS, the City desires to retain the services of Contractor as an Independent Contractor, and Contractor desires to provide services as an Independent Contractor upon the terms and conditions set forth hereinbelow.

NOW, THEREFORE, in consideration of the mutual terms, conditions, representations and covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **DESCRIPTION OF SERVICES.** Contractor agrees to provide legal counsel and legal support services for the City, providing legal advice and expertise in conjunction and cooperation with the Corporation Counsel, to the City's Mayor, Boards and Commissions as prescribed by statute, including the Duties and Responsibilities set forth on the City of Evansville Position Description for the Assistant City Attorney position which is attached hereto as "EXHIBIT A" and made a part hereof. The Services provided under this Agreement shall be provided on a "supplemental" or "as needed" basis. "Supplemental" and "as needed" are defined to mean that the City will not provide the Contractor any guaranteed work hours or work schedules.

2. **CONTRACTOR'S JOB REQUIREMENTS.** During the term of this Agreement and in the Contractor's provision of the services as Assistant City Attorney to the City, Contractor shall fulfill, satisfy and maintain the Job Requirements set forth in the Position Description attached as "EXHIBIT A" and made a part hereof, including, without limitation, maintaining Contractor's status as an attorney in good standing and licensed in the State of Indiana.

3. **TERM OF AGREEMENT.** This Agreement is effective from the 1st day of January, 2011 and shall continue until the 31st day of December, 2011, unless terminated sooner as provided for hereinbelow.

4. **COMPENSATION.** As compensation for the Services rendered under this Agreement, the Contractor shall receive One Hundred Forty Thousand Seven Hundred Eighty-six Dollars (\$140,786.00) per year, payable in accordance with the City's standard payment practices, but in any event no less frequently than equal monthly

payments in the amount of Eleven Thousand Seven Hundred Thirty-two Dollars Seventeen Cents (\$11,732.17). The City shall only reimburse the Contractor for out-of-pocket expenses arising out of or incurred in Contractor's provision of Services to the extent such expenses are approved in advance by the City.

Contractor shall receive Seventy-two Thousand Three Hundred Sixty-two Dollars (\$72,362.00) per year for legal support services payable in accordance with the City's standard payment practices, but in any event no less frequently than equal monthly installments in the amount of Six Thousand Thirty Dollars Sixteen Cents (\$6,030.16).

As a self-employed individual, the Contractor shall not receive or earn any holiday, vacation or sick pay from the City, is not eligible to participate in its retirement plan(s) and is not covered under the City's welfare benefits plan(s), including, but not limited to, plans that provide medical and dental benefits.

Contractor agrees to be fully responsible for complying with all federal, state and local laws in connection with the performance of this Agreement, including, but not limited to, payment of any estimated or other federal, state or local income taxes, and payment of applicable charges for Social Security, FICA and self-employment taxes. The City shall not be responsible for payment or withholding of any such items in connection with the Services rendered by the Contractor under this Agreement. The Contractor agrees to indemnify and hold the City harmless from any assessment against the City because of any failure by the Contractor to properly pay federal, state or local income taxes (including estimated tax payments) and file returns in connection therewith, or to pay Social Security contributions, FICA, or any other self-employment tax.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP.** This Agreement does not constitute nor shall the same be construed as an employment or a hiring by any party. Contractor covenants, stipulates and agrees that Contractor is and shall remain an independent contractor bound by the provisions hereof. Contractor is under the control of the City as to the Services performed by the Contractor only, and not as to the means by which such Services are accomplished by the Contractor. Contractor shall exercise Contractor's discretion in the manner and method of the performance of the Services hereunder, consistent with the general direction which may from time to time be given by the City, but the manner and means of performing the Contractor's duties shall be in the Contractor's discretion. This Agreement shall not be construed as a partnership, association or to the extent specifically provided in this Agreement. The City shall not make any premium payments or contributions for workman's compensation insurance or employment compensation relating to the Contractor, it being understood by the parties hereto that the relationship between the parties is such that no such payments or contributions are required or appropriate. Without limiting the generality of the foregoing, the Contractor agrees that the Contractor shall be responsible for compliance, at Contractor's own cost and expense, with all statutes, laws, rules and regulations, either now in force or hereafter enacted, applicable to the Contractor, including, without limit, federal, state and local income tax withholding, self-

employment tax, unemployment insurance and Social Security laws, and shall duly and punctually pay all taxes and contributions that may be required.

6. **INSURANCE**. Contractor agrees to maintain professional malpractice and other insurance coverage, including, but not limited to, automobile and other liability insurance, with carriers and with policy limits reasonably acceptable to the City.

7. **TERMINATION**. This Agreement will automatically expire on December 31, 2011, provided, however, this Agreement may be terminated by either party prior to December 31, 2011, by giving fourteen (14) days' written notice.

8. **ARBITRATION**. This Agreement shall be governed and construed under the laws of the State of Indiana, not including the choice of law rules thereof. Any and all disputes, complaints, controversies, claims and grievances arising under, out of, in connection with, or in any manner related to this Agreement or the relationship of parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any decision and award of the arbitrator shall be final, binding and conclusive upon all of the parties hereto, and said decision and award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Vanderburgh County, Indiana, before one (1) arbitrator who shall be an attorney who has substantial experience in commercial law issues. However, neither party shall institute an arbitration, nor any other proceeding to resolve such disputes between the parties before that party has sought to resolve disputes through direct negotiations with the other party. If disputes are not resolved within three (3) weeks after a demand for direct negotiation, the parties shall attempt to resolve disputes through mediation conducted in Evansville, Vanderburgh County, Indiana. If the parties do not agree on a mediator within ten (10) days, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney with substantial experience in commercial law issues. If the mediator is unable to facilitate a settlement of disputes within thirty (30) days, the mediator shall issue a written statement to the parties to that effect, and the aggrieved party may then seek relief through arbitration as provided above. The fees and expenses of the mediator and any arbitrator shall be split and paid equally by each of the parties. In the event of any arbitration between the parties hereto involving this Agreement or the respective rights of the parties hereunder, each party shall pay their own attorneys' fees, costs and expenses of such arbitration. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving more than two (2) parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures, in aid of the arbitration proceedings, or to enforce the arbitration award, but not otherwise. Any such application to a court shall not be deemed incompatible or a waiver of this section. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Notwithstanding anything to the contrary in the Commercial Arbitration Rules and supplementary procedures, the arbitrator shall not be authorized

or empowered to award punitive, exemplary, consequential or special damages, or attorney's fees, and the parties expressly waive any claim to such damages or fees.

9. **MISCELLANEOUS.** This Agreement contains the entire agreement between the parties hereto, and supersedes all prior oral or written agreements, commitments, expectations or understandings with respect to the parties, and such other matters as may be provided for herein. No amendment or modification hereof shall be binding upon any party hereto unless set forth in writing and duly executed by all of the parties hereto. All headings set forth herein are included for the convenience of reference only and shall not affect the interpretation hereof, nor shall any weight or value be given to the relative position of any part or provision hereof in relation to any other provision in determining such construction. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid under applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and deemed omitted, but shall not invalidate the remaining provisions hereof. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original but all which together shall constitute one and the same instrument. THIS PROVISION, AND EACH AND EVERY OTHER PROVISION OF THIS AGREEMENT, MAY NOT UNDER ANY CIRCUMSTANCE BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED VERBALLY, BUT MAY ONLY BE MODIFIED, CHANGED, AMENDED OR PROVISIONS HEREUNDER WAIVED BY AN AGREEMENT IN WRITING EXECUTED BY ALL PARTIES HERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE CITY OF EVANSVILLE

JONES · WALLACE, LLC

By: Anthony Brooks
Printed Name: Anthony Brooks
Title: Vice President, Board of Public Works
"City"

By: David L. Jones
David L. Jones, Partner
"Contractor"

**EXHIBIT A
TO THE INDEPENDENT CONTRACTOR
AGREEMENT FOR ASSISTANT CITY ATTORNEY
BY AND BETWEEN THE CITY OF EVANSVILLE
AND JONES · WALLACE, LLC**

Prepares court cases and represents the City and its agencies, including Mayor, Boards, Commissions, and Departments during various legal proceedings.

Drafts ordinances, resolutions, contracts, and legal documents for actions by the policymaking boards and commissions.

Answers legally related citizen inquiries and complaints, both orally and in writing; makes recommendations for legal cases pending with the City.

Maintains legal documents, including municipal code; reviews contracts, bonds, specifications, agreements, and liens, to assure legal compliance.

May participate in labor-management negotiations meetings and reviews agreements to assure proper execution of terms.

Conducts legal research as assigned.

Attends all Board and Commission meetings as required.

Prepares and files all pleadings and documents related to all assignments.

Must be able to decipher all internal memoranda and maintain a level of expertise in all areas of law which affect the City.

Performs related duties as assigned.

Assists Corporation Counsel in achieving departmental risk management duties.

Provides legal advice to various City Boards, Commissions, Departments, and elected City officials, as needed, but specifically including the following:

City Clerk/Code Enforcement Collections

Labor/employee matters, including matters involving employee bargaining units, negotiations, grievances, etc.

Drafts ordinances, resolutions, contracts, and legal documents for actions by the policymaking boards and commissions.

Answers legally related citizen inquiries and complaints, both orally and in writing; makes recommendations for legal cases pending with the City.

Maintains legal documents, including municipal code; reviews contracts, bonds, specifications, agreements, and liens, to assure legal compliance.

Conducts legal research as assigned.

Attends all Board and Commission meetings as required.

Prepares and files all pleadings and documents related to all assignments.

Must be able to decipher all internal memoranda and maintain a level of expertise in all areas of law which affect the City.

Performs related duties as assigned.

Assists Corporation Counsel in achieving departmental risk management duties.

Provides legal advice to various City Boards, Commissions, Departments, and elected City officials as necessary, but specifically including the following:

Safety Board

Environmental Protection Agency

Emergency Management Advisory Board

Historic Preservation Commission

Levee Authority District

Domestic & Sexual Violence Commission

Parks Department

Department of Transportation and Services