

**District of Columbia Housing Finance Agency (Agency)  
OUTSIDE COUNSEL ADDENDUM**

**Chapter 1: Representing DCHFA**

**1.1 Scope of Addendum**

This Addendum describes some of the guidelines that must be followed by Outside Counsel to the extent you are selected as part of the Agency’s professional slate. Any questions regarding this Addendum should be directed to the Agency’s Office of General Counsel (“OGC”).

**1.2 Identifying the Agency as a Client**

You may list the Agency as a client in published materials as long as you adhere to the following restrictions:

- You may not represent that you have been "approved" as Outside Counsel for the Agency. You may, however, say that you are listed on the Agency’s professional slate.
- As Outside Counsel, you are required to comply with all applicable ethics rules regarding advertising, including those restrictions pertaining to claims of "expert" status, expertise, or specialization.
- You may not quote Agency materials or staff comments as to performance evaluations, if any. If you wish for Agency personnel to participate in surveys or interviews regarding your performance, you must first submit the survey or interview questions to the OGC for review and approval.

**1.3 Ethical Considerations**

The Agency expects you to maintain the highest ethical standards and to comply with all applicable laws, rules and regulations governing ethical conduct.

**1.4 File and Record Retention**

All information contained in Agency legal matter files, whether supplied by the Agency or third parties or created by you, including attorney work product, is the property of the Agency. Under no circumstances may you withhold files for any reason, including a dispute over payment. Upon completion or termination of the matter, you are responsible for the preservation of the files until the Agency authorizes the files' destruction pursuant

## **ATTACHMENT A – SOLICITATION NUMBER: DCHFA-23-013**

to the Agency's Record Retention Guidelines and Schedule or the Agency orders their transfer to the Agency or another organization.

### **1.5 CONFIDENTIAL INFORMATION**

Means any oral, written, graphic or machine-readable information, including but not limited to, any personally identifiable information related to the Agency's programs, partners, employees, or borrowers including, but not limited to, names, addresses, social security numbers, telephone numbers, e-mail addresses, financial and similar information, regardless of the manner in which it was furnished or obtained.

### **1.6 NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

You shall not use or retain any Confidential Information for your own use or for any reason other than to carry out services contemplated by the engagement. You shall take all reasonable measures to protect the privacy of the Confidential Information in order to prevent it from public disclosure or unauthorized use or access by persons or entities not authorized. Access to Confidential Information shall be limited only to the firm employees who have a need to access the Confidential Information in their official capacity to carry out legal services to the Agency. Confidential Information shall not be directly or indirectly disclosed, reproduced, copied, disseminated, published, furnished, provided or otherwise made available to any person, firm partnership, limited liability company, corporation, government, association, institution, or other entity, without the prior written consent of the Agency. Notify the Agency immediately of any actual or suspected breach, misuse, misappropriation, or unauthorized disclosure of the Confidential Information. You shall be personally liable for any violations of the terms of this Section.

### **1.7 Audit Rights**

You must permit the Agency to conduct audits or reviews of your Agency billings, including previously paid invoices. All paid invoices are subject to audit regardless of disallowances taken during the fee bill review and approval process.

For purposes of subsequent audits, you must retain invoice files, original underlying support documentation for expenses, subcontractor invoices, and original or electronic time sheets and time and expense adjustment records, for at least three years after final payment under the legal referral.

### **1.8 Fees and Expenses**

The OGC will consider flat fee arrangements and other innovative rate proposals. Your costs of doing business, including all "overhead," general and administrative costs, fringe benefits, and profit must be included in your fees or hourly rates for legal services.

## ATTACHMENT A – SOLICITATION NUMBER: DCHFA-23-013

You may not submit, and the Agency will not pay, separate invoices for such costs of doing business.

The Agency will only pay reasonable costs for services rendered or supplies provided in the course of representation. The Agency will reimburse only out-of-pocket expenses, except hotel, airfares and employee meals, and will not reimburse on a cost plus or similar basis.

The Agency's goal is to obtain the best legal representation at the lowest reasonable cost. Consistent with that goal, we expect you to manage time carefully.

The Agency will not pay for costs associated with:

- Excessive or redundant conferencing;
- Unnecessary review of documents or files;
- Unnecessary "polishing" of documents;
- The "learning curve" for Agency matters;
- Unfocused legal research; and/or
- Excessive, unreasonable or unapproved expenses.

Fees for transactions are paid only when the transaction closes unless otherwise agreed to before engagement for a particular matter. A billing statement must be provided at closing, which indicates amounts attributed to fees and to expenses. Detailed billing reports must be provided at the Agency's request.

### **1.9 Contacts with the Media and the Public**

Extra-judicial statements regarding Agency matters are usually inappropriate and are often counterproductive. If media representatives contact you concerning matters that you are managing on behalf of the Agency, you may confirm facts that are a matter of public record. Under no circumstances shall you comment to the media on other specifics of a matter, such as potential appeals or settlements, or on more general matters involving the Agency's policies and procedures or decision-making processes. All media inquiries concerning Agency matters must be referred to the Agency's Vice President of Public Relations at (202) 777-1650 for a response. Additionally, you should promptly advise the assigned Oversight Attorney of the inquiry and its referral to the Vice President of Public Relations.

If you address the public at conferences or other functions on topics pertaining to the Agency or laws and regulations impacting the Agency, you must disclose to the audience that you are making the presentation on your own behalf and not on behalf of the Agency. You will not disclose any confidential Agency information in any such presentation. You also must provide any corresponding written materials that specifically mention the Agency to the OGC for review prior to your speaking engagement.

### **1.10 Role of Agency Oversight Attorney**

Attorneys in OGC are responsible for managing all legal assignments and litigation, including matters referred to Outside Counsel (the “Oversight Attorney”). As Outside Counsel, you must consult with the Oversight Attorney on all strategic and major tactical decisions associated with a matter.

On routine cases, the OGC does not expect to be involved in every decision. **However, important decisions should always be raised with your Oversight Attorney in sufficient time to allow for meaningful review and consideration of the issues, especially if the issue involves Agency revenue or policy issues.**

#### **At the Beginning of the Legal Matter**

It is important at the beginning of a legal matter to clearly identify the objectives to be achieved and possible alternative courses of action. As a general rule (depending in part on the scope of the assignment), the Oversight Attorney will:

- Define the goals and objectives to be achieved.
- Outline your role and expected duties.
- Discuss with you the scope of the required work and budget designed to achieve the Agency’s goals and objectives in a cost-effective manner.

#### **During the Course of the Legal Matter**

During the course of the legal matter, the Oversight Attorney will:

- Review your work and participate in representation.
- Monitor progress.
- Review and obtain approval of any significant changes in representation or budget.
- Keep Agency business personnel informed of developments.
- Coordinate contacts between you and Agency business personnel.
- Evaluate your performance as Outside Counsel on an on-going basis. Among the items evaluated are the quality of the services provided, cost consciousness, responsiveness to OGC and business personnel, effective management of matters and compliance with Agency policies and procedures.
- Reviewing invoices for completed work and recommending approval by the General Counsel for the Agency, if the Contractor’s prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;  
Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers; and

## ATTACHMENT A – SOLICITATION NUMBER: DCHFA-23-013

The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes

### **Reports**

Outside Counsel must keep the Oversight Attorney fully informed regarding the status of each open matter. Reporting requirements will vary by type and size of case, and by firm. A status report for any matter shall be submitted to the Oversight Attorney as often as directed.

Reports should:

- Be brief but meaningful.
- Emphasize developments since the last report.
- Review whether the case is proceeding in line with the budget; and, if not, explain why actual costs differ from projected or budgeted amounts. This explanation must be provided before an invoice is paid.

### **Contacts with Other Agency Personnel**

Generally, contact with non-legal Agency personnel regarding a matter should be made through the Oversight Attorney or the OGC. Except as otherwise instructed, you should always copy the Oversight Attorney on any contact with Agency business personnel regarding a matter. This policy permits the most efficient utilization of resources and serves to minimize costs and to avoid duplication of effort.

### **1.11 Termination**

The Agency reserves the right to discontinue or limit its relationship with you for any or no stated reason. In such an event, notification of removal from the professional slate or removal of individual legal matters will be confirmed in writing. You will be contacted and provided with instructions concerning disposition of files and other Agency property. Your cooperation during transition is a contractual and ethical obligation and is necessary for an orderly transfer of legal matters.

**You must forward upon demand of the Agency all files, documents, original underlying support documentation for expenses, subcontractor invoices, and electronic time sheets concerning the terminated legal matter(s), including all related work product of your firm. It is important that you promptly forward files as instructed. Failure to do so may delay or prevent payment of your final invoice. Under no circumstances may you withhold files in the event of a dispute with the Agency.**

**Chapter 2: Conflicts of Interest**

**1.1 Rules of the Legal Profession**

All Outside Counsel are subject to applicable Federal, District and Agency conflict of interest laws, regulations, and guidelines. You must also observe applicable bar rules of professional responsibility with respect to conflicts of interest and confidentiality for your jurisdiction, and the American Bar Association Model Rules of Professional Conduct to the extent that they are also applicable.

**1.2 Required Disclosures**

At and during the time you or your firm is assigned to a specific matter by the Agency, you must disclose to the OGC, any facts which are known by you or your firm that create an actual or potential conflict of interest or that may present the appearance of a conflict as defined by the applicable bar rules of professional responsibility. Disclosure should be made to the Oversight Attorney or the General Counsel.

**2.3 Conflict Determination**

It is solely within the discretion of the OGC to determine whether an actual or potential conflict exists. Moreover, even the appearance of a conflict may result in the denial of a waiver or imposition of other corrective actions. Conflicts of interest may only be waived by the OGC in writing. Requests for waivers of conflicts of interest are granted or denied on behalf of the Agency by the OGC.

Requests for waivers are considered only on a case-by-case basis.

**2.4 Noncompliance**

Failure to promptly disclose promptly any actual or potential conflicts of interest or matters that may present the appearance of a conflict may result in the following the termination of your engagement and removal from the Agency’s professional slate.

**2.5 The Agency as Former Client**

You are also expected to observe all requirements of attorney-client confidentiality after the conclusion of any Agency representation.

**Chapter 3: Engagement for Individual matters**

**3.1 Selection of Outside Counsel for an Individual Matter**

## ATTACHMENT A – SOLICITATION NUMBER: DCHFA-23-013

The OGC attempts to select Outside Counsel on a competitive basis whenever possible. The OGC may, subject to its discretion, send out invitations to multiple law firms to submit written proposals on particular matters. When retaining Outside Counsel to perform legal services, the OGC considers several factors, including, but not limited to:

- The experience of Outside Counsel in the type of legal work required to be performed.
- The capacity of Outside Counsel to handle the anticipated volume of work created by the engagement.
- Whether the fees or rates proposed by Outside Counsel are competitive in comparison to other firms' rates.
- Whether, at the sole discretion of the Agency, the firm has a disproportionate number of ongoing engagements.
- Whether provision of legal services by Outside Counsel would constitute or give rise to an actual or potential conflict of interest or the appearance of a conflict of interest.
- Whether, in its prior work for the Agency, the firm has demonstrated competence, integrity, cost effectiveness and cooperation.

Whenever possible, the Agency considers a diverse list of law firms (**including minority- and women-owned law firms**) in selecting Outside. The Agency also encourages co-counseling arrangements between majority and minority- and women-owned law firms. If you have questions regarding co-counseling arrangements, please contact the OGC.

### 3.2 Engagement Letters

When the OGC engages your firm to provide legal services for a particular case or matter, a legal engagement letter must be executed for that particular matter. An engagement letter generally covers only one matter, but it may encompass one or more "legal matters." For example, an engagement letter may encompass negotiation and documentation of a particular transaction **and** any post-closing matters that arise from that transaction.

Outside Counsel shall provide a signed engagement letter (including the budget for the matter) to the OGC. After review of the engagement letter by the OGC, the General Counsel shall countersign. Outside Counsel cannot begin work on a matter without an engagement letter signed by the Agency unless such work has been expressly approved by the OGC.

The OGC reserves the right to terminate an engagement for any or no stated reason.

### 3.3 Staffing

Outside Counsel are required to discuss staffing with your Oversight Attorney and assign the number of attorneys or paraprofessionals that are necessary to adequately represent the

**ATTACHMENT A – SOLICITATION NUMBER: DCHFA-23-013**

Agency and must refrain from rotating assignments away from attorneys knowledgeable about Agency matters or using Agency projects for the purpose of training firm personnel.

**Acknowledgement**

The undersigned, on behalf of the firm, understands and agrees to the provisions of the RFQ and the Addendum issued by the Agency and will be bound by terms and guidelines set forth in the RFQ and the Addendum.

AGREED AND ACCEPTED:

Name of Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_