

## TRUST LEGAL SERVICES RETAINER AGREEMENT

THIS AGREEMENT is between the **AGC Health Benefit Trust Oregon-Columbia Chapter** (referred to as the "Trust") and the firm of **MCKENZIE ROTHWELL BARLOW & COUGHRAN, P.S.**, Seattle, Washington (referred to as the "Law Firm"). The purpose of this Agreement is to set the terms under which Law Firm will provide legal services to the Trust.

### **1. Retention of the Law Firm**

The Trust hereby retains the Law Firm to provide the legal services specified in Sections 2 and 3, in accordance with the terms and conditions of this Agreement, and the Law Firm hereby accepts the retention.

### **2. General Legal Services Related to the Administration of the Trust**

It is recognized that there is a continuing need for legal services in the administration of the Trust to ensure that the Trust retains its tax-exempt status and that the affairs of the Trust are conducted in accordance with the terms of the trust indenture agreement and the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code, and the regulations relating thereto, and all other laws and regulations which may be applicable. The Law Firm agrees to provide legal services including, but not limited to, the following:

(a) Make a periodic review of the trust indenture agreement governing the Trust to ascertain that such document is legally sufficient and consistent with the Trustees' objectives. Suggest appropriate amendments. Prepare all amendments which may be authorized.

(b) Make a periodic review of all existing agreements which pertain to the administration of the Trust (such as agreements covering administration services or investment services) to ascertain that such agreements are legally sufficient and consistent with the Trustees' objectives. Prepare all amendments to such agreements which may be authorized. Prepare all new provider agreements or updates.

(c) Draft necessary amendments to the benefit plan(s).

(d) Work with other service providers in the drafting of all benefit plan booklets, including Summary Plan Descriptions, and explanatory materials and forms. Advise as to the legal sufficiency of such items and as to the requirements for filing and distribution.

(e) Attend Board of Trustees and committee meetings as required, and provide legal advice and consultation concerning legal matters which arise during such meetings. Draft motions or resolutions as may be requested.

(f) Review draft minutes of Board of Trustees meetings.

(g) Work with administrative office and Trust consultant in dealing with participant correspondence, distribution questions, approval of domestic relations orders and other interactions with participants, beneficiaries and their representatives.

(h) Advise and assist the Board of Trustees on matters arising under the Patient Protection and Affordable Care Act and state insurance laws and regulations.

(i) If applicable, advise and assist the Trustees with the conduct of appeal hearings requested by participants and beneficiaries whose claims for benefits have been denied or who assert that their interests have been adversely affected by Trust action.

(j) Advise the Trustees, the administrative agent, the consultant, the accountant, and other advisors, where appropriate, concerning legal questions which arise in the course of the day-to-day administration of the Trust.

(k) Research and draft written opinions concerning legal questions, as may be requested.

(l) Assist the accountant, consultant and the administrative agent, as may be requested, in the preparation and submission of government reports, forms and applications, including Internal Revenue Service and Department of Labor reports and forms.

### **3. Special Legal Services Requiring Prior Approval**

The following are services which are unpredictable in nature and for which Law Firm may be asked to perform, subject to the agreement of the Board of Trustees:

(a) Legal services involving the collection of delinquent employer contributions or enforcement of payroll auditing programs. In the event the Law Firm should be requested by the Trust to provide such services, the Law Firm will do so pursuant to a separate agreement.

(b) Represent the Trust and the Trustees with respect to all litigation or dispute resolution proceedings, including appeals, arbitrations, and administrative agency proceedings arising out of Trust activities.

(c) Significant government filings such as determination letter requests or government investigations.

Before the Law Firm undertakes any of these services, it will notify the Board of Trustees and confirm that the Board of Trustees agrees that the services should be performed and that it wishes for the Law Firm to proceed.

### **4. Legal Services That Are Excluded**

The following services will not be provided by the Law Firm pursuant to this Agreement:

(a) Legal services which may be required where the Trustees have deadlocked on an issue submitted for their concurrence and the deadlocked issue is being submitted to arbitration. It is recognized that in such a situation the disagreeing Trustees are entitled to be represented by separate counsel.

(b) Legal services requiring direct representation of any participating employer or employer association.

(c) As to any claims, litigation, or other proceedings, involving individual Trustees, arising out of Trust activities, the Law Firm will represent the individual Trustees as long as the actions or interests of the Trustees are compatible with the institutional interests of the Trust. The Law Firm shall not be obligated to represent any individual Trustee where the actions or interests of the Trustee are incompatible with the institutional interests of the Trust. It is understood that where the actions or interests of a Trustee are incompatible with the institutional interests of the Trust, the responsibility of the Law Firm is to represent the Trust.

(d) Where the Trust and the Trustees are insured under a policy of fiduciary liability insurance, or other liability insurance, the insurance carrier may reserve the right to select defense counsel in the event of litigation covered by such insurance. In such a situation, the Trustees shall request the carrier to engage the Law Firm as primary or associate defense counsel. Should the carrier choose not to engage the Law Firm, then the Law Firm shall be relieved of the responsibility, under this section, for the handling of such litigation.

## **5. Fees and Expenses**

The firm has a team approach to representation with one lead attorney designated to attend meetings and to be the primary contact for the client and a regular backup in the event of a scheduling conflict. This is done to ensure that the firm is available and responsive. It also allows an attorney with recent familiarity on a particular topic to handle that issue.

Frank Morales will have primary responsibility for representing the Trust in consultation matters. Mr. Morales's present hourly rate is \$310 per hour.

Paralegal time is generally not billed for consultation services unless litigation is involved. All time is billed in six-minute increments. Hourly rates are typically adjusted each year. We bill for travel time at the attorney's hourly rate.

In addition to fees, we bill for out-of-pocket expenses, which include: postage; long-distance telephone calls; travel (coach airfare, hotel as needed, parking/taxi/car rental); filing fees; service of process fees; and special investigation fees.

We shall submit bills on a monthly basis, which we request be paid by you within 30 days of receipt. We agree to keep time records detailing the actual services provided and time spent, and provide such detail in our monthly invoices.


**6. Terms of Agreement**

This Agreement shall be effective July 1, 2021 and shall continue thereafter on a month-to-month basis. The Trust may terminate this Agreement at any time. The law firm may terminate this Agreement at the end of any month by giving thirty (30) days prior written notice to the other party.

This Agreement may be amended by mutual agreement of the parties at any time. Any amendments shall be recorded in the minutes of the Board of Trustees' meetings or attached as addenda hereto.

Executed this 1<sup>st</sup> day of JULY, 2021.

**FOR THE LAW FIRM**

By: 

**FOR THE TRUST**

By: 

Chair

By: \_\_\_\_\_

Secretary