


MEMORANDUM

TO: Mayor England
Vice Mayor Kostka
Commissioner George
Commissioner Samora
Commissioner Rumrell

FROM: Max Royle, City Manager 

DATE: January 22, 2020

SUBJECT: Legal Services: Review of Proposed Contract with Paul, Elkind, Branz and Paul of DeLand, Florida, for Legal Services as City Attorney

INTRODUCTION

At your January 13, 2020, continuation meeting, you interviewed five firms for the position of City Attorney. At your January 14th special meeting, you selected the firm of Paul, Elkind, Branz and Paul of DeLand.

During the week following that meeting, the current City Attorney, Mr. Wilson, prepared a draft contract with PEB&P. It was sent to Mr. Darren Elkind, who reviewed it and provided suggested changes. Those changes are shown by strikethroughs and red type on the attached Contract for City Attorney Services.

COMPENSATION

Please note on page 2 the proposed fees:

- a. The \$6,000 monthly retainer will pay for 35 hours of regular work, which includes attendance at all regular and special meetings of the City Commission, the Planning Board's monthly meeting, and any meeting held during the month by the Code Enforcement Board. Also, under regular work is the preparation of ordinances, agreements, contracts, etc.
- b. The firm will charge \$175 an hour for extra-legal work, which includes litigation, depositions, labor negotiations, and defending the City in suits that aren't defended by the City's insurer, the Florida League of Cities.
- c. The firm will also charge \$175 an hour for any hours spent on regular work that are in addition to the 35 hours covered by the \$6,000 retainer. For example, if regular work in one month requires five additional hours, the firm would receive \$6,000 plus \$875 (\$175/hr. x 5 hours).

PLEASE NOTE: On page 2, the firm states that the time for doing regular legal work beyond the 35 hours covered by the retainer will be calculated on the basis of 3-minute increments with a minimum charge of 6 minutes.

MONTHLY WORK HOURS

Upon review of the monthly schedule of meetings and regular legal work, it seems unlikely that the 35 hours will be exceeded on a regular basis. The meeting hours could be:

- a. Four hours for a regular Commission meeting
- b. Possibly an additional four hours for a continuation Commission meeting
- c. Two hours for the Planning Board meeting
- d. Two hours for the Code Enforcement Board meetings

Thus, possibly a total of 12 hours a month for meetings. This leaves 23 hours for other regular legal work such as the preparation of ordinances, final development orders, conditional use permits, responding to phone calls and/or emails from Commissioners and City staff, etc.

We can try this arrangement during the next six months, to see if the City's regular work can be done within 35 hours each month. If not, then changes can be explored, such as making the meetings run more efficiently and/or reducing staff phone calls/emails to the City Attorney.

ACTION REQUESTED

It is that you discuss the proposed contract and decide whether you agree with its terms. If you do, then you can authorize Mayor England to sign it.

CONTRACT FOR CITY ATTORNEY SERVICES

This Agreement entered into this ____ day of February 3, 2020, and effective November 1, 2016, by and between the City of St. Augustine Beach, a Florida Municipal Corporation ("CITY"), having an address of 2200 AIA S., St. Augustine Beach, FL 32080 and ~~Lonnie N. Groot, Darren J. Elkind and~~ the law firm of Paul, Elkind, Branz & ~~Paul Kelton, LLPA,~~ ("ATTORNEY"), having an address of 142 East New York Avenue, Deland FL 32724.

W I T N E S S E T H:

WHEREAS, the City has issued requests for proposals to qualified attorneys to act as the City's City Attorney and has received from the Attorney a response thereto attached as Exhibit "A" (the "Response") and hereby engages the ATTORNEY upon the terms and conditions hereinafter contained:

A. ENGAGEMENT. ATTORNEY agrees to provide legal services including legal advice and consultation, litigation and any other related issues or matters, which are assigned to him by CITY. In connection with such services, ATTORNEY shall provide at its own cost and expense all personnel, equipment, and library or electronic legal research services as are reasonably required to provide the services herein contemplated.

B. COMPENSATION. The primary individual lawyer for the CITY shall be Lonnie N. Groot, who shall serve as the CITY ATTORNEY. The CITY ATTORNEY may utilize other alternative attorneys from the firm, including but not limited to, Darren J. Elkind, who shall be deemed to be assistant city attorneys. Any attorney providing services to the CITY shall be admitted to practice by the Florida Bar and a member in good standing.

The ATTORNEY shall be compensated by the CITY ~~at the rate with a base fee~~ of \$6,000.00 per month for all work within the "Regular Scope of Work," which excludes

litigation and extra legal work, which additional items shall be billable by the ATTORNEY at the rate of **\$175.00** per hour. See attached **Exhibit "B"** for Regular Scope of Work. The parties estimate that in a typical month the ATTORNEY will not be required to work in excess of thirty five (35) hours. However, the ATTORNEY shall be required to keep track of all time incurred working for the CITY in accordance with Florida Bar Rules, and any time expended in excess of thirty five (35) hours per month shall be compensated at the rate of \$175.00 per hour. Time shall be recorded in .05 hour (3 minute) increments with a minimum charge of .10 hours (6 minutes). The ATTORNEY shall not be compensated for any time spent travelling to and from City Hall. The ATTORNEY will notify the CITY in advance if he determines that any particular project or the volume of work being assigned in a single month is likely to exceed thirty five (35) hours.

C. ACCESS TO CITY PERSONNEL AND RECORDS. The CITY agrees to provide access to all personnel and records deemed necessary for the completion of the services to be provided under the terms of this Agreement.

D. OUTSIDE CLIENTS. ATTORNEY is free to engage in any other business or legal representation, provided that such other business or legal representation shall not constitute a conflict of interest. In that event of a potential conflict of interest, the ATTORNEY will promptly advise the CITY of such potential conflict.

E. TIME REQUIRED. ATTORNEY shall devote only as much time and attention to the providing of legal services to the CITY as the opinion and judgment of ATTORNEY deems reasonably necessary.

F. PERSONAL ATTENTION. ATTORNEY agrees to give personal attention to work performed; and to in every way and in good faith protect to his utmost the rights of the CITY.

G. EXPENSES AND LITIGATION EXPENSES. The CITY ~~to shall~~ reimburse pay ATTORNEY for all expenses and court costs incurred in ~~the preparation of connection with~~ any

litigation which the ATTORNEY is authorized to prosecute or defend; in addition to those expenses as may be necessary in the taking of depositions, ~~traveling expenses at such rate as shall be allowed for "Authorized Travelers" by City Ordinance or State Law,~~ or any other expenses incurred in or about litigation that the City authorizes the ATTORNEY to defend or prosecute. It is understood that the CITY may engage other attorneys in ~~the defense of~~ prosecution or defense of any litigation or to handle any specialized matters. The term "litigation" does not include appearances before any City Board such as the Local Code Enforcement Board.

H. NON-LIABILITY FOR COSTS AND EXPENSES. ATTORNEY shall not be liable for costs or expenses of any kind and shall be reimbursed by CITY for all ordinary and necessary expenses paid by ATTORNEY in connection with the prosecution or defense of any litigation.

I. ADDITIONAL COUNSEL. If employment of additional counsel shall be necessary or advisable in the preparation or trial of any litigation, ATTORNEY may contract for such assistance on terms approved by the CITY. Matters related to Police Unions and collective bargaining, should they arise, shall be outside of the scope of this contract and the CITY may continue to retain other labor counsel to handle those matters.

J. EQUAL EMPLOYMENT. In all hiring or employment made possible by or resulting from this ~~Agreement~~^{contract}, there will not be any discrimination against any employee or applicant for employment because of race, color, religion, age, physical or mental disability, national origin, gender, creed, culture or ancestry.

ATTORNEY shall fully comply with CITY Ordinance No. 13-03 regarding employment discrimination, including Section 3-4 of the City Code, which provides:

It is an unlawful employment practice for an employer:

- (1) To fail or refuse to hire, to discharge or otherwise to discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment because of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, age or disability.
- (2) To limit, segregate or classify employees or applicants in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee or applicant because of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, age or disability.

K. ASSIGNABILITY. ATTORNEY shall not assign any interest in this ~~Agreement~~contract, nor shall ATTORNEY transfer any interest in the same without prior written consent of the CITY.

L. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE. ATTORNEY herein expressly agrees and acknowledges that he is an independent contractor. As such, it is expressly agreed and understood between the parties hereto, in entering into this ~~professional services contract~~Agreement, that CITY shall not be liable to the ATTORNEY for any benefits or coverage as provided by the Worker's Compensation Law of the State of Florida.

M. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION. ~~COVERAGE~~ ATTORNEY herein expressly declares and acknowledges that he is an independent contractor, and as such is being hired by the CITY under this ~~contract~~Agreement, and therefore, it is expressly declared and understood between the parties hereto, in entering into this ~~professional services contract~~Agreement, and in connection with unemployment coverage only that: (1); ATTORNEY has been and will be free from any control or direction by the CITY over the performance of the services covered by this ATTORNEY; (2); Services to be performed by ATTORNEY are outside the normal course and scope of the

CITY's usual business; and (3) ATTORNEY has been independently engaged in the practice of law prior to the date of this ~~Agreement~~contract. Consequently, neither ATTORNEY nor anyone employed by ATTORNEY shall be considered an employee of CITY for purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

N. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS. It is expressly agreed and understood between the parties entering this ~~professional services contract~~Agreement that the ATTORNEY, acting as an independent agent, shall not receive any sick or annual leave benefits from the CITY.

O. CONFLICT OF INTEREST. ATTORNEY, by signing this Agreement, covenants that ATTORNEY has no public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest, which does or may conflict in any manner with the performance of ATTORNEY'S services and obligations under this Agreement. ATTORNEY further covenants that, in the performance of this ~~Agreement~~contract, no person having such an interest as described above shall be employed by ATTORNEY.

P. POWERS CONFERRED ON ATTORNEY. The CITY gives ATTORNEY the authority to file any and all papers necessary and proper in any action which he is authorized to prosecute or defend on behalf of the CITY; to take any evidence necessary and proper; to make any amicable and extrajudicial compromise of the case only with the CITY approval; and otherwise do those things ordinarily undertaken by a ~~C~~city attorney. ATTORNEY is granted the right and authority to do any and all things necessary and proper to protect the interest of the CITY, consistent with the City's Charter.

Q. CANCELLATION. Either party to this ~~contract~~Agreement may terminate this ~~contract~~Agreement at any time during the term of this ~~contract~~Agreement by giving the other

party written notice of said intention to terminate at least thirty (30) days before the date of termination; **provided, however,** that as to any pending litigation in which the ATTORNEY has been engaged, ATTORNEY shall, until a successor is appointed, take all actions necessary to protect the interests of the CITY pending appointment and appearance of such successor and shall be compensated therefore in the same manner as compensation is paid for litigation. ATTORNEY shall reasonably cooperate with any successor about pending matters. Notice of cancellation by the ATTORNEY shall be given to the CITY in care of the City Manager. Notice of cancellation shall be given to the ATTORNEY at his or her then address as shown by the records of the Florida Bar.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

CITY OF ST. AUGUSTINE BEACH

ATTEST: _____
City Manager

BY: _____
Mayor-Commissioner

**PAUL, ELKIND, BRANZ AND KELTON,
P.A. PAUL, LLP**

BY: _____
Darren J. Elkind, Managing Partner

CITY ATTORNEY

BY: _____

Lonnie N. Groot

Exhibit "B"

CITY ATTORNEY, CITY OF ST. AUGUSTINE BEACH

REGULAR SCOPE OF WORK

The scope of work is divided into two parts: regular and extra-legal. Under regular is the following:

1. Attend all regular and special or workshop meetings of the City Commission.

The City Commission has one regular meeting on the first Monday of every month. This meeting begins at 6:00 p.m. The Commission sometimes has special meetings or workshop meetings on other days of the month. These meetings may be held at 5:00 or 6:00 p.m.

2. Attend all meetings of the Comprehensive Planning and Zoning Board.

The Board normally has one meeting a month: the third Tuesday at 6 p.m.

3. Attend meetings of the Code Enforcement Board as the attorney for the Code Enforcement Officer.

The Officer brings cases to the City's Code Enforcement Board once a month, usually on the fourth Wednesday at 2:00 p.m. The City Attorney provides legal advice to the Officer. The Code Enforcement Board has its own attorney, if one is needed. Sometimes the Board has an emergency or special meeting.

4. Attend other meetings when requested or when deemed appropriate by the City Commission.
5. Perform all legal work for the City as required by the City Charter, excluding litigation.
6. Handle the negotiation and preparation of agreements, contracts or similar documents.
7. Review and comment on contract forms between the City and independent contractors.
8. Perform legislative work associated with City Commission, Planning Board, and Code Enforcement Board meetings, including preparation of ordinances and resolutions, variances, conditional

use permits, final development plans, etc., together with research work associated with the preparation of those documents.

9. Respond by telephone, e-mail or regular mail to requests for advice from the Mayor, Commissioners, Police Department, City Manager's office, and Building and Zoning Department regarding administrative, legislative, executive and legal issues.
10. When requested by the City Commission or by the Police Chief or by the City Manager, perform investigations that would require interviewing witnesses, taking testimony, review of reports and legal research.
11. Respond to email and telephone inquiries by members of the public regarding matters before the city.

Extra Legal – Bill Hourly at \$175

Work performed under extra-legal consists of the following:

- A. Attend City, County, State and Federal meetings and conferences on litigation work concerning the City when approved by the City Commission.
- B. Prosecute violations of local ordinances or of the zoning code in any Court, if the State Attorney is not handling the prosecution.
- C. Provide labor negotiations and assist with labor relations matters that go beyond routine telephone conferences or counseling. Ability to perform labor negotiations legal work is optional as the Police Department has traditionally used separate counsel for this work.
- D. Provide legal services for such matters which do not involve items covered by paragraphs 1-10 above, but which necessitate legal advice or use of the City Attorney's office, as determined by the City Commission. These matters which might be difficult to quantify but may include attendance at meetings between City officials and officials or representatives of other business entities or governmental entities, or attendance at mediation.
- E. Provide legal counsel in any litigation, including but not limited to defense of challenges to the City's ordinances, development orders, regulations; and defend the City in lawsuits which are not defended by legal services provided by the City's insurer, the Florida League of Cities.
- F. Conduct real estate or public finance closings and related legal work as bond counsel, etc.

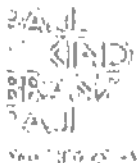
Max Royle

From: Darren Elkind <delkind@paulandelkind.com>
Sent: Wednesday, January 22, 2020 9:06 AM
To: Max Royle
Subject: RE: OUTSIDE ATTACHMENT:RE: City Attorney Contract

Max,

We charge in 3 minute (.05 hours) increments with a minimum charge of 6 minutes (.10). So if we spend 20 minutes on a particular task, it will be billed as .35 (21 minutes). I am very familiar with the 15 minute increment billing practice and find it to be a terrible idea, especially when serving in a general counsel or city attorney role. We don't want department heads to avoid asking simple questions, whether by phone or email, simply because they are worried about a 15 minute charge. I am happy to include this specific provision in the contract

I want to reiterate that the purpose of keeping track of time is not so that we can bill more. On the contrary, it is absolutely our intent and the plan all along to get the work done for \$6,000 per month. We just don't want to be in a position where we are having to do significantly more work in a given month for free. You will appreciate the quality work and the timely responses, but we just want to be treated fairly. Let me know if you need anything else.



142 E. New York Avenue

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From: Max Royle <mroyle@cityofsab.org>
Sent: Wednesday, January 22, 2020 8:24 AM
To: Darren Elkind <delkind@paulandelkind.com>
Subject: RE: OUTSIDE ATTACHMENT:RE: City Attorney Contract

Darren,

How will your firm determine the time spent on City business outside of the meetings? For example, if we ask you to prepare an ordinance and it takes the firm 20 minutes to do the draft, will the City be charged the 20 minutes or will you calculate the charges on 15-minute increments, so that the 20 minutes for the ordinance is charged as 30 minutes?

From: Darren Elkind <delkind@paulandelkind.com>
Sent: Tuesday, January 21, 2020 2:48 PM