



MEMORANDUM

TO: File

FROM: Sandy Wirtanen, Procurement Specialist IV

DATE: September 25, 2017

SUBJECT: MA 5700 NA170000236

The Master Agreement was created and administered by the Law Department. All original documents are located with the Law Department. The Purchasing Office is not responsible for any procurement actions taken for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes.



City of Austin
Law Department

301 W. 2nd Street, P.O. Box 1088
Austin, Texas 78767-1088
(512) 974-2268

(512) 974-2268
Writer's Direct Line

(512) 974-2912
Writer's Fax Line

RECEIVED

September 18, 2017

SEP 25 2017

J. Greg Hudson
Partner
Hudson & O'Leary, L.L.P.
1010 MoPac Circle, Suite 201
Austin, Texas 78746

**Re: Engagement Letter for representation of Waller Creek Local
Government Corporation, as assigned by the City Attorney**

Dear Mr. Hudson:

This Engagement Letter confirms that you will represent the Waller Creek Local Government Corporation ("LGC") on behalf of the City of Austin to provide legal services concerning the above-referenced matter. The City requires outside counsel to follow certain policies outlined in the attached Terms of Engagement. We recognize that certain of these terms may not be applicable to your representation of the LGC. Assistant City Attorney, Sandra Kim will be the in-house attorney responsible for managing this matter (the "Managing Attorney").

Please sign and return this Engagement Letter to Teresa Medina in the enclosed envelope, confirming that you agree to these policies. Please include proof of professional liability insurance with minimum limits of three hundred thousand dollars (\$300,000) per occurrence, per "Section II L" of attached Terms of Engagement. Additionally, the firm must register through the City's Vendor Connection System at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm before any invoice can be paid.

The City will pay for the legal services you provide, in a total amount not to exceed \$58,000 for all fees and expenses billed under this agreement. We have agreed that your billing rate for this matter is \$225.00 per hour. The agreed billing rates for any other named attorney(s) and paralegal(s) authorized to work on this matter, if any, are shown on the attached Rate Schedule. The City will not pay for work by any person not listed on the Rate Schedule unless I preauthorize the change in writing in an amendment to the Rate Schedule. Unless later agreed to in writing, these hourly rates are set for the duration of this engagement.

J. Greg Hudson, Partner
September 18, 2017
Page 2

If you require consultant or subcontractor services, you must receive prior written approval from me. Pursuant to the City's accounting and auditing policies, you must bill the City on your letterhead for services rendered by other firms, i.e., court reporters, record companies, and consultants. The City cannot pay invoices from other businesses if they were not hired directly by the City.

If you have any questions, please do not hesitate to call me or the Managing Attorney.

Sincerely,



Anne L. Morgan
City Attorney

AGREED:



J. Greg Hudson, Partner
Hudson & O'Leary, L.L.P.

Attachments: Scope of Services
 Rate Schedule

ALM/twg

CITY OF AUSTIN OUTSIDE COUNSEL – TERMS OF ENGAGEMENT

I. DEFINITIONS

“Agreement” means this Terms of Engagement, including all exhibits and any written amendments, and the Engagement Letter.

II. DUTIES OF FIRM

A. Scope of Services

Provide legal representation to the Waller Creek Local Government Corporation (Waller LGC). We expect matters to be leanly staffed and economically handled. The Managing Attorney will be contacting you to discuss the specific work assignments and your firm, and how to work together most efficiently to fulfill the engagement and to constrain costs.

Following is a description of the scope of work for the Waller LGC:

1. Review agreements and other documents presented to the Waller LGC for approval and advise the Waller LGC regarding its role in approving projects to ensure that it stays within its approved role and sends matters that need to be approved by council to council. Will include review and (potentially drafting) of agreements and contracts related to construction, development and government contracting.
2. Advise the Waller LGC in regard to its contractual and legal obligations and in regard to any legal disputes, or potential legal disputes (including but not limited to governmental contract, construction, and development matters related to project that are proposed by the Waller Creek Conservancy for construction on public property).
3. Review agendas for Texas Open Meetings Act compliance and work with City staff to review timely for posting by City staff on the City website in accordance with the Texas Open Meetings Act.
4. Prepare simple scripts for the chair of the Waller LGC meeting to aide in parliamentary duties.
5. Attend meetings, as necessary, to ensure the meetings proceed in compliance with the Texas Open Meetings Act.
6. Update and maintain filings with the Texas Secretary of State and ensure filings are legally compliant for the Waller LGC.
7. Convene and provide legal advice in executive sessions of the Waller LGC as needed.
8. Make sure the Waller LGC is taking the actions required by any Agreements that are binding on the Waller LGC – including budget adoption and communication to council regarding Waller LGC projects.
9. Ensure authorized Waller LGC representatives sign necessary documents such as insurance documents.
10. Review meeting minutes prepared by City staff for maintenance on the City web site for Waller LGC documents.

Any decision to institute or defend any legal action or settle any claim for Waller LGC must be made by the City Attorney.

Copies of all legal research or memoranda which you create, whether intended for internal or external use, must be timely furnished to the Managing Attorney.

B. Representation

Except in matters where there may be a conflict with the City or interests adverse to the City, the Firm shall: coordinate all aspects of its services with the Managing Attorney assigned to this matter; and submit contemporaneous copies of all legal memoranda, and correspondence to the Managing Attorney. All policy decisions, including but not limited to any settlement negotiations and the scope of those negotiations, shall be made by the Managing Attorney. Please note that formal action by the Waller LGC and/or the Austin City Council may be required to approve certain actions, including settlement. All contact with City Officials must be coordinated through the Managing Attorney. Contact with Waller LGC members and/or the Waller Creek Conservancy shall be limited to legal issues and streamlined to avoid duplication or excessive bills.

C. Conflict of Interest

Before commencing work on this assignment, you must verify whether your firm has a conflict of interest with respect to the parties involved which include the Waller Creek LGC board members and Waller Creek Conservancy. If any conflicts are present, please advise the Managing Attorney immediately in writing.

In your representation of the Waller LGC there may be conflicts or interests that are adverse to those of the City. By signing the Engagement Letter, you will act accordingly in conformance with the Texas Disciplinary Rules of Professional Conduct. Further, other than the Waller LGC, during the course of this representation, your firm shall refrain from representing clients whose interests may conflict with those of the City. Should such a conflict arise, you shall contact the Managing Attorney immediately to discuss the situation.

D. Assignment

The Firm may not assign this Agreement in whole or in part, or subcontract any legal services without the prior written consent of the Managing Attorney.

E. Budget Cap to Complete the Engagement

If required by the Managing Attorney for this engagement, the Firm's budget for this matter is **attached**. The budget may include an agreement that work on this matter will be billed on an hourly basis with **total fees to complete work on the matter capped at the budget limit**. The budget shall include a list of specific legal services, including a detailed estimate of all fees, expenses, and costs for each legal service to be performed. If it becomes apparent to the Firm that it may exceed the budget cap because of unforeseeable, exceptional circumstances, the Firm may notify the Managing Attorney in writing describing in detail the reason why the Firm seeks to increase the budget cap. **It is solely within the City's discretion to deny or agree to a budget cap increase.**

F. Ethics

In providing legal services to the Waller LGC, the Firm and each attorney providing services to the Waller LGC shall fully comply with the Texas Disciplinary Rules of Professional Conduct. The law firm shall promptly notify the City if any disciplinary action or malpractice action is instituted against the law firm or an attorney providing services to the Waller LGC.

G. Media Inquiries

All inquiries from the media must be referred to the Managing Attorney for response. No public comment on litigation or other matters may be made without prior approval from the City Attorney.

H. Authorized Expenditure Ceiling

The total cost of fees and expenses to the City for representation in this matter shall not exceed the authorized expenditure amount specified in the Engagement Letter. If the City requires additional

services, a new or amended Agreement is required before fees or expenses exceeding the expenditure ceiling are incurred. **The City will not pay any amount in excess of the authorized expenditure ceiling without a new or amended written agreement.** Unlike the Budget Cap which is fixed for the engagement, the authorized expenditure ceiling may be increased if additional work is authorized.

I. Expenses

The Firm shall exercise prudence in incurring expenses. The Firm agrees to timely pay for all reasonable expenses incurred during representation of the Waller LGC in this matter, including litigation expenses, if applicable. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement. The City agrees to reimburse the Firm for the reasonable, actual cost of expenses incurred in this matter as provided in the Billing Requirements section of this Agreement.

J. No Increase in Billing Rates

The City will not increase billing rates for any matter which is in progress without the written approval of the City Attorney in an amended Rate Schedule.

K. Indemnity

The Firm shall indemnify and hold the Waller LGC and City harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the negligence, gross negligence, malpractice, or willful misconduct of the Firm, or any attorney associated with the Firm, in the rendering of legal services.

L. Insurance

The Firm shall carry professional liability insurance with minimum limits of three hundred thousand dollars (\$300,000.00) per occurrence and shall not permit such insurance to be canceled or lapse during this engagement. The Firm shall provide an insurance certificate or other proof of insurance to the Managing Attorney with the return of the signed Engagement Letter identifying both the City and Waller LGC as additional insureds.

M. Work Products

It is agreed that all files, reports, exhibits, data compilations, memoranda, and other work products produced under this Agreement, collectively, the "Documents," are the property of the Waller LGC. Upon termination, the Firm may retain a copy of the Documents, but the Firm shall deliver the original Documents to the Waller LGC on request, at no expense to the City or Waller LGC.

III. BILLING INSTRUCTIONS

Failure to follow these policies may result in no payment for part or all of the fees associated with work that does not comport with these policies.

The City will not pay for work outside the scope of work and assignments approved by the Managing Attorney.

All invoices must be submitted with a remittance page. Your firm's name and remittance address must exactly match your registration on the Vendor Self Service System (VSS).

If your firm has a change of address, you must notify the Managing Attorney immediately and update your registration on VSS. If you move to a different firm, you must indicate in writing your final date with the firm, submit a final invoice from the firm, and indicate your start date with your new firm. The continuation of this engagement and any staffing changes at your new firm must be approved in writing by the City Attorney.

A. Billing Requirements

1. Itemized bills must be submitted on Firm letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. The Firm shall bill time in 1/10th of an hour increments.
4. The negotiated hourly rates on the attached Rate Schedule include all overhead and internal charges associated with your firm's practice. The City expects that work for the Waller LGC will be done at a substantial discount from the firm's general billing rates. The City will not separately pay for overhead or law firm costs associated with services of secretaries, word processors, librarians, investigators, or other support staff.
5. The City will not pay for time spent preparing, discussing, or correcting a billing statement.
6. The City will not pay for opening routine correspondence which does not require a response or impact the merits of the case.
7. The City expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.
8. Any attorney work product for which the City is billed shall be provided to the City, either electronically or as a paper copy at the time it is completed.
9. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the City of Austin, or the amount of the award must be specifically credited on the next billing statement.
10. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.
11. Expenses over and above the limits set forth herein shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

B. Billing Statement Requirements

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.
2. The vendor's name and address which must exactly match the name and address on the VSS (e.g., if the name includes L.L.P., it must match on the bill and on VSS).
3. Style of case or Matter description.
4. A remittance page with the monthly statement.
5. Dates of service and a description of service containing minimal information to advise the City of the completed work without revealing confidential attorney-client information of the Waller LGC. The Firm shall maintain in its files a duplicate copy of the invoices provided to the City with a full detailed description of the work in case of an audit or request from the Waller LGC.
6. Name, classification (e.g., "partner," "associate," "legal assistant"), billing rate for the person doing the task, and specific time for service to a tenth of an hour.
7. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Sales and Use Tax. The Firm's invoices to the City must not contain assessments of any of these taxes.

*** Please note that billing statements are subject to release under the Public Information Act.**

C. Consultations

1. The City will not pay for inefficient conferences among outside attorneys or support staff. The City expects the matter to be leanly staffed.
2. The City will not pay for time involved educating an outside attorney on a particular matter when it has previously been handled by another attorney in the Firm.

D. Court Proceedings or Meeting Attendance

1. Attendance of more than one attorney at depositions or court proceedings, including trials, or meetings is not reimbursable without prior approval by the Managing Attorney. Generally, one attorney is expected to handle matters.

2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, trials or meetings is not reimbursable unless approved in advance by the Managing Attorney.

E. Inefficient or Duplicate Work

The City will not pay for inefficient work, including the following:

1. More than one attorney performing any one task on a matter.
2. An attorney to re-do the work of a paralegal or another attorney.
3. Multiple entries for reviewing correspondence, documentation, trial, and/or deposition transcripts, indicative of inefficient work.
4. Repeat and inefficient research on an issue.
5. Legal research over 3 hours or any paralegal project over 5 hours, without prior Managing Attorney approval.
6. Research for matters which should be within the knowledge of an experienced practitioner.
7. Time spent for the partner and junior or other lawyers to review or discuss junior or other lawyers work product.

F. Expenses

The City will not pay for the following expenses:

1. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).
2. Unnecessary use of express mail, facsimile transmissions, or couriers.
3. Any computerized legal research over \$200.00 without prior Managing Attorney approval.

The Firm must evaluate the need to engage experts, investigators, visual aid companies, etc. on a case by case basis, and must obtain approval of the Managing Attorney before retaining any such services.

G. Travel

The City will not pay:

1. For time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in an amendment to this agreement.
2. For air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the Managing Attorney for information on City vendor discounts.
3. For lodging and meals that exceed the per diem rates established by the U. S. General Services Administration.
4. For alcoholic beverages.
5. For charges from in room hotel "honor" bars.

The City will pay for automobile mileage outside of the Austin City limits not to exceed the amount permitted as a business expense under the Internal Revenue Code. No payment will be made for automobile mileage with the City's corporate limits.

IV. DUTIES OF CITY

A. Payment Terms

1. The City shall pay the Firm on the basis of monthly invoices submitted by the Firm and approved by the City Attorney or his designee.

2. The City shall make payments to the Firm within 30 days of receipt of an invoice meeting contract and billing requirements.

B. Disputed Payments

1. If the City disputes any item in an invoice the Firm submits for any reason, the Managing Attorney shall advise the Firm of the issue and request that the Firm submit a new invoice of current date that does not include the disputed amount. The City will not pay for time spent discussing or correcting an invoice.

2. If the dispute is later resolved in the Firm's favor, the Firm may include the disputed amount on a separate invoice or on a subsequent monthly invoice.

C. Written Amendment

Unless otherwise specified, this Agreement may be amended only by written instrument executed by the City Attorney.

V. GENERAL PROVISIONS

A. Compliance with Laws

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in Travis County, Texas. All obligations of the parties shall be deemed performable in Travis County, Texas.

B. Right to Audit

The City and the Waller LGC has the right to inspect and audit all books, records, and documents of the Firm pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation. Documents audited by the City will be redacted at the Firm's expense in order to prevent disclosure of Waller LGC confidential attorney-client communications or attorney work product.

C. Audit Expenses

If the Firm is asked to provide information to the City, including, but not limited to City or Waller LGC auditors (either City employees or professionals hired by the City to audit the City's records) or the City finance department, the Firm shall provide such information at no additional cost to the City or Waller LGC.

D. Entireties

This Agreement, together with the engagement letter, shall constitute the entire Agreement and understanding of the parties concerning the engagement of the law firm. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

E. Severability

If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

VI. TERMINATION

Termination of Agreement

The City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, the Firm shall immediately discontinue work under the Agreement and transmit all files or written materials to the City. Thereafter, only those legal services necessary to effectuate termination of representation or transfer to another attorney may be performed. All such services must be expressly authorized in advance and in writing by the Managing Attorney.

Outside Counsel Hourly Rate Schedule and Authorized Staff

The City will only pay for work done by the staff named and at the hourly rates listed below.

The City expects that this matter will be leanly staffed and economically handled.

Work is to be done by the person with the appropriate qualifications and an appropriate hourly rate for the services performed.

The City expects that work on city matters will be done at hourly rates that are a substantial discount from the firm's general billing rates.

These hourly rates are set for the duration of the engagement.

Only the following people are authorized to work on this matter:

J. Greg Hudson	Partner	\$225/hr
Tom O'Leary	Partner	\$225/hr
	Legal Assistant	\$20/hr
Name	Classification (e.g., "partner," "associate," "paralegal")	Hourly Rate

Agreed:



Outside Counsel Initials

9/25/17

Date