

MEMORANDUM



DATE: October 17, 2016
TO: Finance and Administration Committee
FROM: Michael Geisel, City Administrator
RE: Engagement Agreements for Special Counsel

For almost two decades, the City of Chesterfield has engaged the services of specialized counsel on an as-needed basis. Funds for these services were specifically identified in each annual budget. As you are all aware, we have utilized the specialized services of Armstrong Teasdale for special development proposals, litigation, TIF, NID, TDD, CID, tax proposals and revenue initiatives. The Police Department has also engaged the services of Mr. Pleban to represent the City in employee grievance resolution, termination and Police Personnel Board hearings. The City has also engaged Mr. Harris for specialized counsel services related to collective bargaining and labor concerns.

However, it has come to my attention that the City has been less vigilant than it should have been in maintaining current engagement agreements for these services. As soon as this was discovered, we sought to obtain new engagement agreements for these services. Interim City Attorney Chris Graville has developed standard engagement agreements to be used by the City for these purposes. Mr. Graville has successfully negotiated said agreements with Armstrong Teasdale and Michael Harris. While he continues to work with Mr. Pleban to develop a current engagement agreement, that agreement is not yet available.

Mayor Nation has reviewed and recommends approval of the agreements pursuant to City code Section 2-153, derived from Ordinance #17, excerpted below for your convenience:

Sec. 2-153 City Attorney and City Prosecutor; appointment and removal.

[Ord. No. 17, § 3, 6-1-1988]

The Offices of City Attorney and City Prosecutor shall be filled by appointment made by the Mayor with the advice and consent of the Council, of persons competent to carry out the duties of said offices. Such appointments shall be for an indefinite term. The Attorney and the Prosecutor may be removed from office by the Mayor with the advice and consent of the Council. The Mayor, with the advice and consent of the City Council, may also retain special counsel to advise or represent the City on special matters.

Going forward, I would propose that any engagement agreements for non-specific ad hoc services be revised and approved on a biennial basis. Council should

certainly have the ability to review and renew such ad-hoc service agreements with specialized counsel.

For your consideration, I recommend that the F&A Committee favorably recommend to the full Council that these agreements be approved and executed for services on an as-needed basis to the extent funds are budgeted.

As of the date of this memorandum, I have yet to receive the engagement letter from Mr. Pleban. Upon final negotiation and after approval by the Mayor, I expect to forward same to Council at the earliest possible opportunity.

I request, as recommended by Mayor Nation, that the F&A Committee favorably recommend to the full Council that the engagement agreements with Armstrong Teasdale and with Michael Harris be approved and executed.

Also, I request and recommend that the F&A Committee authorize staff to forward the engagement agreements for Mr. Pleban directly to Council for consideration after Mayor Nation has reviewed and recommended its execution.

As always, if you have any questions or require additional information, please advise.

Attachments

Cc Mayor Bob Nation
Interim City Attorney, Chris Graville

SPECIAL COUNSEL AGREEMENT

THIS SPECIAL COUNSEL AGREEMENT (“Agreement”) is made by and between the City of Chesterfield, Missouri, a municipal subdivision of the third class organized under the laws of the State of Missouri (the “City”), and **Armstrong Teasdale, LLP**, a Missouri limited liability partnership, whose address is: 7700 Forsyth Blvd., Suite 1800, St. Louis, MO 63105 (“Special Counsel”), collectively referred to as “the Parties”.

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

I. COORDINATION WITH CITY STAFF:

To provide the best possible legal representation and reduce costs and expenses, Special Counsel agrees whenever possible to utilize City staff and personnel. As directed by the City Administrator or the City Administrator’s designated representative, Special Counsel agrees to utilize and coordinate with any City staff member or consultant retained by the City on matters related to Special Counsel’s work. When requested, Special Counsel shall submit to the City Administrator budgets, work plans and case plans in such form as may be required by the City Administrator.

II. PROFESSIONAL SERVICES PERFORMED:

Special Counsel shall provide professional legal services in conformance with the Missouri Rules of Professional Conduct, to serve as counsel for special legal matters and services, as necessary and directed by the City Administrator or the City Administrator’s designated representative, for preliminary or exploratory matters involving the use of state and local tax incentives for development projects within the City during the pre-development stage, provided that any such project may become the subject of a separate special counsel agreement once such project moves beyond the pre-development stage (the “Work”). Any new or supplementary special counsel agreements shall be approved as provided by the laws of the state of Missouri and ordinances of the City. **Robert Klahr** shall serve as designated Special Counsel and shall direct the provisions of services under this Agreement. Special Counsel shall supply the City with a copy of all documents prepared by Special Counsel or any approved subcontractor hired by Special Counsel under this Agreement.

III. FEES:

Charges for legal services shall be based solely on the amount of time spent by attorneys and legal assistants in performing the Work, unless otherwise agreed to in writing. Special Counsel may charge the City at the hourly rates of the attorneys and legal assistants as set forth below:

- | | | |
|----|--|----------------|
| 1. | Partners, Principles and/or of Counsels: | \$325.00/hour; |
| 2. | Associate Attorneys: | \$250.00/hour; |
| 3. | Legal Assistants/Paralegals: | \$175.00/hour. |

Special Counsel and City agree that bond counsel, special projects, special investigations and litigation may arise from time to time requiring an additional legal services agreement for terms of said service. Special Counsel will bill the City on a monthly basis for professional fees and expenses incurred on the City’s behalf and bills will be addressed to the City for

payment. Any expense or costs, excepts routine photocopying and travel within the State of Missouri, must be pre-approved in writing by the City Administrator prior to the incurrence. Preapproval from the City Administrator or his designee shall be required for more than one attorney or an attorney and paralegal to attend meetings, court appearance, trials, hearings, mediations and arbitration proceedings.

IV. ANNUAL APPROPRIATION:

The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually or by special appropriation by the Chesterfield City Council encumbered for the purpose of this Agreement. The City does not, by this Agreement, irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

V. TERM AND TERMINATION:

Because the need for Special Counsel arises from time to time, this Agreement shall commence on **October _____, 2016** and terminate at any time by the City, with or without cause. Termination shall be subject to the Court's consent, if such is required. If Special Counsel is terminated, he or she shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action. The city shall provide 10 days prior written notice of termination to Special Counsel to allow the transition of files and matters to the City Administrator's designee.

VI. CONFLICTS:

a. No employee of the City shall have any personal or beneficial interest in the services described in this Agreement. Special Counsel shall not hire, or contract for the services with any employee or officer of the City without the prior written approval of the Mayor and City Council.

b. Special Counsel acknowledges that it and its attorneys are bound by the Missouri Rules of Professional Conduct applicable to Missouri attorneys, including without limitation Rule 4, which addressed a lawyer's engagement under circumstances involving a conflict of interest. Special Counsel shall not engage in any transactions, activity or conduct that would result in a conflict of the City's interest. Special Counsel represents that it has disclosed all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Special Counsel by placing the Special Counsel's own interest, or the interest of any party with whom Special Counsel has a professional relationship or contractual arrangement in conflict with those of the City. Special Counsel agrees that they will not undertake to represent an existing client on new matters or new clients if the interest of such clients is directly adverse to the City without the prior written approval of the City Administrator.

VII. CLIENT FILES:

Special Counsel shall employ physical, electronic, and procedural safeguards to preserve client confidentiality and to protect the City's non-public information. Special Counsel agrees to retain and securely store the City's files for a period of five (5) years after

completion or termination of representation. Special Counsel shall return all files within a reasonable time after termination of representation or conclusion of the Special Counsel matter, but in no event later than thirty (30) days of written demand from the City. The City Administrator or his designee has the right to access and the right to examine any pertinent books, documents, papers and records of Special Counsel upon reasonable notice to Special Counsel.

VIII. E-MAIL CONFIDENTIALITY:

Missouri lawyers are required by the Missouri Bar Disciplinary Council to notify prospective recipients of email that (1) email communication is not a secure method of communication, (2) any email that is sent by any City employee may be copied and held by various computers it passes through as it goes from Special Counsel to a City representative or vice versa, and (3) persons not participating in City/Special Counsel communications may intercept said communications by improperly accessing City computers or Special Counsel's computers or even some computer unconnected to either the City or Special Counsel that the email passes through. Unless otherwise instructed in writing, Special Counsel will assume that the City has consented to receive communications via e-mail. If the City Administrator changes his mind and wants future communication to be sent by a different method, the City Administrator or his designee will contact Special Counsel in writing and notify Special Counsel.

IX. WHEN RIGHTS AND REMEDIES NOT WAIVED:

In no event will any payment or other action by the City constitute or be construed as a waiver by the City of any breach of covenant or default that may then exist on the part of Special Counsel. No payment, or other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

X. INSURANCE:

Special Counsel agrees to secure, at or before the time of execution of this Agreement, insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required minimum insurance coverage in force at all times during the term of this Agreement, or any extension thereof, for three (3) years after the termination of the Agreement. Special Counsel shall be responsible for the payment of any deductible or self-insured retention. The insurance coverage specified herein are minimum requirements and these requirements do not lessen or limit the liability of Special Counsel. Special Counsel shall maintain limits of \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit professional liability insurance. Special Counsel shall maintain any and all other Commercial General Liability, Business Automobile Liability and Workman's Compensation insurance policies as required by the City Administrator. For Professional Liability policies, Special Counsel's insurer shall waive subrogation rights against the City.

XI. NO AUTHORITY TO BIND CITY TO CONTRACTS:

Special Counsel lacks any authority to bind the City on any contractual matters. Final

approval of all matters that purport to obligate the City must be executed by the City in accordance with State statute, City ordinances and City policies.

XII. COMPLIANCE WITH ALL LAWS:

Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and the State of Missouri; and with the Chesterfield's City Code, ordinances, rules and policies of the City.

(Name)

Bob Nation, Mayor

By _____

By _____

Title _____

Title _____

ATTEST:

DATE: _____

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Special Counsel shall provide professional legal services in conformance with the Missouri Rules of Professional Conduct, to serve as counsel for special legal matters and services, as necessary and directed by the City Administrator or the City Administrator's designated representative, for labor and employment issues (the "Work"). Any new or supplementary special counsel agreements shall be approved as provided by the laws of the state of Missouri and ordinances of the City. **Michael Harris** shall serve as designated Special Counsel and shall direct the provisions of services under this Agreement. Special Counsel shall supply the City with a copy of all documents prepared by Special Counsel or any approved subcontractor hired by Special Counsel under this Agreement.

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Charges for legal services shall be based solely on the amount of time spent by attorneys and legal assistants in performing the Work, unless otherwise agreed to in writing. Special Counsel may charge the City at the hourly rates of the attorneys and legal assistants as set forth below:

- | | | |
|----|--|----------------|
| 1. | Partners, Principles and/or of Counsels: | \$275.00/hour; |
| 2. | Associate Attorneys: | \$275.00/hour; |
| 3. | Legal Assistants/Paralegals: | \$85.00/hour. |

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(Name)

By _____

Title _____

Bob Nation, Mayor

By _____

Title _____

ATTEST:

DATE: _____