



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: May 2, 2017

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: City Attorney Contract

Background: At the April 18 Council Meeting, Council directed the City Manager to negotiate a contract with the City Attorney for the City Attorney to provide legal services to the City of Belle Isle. The contract also allows for an Assistant City Attorney, which is also designed and calls for a term limit on the contract of 5 years with a 2 year renewal before the term of the contract ends.

Staff Recommendation: Council approves the contract.

Suggested Motion: I move that we approve the contract of the City Attorney.

Alternatives: Do not adopt the contract and direct the City Manager to either renegotiate the terms of the proposed contract with further direction from Council on the terms, or direct the City Manager to draft and issue a Request For Qualifications (RFQ) for legal services.

Fiscal Impact: 2016-2017 Budget authorizes \$100,000 total for legal services. Contract calls for \$7,500/month (\$90,000). Potential savings of \$10,000

Attachments: Legal Services contract

**CONTRACT SERVICES AGREEMENT FOR
CITY ATTORNEY SERVICES
CITY OF BELLE ISLE, FL**

THIS AGREEMENT, made and entered into this 1st day of July, 2001 by and between the **CITY OF BELLE ISLE**, a Municipal corporation of the State of Florida, hereinafter referred to as the "**CITY**" and **(Law Firm Name)**, Attorneys at Law, hereinafter referred to as "**THE FIRM.**"

WITNESSETH:

WHEREAS, the CITY has the need for services of a law firm with the particular training, ability, knowledge and experience possessed by THE FIRM; and

WHEREAS, the CITY has determined that THE FIRM is qualified and capable of performing the professional services as CITY does hereafter require, under these terms and condition set forth; and

WHEREAS, it is the purpose of this Agreement to establish the terms and conditions of employment of THE FIRM under this Retainer Agreement to act as attorneys for and to fulfill the duties of general and legal counsel to the CITY;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES DO AGREE AS FOLLOWS:

SECTION 1 - GENERAL RESPONSIBILITIES

Act as General and Legal Counsel to the CITY. FRANK KRUPPENBACHER is designated as and appointed CITY ATTORNEY. The CITY also appoints TOM CALLAN, TOM LANG and JUDGE BELVIN PERRY as Assistant CITY ATTORNEY to perform the duties of the CITY ATTORNEY in the absence of the CITY ATTORNEY.

THE FIRM shall not replace the designated City Attorney (or any successor to such person) without the City Council's prior approval, except from time to time necessary due to illness or vacation scheduling. Approval of any such temporary substitute shall be obtained from the City Manager.

SECTION 2 - SCOPE OF WORK

As General and Legal Counsel, the attorney or a designated attorney from THE FIRM shall:

A. Attend all regularly scheduled meetings of the CITY COUNCIL (including Council workshops) and other meetings when necessary (including but not limited to land use public hearings, neighborhood meetings, land purchase/sale meetings, etc.) as requested by the City Manager.

B. Provide legal advice (oral and written), written legal opinions, and consultation on all matters affecting the City to the City Council, City Administrator, boards, commissions, committees, officers, and employees of City and as requested by the City Council, the City Administrator, or his/her designee, in accordance with such policies and procedures as may be established by City from time to time.

C. Be available for telephone consultation with City staff, as needed on legal matters which are within their area of operation and maintain office hours at City Hall as requested by the City Administrator at times mutually agreed to by the City Administrator and designated City Attorney

D. Prepare or review necessary legal documents such as: ordinances and resolutions; all agreements of any nature; all real property instruments of any nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; bond size, amount, and offering terms and conditions; public works construction documents including bid specifications, contracts, bonds, insurance, liens and related documents; memorandums of understanding; franchise agreements; and all similar documents, all as requested by City

E. Review minutes, findings and decisions documents, motions, resolutions, ordinances, contracts, leases, purchases and other legally binding agreements, consistent with existing laws, statutes, administrative rules and regulations.

F. Provide such assistance and legal advice as may be required by the CITY MANAGER for the administration of the CITY.

G. Represent the CITY in litigation where appropriate and assist and cooperate with special counsel as necessary. It is understood by the parties that THE FIRM shall assist in identifying those areas where special counsel may be required and to assist the CITY in the selection of special counsel. It is recognized that the CITY'S insurance program will represent the CITY in most tort claims, with the claims handled by the attorney(s) designated by the insuring entity. However, in litigation of the type specified, THE FIRM may be, by background or expertise, more appropriate for the handling of certain litigation.

H. Advise and assist the CITY in matters involving Municipal Corporation Law, Florida Sunshine Law, Florida Budget Law, elections, special elections, and state laws governing public leasing, purchasing and contracting, code development and enforcement, intergovernmental agreements, environmental, water, federal civil rights and related state and federal issues and employment matters.

I. The City Attorney will keep City informed as to the progress and status of all pending matters in accordance with such procedures as the City may establish from time to time. The City Attorney is expected to manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. All legal services shall be properly supervised and all personnel shall be qualified to handle the work assigned. If outside special counsel is retained, unless otherwise directed by the City Council, such special counsel shall be supervised by the City Attorney.

J. All legal services shall be coordinated under the direction of the City Manager. Notwithstanding any other provision contained herein, any legal services can only be authorized by the City Council or City Administrator. Nothing in this Agreement shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matter of City from or to THE FIRM.

K. Utilize best efforts and abilities to minimize legal expenses and advise the CITY of liability exposure.

SECTION 3 – TERM

The initial term (Initial Term) of this Agreement shall commence as of the Effective Date and shall continue in effect until the fifth (5th) anniversary of the Effective Date, unless sooner terminated in accordance with Section 14 of this Agreement. Upon expiration of the Initial Term, this agreement may be renewed for an additional two (2) years on the anniversary of the Effective Date (Renewal Term). Upon expiration of the Initial Term and Renewal Term, this Agreement shall automatically renew for successive additional 2 periods (each a Renewal Term) unless either THE CITY or THE FIRM shall have given the other party written notice of its election not to have the term renewed in accordance with Section 14 of this Agreement.

SECTION 4 - COMPENSATION

This Agreement shall compensate THE FIRM for the services described above.

A. The CITY will pay a monthly retainer in the sum of \$7,500 per month for the services described in Section 2 (Scope of Work).

B. For all other services shall outside the Scope of Work, those services will be charged to the CITY at an hourly rate of \$120 per hour. Charges will be made in 15 minute increments.

C. Work Performed Outside of the Scope of Work. The City Manager or his designee may authorize work to be performed outside of the Scope of Work. Failure to obtain approval prior to performing work outside of the scope of work may result in the waiver of compensation for services performed. Examples of services that are considered outside of the scope of work for which the City may use outside counsel and/or the City Attorney include, but are not limited to:

1. Preparation for the issuance and sale of City bonds.
2. Preparation of business development loan/guarantee documentation.
3. Filing and prosecution of municipal code enforcement cases.
4. Assignments mutually agreed as outside of the retainer by the City Manager and City Attorney and not specifically listed as included in the retainer.
5. Provision of counsel for all personnel-related issues.

D. The CITY and THE FIRM agree to review this Agreement on an annual basis to determine a fair amount of compensation for the services rendered.

SECTION 5 - AUTHORIZATION FOR SERVICES BILLED AT HOURLY RATE

A. To control costs, all CITY requests for legal services (with the exception of requests from CITY MANAGER, MAYOR or CITY COUNCIL) will be directed back to the CITY MANAGER.

B. Hourly service will be specifically authorized by the CITY MANAGER.

SECTION 6 - EXPENSES

In addition to the foregoing charges for services, the CITY will pay, upon receipt of itemized statement from THE FIRM, for expenses incurred in connection with the performance of their duties as CITY attorneys and general counsel for the CITY.

SECTION 7 - BILLING

Billing for hourly services and expenses will be monthly and will be identified as to MAYOR/COUNCIL, CITY MANAGER, or CITY DEPARTMENT. THE FIRM's billing will include the following:

- A. Date
- B. Hours
- C. Topic or area of service
- D. Description of service (i.e. conference, letter, phone, research, etc.)
- E. Fee
- F. Name of authorized requestor

SECTION 8 - STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

THE FIRM, for the purpose of this Agreement, shall perform all legal services required under this Agreement as an independent contractor of CITY, and shall remain, at all times as to CITY, a wholly independent contractor with only such obligations as are required under this Agreement. Neither CITY, nor any of its employees, shall have any control over the manner, mode, or means by which THE FIRM, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. CITY shall have no voice in the selection,

discharge, supervision or control of THE FIRM employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

SECTION 9 - INSURANCE

THE FIRM shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement, including any extension thereof, the following policies of insurance:

1. Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than a combined single limit of One Million Dollars (\$3,000,000.00).
2. Workers' Compensation Insurance. A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of Florida and which shall indemnify, insure and provide legal defense for both THE FIRM and City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.
3. Automobile Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than a combined single limit liability of One Million Dollars (\$1,000,000.00). Said policy shall include coverage for owner, non-owner, leased and hired cars.
4. Errors and Omissions Insurance. A policy of professional liability insurance written on a claims made basis in an amount not less than Three Million Dollars (\$3,000,000.00). Except for the policy of professional liability insurance, all of the above policies of insurance shall be primary insurance and shall name City, its officers, employers and agents as additionally insured. Except for the policy of professional liability insurance, the insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Except for the policy of professional liability insurance, all of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the attorney shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City.

SECTION 10 – PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT

The experience, knowledge, capability and reputation of THE FIRM, its partners, associates, and employees, was a substantial inducement for City to enter into this Agreement. Therefore, THE FIRM shall not contract with any other person or entity to perform, in whole or in part, the legal

services required under this Agreement without the written approval of CITY. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors, or otherwise, without the prior written approval of CITY. Adding attorneys to THE FIRM, changes in the partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of CITY or amendment hereof.

SECTION 11 - CITY ATTORNEY BAR MEMBERSHIP/OCAA MEMBERSHIP REQUIREMENTS

CITY ATTORNEY is responsible for maintaining CITY ATTORNEY'S professional standing as a member of the Florida State Bar Association.

SECTION 12 - INDEMNIFICATION

A. THE FIRM agrees to indemnify CITY, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of THE FIRM, its agents, employees, subcontractors, or invitees, provided for herein or arising from the acts or omissions of THE FIRM hereunder, or arising from THE FIRM's performance of or failure to perform any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arise from the negligence or willful misconduct of CITY, its officers, agents or employees.

B. CITY acknowledges THE FIRM is being appointed as CITY Attorney pursuant to the authority of BELLE ISLE CITY CHARTER, and has the authority of that office. Therefore, CITY agrees to undertake its statutory duty and indemnify THE FIRM, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of THE FIRM within the course and scope of its employment hereunder, but nothing herein shall require CITY to indemnify THE FIRM for liability arising from its own negligence.

In connection herewith:

- (i) CITY will promptly provide a defense and pay any judgment rendered against the CITY, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of CITY hereunder;
- (ii) In the event THE FIRM, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against CITY for such damages or other claims solely arising out of or in connection with the work operation or activities of CITY hereunder, CITY agrees to pay to THE FIRM, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or

employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

SECTION 13 - NOTICES

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor; postage prepaid and addressed as follows:

CITY: CITY of BELLE ISLE
1600 Nela Ave
Belle Isle, FL 32809

CITY ATTORNEY

Attention: CITY Manager

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that specified above.

Section 14 - NON-DISCRIMINATION

In connection with the execution of this Agreement, THE FIRM shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, disability, sexual persuasion, or national origin. THE FIRM shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, marital status, disability, sexual persuasion, or national origin. Such actions shall include, but not be limited to the following: employment, promotion, demotion, transfer, duties assignment; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 15 - CONFLICTS

THE FIRM has no present or contemplated employment which is adverse to the CITY. THE FIRM agrees that it shall not represent clients in matters either litigation or non-litigation against the CITY. However, THE FIRM may have past and present clients or may have future clients, which, from time to time, may have interests adverse to CITY, and THE FIRM reserves the right to represent such clients in matters not connected with its representation of the CITY. If a potential conflict of interest arises in THE FIRM's representation of two clients, if such conflict is only speculative or minor, THE FIRM shall seek waivers from each client with regards to such representation. However, if real conflicts exist, THE FIRM would withdraw from representing either client in the matter, and assist them in obtaining outside special counsel.

SECTION 16 - TERM, DISCHARGE AND WITHDRAWAL

This Agreement shall commence on the date it is signed by both parties (Effective Date), and shall remain in full force and effect until as stated in Section 3 of this Agreement or terminated by either party hereto. CITY may discharge THE FIRM at any time. The CITY Attorney shall have no right to hearing or notice, and may be discharged with or without notice. THE FIRM may withdraw from CITY's representation at any time, to the extent permitted by law, and the Rules of Professional Conduct, upon at least sixty (60) days' notice to CITY.

In the event of such discharge or withdrawal, CITY will pay THE FIRM professional fees and costs, in accordance with this Agreement, for all work done (and costs incurred) through the date of cessation of legal representation, including without limitation, proration of the monthly retainer amount to the date of such cessation. CITY agrees to execute, upon request, a stipulation in such form as to permit THE FIRM to withdraw as CITY's attorneys of record in any legal action then pending. THE FIRM shall deliver all documents and records of CITY to CITY, or to counsel designated by CITY, and assist to the fullest extent possible in the orderly transition of all pending matters to CITY's new counsel.

SECTION 17 - INTEGRATED AGREEMENT; AMENDMENT

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement; and the current agreement between the CITY and THE FIRM regarding legal services for the CITY is hereby terminated as of _____. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

SECTION – 18 - CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the City.