



City of Dublin

Office of the City Manager
5200 Emerald Parkway • Dublin, OH 43017-1090
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council

From: Marsha I. Grigsby, City Manager 

Date: June 6, 2013

Initiated By: Stephen J. Smith, Law Director

Re: Resolution 33-13 – Authorizing the City Manager to Enter into an Amended Professional Services Agreement for Law Director Services

Background

As Council is aware, the City of Dublin has an existing professional services agreement with Stephen J. Smith and the law firm of Ice Miller to provide law director services. The term of the agreement is from January 1, 2012 through December 31, 2013. Under the terms of the agreement, the City receives routine legal services representation at a rate of \$68,000.00 per month. Prosecutorial services are also provided for Franklin County Municipal Court and Mayor's Court at a rate of \$10,000.00 per month. Fees for non-routine legal services are negotiated between the Law Director and the City Manager.

Several attorneys who perform the vast majority of legal services for the City of Dublin recently relocated their offices from the firm of Ice Miller LLP to the firm of Frost Brown Todd, LLC. These attorneys include Law Director Stephen J. Smith, along with Jennifer Readler, Phil Hartmann, Stephen Smith, Jr., Mitch Banchefsky, Marty Nobile and Morgan Masters.

City Council approved a motion at the May 20 meeting, indicating its desire to retain the services of Stephen J. Smith and the firm of Frost Brown Todd, LLC. As a result, an amended agreement was prepared to simply substitute the firm of Frost Brown Todd, LLC for Ice Miller LLP. The remaining terms of the professional services agreement will remain unaltered.

Recommendation

The City Manager recommends approval of Resolution 33-13, authorizing the City Manager to enter into an amended professional services agreement with the firm of Frost Brown Todd, LLC.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

33-13

Resolution No. _____

Passed _____, 20____

A RESOLUTION TO AMEND THE PROFESSIONAL SERVICES AGREEMENT FOR LAW DIRECTOR SERVICES

WHEREAS, Section 6.04 of the Dublin Charter provides for a director of law and Section 6.03(b) provides that the director of law is appointed by the City Manager, subject to the consent and approval of Council;

WHEREAS, the City of Dublin currently has a professional services agreement with Stephen J. Smith and the law firm of Ice Miller LLP ("the Agreement") to provide law director services;

WHEREAS, the Agreement was effective on January 1, 2012 and expires on December 31, 2013;

WHEREAS, the Agreement provides that routine legal services will be provided at a rate of \$68,000.00 per month;

WHEREAS, routine legal services include attending Council and Planning and Zoning Commission meetings, attending meetings at the request of the City Manager, drafting resolutions and ordinances, providing legal advice, representing the City in all administrative appeals, drafting routine documents and other memoranda, representing the City in annexation matters, representing the City in land acquisition proceedings, providing routine labor counsel, and providing other typical day-to-day counsel;

WHEREAS, non-routine services are not covered under the Agreement and include labor and employment counseling, telecommunications matters and eminent domain matters required after the filing of an appropriation case, litigation and special counsel and special projects, which are all negotiated with the City Manager;

WHEREAS, the Agreement also provides for prosecutorial services for Franklin County Municipal Court and Mayor's Court at a rate of \$10,000.00 per month;

WHEREAS, on or about May 25, 2013, the Dublin Law Director, Stephen J. Smith, along with Jennifer Readler, Philip Hartmann, Stephen Smith, Jr., Mitch Banchevsky, Marty Nobile and Morgan Masters left the firm of Ice Miller LLP and joined the law firm of Frost Brown Todd, LLC; and

WHEREAS, the City desires to amend the existing Agreement to substitute the law firm of Frost Brown Todd, LLC, under the same terms and provisions contained in the existing Agreement with Ice Miller LLP.

NOW, THEREFORE, BE IT RESOLVED by Council of the City of Dublin, State of Ohio, ____ of the elected members concurring, that:

Section 1. The City Manager is hereby authorized to execute an amended Agreement to provide that Stephen J. Smith and Frost Brown Todd, LLC shall provide legal services for the City under the same terms and conditions as contained in the existing Agreement, in substantially the same form as the attached Agreement.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

33-13

Page 2 of 2

Resolution No. _____

Passed _____, 20____

Section 2. This Resolution shall take effect immediately upon passage in accordance with Section 4.04(a) of the Revised Charter.

Passed this _____ day of _____, 2013.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

**AGREEMENT BETWEEN THE CITY OF DUBLIN
AND STEPHEN J. SMITH/FROST BROWN TODD, LLC
FOR SERVICES AS LAW DIRECTOR**

This contract for the services of Law Director between the City of Dublin, an Ohio Municipal Corporation, (“Dublin”) and Stephen J. Smith/Frost Brown Todd, LLC, (“Law Director”), effective this 1st day of January 2012.

WITNESSETH:

WHEREAS, Dublin and the Law Director wish to continue their professional relationship until December 31, 2013.

NOW, THEREFORE, intending to be bound by this Agreement, the parties agree as follows:

1. **Routine Services.**

Except as otherwise provided herein, the Law Director agrees to provide and Dublin agrees to pay for the following “Routine Services” at the rate of \$68,000.00 per month.

- a. Attending all Council meetings.
- b. Attending all Planning and Zoning Commission meetings.
- c. Attending other routine board and commission meetings upon the request of the chairman or upon request of the City Manager.
- d. Drafting ordinances and resolutions arising in the normal course of municipal operation upon request of the City Manager or Staff, or as requested by action of City Council.
- e. Representing the City in all administrative hearings and general litigation. General litigation shall be defined as administrative (Chapter 2506) appeals from Dublin boards and commissions to the common pleas court level.
- f. Drafting all other routine documents, legal memoranda, and legal opinions as requested by the City Manager, Staff and/or Council subject to prior approval of the City Manager.
- g. Providing legal advice relating to matters of public law to City officials as necessary or upon request, and attending meetings and/or conferences as requested by City officials.

- h. Responding to City Manager and Staff inquiries about legal matters.
- i. Reviewing, approving and/or preparing all contracts, ordinances, and legal documents.
- j. Representing the City in all matters related to annexation.
- k. Land acquisition shall be a part of Routine Services on matters defined as normal real estate contractual issues. However, other land acquisition matters of a special or more complex nature (for example those with more complex economic development terms embodied within the real estate agreement) will be handled on a case by case basis, and may be subject to separate billing, as provided under “Non-Routine Services”, with prior approval of the City Manager as to rates and staffing. Regarding ROW land acquisition being carried out under the City’s Eminent Domain authority, all steps in the ROW acquisition process through the presentation of an offer(s) to purchase, the receipt of counter offer(s), and all early negotiations up to the filing and prosecuting an appropriation case will be considered Routine Services.
- l. Termination counseling, FLMA, ADA, ADEA, FLSA, Title VII, PPACA, Workers’ Compensation statutes, Collective Bargaining statutes, USERRA, COBRA, and HIPAA related questions, and other general legal advice related to labor and human resource matters shall be included as Routine Services.
- m. Other normal City matters requiring legal input or involvement, not specifically described under “Non-Routine Services”.

2. Non-Routine Services

The following legal services shall be classified as “Non-Routine Services”, and will be separately billed, at rates as approved by the City Manager.

- a. Labor and Employment: Legal services provided for collective bargaining negotiations, fact finding, and conciliation, grievance arbitration, charges of discrimination, and lawsuits related to labor and employment issues.
- b. Telecommunications: Advisory and legal services related to Dublin’s telecommunications activities, including matters associated with Dublin, PUCO, leasing for space for cell towers, cable television negotiations, telephone and internet contracting, ROW management, Broadband Council.
- c. Eminent Domain: As provided under “Routine Services”, all steps in the ROW acquisition process through the presentation of an offer(s) to purchase, the receipt of counter offer(s), and all early negotiations up to the filing and prosecuting an appropriation case will be considered Routine Service. All legal services associated with filing and prosecuting of an appropriation case, including but not limited to written discovery, dispositions, mediation, and trial shall be billed separately as Non-

Routine Services” at hourly rates, as approved in advance of the work by the City Manager.

- d. Litigation: Complex litigation is not included within “Routine Services” and will be billed separately. Complex litigation will be defined as major litigation that involves, for example purposes only, significant written or oral discovery, significant motion practice, and attendance at hearings before a judge and/or a jury. Complex litigation shall also include Chapter 2506 appeals that proceed past the common pleas level. All rates for complex litigation shall be pre-approved by the City Manager prior to the Law Department commencing work on any individual matter. Applicable rates will be negotiated at the time the complex litigation arises and will be based upon staffing needs and selection of legal expertise by the City Manager.
- e. Special Projects: Subject to agreement of both parties, the Law Director shall undertake specific projects on a flat fee basis. Such flat fee projects shall be as agreed upon by the Law Director, and the City Manager.
- f. Special Counsel: The Law Director may utilize the services of other attorneys both within his firm and outside his firm as Assistant Law Director, Prosecutor and/or Special Counsel, subject to the City Manager’s prior approval as to individual cases, attorneys and fee arrangements.

3. Mayor’s Court Services

The Law Director shall serve as the City’s prosecutor for cases before Mayor’s Court and for traffic and criminal matters in Franklin County Municipal Court. These services shall be provided at the rate of \$10,000 per month.

4. Term.

This contract shall take effect and be in force January 1, 2012 through December 31, 2013. However, at any point during the term of this Contract, either Party may terminate this Agreement upon providing sixty (60) days’ notice of its intent to terminate to the other Party.

5. Miscellaneous Provisions.

a. Indemnification:

- Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the Law Director agrees to indemnify and save the City, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury arising from the negligent acts, errors or omissions by the Law Director or his employees.

- Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Law Director shall indemnify, defend and hold harmless the City, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the Law Director, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Law Director, any subconsultant(s) of the Law Director, his agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
- b. Insurance Requirements: The Law Director shall maintain the insurance coverage limits specified in Exhibit A throughout the term of this Agreement.
- c. Expenses and Disbursements: In addition to charges for professional services as described above, the Law Director may charge the City for expenses incurred on its behalf. These expenses may include but are not limited to the following examples: duplication and binding of documents; telecopy, telex, fax and long distance telephone calls; messengers, couriers and postal services; expenses for computerized legal research and other automated services; and other business expenses as approved by the City Manager. In addition, the Law Director's services frequently require engaging the services of third parties on the City's behalf. Generally, the City will be asked to pay such third parties directly, provided that, whenever possible, the City Manager shall approve in advance the third party service provider, and the cost of those third party services. . Where relatively small amounts of money are involved (as determined by the City Manager), the Law Director may advance payments to third parties and include them in his periodic bills. These smaller disbursements include the following types of expenses: state agency filing fees; outside duplication of documents; fees for commencing lawsuits and service of process; deposition and court stenographer fees; expert witness and consultant fees; real estate recording fees and taxes; Uniform Commercial Code search fees; and, in general, any fees or charges the Law Director pays to governmental or quasi-governmental agencies.
- d. All invoices for legal services (including those for Routine Services, Non-Routine Services, Mayor's Court and prosecutorial services at Franklin County Municipal Court) shall include a detailed itemization of the work tasks performed during that billing period, the person performing the work, the billing rates (where applicable) and the time spent on each task. The invoice shall be organized by related work categories and/or projects, as specified by the City Manager.

- e. The Law Director shall provide an estimated budget for the projected costs (or cost range) associated with potential litigation, The City and the Law Director acknowledge the uncertainty and volatility associated with such estimates, which are intended for use in the City's budgeting and risk assessment purposes.
- f. It shall be the responsibility of the Law Director to pay for any and all municipal publications, services, updates, seminars, conferences, etc. that he or his office may utilize or attend on Dublin's behalf.
- g. In the event that the Law Director becomes incapacitated, unable to perform his duties, or no longer serves as Law Director, it is hereby agreed that his files and records shall become Dublin's property, except for information which would be classified as work product under Ohio law, which the Law Director shall release to an attorney designated by the City Manager.

IN WITNESS WHEREOF, the parties have executed this Agreement.

LLC

STEPHEN J. SMITH/FROST BROWN TODD

Stephen J. Smith, Law Director

CITY OF DUBLIN

Marsha Grigsby, City Manager

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ALAS



ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC.,
A RISK RETENTION GROUP

June 04, 2013

Frost Brown Todd LLC
3300 Great American Tower
301 E. Fourth Street
Cincinnati, OH 45202

To Whom It May Concern:

CONFIRMATION OF INSURANCE

We hereby confirm that Frost Brown Todd LLC has Professional Liability Coverage under Policy ALA#1669 with an annual limit of \$40,000,000 per claim and \$80,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The self-insured retention under such Policy is \$1,000,000 each claim up to an aggregate of \$2,000,000 and \$100,000 each claim thereafter.

The Policy effective date is from January 1, 2013 to January 1, 2014.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC.,
A RISK RETENTION GROUP**

By:

A handwritten signature in black ink that reads "Nancy J. Montroy". The signature is written in a cursive, flowing style.

Date: June 04, 2013

Nancy J. Montroy
Vice President – Director of Underwriting

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