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: December 5, 2013

Initiated By: Michelle Crandall, Assistant City Manager

Re: Resolution 73-13- Authorizing an Agreement with Stephen J. Smith/Frost Brown Todd, LLC for Law Director Services

Summary

Attached is a proposed agreement between the City of Dublin and Stephen J. Smith/Frost Brown Todd, LLC for the services of Law Director for 2014 and 2015. The agreement provides for routine services to be provided to the City for a flat rate of $68,000 per month and for Mayor's Court services to be provided at a flat rate of $10,000 per month. These rates reflect no increased cost to the City for services provided by the Law Director.

Recommendation

Staff recommends approval of Resolution 73-13.

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

Resolution No. 73-13 Passed _____, 20____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE PROVISION OF LEGAL SERVICES

WHEREAS, Law Director Stephen J. Smith has agreed to enter into a contract to provide legal services to the City of Dublin; and

WHEREAS, Dublin City Council has reviewed the terms of the contract, attached hereto as Exhibit "A," commencing January 1, 2014 and continuing through December 31, 2015, and determined the terms to be acceptable.

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

Section 1. The City Manager is hereby authorized to enter into the attached agreement with Stephen J. Smith, attorney, for the provision of legal services to the City of Dublin in accordance with the terms approved by Council.

Section 2. This Resolution shall take effect and be in force 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 2014.

WITNESSETH:

WHEREAS, Dublin and the Law Director wish to continue their professional relationship until December 31, 2015.

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. <u>Non-Routine Services</u>

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 Dublink, 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, 2014 through December 31, 2015. 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.

STEPHEN J. SMITH/FROST BROWN TODD LLC

_____

Stephen J. Smith, Law Director

CITY OF DUBLIN

_____

Marsha Grigsby, City Manager

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Exhibit A

November 25, 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: Nancy Montroy Date: November 25, 2013

Nancy J. Montroy
Vice President – Director of Underwriting

311 South Wacker Drive, Suite 5700
Chicago, IL 60606-6622

tel 312-697-6900 fax 312-697-6901 www.alas.com