

REQUEST FOR COUNCIL ACTION

Date: 12/10/12
Item No.: 12.d

Department Approval

City Manager Approval



Item Description: Approve Contract for Civil Legal Services

BACKGROUND

At the December 3, 2012 Council meeting the Roseville City Council concurred the City Manager's recommendation for City Attorney and authorized the City Manager to negotiate a contract with the selected law firm of Erickson, Bell, Beckman, & Quinn.

BUDGET IMPLICATIONS

As part of the pending contract with the City Attorney, it is proposed that the City Attorney would have the ability to charge the cost of its services to applicants of certain land use requests. If approved, this would reduce the cost of legal services accrued by the City.

STAFF RECOMMENDATION

Approve the contract for civil legal services between the City of Roseville and Erickson, Bell, Beckman & Quinn, P.A.

REQUESTED COUNCIL ACTION

Approve the negotiated contract for Civil legal services with the law firm of Erickson, Bell, Beckman & Quinn, P.A.

Prepared by: William J. Malinen, City Manager
Attachments: A: Contract for Civil legal services

Standard Agreement for Professional Services

This Agreement is made on the _____ day of _____, 2012, between the City of Roseville, Minnesota, whose business address is 2660 Civic Center Drive, Roseville, MN 55113-1899 (hereinafter "City"), and Erickson, Bell, Beckman & Quinn, P.A., a Minnesota professional corporation whose business address is 1700 West Highway 36, Suite 110, Roseville, MN (hereinafter "Consultant").

Preliminary Statement

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Consultant for Civil legal services hereinafter referred to as the "Work".

The City and Consultant agree as follows:

1. **Scope of Work/Proposal.** The Consultant agrees to provide the professional services shown in Exhibit "A" in connection with the Work. The terms of this standard agreement shall take precedence over any provisions of the Consultants proposal and/or general conditions.
2. **Term.** The term of this Agreement shall be from 1-1-2012 through 12-31-2015, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** City agrees to compensate the Consultant for the services as described in Exhibit A as follows:
 - a. Any changes in the scope of the work which may result in an increase to the compensation due the Consultant shall require prior written approval by an authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.
 - b. Special Consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by the City.
 - c. If Consultant is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of City, the time for performance shall be extended by a period of time lost by reason of the delay. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.
4. **City Information.** The City agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
 - a. Access to the Area. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, the City shall

obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the Work.

- b. **Consideration of the Consultant's Work.** The City shall give thorough consideration to all memorandums, opinions, reports, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of City within a reasonable time so as not to delay the work of the Consultant.
 - c. **Standards.** The City shall furnish the Consultant with a copy of any standard or criteria that may be required in the performance of the Work.
 - d. **Owner's Representative.** The City Manager shall act as the City's representative with respect to the work to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
5. **Method of Payment.** The Consultant shall submit to the City, on a monthly basis, an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the City for:
- a. **Progress Payment.** The Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation as reasonably required by the City. Each invoice shall contain the City's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract.
 - b. **Payments for Special Consultants.** The Consultant shall be reimbursed for the work of special consultants, as described in Section 3B, and for other items when authorized in writing by the City.
 - c. **Claims.** To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
6. **Project Manager and Staffing.** The Consultant has designated Mark G. Gaughan to perform the Work. They shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace these designated staff from the Project without the approval of the City, unless Consultant replaces such person with another capable person.
7. **Performance Evaluation.** The parties agree that a performance evaluation shall be conducted annually.

8. **Standard of Care.** All Work performed pursuant to this Agreement shall be in accordance with the standard of care in Ramsey County, Minnesota for professional services of the like kind.
9. **Audit Disclosure.** Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential, shall not be made available to any individual or organization without the City's prior written approval, unless otherwise required under Minnesota law. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Contract. The Consultant shall at all times abide by Minn. Stat. 13.01 et seq., the Minnesota Government Data Practices Act, to the extent the Act is applicable to data and documents in the possession of the Consultant.
10. **Termination.** This Agreement may be terminated by either party by thirty (30) days written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the City terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to the Consultant, and the City may retain another consultant to undertake or complete the work identified in Paragraph 1.
11. **Subcontractor.** The consultant may enter into subcontracts for services provided under this Agreement. The Consultant shall promptly pay any subcontractor involved in the performance of this Agreement as required by the State Prompt Payment Act.
12. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
13. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
14. **Assignment.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.
15. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be honored by the City.
16. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.

17. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
18. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant shall abide by statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided. The Consultant and City, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
19. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.
20. **Indemnification.** Consultant agrees to defend, indemnify and hold the City, its officers, and employees harmless from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from a negligent act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, or subcontractors in the performance of the services provided by this Agreement and against all losses by reason of the failure of said Consultant fully to perform, in any respect, all obligations under this Agreement.
21. **Insurance.** Consultant shall procure and maintain the following minimum insurance coverages and limits of liability during the pendency of this Agreement:
- A. Worker's Compensation Statutory Limits
 - B. Professional Liability Insurance. The Consultant agrees to provide to the City a certificate evidencing that they have in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for legal liability arising out of the performance of professional services for the City, in the insured's capacity as the Consultant, if such legal liability is caused by an error, omission, or negligent act of the insured or any person or organization for whom the insured is legally liable. Said policy shall provide an aggregate limit of at least \$2,000,000. Said policy shall not name the City as an insured. **A copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable, which evidences the compliance with this Paragraph 20, must be filed with City prior to the start of Consultant's Work.** Such documents evidencing Insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, City's right to enforce the terms of Consultant's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph.

- C. **Effect of Consultant's Failure to Provide Insurance.** If Consultant fails to provide the specified insurance, then Consultant will defend, indemnify and hold harmless the City, the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity in this subparagraph 20 C, the City may require Consultant to:

- a. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company

Consultant will take the action required by the City within fifteen (15) days of receiving notice from the City.

22. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement except for personal notes and writings of Consultant's attorneys, staff, agents and subcontractors ("Information") shall become the property of the City, but Consultant may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of the Consultant, but any use of the Information by the City or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.

23. **Dispute Resolution/Mediation.** Each dispute, claim or controversy arising from or related to this Service Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Roseville unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a Mediated Settlement Agreement, which Agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

24. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.

25. **Conflicts.** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this Contract. The violation of this provision renders the Contract void. Any federal regulations and applicable state statutes shall not be violated.
26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

Executed as of the day and year first written above.

CITY OF ROSEVILLE

City Manager

ERICKSON, BELL, BECKMAN & QUINN, P. A.

By: _____

Its: _____

Exhibit A

Civil Attorney

Scope of Services and Compensation

Scope of Services

1. Attend all City Council meetings (generally three per month) and other City Board, Commission or Committee meetings as requested by the City Council or City Manager.
2. Draft and review ordinances, resolutions, and correspondence, as requested.
3. Review selected Council and Planning Commission agenda items and minutes.
4. Advise Mayor, Council Members, City Manager, Department Heads and other staff on City legal matters.
5. Prepare and/or review municipal contracts, such as contracts for public improvements, joint powers of agreements, construction, and purchase of equipment.
6. Represent City in matters related to the enforcement of City building and zoning codes.
7. Research and submit legal opinions on municipal or other legal matters, as requested by City Council or City Manager.
8. Meet with the City Council, City Manager, Department Heads and City Staff, as needed, to review Council agenda items, and the status of all legal matters before the City.
9. Hold office hours at City Hall one morning or afternoon each week.
10. Provide legal briefings as requested to City Council and Staff regarding new or proposed legislation or new court cases affecting municipal operations and activities.
11. Upon request, provide written update on new State or Federal legislation or judicial decisions impacting the City and suggested action or changes in operations or procedures to assure compliance.
12. Provide advice on open meeting law, data practice, records retention and privacy issues.
13. Provide advice on and represent the City in employment, workers' compensation and labor relations issues, including negotiations, administrative hearings and mediation, but excluding arbitration and litigation.
14. Interpret, advise and provide training with respect to municipal employment matters including but not limited to PERA, labor agreements, personnel policy, FLSA, Veterans' Preference, and unemployment compensation.

15. At the City's discretion (as well as the discretion of any insurance company providing coverage), represent the City in matters related to, but not limited to, human rights claims; condemnation; and permits and administrative actions; excluding litigation.
16. In coordination with other attorneys representing the City on a case-by-case or project-by-project basis, review financing arrangements, special assessments, bonds and insurance requirements required by or for City contracts or activities, and interpret and advise the City regarding State land use statutes and regulations and City Code provisions.
17. Provide advice on and represent the City in the acquisition of real property for public purposes (public improvements, easements, parks, etc.), excluding condemnation proceedings.
18. Prepare and review the following: Conditional Use Permits and Documentation; Vacation of Rights-of-Way; and other land use approval documents.
19. Issue formal and informal advisory Ethics opinions, and assist the Roseville Ethics Commission, City Council and City Staff in matters related to the City Ethics Code, including providing training.

Compensation for the foregoing work shall be as follows:

Retainer:	Per Month
Months 1-12	\$14,667.00
Months 13-24	\$15,107.00
Months 25-36	\$15,560.00

In addition, thereto the City shall pay the Consultant's out-of-pocket expenses, such as filing fees, transcript fees, photocopying (at \$.25 per page for black and white copies and \$1.00 per page for color copies), messenger fees, etc. for documents and materials required to be served and/or filed by the court. Such expenses are posted to the monthly retainer fee statement on a cost item basis.

The parties agree to review the compensation increases for Months 13-24 on or before July 1, 2013 and for Months 25-36 on or before July 1, 2014. In the event that the parties determine that such increases are not justified due to the then existing economic conditions and inflationary factors the parties shall reduce such increases downward by an amount mutually agreeable to the parties.