

Professional Services Agreement for Outside Legal Counsel

This Professional Services Agreement (“Agreement”) for Outside Legal Counsel is entered into by and between the City of Corpus Christi, a Home-Rule Municipality (“City”), and **McCall, Parkhurst & Horton L.L.P.**, (“Counsel”) effective for all purposes upon execution by the City Manager or City Manager’s designee.

1. MANAGING ATTORNEY: Counsel’s primary City contact will be with Assistant City Attorney **Aimee Alcorn-Reed**, hereinafter known as the “Managing Attorney”. The City Attorney may redesignate the Managing Attorney at any time. Only the Managing Attorney or the City Attorney may assign duties to Counsel unless otherwise directed by the City Attorney.

2. SERVICES TO BE PERFORMED:

- a. City desires Counsel to perform and Counsel agrees to provide legal services as bond and special counsel in connection with the City’s pursuit of expanding and renovating its existing convention center facilities, development of a convention center hotel, and activation of private development in and around the convention center footprint (collectively, the “Plan”) and repurposing of the City’s existing “Type A” sales tax authority, as follows:
 1. Assist with Plan development, to include development of a convention center capital improvement plan.
 2. Evaluate existing law to identify and evaluate financing and development tools available to implement all or part of the Plan.
 3. Provide advice and support in development and seeking enrollment of special legislation determined by the City as necessary or desirable to implement the Plan.
 4. Identify available sources of credit to support a financial program to fund Plan implementation.
 5. Negotiate development, operating, and concession agreements and leases with third parties (public or private) participating in Plan implementation.
 6. Structure and coordinate issuance and approval of evidences of indebtedness necessary to fund elements of the Plan (whether debt issued by the City or on its behalf, to include State law approvals and delivery of legal opinions as to validity and enforceability and, as applicable, exemption of interest thereon for purposes of income taxation under federal tax law).
 7. Coordination with Texas Comptroller to activate any State revenue rebate or refund available to fund a part of the Plan.
 8. Support and advice regarding any public elections necessary to repurpose for or make available to the Plan various identified revenue sources.
 9. Support and advice relating to the re-purposing of the 2 “Type A” 1/8th cent sales tax funds.
- b. This contract is terminable with or without cause by the City. Further, this contract does not bind the City for any obligation exceeding **\$100,000** without further City Manager approval. If Counsel believes, at any point, that amounts will exceed such limitation, then Counsel will immediately inform the Managing Attorney with copy to the City Attorney.
- c. Counsel agrees to perform its services in accordance with the attached GUIDELINES FOR OUTSIDE COUNSEL. City will reimburse Counsel for reasonable expenses and pay Counsel a fee for its services in accordance with the attached GUIDELINES FOR OUTSIDE COUNSEL at the following rates:

For the Matter, initially and continuing until development of a final Plan (as approved by City Council

or City staff), Counsel shall charge for services rendered on an hourly basis, calculated at the hourly rates provided below and provide an accounting of hours each quarter. Fees up to the initial \$100,000 will be billed quarterly as shown below.

April 1, 2023: \$25,000
 July 1, 2023: \$25,000
 October 1, 2023: \$25,000
 January 1, 2024: \$25,000

After Plan finalization, the City and Counsel will determine the scope of financings and other work necessary for Plan implementation and negotiate a fair and reasonable fee for necessary services to be rendered, which amounts shall be paid from debt proceeds at their time of issuance. At the time of Plan finalization and negotiation of the fees to be paid by the City, Counsel shall provide a final accounting of the amount of hourly time spent on the legal services prior to the date of Plan finalization and subtract from that total the amount paid by the City to Counsel pursuant to the preceding paragraph. The balance shall be credited or debited, as applicable, to the total amount of fees to be owed to Counsel upon completion of a Plan-related financing.

Hourly fees in furtherance of the foregoing shall be calculated at the following rates:

- Senior partners (Clay Binford; Stefano Taverna) – \$650/hour
- Junior Partners (Lauren Ferrero; Jay Juarez) – \$575/hour
- Senior Counsel (Rose Kanusky) – \$500/Hour
- Associates – \$325/hour

Other personnel may be added based on specific skill set or need. Such other personnel, if any, will be slotted at the hourly rate most commensurate with his or her level of experience.

- d. Payments due to Counsel by the City are payable within 30 days after receipt of an acceptable invoice. Payments due to Counsel will be made payable to and addressed as follows:

Name: **McCall, Parkhurst & Horton L.L.P.**
 Address: **As stated on invoice**

3. INDEPENDENT CONTRACTOR: Counsel shall perform all professional services as an independent contractor and shall furnish such services in its own manner and method, and under no circumstances or conditions shall an agent, servant, or employee of Counsel be considered an employee of the City. If Counsel believes, at any point, that its duties create an employment relationship with City, then Counsel shall immediately notify its City contact.

4. OUTSIDE ACTIVITIES: Outside consulting or business opportunities are completely allowed under this agreement. Counsel may accept or engage in outside business opportunities with the understanding that such arrangements must not constitute a conflict of interest with Counsel's responsibilities under this Agreement.

5. QUALIFICATION: Counsel represents that Counsel is fully capable and qualified to execute the services in this agreement and does not require any training from the City.

6. QUALITY OF SERVICE: All work will be done in accordance with the standards of the legal profession and all services are subject to final approval by a representative of the City prior to payment.

7. CONFIDENTIAL MATTERS AND PROPRIETARY INFORMATION: Counsel recognizes that during the course of contract performance he or she may acquire knowledge or confidential information. Counsel agrees

to keep all such confidential information in a secure place and further agrees not to publish, communicate, divulge, use, or disclose, directly or indirectly, for his or her own benefit or for the benefit of another, either during or after contract performance, any such confidential information.

8. CAPTIONS: The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

9. RELATIONSHIP OF PARTIES: In performing this Agreement, both the City and Counsel shall act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

10. SEVERABILITY: If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

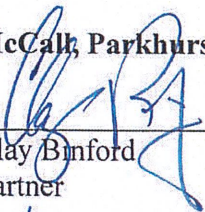
11. SOLE AGREEMENT: This Agreement constitutes the sole agreement between the City and Counsel. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

EXECUTED by the PARTIES, both of which hereby represent that the signatures to this AGREEMENT, below, are of those persons with the capacity and authority to legally bind the PARTIES.

CITY OF CORPUS CHRISTI

McCall, Parkhurst & Horton, L.L.P.

Peter Zanoni
City Manager



Clay Bimford
Partner

Date

March 14, 2023

Date

GUIDELINES FOR OUTSIDE COUNSEL

I. DUTIES OF FIRM

A. Scope of Services

We expect matters to be leanly staffed and economically handled. The Managing Attorney will be contacting you to discuss the specific work assignments, possible sharing of work between our in-house staff and your firm, and how to work together most efficiently to fulfill the engagement and to constrain costs. Decisions will be made jointly by you, the Managing Attorney and the Assistant City Manager, when indicated. Examples of such decisions include whether to:

- engage in extensive research on an issue and who will do the research;
- file a motion;
- hire an expert;
- engage in settlement negotiations and the scope of those negotiations (Assistant City Manager and Managing Attorney, jointly); and
- any decision to appeal a case (must be separately authorized by the City Attorney.)

B. Representation

The Firm shall coordinate all aspects of its services with the Managing Attorney assigned to this matter. Contemporaneous copies of all pleadings, legal memoranda, and correspondence shall be submitted to the Managing Attorney. Settlement actions shall be made by the Managing Attorney and Assistant City Manager. Please note that formal action by the Corpus Christi City Council may be required to approve certain actions, including settlement. All contact with City Officials must be coordinated through the Managing Attorney.

C. Conflict of Interest

Before commencing work on this assignment, you must verify whether your firm has a conflict of interest with respect to the parties involved. If any conflicts are present, please advise the Managing Attorney immediately in writing.

D. Ethics

In providing legal services to the City, the Firm and each attorney providing services to the City shall fully comply with the Texas Disciplinary Rules of Professional Conduct. The law firm shall promptly notify the City if any disciplinary action or malpractice action is instituted against the law firm or an attorney providing services to the City.

E. Authorized Expenditure Ceiling

The total cost of fees and expenses to the City for representation in this matter shall not exceed the authorized expenditure amount(s) established in written by the Managing Attorney. If the Counsel objects to the authorized expenditure amount, Counsel must obtain a written increase in the authorized expenditure amount.

F. Expenses

The Firm shall exercise prudence in incurring expenses. The Firm agrees to timely pay for all reasonable expenses incurred during representation of the City in this matter, including litigation expenses, if applicable. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement. The City agrees to reimburse the Firm for the reasonable, actual cost of expenses incurred in this matter as provided in the Billing Requirements section of this Agreement. The City of Corpus Christi will not reimburse for expenses related to client reports or billing.

G. No Increase in Billing Rates

The City will not increase billing rates for any matter which is in progress without the written approval of the City Attorney in an amended Rate Schedule.

H. Work Products

All files, reports, exhibits, pleadings, data compilations, memoranda, and other work products produced under this Agreement, collectively, the “Documents,” will be the property of the City of Corpus Christi. Upon termination, the Firm may retain a copy of the Documents, but the Firm shall deliver the original Documents to the City Attorney on request, at no expense to the City. Neither the Firm nor any persons hired by the Firm to prepare Documents pursuant to this contract shall own a copyright or other intellectual property rights in the documents, and the City shall be entitled to copy and distribute all Documents. Copies of documents prepared by Firm shall be provided electronically to the City in editable WORD format.

II. BILLING INSTRUCTIONS

Failure to follow these policies may result in no payment for part or all of the fees associated with work that does not comport with these policies. The City will not pay for work outside the scope of work and assignments approved by the Managing Attorney.

A. Billing Requirements

1. Itemized bills must be submitted on Firm letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. The Firm shall bill time in 1/10th of an hour (or smaller) increments.
4. The negotiated hourly rates on the attached Engagement Letter include all overhead and internal charges associated with your firm's practice. The City expects that work for the City will be done at a substantial discount from the firm's general billing rates. The City will not separately pay for overhead or law firm costs associated with services of secretaries, word processors, librarians, investigators, or other support staff.
5. The City will not pay for time spent preparing, discussing, or correcting a billing statement.
6. The City will not pay for opening routine correspondence which does not require a response or impact the merits of the case.
7. The City expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.
8. Any attorney work product for which the City is billed shall be provided to the City, either electronically or as a paper copy at the time it is completed.
9. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the City of Corpus Christi, or the amount of the award must be specifically credited on the next billing statement.
10. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.
11. Expenses above the limits set forth in the **Professional Services Agreement** and these **Guidelines** shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

B. Billing Statement Requirements

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.
2. The vendor's name and address Style of case or Matter description.
3. A remittance page with the monthly statement.
4. Dates of service and a detailed description of service. Vague descriptions, such as “review,” “update,” “attention to file,” “research,” and “trial preparation” without more specifics are not acceptable.

5. Name, classification (e.g., “partner,” “associate,” “legal assistant”), billing rate for the person doing the task, and specific time for service to a tenth of an hour.
6. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

C. Consultations

1. The City will not pay for conferences between outside attorneys and support staff. The City expects the matter to be leanly staffed.
2. The City will not pay for time involved educating an outside attorney on a particular matter when it has previously been handled by another attorney in the Firm.

D. Court Proceedings Attendance

1. Attendance of more than one attorney at depositions or court proceedings, including trials, is not reimbursable without prior approval by the Managing Attorney. Generally, one attorney is expected to handle matters.
2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, or trials for training purposes is not reimbursable.

E. Inefficient or Duplicate Work

The City **will not** pay for the following;

1. More than one attorney performing any one task on a matter.
2. An attorney to re-do the work of a paralegal or another attorney.
3. Multiple entries for reviewing correspondence, documentation, trial, and/or deposition transcripts, indicative of inefficient work.
4. Repeat and inefficient research on an issue.
5. Research for matters which should be within the knowledge of an experienced practitioner.
6. Time spent training junior or other lawyers.
7. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).
8. Unnecessary use of express mail, facsimile transmissions, or couriers.
9. Database usage charges or other fees (other than costs for the time of the researching attorney) for computerized legal research over \$200.00 without prior Managing Attorney approval.
10. Automobile mileage exceeding the amount permitted as a business expense under the Internal Revenue Code.
11. Charges for which the Firm would not be liable in the absence of a reimbursement relationship with the client.

The Firm must evaluate the need to engage experts, investigators, visual aid companies, etc. on a case by case basis, and must obtain approval of the Managing Attorney before retaining any such services.

F. Travel

The City **will not** pay for:

1. time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in an amendment to this agreement.
2. air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the Managing Attorney for information on City vendor discounts.
3. lodging and meals that exceed the per diem rates established by the U.S. General Services Administration. See <http://www.gsa.gov/portal/category/100120>

4. alcoholic beverages.
5. charges from in room hotel "honor" bars.
6. entertainment charges.

III. DUTIES OF CITY

A. Payment Terms

1. The City shall pay the Firm on the basis of monthly invoices submitted by the Firm and approved by the City Attorney or his designee.
2. The City shall make payments to the Firm within 30 days of receipt of an invoice meeting contract and billing requirements.

B. Disputed Payments

1. If the City disputes any item in an invoice the Firm submits for any reason, the Managing Attorney shall advise the Firm of the issue and request that the Firm submit a new invoice of current date that does not include the disputed amount. The City will not pay for time spent discussing or correcting an invoice.
2. If the dispute is later resolved in the Firm's favor, the Firm may include the disputed amount on a separate invoice or on a subsequent monthly invoice.

IV. GENERAL PROVISIONS

A. Right to Audit

The City has the right to inspect and audit all books, records, and documents of the Firm pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation. If the Firm is asked to provide information to the City, including, but not limited to City auditors (either City employees or professionals hired by the City to audit the City's records) or the City finance department, the Firm shall provide such information at no additional cost to the City.

V. TERMINATION

The City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, the Firm shall immediately discontinue work under the Agreement and transmit all files or written materials to the City. Thereafter, only those legal services necessary to effectuate termination of representation or transfer to another attorney may be performed. All such services must be expressly authorized in advance and in writing by the Managing Attorney.

VI. REPORTS

The City requires outside counsel to provide initial and supplemental reports to the Managing Attorney and the Assistant City Manager via e-mail. The initial report shall provide concise statement of current status of the matter with anticipated next steps and identify any deadlines for response. A monthly follow up report will be provided by outside counsel to the Managing Attorney and Assistant City Manager every 30 days.

VII. ATTENDANCE AT MEDIATION AND SETTLEMENT CONFERENCES

The Assistant City Manager or designee will attend mediations with defense counsel. Defense counsel should consult with the Assistant City Manager to determine if attendance at settlement conferences is necessary.