

EXHIBIT “B”

CITY OF HOUSTON OFFICE OF THE CITY ATTORNEY POLICY ON ENGAGEMENT OF OUTSIDE LEGAL COUNSEL

I. DEFINITIONS

A. “Handling City Attorney” means the assistant City attorney who has been assigned to supervise the Firm’s provision of legal services in accordance with the terms of the professional services contract between the Firm and the City.

B. “City” means the City of Houston, Texas.

C. “Firm” means the outside law firm retained by the City to provide legal services to the City.

D. “Agreement” means a written professional services contract between the Firm and the City for provision of legal services to the City. Agreement includes a City Purchase Order with an Addendum issued by the City for the provision of legal services.

II. INTRODUCTION

When contracting with the Firm, the City of Houston Legal Department expects to receive the highest caliber of professional legal services at the most reasonable price. All Firms providing legal services to the City shall comply with the provisions and directives contained in this Policy. Unless specifically agreed otherwise in writing, this Policy on Engagement of Outside Legal Counsel (“Policy”) shall supplement any related Agreement between the Firm and the City. To the extent one or more provisions of the Policy are inconsistent with the terms of the Agreement, the Agreement will govern as to the inconsistent Policy provision.

III. THE FIRM’S PROVISION OF LEGAL SERVICES

A. The Firm’s Staff

1. Concurrent with execution of the Agreement, the Firm shall advise the Handling City Attorney which lawyers in the Firm will provide such legal services. Firm shall not use or bill for additional lawyers or staff without prior approval by the City Attorney.

2. Only one attorney from the Firm shall attend meetings, depositions, arguments, discovery hearings, motion conferences, and so forth. The City will not pay for the participation or attendance of more than one attorney at events absent the City Attorney’s prior written approval. In the case of trials and major hearings, the Firm may have a second person attend, with the City Attorney’s prior written approval.

3. As the Firm has been retained due to its expertise, the City will not pay and the Firm will not bill or invoice for any time spent or expenses incurred in educating Firm members or employees in procedural matters or the substantive law applicable to the legal matter the Firm is handling for the City.

4. The City acknowledges that staffing changes at the Firm may be necessary from time to time. However, once the Firm's attorneys or legal assistants have begun handling a legal matter for the City, the City will not pay, and the Firm will not bill or invoice, for any resulting "downtime", "learning time", or expenses that may result from a staffing change at the Firm.

B. Coordination of Work with the City Attorney's Office

1. The Firm shall inform the Handling City Attorney of any relevant developments relating to the legal matter being handled by the Firm, including (but not limited to):

- a. Due dates for:
 - (1) Responses to pleadings.
 - (2) Responses to discovery.
- b. Hearing and trial dates.
- c. Briefing deadlines.
- d. Motion deadlines.
- e. Witness meetings and depositions.

2. If the Handling City Attorney needs to be present at a meeting with the Firm, then the Firm shall schedule the meeting at a time and place convenient for the Handling City Attorney.

3. The Firm must promptly provide drafts of any original briefs, pleadings, or other documents ("Documents") it creates in the course of handling a legal matter for the City to the Handling City Attorney, for his or her approval and a copy of documents once finalized. The City shall not pay the Firm for the fees and expenses the Firm incurs in creating such Documents until the Firm provides them to the Handling City Attorney.

4. The Firm shall ensure that the Handling City Attorney receives copies of the following items in a timely manner.

- a. All pleadings filed by all parties involved. Pleadings shall include motions and exhibit documentation.
- b. All correspondence between the parties, their counsel, or the court.

5. In cases involving litigation, the Firm shall provide a pre-trial memorandum of legal issues and potential outcomes to the Handling City Attorney at least two weeks before commencement of the trial. The Firm shall provide a post-trial memo if requested by the Handling City Attorney.

6. The Firm shall issue no press release, announcement or other release of information relating to legal matters on which it represents the City (or any party the City employs Firm to represent) without the prior consent of the City Attorney.

C. Legal Resources

1. The Firm's Use of the City Attorney's Office's Legal Resources

a. In order to reduce the City's legal costs where practicable, the Firm's attorneys shall make use of the legal personnel in the City Attorney's office, as well as any other personnel or facilities of the City. For example, the City's legal staff can help the Firm prepare discovery responses or schedule matters associated with the appearance or participation of City employees or officers. The Handling City Attorney will assist the Firm in coordinating such activities.

b. Prior to undertaking a legal research project, the Firm shall ask the Handling City Attorney to provide any research the City Attorney's Office has already performed regarding the legal matter the Firm is to handle for the City. Further, before the Firm undertakes a legal research project, the Handling City Attorney's prior approval is required.

c. In some cases, the Firm's attorney and the Handling City Attorney may share responsibilities for:

- (1) Document retrieval;
- (2) Pre-trial discovery;
- (3) Witness preparation;
- (4) Hearings;
- (5) Trial; and
- (6) Appellate work and argument.

2. Firm's Use of Other Legal Resources. When handling a legal matter for the City, the Firm shall use paralegal personnel whenever possible in order to reduce the City's overall legal costs.

IV. PAYMENT

A. The Firm's Budget and Billing Policies

1. Before the Firm begins handling a legal matter for the City, it shall provide to the City Attorney an initial budget which shall include, at a minimum, a list of each specific legal service the Firm shall perform for the City, and include:

- a. A detailed estimate of all fees, expenses, and costs the Firm shall charge for each legal service to be performed by the Firm;
- b. The identity and billing rate of each of the Firm's attorneys and paralegals who are to perform each legal services; and
- c. The amount of time the Firm expects to take to perform each legal service.

2. The Firm shall update its budget every six months or more frequently when requested by the City Attorney or Handling City Attorney. The Firm shall provide a copy of each revised budget to the City Attorney and Handling City Attorney, and shall point out and explain each material modification or change from previous budgets.

3. If it becomes apparent to the Firm that it will exceed its budget, the Firm must promptly notify the City Attorney and First Assistant City Attorney in writing, describing in detail the reason(s) why the Firm expects to or has overrun its budget.

4. The City will not pay any amount in excess of the Firm's budget without the prior written approval of the City Attorney and, where appropriate, the City Council.

5. Failure to submit invoices **each month timely**, that is on or before the first business day of the month following the month in which services are rendered or expenses incurred, may result in the City denying or reducing payment for the invoiced amounts to the extent the invoiced amounts are (a) unverifiable or disputed by the Handling City Attorney or First Assistant City Attorney, or (b) otherwise prohibited or restricted as described in Section V, Monitoring Contract Funds.

B. The Firm's Legal Fees

1. The Firm shall bill the City **on a monthly basis** as follows:

- a. The Firm shall identify the total amount to be charged to the City for all legal services provided by the Firm.
- b. The Firm shall provide a billing report for each specific legal service performed by the Firm as identified in the Firm's budget. For each such legal service, the billing report shall record:
 - (1) each date on which the legal service was performed,
 - (2) the time expended performing legal services on each date,

- (3) each member of the Firm, who performed this legal service during this day,
- (4) the billing rate of each member of the Firm so identified, and
- (5) the total charge for performance of the legal service by each Firm member during this day and time. A sample of this billing report is included in Exhibit "B1".

2. All time billed by the Firm shall be in increments of 6 minutes (1/10 of an hour) and shall specifically identify the legal service performed by the Firm's personnel during that time, in accordance with the list of legal services identified in the Firm's budget.

3. Block billing is unacceptable. Each task and its corresponding time entry shall be identified separately.

4. If the Firm expects to be compensated for a conference between two or more of the Firm's personnel without any participants from outside the Firm, then

a. The Firm employees shall not each charge the City for their time spent participating in the conference at their individual hourly billing rates. Instead, the Firm shall be compensated for the conference at an amount that is equal to a "special conference hourly billing rate" multiplied by the length of the conference (in hours). The "special conference hourly billing rate" shall not exceed 150% of the highest billing rate associated with the conference, which the Firm may determine in either of the two following ways:

- (1) As equal to the per-hour billing rate of the Firm employee participating in the conference with the highest per-hour billing rate, or
- (2) As equal to the pro rata billing rate for the conference, which shall be calculated as follows:
 - (a) Each member's hourly billing rate is multiplied by the number of hours that member participated in the conference;
 - (b) Each member's individual per-hour billing rate charge is added together to arrive at the total amount of charges associated with the conference; and
 - (c) The total amount of charges associated with the conference is divided by the number of Firm members participating in the conference.

b. The Firm must justify such an expense in writing at the time the bill for such a meeting is presented to the City, including a description of how the Firm

arrived at the “special conference hourly billing rate” charged to the City for this conference.

C. The Firm’s Expenses

1. The City shall reimburse the Firm for the actual cost of out-of-pocket expenses incurred by the Firm which are related to the legal matter the Firm handles for the City, as follows:

2. Specific Expense Provisions

a. Photocopy Expenses.

- (1) Any photocopy expenses incurred by the Firm at a cost of more than 10 cents per page must be approved in advance by the Handling City Attorney.
- (2) Any photocopy costs in excess of \$500 for a single job must be authorized in advance by the Handling City Attorney. The Firm’s request for approval of such photocopy costs must be accompanied by cost estimates provided by at least three (3) photocopy vendors, one of which may be the Firm itself.
- (3) Notwithstanding (1) and (2) above, the Firm shall use vendors such as court reporters and copying services under contract with the City whenever possible. The Firm should ask the Handling City Attorney to identify such contracts for its use.

b. Travel Expenses.

- (1) The Firm shall exercise prudence in incurring travel expenses. Travel expenses for lodging, meals, and out-of-town transportation shall be at reasonable rates and consistent with the City’s travel policies. It shall be the Firm’s responsibility to apprise itself of the City’s travel policies; if clarification of such policies is required, the Firm may contact the Handling City Attorney for such clarification.
- (2) The Firm shall not charge for any time a Firm member spends traveling or providing legal services during travel, unless otherwise approved in advance by the City Attorney.
- (3) Whenever the Firm wishes to have more than one Firm member incur travel expenses related to the legal matter the Firm is handling for the City, the Firm must request and obtain advance approval from the City Attorney for such travel expenses. This requirement applies regardless of whether the different Firm

members incur travel expenses at the same time or at different times.

- (4) The Firm shall not charge for time or mileage while traveling within the City limits.

c. Telephone / Telecommunications Expenses.

- (1) The City shall not pay for any of the Firm's local telephone expenses.
- (2) The maximum time the City shall pay for the Firm's long-distance phone calls related to the legal matter the Firm is handling for the City (whether incurred for voice or data transmission) is 6 minutes, unless the Firm provides a detailed explanation justifying payment for a longer period.
- (3) The City shall not pay for the following unless agreed to in advance and in writing by the Handling City Attorney:
 - (a) Fax charges for local numbers;
 - (b) Fax charges for long distance numbers at more than the cost of the call.

d. The City shall not pay any of the following out-of-pocket expenses incurred by the Firm unless such payment is agreed to in advance by the City Attorney:

- (1) Secretarial or word processing services (normal, temporary, or overtime);
- (2) Any staff service charges, regardless of when such charges are incurred, such as meals, filing, or proofreading.

e. The following Firm expenses shall not be paid for by the City in any event:

- (1) Office supplies.
- (2) Firm time spent responding to the City's billing inquiries or preparing bills, billing estimates, expense reports, budgets or status reports;
- (3) Overhead, including but not limited to, after-hours air conditioning or heating and online legal research service fees (including but not limited to any Westlaw or Lexis charges or fees), however characterized.

3. The Firm shall bill the City for its expenses by submitting invoices detailing the following for each expense for which the Firm wishes to be reimbursed:

a. Identification of the legal service performed for the City in which the Firm incurred the expense;

b. Identification of the specific expense incurred by the Firm, including but not limited to:

- (1) Long distance calls to the extent permitted under Section C(2)(c) as a reimbursable travel expenses;
- (2) Photocopying;
- (3) Cost of transcripts;
- (4) Cost of expert witnesses; and
- (5) Court costs.

c. If the expense is a travel or out-of-town living expense, then the Firm shall itemize such expenses separately on an attached form and describe in specific detail the type of expense incurred and where applicable, the person incurring the charge or participating in the event. Allowable costs are:

- (1) Travel;
- (2) Lodging;
- (3) Business meetings;
- (4) Meals;
- (5) Taxis and similar ride-sharing or transportation network vehicles (e.g. Uber, Get Me, or Lyft); and
- (6) Case-related long distance telephone or fax charges.

4. In addition to the above invoices, the Firm must also submit receipts or other documentation verifying each expense for which the Firm expects to be reimbursed by the City.

D. Audits and Reviews

1. At any time, representatives of the City may audit the Firm's invoices, billings, and invoicing and billing practices respecting the legal services the Firm provides to the City.

2. The Handling City Attorney shall review all bills and invoices and may request that the Firm reasonably adjust such bills and invoices to comply with the provisions and directives contained in this Policy.

V. MONITORING CONTRACT FUNDS

It is the Firm's responsibility to closely monitor expenditures under the contract and to notify the appropriate First Assistant City Attorney and the Handling City Attorney, in writing, when fees and expenses equal to 80% of the total contract funding have been accrued or committed, even if they have not yet been billed. At this point, the Firm shall stop providing services, unless instructed otherwise by the First Assistant City Attorney or City Attorney, until notified in writing that the City has allocated additional funding. The City has no obligation to pay for invoiced amounts in excess of the 80% allocation in the absence of prior, written approval from the First Assistant City Attorney or City Attorney. **THE CITY SHALL NOT HAVE ANY OBLIGATION TO PAY AND SHALL NOT PAY FOR SERVICES RENDERED OR EXPENSES INCURRED AFTER ALLOCATED FUNDS ARE EXHAUSTED.**

VI. TERMINATION

Despite the termination provisions set out in the professional services contract agreement between the City and the Firm, the Firm shall not terminate the agreement and stop providing legal services to the City in the following situations:

- A. Within 30 days of a deadline stated in the applicable docket control order;
- B. Within 60 days of a trial setting or administrative hearing or any appellate deadline in the cause in question; or
- C. In any other situation in which the Firm's termination of legal services would result in substantial prejudice to the City's rights.
- D. The Firm may withdraw in accordance with the Texas Disciplinary Rules of Professional Conduct.

THIS PROHIBITION OF TERMINATION OF THE AGREEMENT UNDER CERTAIN CIRCUMSTANCES DOES NOT AFFECT THE FIRM'S OBLIGATION TO SUSPEND THE PROVISION OF SERVICES UNDER SECTION V ABOVE.

Exhibit B1

FIRM LETTERHEAD

PRIVILEGED AND CONFIDENTIAL

DATE

City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368
Attention: Handling City Attorney

INVOICE NUMBER: 2304
(ACH and Electronic Transfer
information optional)

For Professional Services rendered from June 1, 2016 to June 30, 2016

Re: Agreement or Purchase Order Number _____

(Brief description of legal matter) _____

(Style of case if in litigation) _____

Professional Services

| Date | Name | Activity | Hours |
|-------------|-------------|--|--------------|
| 06-04-2016 | RPS | Meet with Ms. Jones regarding facts of the case and strategy | 1.10 |
| 06-07-2016 | MGI | Draft City's Plea to the Jurisdiction | 0.80 |
| 06-24-2016 | MGI | Prepare Motion for Summary Judgment | 1.00 |
| 06-26-2016 | RPS | Review plaintiff's response to City's MSJ on Limitations | 0.20 |
| 06-28-2016 | MGI | Attend pretrial conference | 2.10 |

Professional Services Total

Hours _____

Amount

\$ _____

Time Summary

| Initials | Name | Hours | Rate | Amount |
|-----------------|--------------------|--------------|-------------|---------------|
| RPS | Robert Paul Smith | 3.40 | \$340.00 | \$816.00 |
| MGI | Marta Gomez Ibarra | 1.80 | \$220.00 | \$396.00 |

| Additional Charges: | (documentation attached) | Amount |
|---------------------------------|---------------------------------|---------------|
| Photocopies | | \$15.24 |
| Long-Distance Telephone Charges | | <u>5.32</u> |

| | |
|--|-----------|
| Total Expenses | \$20.56 |
| Total amount of this bill | \$1232.56 |
| Amount Remaining in Contract (as of date of bill) | \$2000.00 |

Balance Due 07-01-2016 \$1232.56