

RESOLUTION 2019-073

PASSED: APRIL 22, 2019

AUTHORIZING AN AGREEMENT FOR LEGAL SERVICES FOR THE CITY OF DEKALB AND APPROVING THE APPOINTMENT OF A CITY ATTORNEY (ROSENTHAL, MURPHEY, COBLENTZ & DONAHUE).

WHEREAS, the City of DeKalb ("City"), Illinois is a home-rule municipality with the power and authority granted under the provisions of the Illinois Constitution and the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, the City requires services from a licensed attorney to serve as City Attorney and to perform legal services on behalf of the City; and

WHEREAS, the City has conducted a Request for Proposals process and has determined to select the firm of Rosenthal, Murphey, Coblenz & Donahue for said role;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

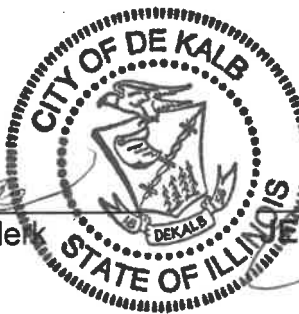
SECTION 1: The City Council authorizes and directs the Mayor to execute an agreement for legal services with the above-referenced firm, substantially in the format attached hereto, subject to such changes as shall be acceptable to him with the recommendation of City staff. The City Council, Mayor and City Manager concur in the appointment of the above-referenced firm to serve as City Attorney pursuant to City Code Section 3.17, with said appointment to take effect on June 1, 2019, and to remain in full force and effect thereafter until terminated.

SECTION 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 22nd day of April 2019 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Stupegia, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:


LYNN A. FAZEKAS, City Clerk




JERRY SMITH, Mayor

RETAINER AGREEMENT FOR CITY ATTORNEY SERVICES

This Retainer Agreement for City Attorney Services (the "Agreement"), effective June 1, 2019, is made and entered into by and between the City of DeKalb (the "City"), an Illinois home rule municipal corporation, and Rosenthal, Murphey, Coblentz & Donahue, Ltd. ("RMCD"), an Illinois limited law partnership, as follows:

1. The City agrees to retain RMCD to serve as the City Attorney, with John Donahue serving as the City Attorney and Matthew Rose serving as the Assistant City Attorney, to perform legal services as provided by Section 3.17 of the Municipal Code of the City of DeKalb, Illinois and this Agreement.

2. The scope of legal services provided under this Agreement shall include:

A. Basic Services as follows:

- a) Representation for all City Council and Committee of the Whole meetings;
- b) Review, draft, advise, and counsel for all ordinances, resolutions, real property documents, legal documents, legal opinions, agreements to which the City is a party including annexation agreements, planned development agreements, development incentive agreements, special service agreements, and intergovernmental agreements, and compliance with the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*, and the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq.*;
- c) Advice and counsel by telephone, email, or in-person meetings as reasonably requested by the City Council, City Manager, and City Staff, for all pending or routine City business or matters including TIF districts, the Joint Review Board, and general labor and employment matters;
- d) Prosecute all municipal ordinance violations pending before the City's Administrative Hearing Process;
- e) Prosecute all matters before the Liquor Commissioner;
- f) Represent the Police and Fire Chiefs in all proceedings under the Uniformed Peace Officers' Disciplinary Act and Fireman's Disciplinary Act;
- g) Review all litigation in which the City is represented by other lawyers retained by insurance companies, self-insurance pools, or otherwise retained by the City;

- h) Represent the City in the pending litigation matters that are attached hereto as Exhibit A;
- i) Supervise senior law students under Illinois Supreme Court Rule 711 in association with the NIU College of Law; and
- j) Prepare annotated monthly statements of contractual expenses detailing work in topical fashion to the City Manager.

B. Additional Services as follows:

- a) Represent the City in all litigation pending in state and federal courts, state and federal administrative agencies, arbitrations, and mediations;
- b) Advise the City Council, City Manager, or designee regarding collective bargaining matters as requested. Represent the City in labor matters arising under the City's collective bargaining agreements, including formal grievance and interest arbitration proceedings;
- c) Representation for all meetings of subsidiary City boards, commissions, and meetings; and
- d) Special projects as assigned by the City Council or City Manager.

C. By separate agreement, RMCD may provide legal services for bond issues.

3. City agrees to compensate RMCD for the legal services provided under this Agreement as follows:

- A. For Basic Services, a monthly retainer in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) per month. The monthly retainer for Basic Services shall not be changed during the period of time from the effective date of this Agreement through December 31, 2020; however, the monthly retainer for Basic Services shall be in the amount of Sixteen Thousand Dollars and Zero Cents (\$16,000.00) per month during the period of time from January 1, 2021 to December 31, 2021; thereafter, the retainer may be modified by mutual agreement. Notwithstanding anything to the contrary contained in this paragraph, the total annual amount of the retainer for Basic Services shall not exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) during the 2019 calendar year, One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00) during the 2020 calendar year, and One Hundred Ninety Thousand Dollars and Zero Cents (\$190,000) during the 2021 calendar year;
- B. Additional Services, at the hourly billing rate of One Hundred and Seventy-Five Dollars and Zero Cents (\$175.00) for attorneys as invoiced by RMCD to the City on a monthly basis. The City shall not be charged for

the travel time associated with providing the Additional Services. The hourly rate shall not be changed during the period of time from the effective date of this Agreement through December 31, 2020; however, the hourly rate for Additional Services shall be One Hundred Eighty Five Dollars and Zero Cents (\$185.00) during the period of time from January 1, 2021 to December 31, 2021; thereafter, the hourly rate may be modified by mutual agreement;

- C. Reimbursement of cash expenditures advanced and expenses incurred by RMCD on behalf of the City, as invoiced by RMCD to the City on a monthly basis, including court costs and fees related to the filing of pleadings, fees of the County Recorder relating to the recording of documents, and litigation-related costs like court reporter and witness fees. The City shall not be responsible for any travel charges, legal research charges (unless legal research is requested from a foreign state or foreign jurisdiction), customary printing or copying charges, or similar expenses; and
- D. Itemized statements of legal services and disbursements shall be sent to the City Manager monthly. Payments shall be made in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq.*

4. The term of this Agreement shall commence on the effective date of this Agreement and shall continue thereafter until this Agreement is terminated. This Agreement may be terminated at will, with or without cause, by either party upon 30 days written notice to the other party. Upon termination of this Agreement, RMCD shall be entitled to compensation on a quantum meruit basis for all work performed for the City prior to termination. The City's issuance of a notice of termination shall function as a stop work order, and RMCD shall not incur any additional costs or expenses without the City's express written consent.

5. The parties acknowledge that RMCD may determine that it cannot provide certain legal services in accordance with the Illinois Rules of Professional Conduct. This determination shall be subject to RMCD's sole discretion and judgment. Should RMCD make such a determination, it shall give timely written notice to the City so that the City may retain substitute counsel; however, such notice shall not be considered as a notice of termination of this Agreement or a breach of this Agreement.

6. RMCD shall provide professional legal services under this Agreement as an independent contractor, and not as an agent, employee, or officer of the City. RMCD shall have sole control over the manner and means of providing the work and services performed under this Agreement. RMCD shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees. RMCD shall provide all insurance required under any applicable law, regulation, statute or ordinance including, workers' compensation insurance, unemployment insurance, automobile liability insurance, and other legally required insurance.

7. All documents, data, records, reports, and other information relating to the legal representation of the City, unless in the public domain or unless disclosure is required by law, shall be considered attorney-client privileged and kept confidential by RMCD.

8. All documents, data, records, and other material constituting the work product of RMCD shall be the property of the City, subject to the applicable attorney's lien and title thereto, free of such lien transfer to the City following payment in full of any sums due to the City. RMCD, however, shall have the right to maintain for its files and use copies of such documents, reports, and other materials constituting RMCD's work product.

9. RMCD agrees to furnish all records related to this Agreement and any public record of the City in RMCD's possession that is requested under the Illinois Freedom of Information Act (the "FOIA"), 5 ILCS 140/1, *et seq.*, within five (5) business days after the City issues notice of such request to RMCD. RMCD agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to a FOIA request. RMCD agrees to defend, indemnify, and hold harmless the City, and agrees to pay all reasonable costs connected therewith, including reasonable attorney's fees and court costs, for the City to defend all claims, causes of action, disputes, prosecutions, or conflicts arising from RMCD's actual or alleged violation of the FOIA or RMCD's failure to furnish all documentation related to a FOIA request within five (5) days after City issues notice of a request.

10. RMCD acknowledges, certifies, and represents that it is authorized to lawfully transact business and perform the legal services provided under this Agreement; compliant with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the contracting process, agreement, or any services or materials provided in connection therewith; and responsible for identifying and complying with all applicable laws, ordinances, rules and regulations.

11. RMCD shall maintain professional liability, malpractice, or errors and omissions insurance applicable to the services rendered to the City under this Agreement.

12. Any notice given under this Agreement shall be in writing and transmitted via email or the United States mail, registered or certified, postage pre-paid, addressed to the proper party as follows:

A. If to the City:

Bill Nicklas, City Manager
City of DeKalb
200 S. 4th St.
DeKalb, IL 60115
bill.nicklas@cityofdekalb.com

B. If to RMCD:

John F. Donahue
Rosenthal, Murphey, Coblentz & Donahue
30 N. La Salle St., Ste. 1624
Chicago, IL 60602
jdonahue@rmcj.com

Either party may change its mailing address by giving written notice to the other party as provided above.

13. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. Venue and jurisdiction for any legal action arising out of or related to this Agreement shall be exclusively fixed in the DeKalb County Circuit Court, DeKalb County, Illinois.

14. This Agreement shall not be assigned or subcontracted by either party without first obtaining express written permission in writing from the other party; however, the parties agree that senior law students may perform legal services under RMCD's supervision as provided by Illinois Supreme Court Rule 711 and the City's association with the NIU College of Law.

15. Changes and amendments to this Agreement shall only be made in writing and by amendment to this Agreement, said amendment to be in contract form and to be approved by the City. This Agreement contains all of the terms, provisions, agreements, conditions, and covenants between the parties; and there are no understandings or agreements other than those recited herein.

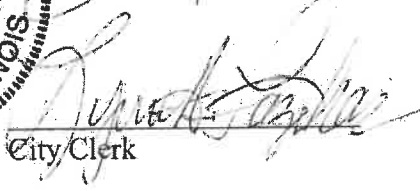
Agreed to this 22nd day of April, 2019.

City of DeKalb:

RMCD:




Mayor Jerry Smith


City Clerk


John Donahue, Partner

EXHIBIT A
RETAINER AGREEMENT FOR CITY ATTORNEY SERVICES
(Basic Services Litigation)

1. *City of DeKalb vs. Cathleen Hathaway*, 18-MR-125;
2. *City of DeKalb vs. Robin Hofbauer*, 17-MR-370;
3. *City of DeKalb vs. Amie Neumann a/k/a Amie Riggs*, 18-MR-24;
4. *Depositors Insurance Company a/s/o Michael Secor vs. City of DeKalb*, 18-SC-650; and
5. OV cases pending in the Circuit Court of DeKalb County, except for the "Hunter Property" OV cases and such others as may be otherwise agreed to by RMCD and the City Manager.



200 South Fourth Street
DeKalb, Illinois 60115
815.748.2000 • cityofdekalb.com

April 25, 2019

Mr. John F. Donahue
Rosenthal, Murphey, Coblenz & Donahue
30 N. La Salle Street
Suite 1624
Chicago, Illinois 60602

Mr. Donahue:

Enclosed please find the Retainer Agreement for City Attorney Services between the City of DeKalb and Rosenthal, Murphey, Coblenz & Donahue, Ltd. Please sign where indicated, retain a copy for your records, and return the original document to my attention.

If I can be of further assistance, please don't hesitate to contact me by phone at (815) 748-2090 or via email at ruth.scott@cityofdekalb.com.

Sincerely,

Ruth A. Scott
Executive Assistant