



Board of Aldermen Request for Action

MEETING DATE: 7/16/2023

DEPARTMENT: Administration and Public Works

AGENDA ITEM: Resolution 1389 – Appointment of Special Counsel.

REQUESTED BOARD ACTION:

Motion to approve Resolution 1389, authorizing the appointment of special counsel Lauber Municipal Law.

SUMMARY:

Staff had inquiries from governing body members as well as contact from private utility providers regarding review of the city's water and wastewater operations in order to explore the possibility of the sale of these utility systems. Such a process would be lengthy and would require significant review. Following conversations with City Attorney John Reddoch, it was determined that it would be in the best interest of the City to enlist the services of an attorney with experience in the processes required for review and sale of utility systems. Lauber Municipal Law has attorneys on staff who have been involved in similar utility reviews across the state. Following conversations with representatives of this firm, Mr. Reddoch and staff recommend appointment of Lauber Municipal Law for the purpose of advice and counsel relating to the review and potential sale of the City water and wastewater system.

PREVIOUS ACTION:

This is the first step in initiating review of the utility systems to determine the potential sale of those systems.

POLICY OBJECTIVE:

Provision of the highest level of services to Smithville residents at the most efficient cost.

FINANCIAL CONSIDERATIONS:

Hourly rates of \$260 per hour will be funded through the Combined Water and Wastewater Systems Fund budget.

ATTACHMENTS:

- | | |
|--|-----------------------------------|
| <input type="checkbox"/> Ordinance | <input type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Engagement Letter (Exhibit A) | |

RESOLUTION 1389

A RESOLUTION AUTHORIZING THE APPOINTMENT OF SPECIAL COUNSEL LAUBER MUNICIPAL LAW

WHEREAS, the City needs special advice and counsel with regard to exploring the possible sale of the city water and sewer systems.

WHEREAS, Lauber Municipal Law is capable of providing such special counsel services, having done so in the past for other political subdivisions.

WHEREAS, Lauber Municipal Law has provided a proposed contract and engagement letter which is overly broad and is clarified as follows:

WHEREAS, Lauber Municipal Law has provided a proposed contract and engagement letter which is modified and clarified as follows:

1. Service Provided: Lauber will serve a special counsel to the City for the purposes of advice and counsel on the issue of the sale of the City water and sewer systems; negotiation and drafting of contracts related thereto and all other reasonably related matters.
2. Engagement Letter: Attached hereto as Exhibit A is the Lauber Engagement letter, which is hereby approved, except that services shall be limited to the services set forth in paragraph 1 of this Ordinance above. If the terms of the Engagement Letter differ from the terms hereof in any way, the terms hereof shall control or as otherwise set forth herein.
3. The City is authorized to enter into this special counsel agreement pursuant to §79.230. R.S. Mo.
4. Termination: This agreement shall remain in full force and effect until terminated by the City, which the City may do at any time upon written notice to Lauber.
5. Services will be charged at the standard rate of \$260 per hour subject to the annual adjustments set forth in the engagement letter.
6. General: This agreement shall be deemed to be made in Clay County, Missouri and shall be governed by and construed under Missouri Law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE MISSOURI AS FOLLOWS.

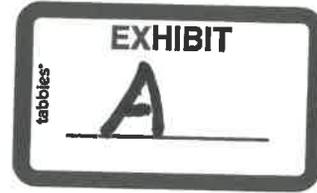
The Mayor or the City Administrator is authorized to execute the engagement letter with Lauber Municipal Law attached to this Resolution as Exhibit A subject to the terms and modifications of this Resolution.

PASSED AND ADOPTED by the Mayor and Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, on the 16th day of July 2024.

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk



LAUBER MUNICIPAL LAW
Serving those who serve the public

April 30, 2024

City of Smithville
Attn: Cynthia Wagner, City Administrator
107 W. Main Street
Smithville, Missouri 64089

RE: *Special Counsel-General Municipal Legal Services*

Dear Ms. Wagner:

Lauber Municipal Law, LLC (the "Firm") is grateful for the opportunity to provide Special Counsel-General Municipal legal services to the City of Smithville (the "Matters"). I am submitting this letter to you to serve as the written agreement for my firm's engagement to provide legal services to the City concerning the Matters.

The City will be our client for this engagement. I will primarily be responsible for the engagement on behalf of the Firm; however, other experienced municipal attorneys in our firm may also provide legal services pursuant to this engagement. The scope of this engagement will be limited to the provision of legal services for the Matters described above unless otherwise directed by you.

The hourly rate for all attorneys is set at \$260 per hour. Any work completed by law clerks or paralegals (non-attorneys) will be billed at \$100 per hour. The Firm reserves the right to charge an hourly rate less than those indicated in this agreement at its sole discretion. The hourly rates for are subject to annual adjustment as described in the Additional Terms of Engagement. We take seriously what we believe is our responsibility to provide legal services within the City's budgetary resources.

The City is not required to utilize a minimum number of hours each month. We bill the hourly rates in one-tenth hour increments and provide the City with detailed monthly statements after services have been provided.

For economic development matters that are reimbursed by the applicant or project pursuant to a funding agreement, the hourly rate will be at the Firm's then-current economic development rate, which is currently \$320 per hour. Economic development matters not reimbursed by an applicant or project pursuant to a funding agreement will be charged at the standard rate of \$260 per hour.

The enclosed Additional Terms of Engagement will govern the general terms of this relationship unless otherwise agreed to in this engagement letter. If you have any questions concerning

the terms of this engagement, or if you ever have a question about our charges, or their reasonableness, please contact us at your convenience to discuss the matter. Our engagement as special counsel-general municipal legal services will begin upon my receipt of a signed copy of this agreement (by email, fax, U.S. Mail or hand delivery). I look forward to a continued good and productive relationship.

Kindest regards,

LAUBER MUNICIPAL LAW



Joseph G. Lauber

CITY OF SMITHVILLE, MISSOURI

Accepted and agreed:

By: _____
Cynthia Wagner, City Administrator

Dated: _____



LAUBER MUNICIPAL LAW

Serving those who serve the public

Additional Terms of Engagement

Lauber Municipal Law, LLC (the “Firm”), appreciates the opportunity to serve you. Our goal is to provide legal services that address your legal needs effectively and efficiently through our offices in Lee’s Summit, Jefferson City, and Springfield. The following information explains the client service practices and billing procedures that apply to our representation of your interests (unless you have reached a different written understanding with us). We encourage you to discuss these practices with us whenever you have questions during this engagement.

Provision of Legal Services. This engagement is for provision of professional legal services, and not for the provision of business, personal, accounting, technical, or other advice not constituting legal services. It is agreed that the client is not relying upon counsel in this engagement for advice in areas other than professional legal services, even if such matters should be discussed in connection with the engagement.

Entire Agreement. The accompanying engagement letter together with these Additional Terms of Engagement shall constitute the entire agreement between us concerning the engagement, and shall not be modified or supplemented, except in a subsequent writing signed by the parties. These documents are intended to supersede all prior documents related to the same matter.

Expectations. Upon hiring the Firm, you have put at your disposal the resources of multiple attorneys who practice municipal law exclusively; in essence, you have hired a full law department. To serve the needs of all our municipal clients quickly and efficiently, it is our business practice to attempt to acknowledge all calls and e-mails within one business day of when they are received. We generally prefer that you contact us via e-mail or call our office at (816) 525-7881, unless you have a different arrangement with your primary attorney. Text messages or calls to our cell phones are not as easy to track and should generally be limited to matters requiring immediate attention. Text messages or calls to our cell phones should not be used to communicate general requests for work to be completed. Messages received after 5:00 p.m. will be treated as though received on the following business day. We will make every effort to complete assignments communicated to us using appropriate channels within five business days. If a situation exists that requires a more immediate response or completion date, be sure to communicate this at the time you contact us regarding the matter. Please be sure to allow our attorneys adequate time to review documents and provide solutions prior to your meeting packet deadlines.

Subcontractors. From time-to-time, it may be necessary for us to engage subcontractors to assist in the provision of services to you. It is agreed that we are not authorized to engage any such subcontractors without the prior approval of authorized City officials.

Periodic Billings for Legal Services. It is our policy to render periodic statements for legal services monthly. We will base these periodic statements on the hourly rates set forth in the attached Engagement Letter. Statements will be due upon receipt and are to be paid no later than 30 days following the invoice date. If any statement amount remains unpaid 30 days after the invoice date, the Firm reserves the right at its sole discretion to elect to charge a reasonable late fee or to terminate its services, or both, consistent with applicable Rules of Professional Conduct.

Annual Rate Adjustment. All hourly rates for legal services provided by the Firm are subject to annual adjustment, at the sole discretion of the Firm, with written notice of at least thirty days.

Client Disbursements. Some matters require, from time to time, certain monetary advances to be made on your behalf by the Firm. Some “client disbursements” represent out-of-pocket charges that the Firm advances, while others represent internal costs (including costs such as fees for service of process, court filing fees, deliveries, etc.). It is understood that while acting as your attorney, we have the authority to use our best judgment in making such expenditures on your behalf. Unless we have made prior arrangements with you, we will send you monthly billings for client disbursements incurred during the preceding month. Substantial individual items in excess of \$250, such as expert witness fees, court reporter fees, deposition transcripts, etc., may be billed directly to you by the vendor of such services.

File Retention. After the Firm’s services conclude, you may obtain the file for this engagement from the applicable office. If you do not obtain the file, we will retain it for a period of six years after the matter is closed. If you do not obtain the file before the end of the six-year period, the Firm will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to you. At any point during the six-year period, you may obtain the file.

Disbursements and Other Charges. We may charge the City for certain expense items listed below that we provide in connection with the legal services:

Photocopying. We will not charge the City for in-house photocopies which do not exceed 100 copies in a month. If in-house photocopies exceed 100 in a month, then we reserve the right to charge \$0.15 per page (or the Firm’s cost, whichever is less) but only for each page over 100 in number. If the need to utilize an outside copy service arises, we only bill the actual cost incurred for photocopying without markup.

Computer Research. We do not charge for the Firm’s service agreement with LexisNexis or other electronic provider of legal research resources.

Telecommunications. We do not charge for local or long-distance phone calls or facsimiles.

Mail/Messengers. We do not charge for regular mail; however, bulk mailings, packages and special postal services may be charged at the Firm’s actual cost. Messengers are used as appropriate to assure expedited delivery. The actual cost of such messenger services is charged without markup.

Travel. Unless we have a different written agreement with you, we will not bill for the first 30 minutes of travel to and from the applicable Firm office to City Hall. To the extent requested by the City, electronic attendance via Zoom or similar video platform is available as a cost-effective substitute for in-person meetings.

Internet Usage. We regularly use the Internet as a means for communicating about matters concerning your representation. Any such communication could be randomly intercepted and otherwise used or disclosed by anyone, including someone specifically interested in your matter or business. This could cause you to lose your confidentiality and attorney/client privilege protections. However, to facilitate your representation, you approve the use of Internet communications during your representation by us unless we are instructed otherwise.

Termination of Services. You may terminate the services of Lauber Municipal Law, LLC, at your discretion by giving us 30 days written notice of termination. We retain the right to cease performing legal services and to terminate our legal representation for any reason consistent with ethical rules, including conflicts of interest or the failure to pay legal fees and expenses when due. Termination by us will be effective upon 30 days written notice delivered to you. Our termination or your termination of services does not affect your obligation to pay legal fees and expenses incurred prior to the effective date of such termination.

Questions. One of our goals is to ensure that legal services are delivered effectively and efficiently, and that all billings are accurate and understandable. Please direct any questions about services, billing, or payment status of your account to your primary attorney or one of the Firm’s partners.