



INFORMATIONAL MEMORANDUM

**TO: Mayor Ekberg
Finance & Governance Committee**

FROM: David Cline, City Administrator

BY: Cheryl Thompson, Executive Assistant

DATE: October 17, 2022

SUBJECT: Contract for City Attorney Services

ISSUE

The current contract for City Attorney Services provided by Ogden Murphy Wallace expires December 31, 2022. The proposed contract for 2023-2024 is attached.

DISCUSSION

Ogden Murphy Wallace began providing City Attorney Services to the City of Tukwila in April 2020. Under the proposed 2023-2024 contract, general City Attorney services are maintained at 28 hours per week at the flat monthly rate of \$33,000 per month for 2023 with an increase of the flat monthly rate to \$35,000 per month in 2024. Litigation, contested administrative proceedings, and special services are subject to prior approval and are billed at the hourly rates of the staff involved. Hourly rates are listed in Exhibit B to the contract.

RECOMMENDATION

The Committee is being asked to move this contract forward to the November 14, 2022 Committee of the Whole Meeting for discussion

ATTACHMENTS

Draft 2023-2024 Contract for Legal Services

KARI SAND
206.447.2250
ksand@omwlaw.com

September 23, 2022

SENT VIA E-MAIL ONLY

Mayor Allan Ekberg
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188
Alan.Ekberg@TukwilaWA.gov

Re: Engagement Letter for City Attorney Services through December 31, 2024

Dear Mayor Ekberg:

My team at OMW and I appreciate the opportunity to be of continued service providing City Attorney services for the City of Tukwila from January 1, 2023 through December 31, 2024. The purpose of this letter is to confirm how our services will be provided.

Terms of Engagement

In our representation of clients, we think it is critical that our clients and the firm share the same understanding of the attorney-client relationship. To that end, enclosed is a copy of our Standard Terms of Engagement. This engagement letter and the enclosed Standard Terms of Engagement set forth our agreement with you. Please review them carefully and let me know if you have any questions regarding the proposed terms.

Legal Fees

We will provide City Attorney services up to approximately 28-hours per week consistent with Exhibit A, the Scope of Services. I will serve as City Attorney and will be available, either in-person or remotely, as needed. Associates Emily Miner and Andrew Tsoming will be otherwise available, either on-site or remotely, as appropriate, as well as any other Member of my firm whose expertise may be needed, such as Member Karen Sutherland. Invoice statements will be sent monthly via regular mail or e-mail, unless you request otherwise. As supervising attorney, I will be responsible for seeing that the work is carried out in an efficient and economical manner. I will be assisted by other attorneys and legal assistants in our office. They are all bound to you by the same duties of loyalty and confidentiality that binds me.

Hours of Work	Staffing Model	General Services Rate
<p align="center">Approx. 28 hours per week (varies)</p>	<p>KLS = Supervising Lead City Attorney EFM & ADT = Assistant City Attorneys</p>	<p>Flat monthly rate of \$33,000 in 2023; flat monthly rate of \$35,000 in 2024; and other fees for separate & special services, as explained below.</p>

The flat monthly billing rate will be \$33,000 per month for City Attorney “General Services,” as specified in Exhibits A (Scope of Services) and B (Compensation and Method of Payment). For representation on “Separate Services,” such as administrative and judicial appeals, litigation, and other project/site-specific land use work, as specified in Exhibits A and B, the Member billing rate will be \$350 per hour, and the Associate billing rate will be \$275 per hour. For representation on “Special Services” that are eligible for reimbursement to the City from an applicant (*e.g.*, franchise), as well as telecommunications work (*e.g.*, small cell ROW agreements, pole leases, etc.) will be billed at \$385 per hour for Members and \$285 per hour for Associates. We will not bill for travel time to and from Tukwila City Hall. Travel to other locations for City-related business outside of regular office hours will be billed at applicable hourly rates (*e.g.*, travel to the Kent Regional Justice Center or the King County Courthouse for the Friday motion calendar).

We appreciate your expression of confidence in Ogden Murphy Wallace, P.L.L.C. and would like to assure you that we will do our best to provide you with high quality legal services. If you have any questions or concerns during the course of our relationship, we encourage you to raise them with me or our Managing Member, Geoffrey J. Bridgman or our Chair, Donald W. Black. If you agree with the provisions of this engagement letter and the attached Terms and Conditions, please sign where indicated below and return to me. We look forward to working with you.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.



Kari L. Sand

KLS/ljv

Enclosure – OMW Standard Terms of Engagement
 cc: Vicki Carlsen, Finance Director

Mayor Allan Ekberg
September 23, 2022
Page 3

I HEREBY ACCEPT AND AGREE TO the foregoing letter and the attached Standard Terms of Engagement this _____ day of November, 2022.

By: _____

Print Name: Allan Ekberg

Its: Mayor

**OGDEN MURPHY WALLACE, P.L.L.C.
STANDARD TERMS OF ENGAGEMENT**

General Rates

The usual basis for determining our fees is the time expended by attorneys, paralegals, and legal assistants of the firm. The rates for our services presently range from \$175 to \$635 per hour and are subject to change from time to time. Our current rate schedule is always available upon request. Whenever it is appropriate, we will use associate attorneys, law clerks or legal assistants in our office.

Other Factors in Rates

Although time expended and costs incurred are usually the sole basis for determining our fees, by mutual agreement billings to you for legal services may, in some instances, be based on a more comprehensive evaluation of the reasonable value of the firm's services. The firm is committed to charging reasonable fees for its services. In certain situations, factors other than the amount of time required will have a significant bearing on the reasonable value of the services performed. Such factors include: the novelty and complexity of the questions involved; the skill required to provide proper legal representation; familiarity with the specific areas of law involved; the preclusion of other engagements caused by your work; the magnitude of the matter; the results achieved; customary fees for similar legal services; time limitations imposed by you or by circumstances; and the extent to which office forms and procedures have produced a high quality product efficiently. There may be some activity that we can do on a contingent or other basis; however, we will handle matters on a contingency or other basis only when and to the extent specifically agreed in writing in advance of the work.

In circumstances where our fees will be based on or include factors other than our normal hourly charges and costs, we will notify you promptly and prior to proceeding. Any basic document fee that we may charge you has been and will be set in light of these various factors.

Billing Fees and Costs

The City will not be charged for normal clerical or secretarial work, the expense of which has been calculated into our hourly rates for attorneys. Reimbursement will be made by the City for expenditures related to court costs and fees, copying, postage, computer-aided legal research when conducted on behalf of the City, mileage, and parking. Other expenses shall be reimbursed when authorized in advance by the City.

We will bill the City monthly for services performed. Our bill will show the service provided, the date, the person providing the service, and the time expended in tenths of an hour.

We will work with the City to develop and implement a billing and invoicing framework that meets the City's needs. At the City's preference, individual billing numbers can be established for each

department, as well as for any specialty matter (e.g. litigation, contract negotiations, etc.) that arises.

Legal services would be billed monthly, and each invoice would include a billing narrative for every time entry sensitive to protecting the attorney/client privilege.

Payment; Interest

You agree to make payment within thirty (30) days of receipt of our monthly statement. Outstanding balances that are not paid when due will accrue interest at the rate of one percent compounded monthly from the date of invoice until paid.

Termination

You may terminate our representation at any time, with or without cause, by notifying us. Upon such action, all fees and expenses incurred before the termination are due to the firm. If such termination occurs, your original papers will be returned to you promptly upon receipt of payment for outstanding fees and costs. If you wish to have a paper or electronic copy of your file at the conclusion of our representation, we will provide it to you at the current copy rate per page then in effect.

Confidentiality and Electronic Communications

Ogden Murphy Wallace is committed to maintaining the security of our system and the communications with our clients. Unless you otherwise instruct us in writing, we intend to use various communications devices in the normal course (which may include wired or wireless devices, e-mail, cellular telephones, voice over Internet, texting, and electronic data/document web sites) to communicate with and send or make available documents to you and others. Though encryption is a security tool that we utilize, not all communications are encrypted. By signing this letter, you consent to the usage of a variety of communication methods even if such methods are not encrypted.

It is important for us to maintain open communication with each other throughout the engagement. We will regularly keep you informed of the status of the matter and will promptly notify you of any major case developments. We will consult with you whenever appropriate.

You agree to communicate with and provide us with complete and accurate information as needed to further the case. Further, you will timely notify us of any changes in the structure of your organization, changes to the personal information or residence of any individuals related to this matter, or any extended periods of time when you will be unavailable.

Dispute Resolution

If you disagree with the amount of our fee, please take up the question with your principal attorney contact or with the firm's managing member. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. Any disputes relating to these Terms of Engagement or the accompanying engagement letter (collectively this "agreement") or the amount of legal fees related thereto, will be submitted to arbitration through the American Arbitration Association (the "AAA") in Seattle, Washington, according to its then-effective rules, and to Ogden Murphy Wallace, P.L.L.C. and you agree to be bound by the results of such arbitration. Please be aware that by agreeing to arbitration, you are waiving the right to a trial by jury and your right to appeal. Although the arbitrator will be authorized to award any damages or relief that a court of law having jurisdiction over the dispute could award, the arbitrator will be bound by the AAA rules and not by state or federal court rules, and discovery will be limited to what is allowed under the AAA rules. The grounds for appeal of an arbitration award are limited as compared to a court judgment or jury verdict. Arbitration fees and expenses shall be borne equally by the parties. In the event of non-payment such that we must pursue collection of your account, you agree to pay the costs of collecting the debt, including court costs and fees, and a reasonable attorney's fee.

The law of the state of Washington will apply to any such dispute.

Withdrawal

We reserve the right to withdraw from representing you if, for any reason, our fees are not timely paid in accordance with this agreement, or for any other appropriate reason, as determined by the firm in accordance with applicable law and the Rules of Professional Conduct.

Client Documents

During the engagement, we will maintain certain documents relevant to this representation. At the conclusion of this engagement, we will retain your original documents for a period of ten years unless you request that they be returned to you. If you have not requested possession of the file or any of its contents at the end of ten years, the file may be destroyed in accordance with our record retention program.

We may store some or all of your electronic files on a variety of platforms, including third-party cloud-based servers. You specifically consent to the use of these services for document storage and management, and to the conversion of all paper documents in your file to electronic form. You recognize that technology is ever evolving and that electronic communications cannot be fully protected from unauthorized interception. You acknowledge that our email system may be unencrypted, and you covenant and agree to proactively notify us in writing if you require that any of your deliverables or emails be sent to you with encryption. We caution you not to send or access any email or other electronic message to or from us, respectively, via any public or semi-public network, or network or devices owned or controlled by any third party. Nonetheless, for efficiency

purposes, you authorize us to transmit information, including information of a confidential nature, to you (or your designated representative) by email to any address which you may provide to us for such purposes, including responding to the sending address of any such message that we may receive from you. In addition, you authorize our use of third-party cloud, back-up, client management, timekeeping, and file-sharing services, including, but not limited to, ShareFile, Dropbox, DocuSign, Carpe Diem, Mimecast, and SurePoint, in the course of our representation. You acknowledge that we may be bound by certain third party terms and conditions related to the use of such services and that our use of such services is not without risks (and you agree to assume such risks).

Please note that if we represent you in a matter in litigation, you have an obligation to preserve all documents that may be relevant to this matter.

Disclaimer

You acknowledge that we have made no guarantees regarding the disposition, outcome, or results of your legal or business matters, and all expressions we have made relevant thereto are only our opinions as lawyers based upon the information available to us at the time.

Independent Advice

Since the Engagement Agreement is legally binding and affects your legal rights, you may wish to seek the advice of independent counsel prior to executing it.

Conclusion

Thank you for retaining our firm. We look forward to working with you.

EXHIBIT A-SCOPE OF SERVICES

Contractor agrees to provide a level of service equal to or greater than the level of service provided by an in-house city attorney working approximately 28 hours per week. Kari L. Sand is the designated member of Ogden Murphy Wallace that will serve as the City Attorney. Any changes in this position must be approved in advance by the City.

1. Flat Rate Fee for City Attorney General Services

Contractor agrees to provide general city attorney services, for a flat fee, including but not limited to:

- A. Attending regular meetings of the City Council and executive sessions scheduled for regular meetings of the City Council and, upon request, attending special meetings of the City Council, meetings of the Committee of the Whole, other Committee meetings, and meetings of City Boards and Commissions.
- B. Preparation and/or legal review of contracts, interlocal agreements, resolutions and ordinances and other city documents or materials as requested.
- C. Practice “preventative law” in the form of regular consultation with Mayor, City Councilmembers, City Administrator, and staff.
- D. Except as set forth in Section 2, defend and manage (for WCIA-related matters) litigation brought against the City.
- E. Providing legal advice relating to the Public Records Act and public records requests, including review and redaction of records and preparation and review of exemption logs, as requested.
- F. As requested, providing special classes and/or seminars for staff, elected officials, Boards, and Commissions on issues including, but not limited to, the PRA, OPMA, ethics, conflicts of interest, and the appearance of fairness doctrine.
- G. Such other general city attorney matters as are assigned.
- H. Work up to approximately 28 hours per week on average.
- I. Maintain comprehensive Internet and remote access capability, including e-mail, linking Contractor's office with City Hall.
- J. It is incumbent upon the City, in partnership with the City Attorney, to manage the general services within the estimated 28-hour work week staffing model.

2. Separate Matter Services

Contractor agrees to provide City Attorney Separate Matter Services for litigation and contested administrative proceedings, which include but are not limited to:

- A. Each individual civil action filed by or against the City, except matters for which WCIA has assigned primary, lead defense counsel, which the City Attorney shall manage as part of general city attorney services, and except that multiple condemnation lawsuits related to the same project shall constitute only one Separate Matter;
- B. All Code Enforcement matters conducted before the Hearing Examiner or in Court, but not including general code enforcement services, which shall be included in Contractor's flat monthly fee; and
- C. All drug or other forfeiture matters collectively filed by or against the City.

For each such Separate Matter, Contractor shall be paid hourly rates for 2023-2024 as set forth in Exhibit B, Section 2.

3. Special Services

Contractor agrees to provide City Attorney Special Services, which include but are not limited to:

Other specialized municipal law services, including but not limited to franchise negotiations and telecommunications work (e.g., small cell ROW agreements, pole leases, etc.); provided, however, that any such Special Services shall first be authorized by the City.

For such Special Services, Contractor shall be paid hourly rates for 2023-2024 as set forth in Exhibit B, Section 3.

It is understood and agreed that the City Attorney shall not provide private legal services to any employee of the City of Tukwila during the term of this Agreement.

EXHIBIT B-COMPENSATION AND METHOD OF PAYMENT

1. City Attorney General Services

For 2023, all city attorney general services set forth in Section 1 of Exhibit A, Contractor shall be paid a flat monthly fee of \$33,000, plus extraordinary expenses. For 2024, all city attorney general services set forth in Section 1 of Exhibit A, Contractor shall be paid a flat monthly fee of \$35,000, plus extraordinary expenses.

Extraordinary expenses shall include court filing fees, deposition and other discovery costs, parking, mileage costs other than to and from City Hall or other locations within the City, and other similar expenses advanced by Contractor on City's behalf. Extraordinary expenses shall not include routine photocopying, fax, or long-distance telephone charges.

2. City-Attorney Separate Matter Services

All litigation and administrative proceeding services set forth in Section 2 of Exhibit A shall be considered Separate Matter Services. Contractor shall maintain its current practice of providing individual monthly billing statements for each Separate Matter.

2023-2024	Hourly Rates for Separate Services
Member	\$350/hour
Associates	\$275/hour

3. City-Attorney Special Services

Special Services shall first be authorized by the City. Contractor shall be paid hourly rates for 2023-2024 as set forth below for authorized Special Services.

2023-2024	Hourly Rates for Special Services
Member	\$385/hour
Associates	\$285/hour

Paralegal services for all matters will be billed at \$140/hour.