



CITY OF LE SUEUR
REQUEST FOR COUNCIL ACTION

TO: Mayor and City Council

FROM: Joe Roby, City Administrator

SUBJECT: City Legal Services Contract

DATE: For the City Council Meeting of Monday, January 9th, 2023

PURPOSE/ACTION REQUESTED

Consider entering into a contract for civil legal services with Flaherty & Hood.

SUMMARY

At its October 24, 2022 regular meeting, City Council approved the issuance of a limited Request for Proposal (RFP) for municipal legal services. The goal of the RFP issuance was to vet candidates to serve as the City's primary legal counsel following the end of the legal services contract with Couri & Ruppe on December 31, 2022.

RFP documents were sent to two firms: Kennedy & Kennedy, and Flaherty & Hood. A proposal was received from Flaherty & Hood on December 8, 2022 and, at its December 27, 2022 meeting, City Council voted to direct the City Administrator to enter into contract negotiations with Flaherty & Hood for civil legal services.

The City Administrator has met with and discussed a contract for such services with Robert Scott, shareholder and senior attorney with Flaherty & Hood. The proposed contract is attached to this memo. Some key notes on the proposed contract are listed below:

- Flaherty & Hood is a qualified firm to provide legal services to the City of Le Sueur.
- The proposed fee schedule is considered fair and reasonable.
- There is no set termination date for the contract, however, the City may terminate at any point with a 60-day written notice.
- The legal services provided by Flaherty & Hood meet the scope and scale of the needs of the City of Le Sueur.

ACTION REQUESTED

The City Administrator is recommending City Council approve the execution of the attached contract with Flaherty & Hood for civil legal services.

CONTRACT FOR CIVIL CITY ATTORNEY LEGAL SERVICES

THIS AGREEMENT is made and entered by and between the CITY OF LE SUEUR, a municipal corporation of the State of Minnesota (hereinafter "CITY"), and FLAHERTY & HOOD, P.A. (hereinafter "FIRM").

W I T N E S S E T H

WHEREAS, CITY has need for the professional civil legal services with the particular training, ability, knowledge, and experience possessed by FIRM; and

WHEREAS, at a duly called regular meeting of the City Council held on December 27, 2022, the City Council of CITY determined that FIRM be engaged as City Attorney on civil legal services with Robert T. Scott of FIRM serving as primary legal counsel for CITY and directing and authorizing the City Administrator to negotiate and execute an agreement between FIRM and CITY setting forth the terms and conditions of the engagement; and

WHEREAS, CITY has determined that FIRM is qualified and capable of performing the civil city attorney legal services as CITY does hereinafter require, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **CITY ATTORNEY APPOINTMENT**: CITY appoints FIRM as City Attorney with Robert T. Scott acting as primary legal counsel for CITY. Robert T. Scott, as the designated and appointed City Attorney, will perform, supervise and be responsible to CITY for the civil city attorney legal services provided to CITY by FIRM.
2. **AUTHORIZED CITY CONTACT PERSONS**: The City Administrator or his/her designated representative shall be the primary contact person between CITY and FIRM to request legal services from FIRM.
3. **COUNCIL, STAFF MEETINGS AND OTHER MEETINGS**: FIRM and CITY may agree to have the City Attorney or his designated representative attend certain City Council, staff or other meetings upon request of City.
4. **COMMUNICATION**: FIRM and CITY will establish a regular communication process between the primary legal counsel and the City Administrator in order to communicate legal issues and discuss timing for FIRM to provide and complete services to CITY.
5. **INSTITUTIONAL HISTORY**: FIRM shall become familiar with the City Code and City ordinances and will work with the City Administrator and the Mayor and City Council to develop and expand FIRM's knowledge of CITY's legal issues as well as

the history of the community. CITY shall make reasonable efforts to facilitate FIRM’s said familiarity.

6. **LEGAL SERVICES TO BE PROVIDED.** FIRM will provide civil legal services to CITY upon request of the City Council or City Administrator or the City Council’s or City Administrator’s designated representative(s).

7. **COMPENSATION, BILLING AND PAYMENT PROCEDURES:**

7.1. **Rates.** The following table contains the applicable hourly rates to be billed by FIRM and paid by CITY for legal services.

HOURLY FEES¹		2023
General Municipal Matters Advise and represent the City in civil legal matters not otherwise categorized as Labor and Employment, Environment ² , Real Estate, or Litigation matters.	Attorneys	\$175/hr.
	Legal Admins	\$90/hr.
	Law Clerks	\$80/hr.
Labor and Employment Matters		
Labor and Employment Matters Advise and represent the City in labor relations and employment matters.	First 25 Hours	1/10/23–12/31/23
	Attorneys	\$145/hr.
	Analysts	\$125/hr.
	Legal Admins	\$80/hr.
	Law Clerks	\$70/hr.
	Hours Over 25	1/10/23–12/31/23
	Attorneys	\$175/hr.
	Analysts	\$135/hr.
	Legal Admins	\$90/hr.
	Law Clerks	\$80/hr.
Real Estate Matters		
Real Estate Matters Advise and represent the City in real estate matters.	Attorneys	\$185/hr.
	Legal Admins	\$95/hr.
	Law Clerks	\$85/hr.
Litigation Matters		
Litigation Matters Advise and represent the City in all contested matters, where no insurance coverage is otherwise available, including but not limited to: state or federal district court or appellate civil litigation; mediation; arbitration; eminent domain; administrative proceedings before state or federal agencies; and like proceedings.	Attorneys	\$195/hr.
	Legal Admins	\$105/hr.
	Law Clerks	\$95/hr.

Minimum Increment of Time Billed for Services	15 min.
--	----------------

¹ Firm may utilize other professional staff at lower hourly rates as appropriate.

² Rates for environmental matters will be negotiated on a per case basis.

7.2. Expenses. Unless otherwise provided herein, in addition to the applicable fees for services rendered to CITY by FIRM, CITY shall also reimburse FIRM for all expenses FIRM incurs in performing services for CITY pursuant to the following schedule:

Travel time	50% of the applicable hourly rate
Mileage.....	Applicable I.R.S. rate
Black and white copies.....	15 cents/per page
Color copies	75 cents/per page
Fax.....	15 cents/per page
LexisNexis	As applicable to required usage
Long distance	Actual cost
Parking	Actual cost
Postage	Actual cost
Court costs/fees	Actual cost
Arbitration costs/fees	Actual cost
Contested case costs/fees	Actual cost
Expert costs/fees.....	Actual cost
Messenger	Actual cost

7.3. Billing Procedure. CITY shall pay FIRM for the services rendered by FIRM to CITY and expenses incurred on a monthly basis in accordance with this Agreement. FIRM will submit monthly bills to CITY for services rendered in the prior month in addition to expenses incurred to the date of billing. Bills will include statements itemizing legal services rendered by category for the prior month, along with associated expenses. CITY will pay the bill of FIRM within thirty (30) days or less of its receipt by CITY.

Certain expenses incurred in a respective month may not be known to FIRM until after the monthly bill for legal services has been prepared and mailed to CITY for payment. For example, long distance telephone charges may not be received until after the time for the corresponding legal services has been billed and paid. FIRM and CITY agree that FIRM may seek reimbursement of expenses in subsequent billing cycles as necessary.

7.4. Disputes. In the event that CITY disputes any aspect of FIRM’s bill, the City Administrator shall contact Robert T. Scott at FIRM stating the nature of the dispute. The parties pledge their mutual good faith in resolving any disputes.

7.5. Interest. Because CITY will be paying FIRM’s bills within thirty (30) days from their receipt, no interest will be charged. If CITY determines that it will be

necessary to deviate from that payment schedule, then CITY will notify FIRM thereof. An interest rate of eight (8) percent per annum will be charged to CITY if CITY does not pay any bill of FIRM within thirty (30) days or less of its receipt by CITY with such arrangement subject to change as may be mutually agreed between the parties.

- 7.6. Alternative Fee Arrangement. FIRM and CITY may discuss and enter into alternative fee arrangements, including a monthly retainer.
- 7.7. Rate Adjustments. FIRM may adjust its hourly rates or monthly retainer, as applicable, annually with at least 30 days written notice to CITY.
8. MATTERS COVERED BY INSURANCE: CITY will be responsible for submitting claims for insurance coverage to various insurance carriers. Whenever a claim is made with an insurance carrier that arises out of a legal issue within the scope of this Agreement, CITY will recommend that FIRM be utilized by the insurance carrier in the matter for which the claim is made. CITY may recommend FIRM to an insurance carrier for claims arising out of matters that are outside of the scope of this Agreement. At the point in time when an insurance carrier admits coverage and to the extent that they will provide retroactive payments for attorneys fees, FIRM will receive its payments for services rendered from the insurance carrier and not CITY. To the extent that an insurance carrier does not pay for legal services rendered by FIRM, including any deductibles, CITY will pay FIRM for services rendered at the rates charged to the insurance company. FIRM shall assist CITY in representing its interests before the insurance carrier and in selecting legal counsel should the insurance carrier not utilize FIRM.
9. TERM AND TERMINATION: This Agreement shall commence January 10, 2023 and shall continue in effect until such time as either party terminates this Agreement. This Agreement may be terminated by CITY or by FIRM upon 60 days written notice to the other, provided however, that FIRM's termination of this Agreement shall be governed by Rule 1.16 of the Minnesota Rules of Professional Conduct. CITY shall pay FIRM for the work performed prior to the effective date of termination based upon the payment terms of this Agreement. On or about December 31 of each year, the City Attorney and City Administrator may mutually evaluate the usage of legal services during the prior year of this Agreement in order to evaluate usage and identify areas where modification in the parties' relationship may be mutually beneficial.
10. NOTICE: Any notices required under the provisions of this Agreement shall be in writing and sufficiently given if delivered in person or sent by U.S. mail, postage prepaid, as follows:
- 10.1. Notice to CITY shall be mailed or delivered to Joe Roby, City Administrator, City of Le Sueur, 203 South Second Street, Le Sueur, MN 56058.

10.2. Notice to FIRM shall be delivered to Robert T. Scott, Flaherty & Hood, P.A., 525 Park Street, Suite 470, St. Paul, MN 55103.

11. STATUS OF FIRM AS INDEPENDENT CONTRACTOR: FIRM shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for in this Agreement. No statement contained in this Agreement shall be construed so as to find FIRM to be an employee of CITY. FIRM shall not be entitled to any of the rights, privileges, or benefits of employees of CITY, including but not limited to, workers' compensation, health/death benefits and indemnification for third-party personal injury/property damage claims. FIRM acknowledges and agrees that no withholding or deduction for state or federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due FIRM and that it is FIRM's sole obligation to comply with the applicable provisions of all federal and state tax laws. FIRM shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services identified herein. FIRM is responsible for hiring sufficient workers to perform the services/duties required by this Agreement, withholding their taxes, and paying all other employment tax obligations on their behalf.
12. DATA PRACTICES: All data collected, created, received, maintained or disseminated for any purposes by the activities of FIRM because of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as amended, the Minnesota Rules implementing such act now in force or as adopted, as well as federal regulations on data privacy. This paragraph does not create a duty or any obligation on the part of FIRM to provide access to public data to the public for inspection or otherwise if the public data are available from CITY.
13. AUDITS: Pursuant to Minn. Stat. §§ 6.551 and 16C.05, subd. 5, FIRM agrees that CITY, the State Auditor, or any of their duly authorized representatives, may examine any books, records, documents and the accounting practices and procedures of FIRM. If either CITY or FIRM requests that the State Auditor conduct such an examination, then the requesting party is liable for the costs of the examination.
14. INDEMNIFICATION AND INSURANCE: FIRM agrees it will defend, indemnify and hold harmless CITY, its officers and employees against any and all liability, loss, costs, damages and expenses which CITY, its officers or employees may hereafter sustain, incur, or be required to pay arising out of FIRM's negligence related to performance of this Agreement. FIRM further agrees that in order to protect itself as well as CITY under the indemnity provision set forth above, it will at all times during the term of this Agreement keep in force lawyers professional liability insurance with a coverage amount of not less than \$2,000,000 per claim and \$5,000,000 aggregate.

CITY agrees it will defend, indemnify and hold harmless FIRM, its officers and employees against any and all liability, loss, costs, damages and expenses which FIRM, its officers or employees may hereafter sustain, incur, or be required to pay arising out of CITY's negligence related to performance of this Agreement.

15. CONFLICTS OF INTEREST: FIRM shall use its best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety in representation of CITY. It is the intent of FIRM to refrain from handling legal matters for any other person or entity that may pose a conflict of interest.
16. ATTORNEY-CLIENT PRIVILEGE: FIRM is authorized to utilize email without encryption to transmit and receive confidential client information and to use cellular telephones and other wireless devices for the same purposes. CITY specifically acknowledges that it understands the confidentiality risks associated with inadvertent interception.
17. FORCE MAJEURE: Each party shall be excused from any breach of this Agreement which is proximately caused by war, strike, act of God or other similar circumstance normally deemed outside the control of well-managed businesses.
18. GOVERNING LAW: This Agreement is made pursuant to, and shall be construed in accordance with the laws of the State of Minnesota.
19. HEADINGS AND CAPTIONS: Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement.
20. ENTIRE AGREEMENT: This Agreement contains the entire Agreement for legal services between the parties hereto. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.
21. MODIFICATION: Any modification of the provisions of this Agreement shall be reduced to writing and signed by the parties hereto.
22. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY: If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.
23. CITY APPROVAL: The City Council has approved FIRM's retainer to provide civil city attorney legal services for CITY during the term of this Agreement. The signing of this Agreement will be ministerial, and the FIRM is authorized to commence performing services following execution of this Agreement or at such time as designated by the CITY.
24. AGREEMENT NOT ASSIGNABLE. Except relating to conflicts of interest, the rights and obligations created by this Agreement may not be assigned by either party.
25. AGREEMENT NOT EXCLUSIVE. Notwithstanding this Agreement, CITY retains the right to hire other legal representation for CITY for any legal matter, which FIRM has a conflict of interest, or which is not covered under the scope of this Agreement such as, for example, bond or cable franchising issues. CITY will discuss with FIRM

its intention to hire other legal counsel on a matter and will seek input and advice from FIRM regarding selection of an attorney.

26. WORK PRODUCTS. All records, information, materials and other work products prepared and developed in connection with the provision of services pursuant to this Agreement shall become the property of the CITY.

IN WITNESS WHEREOF, CITY and FIRM have executed this Agreement and it is effective on the latest date affixed to the signatures hereto.

CITY OF LE SUEUR

FLAHERTY & HOOD, P.A.

By: _____
Shawn Kirby,
Its Mayor

By: _____
Robert T. Scott

By: _____
Joe Roby,
Its City Administrator

Date: _____

Date: _____