

## AGENDA ITEM SUMMARY

<b>Meeting Date:</b>	SEPTEMBER 5, 2018
<b>Agenda Category:</b>	CONSENT BUSINESS
<b>Agenda Item Number:</b>	10 J
<b>Subject:</b>	PROPOSED AGREEMENT FOR LEGAL SERVICES RELATED TO LABOR AND EMPLOYMENT MATTERS, FISHER PHILLIPS (CITY MANAGER)

<b>Attachments:</b>	Proposed agreement
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<b>Staff Contact:</b>	City Manager Fettrow
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<b>Background:</b>	City Manager Fettrow is respectfully requesting approval of a proposed agreement with Fisher Phillips, an Orlando-based law firm, for legal services related to Union bargaining, labor issues and personnel matters. The firm would be engaged only on an as-needed basis.
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<b>Reference:</b>	
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<b>Suggested Action:</b>	Approve the proposed agreement with Fisher Phillips for legal services related to labor and employment matters
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fisherphillips.com

August 29, 2018

**VIA E-MAIL [BFETTROW@CITYOFROCKLEDGE.ORG]**

Dr. Brenda Fettrow  
City Manager  
City of Rockledge  
1600 Huntington Lane  
Rockledge, FL 32955

Re: *Legal Services*

Dear Dr. Fettrow:

Thank you for selecting the Firm to act as counsel for the City of Rockledge in connection with labor and employment matters.

I will be primarily responsible for this representation but will call upon other lawyers and legal assistants as I believe appropriate in the circumstances.

The principal factors in determining our fees will be the time and effort devoted to the matter and the hourly rates of the lawyers and legal assistants involved. The hourly rate for attorneys handling your matters will be \$280. Other charges are explained in the accompanying Appendix, which sets forth in greater detail the terms on which we will represent you. Please review the Appendix carefully. If you agree to these terms, please return a signed copy of this letter and the Appendix to me for our files.

At this time we will not require an advance against fees or other charges, but we do require payment upon presentation of our invoices.

Because it is reasonable to anticipate that at some point you might be served with discovery requesting copies of all documents and electronically stored materials, please note that you are under an affirmative duty to suspend or modify normal electronic and document-purge protocols in order to ensure that all data that might be relevant to this matter is preserved.

**Orlando**  
200 South Orange Avenue  
Suite 1100  
Orlando, FL 32801

(407) 541-0888 Tel  
(407) 541-0887 Fax

**Writer's Direct Dial:**  
(407) 541-0850

**Writer's E-mail:**  
jmandel@fisherphillips.com

**Fisher & Phillips LLP**

Atlanta • Baltimore • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Fort Lauderdale • Gulfport • Houston  
Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • New Jersey • New Orleans • New York • Orlando • Philadelphia  
Phoenix • Portland • Sacramento • San Diego • San Francisco • Seattle • Tampa • Washington, DC

Dr. Brenda Fettrow  
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We appreciate the confidence you have shown by selecting us as counsel in this matter, and we look forward to working with you.

Very truly yours,

*s/ Jeffrey E. Mandel*

Jeffrey E. Mandel  
For FISHER & PHILLIPS LLP

Accepted by:

\_\_\_\_\_  
Dr. Brenda Fettrow  
City Manager  
City of Rockledge

Date: \_\_\_\_\_

## APPENDIX

### SUMMARY OF ENGAGEMENT

We appreciate your confidence in selecting Fisher & Phillips LLP to represent you in connection with the matter described in the accompanying letter. The rules of professional responsibility applicable to lawyers strongly encourage written agreements between lawyers and their clients to ensure that there are no misunderstandings that could compromise the representation. For that reason, this sets forth the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We shall assume that the terms are acceptable to you unless you respond, in writing, to the contrary within 30 days. We suggest that you retain this statement in your file.

#### **Scope and Duration of Representation**

It is our policy that the person or entity that we represent is the person or entity that is identified in our engagement letter. Unless the Firm agrees in writing to do so, our engagement does not include any employees, affiliates, or members of that person or entity.

Our practice focuses on advising and representing employers and comparable entities in matters arising under the laws governing labor, employment, immigration and benefits, and our representation is limited to the matter or matters described in the accompanying letter (although the scope of that representation might be enlarged by a supplemental engagement letter). We do not provide advice or representation concerning whether any matters are covered by a client's insurance policies, and, in the event of a dispute over coverage, we cannot advise or represent you in connection with such a dispute. We therefore urge you to review your policies to determine whether any matter for which you might retain us is covered by such a policy; if you believe that the policy might cover any such matter, it will be your responsibility to notify the insurance company.

We do not practice securities law or corporate law, and we do not advise our clients on such matters. Neither do we undertake to determine or advise our clients whether any particular matter or potential matter is material or must be disclosed for financial-audit purposes.

An attorney/client relationship will exist between us for the duration of the matter for which we have been engaged, unless that relationship is earlier terminated in writing by either of us. In cases in which we have been engaged to provide general labor and employment advice, the relationship will end twelve months after the last substantive work you ask us to perform. The term "substantive work" does not include routine responses to auditors' requests.

During the representation, our advice will of course be consistent with applicable legal principles and interpretations as of the date we provide it. However, those principles and interpretations are subject to change, and we cannot undertake to advise you of later changes at our own initiative.

We will be pleased to respond to future requests that we reevaluate our advice in light of any such developments.

### **Management of Engagement**

Each client is served by a responsible lawyer who has primary responsibility for communication between the Firm and the client. The responsible lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of the responsible lawyer by request to the Managing Partner of the office where the responsible lawyer is located or to a member of the Firm's Management Committee. The responsible lawyer may delegate your work, or parts of it, to other lawyers or staff. This delegation may be for the purpose of involving other lawyers who have special expertise or to provide services on the most efficient and timely basis.

### **Fees and Charges**

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible, we will furnish such an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed-fee quotation unless otherwise agreed in writing signed by you and us. The ultimate cost frequently is more or less than the estimated amount.

We normally review our fees annually and adjust them at that time. In addition to the fees for legal services described in the accompanying letter, we will charge you for long-distance telephone calls, travel-and-lodging, photocopying, express delivery, facsimile transmissions, computer-aided legal research, and similar items connected with our handling your work. Ordinarily, these amounts will be set forth separately on your billing statement. Please let us know should you have any questions about the way in which we compute non-fee charges. On some occasions, there might be third-party charges, such as for deposition transcripts, outside printing or copying, expert witnesses, or any one of a variety of other things. Our policy is to submit all invoices from third-party vendors to you for direct payment, and we request that you pay these invoices immediately.

### **Billing Procedures**

Our practice is to send bills on a monthly basis. Our statements generally cover fees and charges for the prior calendar month, although sometimes fees or charges might not be immediately available for one reason or another and will therefore be billed later. We ask that our statements be paid upon presentation to you. If you ever have questions about an invoice, please do not hesitate to contact us promptly to discuss them. If for any reason a statement cannot be paid upon presentation, please call us promptly so that we can discuss this.

Occasionally clients may make an overpayment on a bill. If this happens, unless you tell us otherwise, we will apply the overpayment to any outstanding fees and expenses or to the next bill, with notice to you as to how we have applied the overpayment. If there are no outstanding fees or expenses and no work in process, we will refund the overpayment to you.

We do reserve the right to impose interest charges at 1½% per month in connection with any balance that remains unpaid more than 30 days after the statement date. Also, if it ever should be necessary for us to resort to legal action to collect our fees and expenses, it is agreed that the prevailing party shall recover its reasonable attorney's fees and costs in connection with any such action.

### **Client Responsibilities**

You understand and agree that, in order for us to represent you effectively, it is necessary for you to assist and cooperate with the Firm. You agree to (1) make yourselves (including your employees if applicable) available to discuss issues as they arise in this matter; (2) attend and participate in meetings, preparation sessions, court proceedings and other activities in connection with the representation; (3) provide complete and accurate information and documents to us on a timely basis; and (4) make timely payment to any experts or vendors retained in connection with our services.

### **Communications**

It is of course essential that clients and attorneys communicate effectively with one another to exchange information and to discuss developments and possible courses of action. Naturally, we will keep you informed as developments occur and will consult with you as to the appropriate steps to take. By the same token, we ask that you keep us informed of your objectives and wishes and that, if we ask for specific information or for instructions necessary to our adequately carrying out our representation, you will respond accurately, completely, and as quickly as possible.

As you know, communications between clients and attorneys are generally privileged and are not discoverable by third parties. However, court decisions have emphasized how easily that privilege can be lost, such as where attorney correspondence is routed through a client's routine intra-office mail, or where attorney/client communications are discussed with persons outside the attorney/client relationship. Any practical steps you can take to ensure that our attorney/client communications are not disclosed to third parties will be important in protecting your right to claim that privilege.

It is also important that we agree from the outset what kind of communications technology we will employ in the course of this engagement. Unless you specifically direct us to the contrary, we agree that it is appropriate for us to use fax machines and e-mail in the course of the engagement without any encryption or other special protections. In that regard, please specify an e-mail address which you would like us to use to communicate with you. Please also notify the Firm if you have any other requests or requirements in connection with the methods of telecommunication, or persons to be included or copied in the circulation of documents relating to the engagement.

### **Avoidance of Conflicts**

In the event you have a potential dispute with a third party, and you wish to discuss with us the possibility of us representing you in connection with that potential dispute, we request that you do not disclose the nature of that dispute or any relevant facts until you have provided us with the name of the potential adverse party and afforded us the opportunity to determine whether the representation would create a conflict with another client.

Similarly, because we represent a number of staffing agencies or Professional Employer Organizations (PEOs), it is important that, before you ask us to comment upon such an entity's actions taken, advice given, or services otherwise rendered, you first disclose to us the name of that organization or agency.

### **Termination of Representation**

You may terminate our representation at any time, with or without cause, by notifying us. If you do, papers and property which you have provided to us will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our internal files regarding administrative matters pertaining to the case will be retained. Termination of our services will not affect your responsibility for payment of legal services rendered and additional charges incurred both before termination and in connection with an orderly transition of the matter, including the copying of any files that you request that we provide to you or to substitute counsel.

The rules of professional responsibility for the jurisdictions in which we practice list several types of conduct or circumstances that require or allow us to withdraw from representing a client. These include, for example: nonpayment of fees or costs, use of our services to perform a criminal or fraudulent act, misrepresentation of or failure to disclose material facts, action contrary to our advice, and conflicts-of-interest with another client. In addition, we reserve the right to stop our work for you if you fail to cooperate with us, or if any account is past due and we have been unable to agree on a mutually acceptable plan for payment. You agree that we may withdraw from the representation under these circumstances, subject to court approval where such approval is required for such withdrawals. In the event we seek to withdraw, you agree to engage new counsel immediately.

### **Document Retention**

At the conclusion of the Representation, we return to the client any documents that are specifically requested to be returned. As to any documents so returned, we might elect to keep a copy of the documents in our files. At the close of any matter, we generally purge our files in that matter of unnecessary materials and send the retained materials to a storage facility for storage at our expense. We will maintain the files in storage for a period of ten years. After that time, we reserve the right to destroy the documents in the stored files without further notice to you. You hereby consent to such destruction of your documents in our files, unless we receive from you, within ten years after the close of the matter, written instructions for a different disposition of your

documents.

### **Your Right to Arbitrate Fee Disputes**

If you disagree with the amount of our fee, please take up the question with your principal lawyer contact or with the Firm's Managing Partner. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. In the event of a fee dispute which is not readily resolved, you have the right to request arbitration under supervision of the state or district bar associations for the jurisdictions in which we practice, and we agree to participate fully in that process.

### **Errors-and-Omissions Insurance**

The rules of professional responsibility applicable to attorneys in some states require that law firms advise clients whether the firms have errors-and-omissions insurance coverage. Fisher & Phillips of course does have such coverage.

### **Miscellaneous Matters**

We publish a bi-monthly Labor Letter and other, more-narrowly-focused newsletters in which we cover topical matters relating to employment laws and labor relations. In addition, when circumstances warrant, we publish a Labor Alert to let our clients know about particularly time-sensitive issues of importance. These publications are intended to keep our clients advised about matters which we think will be of interest to them. Of course, due to the generalized nature of these publications, we cannot undertake to address in them every pertinent legal development which might be important to a particular client, and the materials published therein do not constitute legal advice.

We also present seminars periodically. In these seminars, we discuss a broad spectrum of relevant labor- and employment-law issues. These seminars are provided as a service to our clients, and you will be invited to them as they are scheduled.

Accepted by:

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Dr. Brenda Fettrow  
City Manager  
City of Rockledge

Date: \_\_\_\_\_