

SPECIAL COUNSEL AGREEMENT

THIS SPECIAL COUNSEL AGREEMENT (“Agreement”) is made by and between the City of Ballwin, Missouri, a Class Four City organized under the laws of the State of Missouri (the “City”), and **Harris Dowell Fisher & Young L.C.**, a Missouri limited liability corporation, whose address is: 15400 S. Outer Forty, Suite 202, Chesterfield, MO 63017 (“Special Counsel”), collectively referred to as “the Parties.”

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

I. PROFESSIONAL SERVICES PERFORMED:

Special Counsel shall provide professional legal services in conformance with the Missouri Rules of Professional Conduct, to serve as counsel for special legal matters and services, as necessary and directed by the City Administrator or the City Administrator’s designated representative, for labor and employment law advice consisting principally of the negotiation of a collective bargaining agreement with the Fraternal Order of Police and related collective bargaining advice (the “Work”). Any new or supplementary special counsel agreements shall be approved as provided by the laws of the state of Missouri and ordinances of the City.

Michael F. Harris, Esq. shall serve as designated Special Counsel and shall direct the provisions of services under this Agreement.

II. CLIENT’S DUTIES

City’s officials agree to be truthful with Special Counsel, to cooperate, and to keep Special Counsel informed of any information or developments which may come to the City’s attention. City’s officials agree to assist Special Counsel by providing information and documents necessary for representation in the above-referenced matter.

III. FEES:

Charges for legal services shall be based solely on the amount of time spent by attorneys and legal assistants in performing the Work, unless otherwise agreed to in writing. Special Counsel may charge the City at the hourly rates of the attorneys and legal assistants as set forth below:

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|----|--|----------------|
| 1. | Partners, Principles and/or of Counsels: | \$275.00/hour; |
| 2. | Associate Attorneys: | \$275.00/hour; |
| 3. | Legal Assistants/Paralegals: | \$85.00/hour. |

Special Counsel will bill the City on a monthly basis for professional fees and expenses incurred on the City’s behalf and bills will be addressed to the City Administrator for payment. Any out-of-pocket expenses or costs must be pre-approved by the City Administrator prior to the incurrence. Preapproval from the City Administrator or his designee shall be required for more than one attorney or an attorney and paralegal to attend meetings, court appearance, trials, hearings, mediations and arbitration proceedings.

IV. ANNUAL APPROPRIATION:

The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually or by special appropriation by the City of Ballwin Board of Aldermen encumbered for the purpose of this Agreement. The City does not, by this Agreement, irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

V. TERM AND TERMINATION:

Because the need for Special Counsel arises from time to time, this Agreement shall commence on January 28, 2019, and may be terminated at any time by the City, with or without cause. If Special Counsel is terminated, he or she shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action. The City shall provide 10 days prior written notice of termination to Special Counsel to allow the transition of files and matters to the City Administrator's designee.

Special Counsel may withdraw with City's consent or for good cause. Good cause includes City's breach of this Agreement, refusal to cooperate or to follow Special Counsel's advice on a material matter or any fact or circumstance that would render Special Counsel's continuing representation unlawful or unethical, and City's failure or refusal to pay billing statements or invoices in a timely manner.

VI. CONFLICTS:

a. No employee of the City shall have any personal or beneficial interest in the services described in this Agreement. Special Counsel shall not hire, or contract for the services with any employee or officer of the City without the prior written approval of the Mayor and Board of Aldermen.

b. Special Counsel acknowledges that it and its attorneys are bound by the Missouri Rules of Professional Conduct applicable to Missouri attorneys, including without limitation Rule 4, which addresses a lawyer's engagement under circumstances involving a conflict of interest. Special Counsel shall not engage in any transactions, activity or conduct that would result in a conflict of the City's interest. Special Counsel represents that it has disclosed all current or potential conflicts of interest, which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Special Counsel by placing the Special Counsel's own interest, or the interest of any party with whom Special Counsel has a professional relationship or contractual arrangement in conflict with those of the City. Special Counsel agrees that they will not undertake to represent an existing client on new matters or new clients if the interest of such clients is directly adverse to the City without the prior written approval of the City Administrator.

VII. CLIENT FILES:

Special Counsel shall employ physical, electronic, and procedural safeguards to preserve client confidentiality and to protect the City's non-public information. Special Counsel agrees to retain and securely store the City's files for a period of five (5) years after completion or termination of representation. Special Counsel shall return all files within a reasonable time after termination of representation or conclusion of the Special Counsel matter, but in no event no later than thirty (30) days following written demand from the City. The City Administrator or his designee has the right to access and the right to examine any pertinent books, documents, papers and records of Special Counsel upon reasonable notice to Special Counsel.

VIII. E-MAIL CONFIDENTIALITY:

Missouri lawyers are required by the Missouri Bar Disciplinary Council to notify prospective recipients of email that (1) email communication is not a secure method of communication, (2) any email that is sent by any City employee may be copied and held by various computers it passes through as it goes from Special Counsel to a City representative or vice versa, and (3) persons not participating in City/Special Counsel communications may intercept said communications by improperly accessing City computers or Special Counsel's computers or even some computer unconnected to either the City or Special Counsel that the email passes through. Unless otherwise instructed in writing, Special Counsel will assume that the City has consented to receive communications via e-mail. If the City Administrator changes his mind and wants future communication to be sent by a different method, the City Administrator or his designee will notify Special Counsel in writing.

IX. WHEN RIGHTS AND REMEDIES NOT WAIVED:

In no event will any payment or other action by the City constitute or be construed as a waiver by the City of any breach of covenant or default that may then exist on the part of Special Counsel. No payment, or other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

X. INSURANCE:

Special Counsel agrees to secure, at or before the time of execution of this Agreement, insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required minimum insurance coverage in force at all times during the term of this Agreement, or any extension thereof, for three (3) years after the termination of the Agreement. Special Counsel shall be responsible for the payment of any deductible or self-insured retention. The insurance coverage specified herein are minimum requirements and these requirements do not lessen or limit the liability of Special Counsel. Special Counsel shall maintain limits of \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit professional liability insurance. Special Counsel shall maintain any and all

other Commercial General Liability, Business Automobile Liability and Workers' Compensation insurance policies as required by the City Administrator.

XI. NO AUTHORITY TO BIND CITY TO CONTRACTS:

Special Counsel lacks any authority to bind the City on any contractual matters. Final approval of all matters that purport to obligate the City must be executed by the City in accordance with State statute, City ordinances and City policies.

XII. COMPLIANCE WITH ALL LAWS:

Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and the State of Missouri, and with City of Ballwin ordinances, rules and policies.

**HARRIS, DOWELL, FISHER
& YOUNG, L.C.**

CITY OF BALLWIN, MISSOURI

Michael F. Harris, Esq.

Robert Kuntz, Interim City Administrator

Date

Date