

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5050**



LEGAL MEMORANDUM

TO: Honorable Council Members

FROM: Jason Gabriel, General Counsel

RE: Legislative Counsel & Specialized Legal Counsel

DATE: September 23, 2019

I. Background, History & Purpose

A request was made at a Special Council meeting held on September 16, 2019 seeking direction from the Office of General Counsel with regard to engaging specialized outside counsel to assist with JEA-related matters. This memo provides guidance with respect to that process.

The Council's chief legal officer is the General Counsel, and any assistant general counsel may be assigned to the Council by the General Counsel to counsel the Council. Additionally, Section 7.01, Charter, provides that "the council may create an office of legislative counsel within the legislative branch whose purpose shall be to advise and assist the council and its committees and members in the achievement of a clear, faithful and coherent expression of the legislative policies and to perform such other related duties for the council as the council may direct." This provision permits the City Council to create an office within the Consolidated Government which works within, and is part of, the legislative branch.

According to the Charter, such an office would provide services similar to those currently provided by the Office of General Counsel through Peggy Sidman and Paige Johnston (and others). The position(s) would be housed, funded, budgeted and administered by the City Council (under the Council President's immediate supervision). In this format, the City Council may hire the attorneys of its choice. Because of the narrow Charter authority granted to the Legislative Counsel, such counsel would be required to coordinate with the Office of General Counsel so as to assure the proper distribution of labor, allocation of resources and understanding of the role. The Office of General Counsel would be willing to provide training to such attorney(s) and remain in close cooperation and collaboration with such staff. The lawyers within the Legislative Counsel's Office must understand their labor would relate solely to legislative prerogatives such as drafting legislation, providing procedural counsel, etc.

Additionally, such lawyers would be prohibited from drafting contracts or items that involve executive branch functions.

To be clear, City Council is not authorized to hire attorneys to provide adversaries to the Office of General Counsel or to challenge a binding legal opinion. The Office of Legislative Counsel would be bound by the binding legal authority of the General Counsel in the same manner as the Council and any office or agency of the Consolidated Government. The Office of Legislative Counsel would not be authorized to provide legal opinions or advice that run counter to the opinions or advice of the General Counsel. Article 7 of the Charter ensures a single legal voice for the Consolidated City, including the Council. Article 7 centralizes legal advice so as to streamline government and eliminate intergovernmental litigation, as well as the need for the taxpayer dollars that underwrite such internal fights.

The Council has previously experimented with having an Office of Legislative Counsel. Shortly after creating that Office, the City Council, in 1987, recognized that the hiring of Legislative Counsel carries with it complications and difficulties and eliminated the Office of Legislative Counsel. At the time, the Council recognized that its legislative needs were most efficiently met by lawyers from the Office of General Counsel providing those services. See Ordinance 87-1150-614 where Council, in eliminating the Office of Legislative Counsel, set forth several reasons for finding that it was not in the best interests of the City to have an Office of Legislative Counsel, including the fact that it led to duplications in office expenditures as well as problems in coordination and consultation between the Office of Legislative Counsel and Office of General Counsel. Furthermore, the City Council determined that it was in the best interests of the City that the legal staffs providing legal services to the Council “be united under one consolidated office, the Office of General Counsel, in accordance with the original intent and structure of the Consolidated Government.”

Should the Council seek to hire an attorney or firm on a special project basis, the hiring of that attorney or firm would be subject to the requirements of the Charter which provide that any outside counsel may be hired only upon finding of a need by the General Counsel. Section 7.01, Charter (“The General Counsel may authorize the City to engage outside private counsel upon written certification by the General Counsel of its necessity, and such engagement shall be in accordance with procedures set for the by the City Council.”) Should the Council seek counsel other than as the Legislative Counsel, or an assistant to the Legislative Counsel, the Council must coordinate the request for acquisition of such legal counsel through the General Counsel. All legal service requests for the entire consolidated government for outside engagement flow through the Office of General Counsel. Section 7.01, City Charter.

II. Scope of Service, Budget, Selection & Engagement of Special Counsel

With respect to hiring specialized outside counsel regarding JEA questions, I recognize the needs of the Council in this matter and the acquisition of such counsel may be justifiable in accordance with the City Charter. As I recommended at the Special Meeting, the most optimal and efficient method of handling these inquiries is to, as they arise, pose the question to the Office of General Counsel. Our office would in turn either answer the question with in-house expertise, or, if necessary, engage specialized outside counsel to address the matter. The other option would be to engage specialized outside counsel to address the matters as they arise. The

remainder of this memo addresses that process (i.e., the procedures related to engaging specialized legal counsel for legislative-related purposes).

1. Scope of Service

First, the set of questions to be answered or slate of services desired should be considered, articulated and drafted. In the instance of the potential recapitalization of all or a part of the JEA, this could involve corporate, transactional, mergers and acquisition counsel (“M&A”), particularly in the context of a governmental agency examining potential privatization.

2. Budget

Based on the scope of services, anticipated rates, the longevity and complexity of the project and other considerations, an anticipated budget is approximated and the appropriate budget appropriation made. For example, an initial recommended budget for M&A counsel as referenced here might be in the range of \$250,000.00 to \$500,000.00. The budget would be revisited during the course of the engagement and when necessary amended or extended as dictated by the scope of the project.

3. Selection of Counsel

As General Counsel, I would provide either a firm, or list of firms, that would be optimally situated with the appropriate expertise to handle the quality, quantity and breadth of services that is anticipated with the project scope. Council in turn would approve the firm, or set of firms, for that specialized set of legislative-related legal work. This is accomplished via legislation that includes an approved engagement letter as described in the next section.

4. Engagement of Counsel

Once the appropriate counsel is selected, an engagement letter is entered into, in a form substantially similar to the one attached hereto as Exhibit A. The engagement letter is also where approval by the General Counsel is made thereby satisfying the written certification required by the Charter as to the necessity of the legal service. This engagement letter is typically included as an exhibit to the considered legislation referred to above.

III. Conclusion

This memo addresses the process for obtaining and engaging a law firm to serve as legislative counsel for a special project engagement involving legislative-related legal counsel on a particular issue.

Please contact me with any questions or concerns.

EXHIBIT A
ENGAGEMENT LETTER

Date

_____, Esquire
Firm Name: _____
Firm Address: _____

Email: _____

RE: Engagement of [Firm Name] for specialized legislative-related legal services regarding _____

Dear Mr./Ms. _____ :

This letter is to confirm the engagement of [Firm Name] (the “Firm”) by the City of Jacksonville, Office of General Counsel (“OGC”) on behalf of the City of Jacksonville (“City”) for specialized legislative-related legal counsel related to _____. The Firm is being retained to provide specialized legal services as outside counsel to the City Council. Specifically, the Firm will provide the following scope of services to the City Council in close cooperation and consultation with the City Council and the OGC:

- Advise and counsel the City Council and OGC on _____.
- Provide all other legal services as may be requested by the Council and OGC and reasonably related to the matter described.

The first purpose of this letter is to confirm the Firm’s initial engagement as counsel and to confirm certain information concerning fees and billing, and other terms that will govern our relationship. You will be the Firm’s primary contact. As agreed, you are to provide legal services to the City at the rate of \$____.00 per hour. The rate for other attorneys and paraprofessionals who may work on this matter and their respective rates are as follows: _____. Secretarial time will not be billed. In the event that the Firm may, from time to time, recommend that other attorneys and/or paralegals be enlisted to provide assistance on these matters, you will notify OGC when that is recommended to obtain prior written approval and agreement upon the hourly rate for each such person. It is anticipated that routine paralegal and attorney support will be provided directly by OGC.

This engagement is limited to a “not-to-exceed” amount of \$____.00, and is governed by Section 108.505(____) of the City of Jacksonville Ordinance Code, in addition to other provisions of the Ordinance Code. The Firm agrees to notify OGC when \$____.00 of the budget has been expended and recognizes that the *not-to-exceed* amount cannot be modified without written amendments authorized in accordance with the Ordinance Code. No fees or costs shall be billed to the City beyond the foregoing amount without a written amendment to this engagement letter signed by the Firm and the General Counsel or his designee, and subject to the required and authorized approvals as set forth in the Ordinance Code. All files created during

your retention of the matters at hand are the property of the City. Upon the conclusion of the matters, or upon a written request by the Council or OGC for their production, all such files shall be returned.

The Firm will comply with the City's travel reimbursement policy (including but not limited to Chapter 106 (Budget and Accounting Code), Part 7 (Travel and Expense Reimbursement). No travel costs exceeding the amounts allowed by such policy will be reimbursed to the Firm. The Firm shall not charge for travel time to or from Jacksonville, Florida. The Firm also agrees to charge the City the lowest amounts that it charges to other governmental clients for administrative costs such as photocopying, faxing, delivery, etc., although it is contemplated that billing for such services should be minimal because such services will normally be provided by the OGC.

Detailed monthly billings will be submitted by the 10th of each month to the City via OGC, c/o Margaret M. Sidman, Managing Deputy General Counsel, at PSidman@coj.net and hard copy to her attention at 117 W. Duval Street, Ste. 480, Jacksonville, FL 32202, along with electronic copy to Cheryl L. Brown, Director/Council Secretary at CLBrown@coj.net, and electronic copy to me at JGabriel@coj.net. The Firm shall also submit reasonably detailed itemized bills to OGC in tenth-of-an-hour billing increments format, and shall break down the tasks performed by each person involved, and will identify by initials or name each person who performs the respective tasks to OGC. Payment will be remitted by the City approximately thirty days following receipt of the billings. The parties will endeavor in good faith to resolve promptly any billing issues as may arise from time to time.

The City is aware that the nature of the Firm's practice is such that the Firm may from time to time concurrently represent one client in a particular case or matter and an adversary of that client in an unrelated case or matter if it is the Firm's professional judgment that the Firm can undertake the concurrent representation impartially and without any adverse effect on the other responsibilities the Firm has to either client. The Firm will provide the City with information regarding such matters, and seek a written acknowledgment that such concurrent representation, in unrelated matters, is not inappropriate and consent to any such present or future concurrent representations.

OGC may terminate the Firm's representation by delivering a written notice of termination to the Firm. The Firm will also have the right to withdraw from its representation of the City any time with the City's consent or for good cause without the City's consent. If the Firm is discharged or elects to withdraw, the parties will take all steps necessary to free each other of any obligation to perform further, including the execution of any documents necessary to complete the termination of the representation, and will take all steps that are reasonably practicable to protect the City's interests. If a discharge or withdrawal occurs, the Firm, subject to the applicable not-to-exceed amount, will be entitled to be paid or reimbursed for all authorized costs and expenses paid or incurred on the City's behalf, and the Firm will be entitled to be paid a reasonable fee for the authorized professional services rendered to the date of termination and for which the Firm previously had not been paid.

If this letter correctly reflects your understanding of the scope, terms, and conditions of your representation of the City Council and the City of Jacksonville, please execute the enclosed

copy of this letter in the space provided below and return it to my attention. If you have any questions concerning this letter or your representation, please do not hesitate to call me.

Sincerely,

Jason R. Gabriel
General Counsel

The foregoing is approved and agreed to:

By: _____
_____, Esquire
_____, Firm

Date: _____

Approved:

Scott Wilson
Council President

Date: _____

Approved:

Cheryl Brown
Director/Council Secretary

Date: _____

Approved:

Margaret M. Sidman
Managing Deputy General Counsel

Date: _____

I have confirmed that funds are appropriated and can be encumbered to support this retention.

[Name of authorized official]
[Title of authorized official]