

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 13, 2015		DATE SUBMITTED: December 29, 2014	
DEPARTMENT OF ORIGIN: Water Services		SUBMITTED BY: J. Barfknecht	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consider approving an Agreement for Legal Services with the law firm of Mathews and Freeland, L.L.P for representation in connection with the ground water district, Texas Commission on Environmental Quality (TCEQ), and other water law-related matters in a not to exceed amount of \$125,000.			
SUMMARY STATEMENT: For certain specialized areas, the City of Bryan relies on external legal expertise for counsel, recommendation, and representation. For example, the City pursued an application to amend its water utility certificate of convenience and necessity (CCN) with both Brushy and OSR (both issues now closed), the City of Bryan went through a process to obtain bed and banks (B&B) authorization to reuse the City's municipal return flows (i.e. the City's treated wastewater), and the City is continuing to follow Brazos River Authority's (BRA) pursuit of a system wide permit for the Brazos River basin. The City of Bryan also is following closely the groundwater district and actions that may negatively impact the permitted water to the City of Bryan. These topics require the need to rely upon legal counsel specializing in State of Texas water law and a familiarity with water issues.			
<p>This proposed contract with the law firm of Mathews and Freeland, L.L.P. includes billing fees by the firm up to \$300.00 per chargeable hour. Typically, the City's services are provided by Jim Mathews whose current billing rate is \$300.00 per chargeable hour. Other personnel rates, such as briefing clerk fees and paralegal fees, are \$75.00 per chargeable hour. Additionally, incidentals, such as photocopies and facsimiles sent are costs the City should expect to incur. Out-of-pocket expenses incurred and charged to the City include a fifteen (15%) overhead charge. The proposed annual agreement has a total not exceed amount of \$125,000.00.</p> <p>This annual contract, if renewed, will expire on September 30, 2015. The City has expended the following amounts on legal services: 2009 - \$98,592.99; 2010 - \$37,480.01; 2011 - \$123,196.43; 2012 - \$54,823.22; 2013 - \$57,832.67; 2014 - \$104,622.35. Water Services budgeted \$40,000 in legal services and \$165,000 in contractual services for FY2015.</p> <p>Staff recommends approval of this contract. Utilizing another firm at this stage in the B&B process, groundwater related issues and other water-related items and issues could be detrimental to the City's progress. Additionally, another firm would need to become familiar with the City's pending agreements and applications.</p>			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approving the proposed contract with Mathews and Freeland, L.L.P to provide legal representation in connection with the groundwater district and other water-related matters. As a recognized expert in water legislation and other matters, the law firm of Mathews and Freeland, L.L.P provides beneficial legal counsel to the City of Bryan.			
OPTIONS (In Suggested Order of Staff Preference):			

1. Approve the contract with Mathews and Freeland, L.L.P
2. Approve a contract with another firm.
3. Do not approve a contract with a law firm for water-related matters.

ATTACHMENTS: Agreement

FUNDING SOURCE: Water Services Operating budget

APPROVALS: Jayson E. Barfknecht 12/29/14; Hugh R. Walker, 01/05/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12-30-2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 1-5-2015

Revised 05/2013

AGREEMENT FOR LEGAL SERVICES

This Agreement, dated _____, is between the **City of Bryan**, a Texas home-rule municipal corporation (the "City") and **Mathews and Freeland, L.L.P.**, (the "Firm"), whereby the Firm agrees to provide the City with certain professional legal services as described herein and the City agrees to pay the Firm for those services.

1. Scope of Services

In consideration of the compensation stated in paragraph 4, the Firm agrees to provide specialized legal services and representation of the City before State agencies, the Brazos Valley Groundwater District and provide general representation to the City on other water specific issues as may be requested in writing by the City Attorney. Representation under this Agreement shall not include administrative or civil litigation. Administrative or civil litigation matters shall require a separate engagement agreement.

2. Initial Budget

Before the Firm begins handling a new legal matter for the City, it shall provide to the City Attorney an initial budget which shall include, at a minimum, a list of each specific legal service the Firm shall perform for the City, and include

- a. An estimate of all fees, expenses, and costs for the service to be performed by the Firm; and
- b. An estimate of the amount of time the Firm expects to take to perform each legal service.

The Firm shall update its budget every six months or more frequently when requested by the City Attorney. The Firm shall provide a copy of each revised budget to the City Attorney, and shall point out and explain each material modification or change from previous budgets. If it becomes apparent to the Firm that it will exceed its budget, the Firm shall notify the City Attorney in writing, explaining the reason(s) why the Firm expects to or has overrun its budget.

3. Coordinate Performance

All legal services performed under this Agreement shall be at the direction and under the supervision of the City Attorney. The Firm shall coordinate its performance with the City Attorney and other persons that the City Attorney designates. The Firm shall promptly inform the City Attorney and other designated person(s) of all significant events relating to the performance of this Agreement.

4. Payment

In consideration of the Firm's provision of professional legal services in compliance with all terms and conditions of this agreement, the City shall:

- 1) Pay to the Firm a fee of up to \$300.00 per chargeable hour for attorney's fees and \$75.00 per chargeable hour for briefing clerk and paralegal fees. Jim Mathew's fees are currently \$300.00 per chargeable hour.
- 2) Reimburse the Firm for all out-of-pocket expenses incurred for reimbursement, which will include a fifteen percent (15%) overhead charge.

3) Pay the Firm charges other services, such as photocopies, fax transmissions and messenger services will be billed according to the attached Exhibit "A" schedule.

4) This Agreement shall have a not exceed a total amount of \$125,000.00 including attorney fees, briefing fees, paralegal fees, out-of-pocket, and other incidental and overhead expenses (e.g. photocopies and facsimile).

5. Monitoring Contract Funds

It shall be the Firm's responsibility to monitor expenditures under the contract and to notify the City Attorney in writing when fees and expenses equal to 80% of the total contract funding have been billed. The Firm shall continue providing services, unless instructed by the City Attorney to stop until the City has allocated additional funding.

6. Time of Performance

The term of this agreement is based on a calendar year with the agreement beginning at the date of the execution of this Agreement and ending September 30, 2015.

7. Termination

A. Termination by the City of Convenience. The City may terminate this Agreement without cause, at any time upon written notice to the Firm. Upon the Firm's receipt of such notice, the Firm shall cease work immediately and shall be compensated for the services satisfactorily performed prior to the termination date.

B. Termination by the Firm for Cause. The Firm may terminate its performance under this Agreement if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and the Firm wishes to terminate the Agreement, then the Firm must deliver a written notice to the City Attorney describing the default and the proposed termination date. The date must be at least 15 days after the City Attorney receives notice. The Firm, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then the Firm may terminate its performance under this Agreement on the termination date.

8. Miscellaneous Terms

A. This Agreement is governed by and is to be construed and enforced in accordance with the laws of the State of Texas and of the United States. The parties agree and consent to the jurisdiction of the District Courts of Brazos County, Texas, and of the United States District Court for the Southern District of Texas and acknowledge that such courts shall constitute proper and convenient forums for the resolution of any actions among the parties with respect to the subject matter hereof.

B. The Firm shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

C. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805

Mathews & Freeland
Attn: Jim Mathews
P.O. Box 1568
Austin, Texas 78768

The parties specifically reserve the right to designate other addresses for notices in writing from time to time.

D. No waiver by either party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

E. This Agreement represents the entire and integrated agreement between the City and the Firm and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by written instrument approved and executed by the parties.

F. This Agreement and all rights and obligations contained herein may not be assigned by the Firm without the prior written approval of the City.

CITY OF BRYAN, TEXAS:

MATHEWS & FREELAND, LLP:

Jason P. Bienski, Mayor

Jim Mathews, Partner

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A"

SCHEDULE OF OFFICE EXPENSES

As of January 1, 2014

Photocopies –Black & White	\$0.20/page
Photocopies –Color	\$0.50/page
Paralegal Support	\$75.00/hour