



City Council Meeting February 13, 2017 Agenda

5:30 P.M. City Council Meeting

Pledge of Allegiance

I. Unfinished Business

1. Order 06-02062017

Confirming the award for Legal Services to the Malloy Firm.

II. Executive Session

- A. Executive Session regarding a personnel matter (City Manager search), pursuant to 1 M.R.S.A. §405(6)(A)
- B. Executive Session regarding a personnel matter (Norway Savings Bank General Manager search), pursuant to 1 M.R.S.A. §405(6)(A)

III. Adjournment

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

- A. Discussion of personnel issues
- B. Discussion or consideration by a school board of suspension of expulsion
- C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosure of the information would prejudice the competitive or bargaining position of the body or agency
- D. Labor contracts
- E. Contemplated litigation
- F. Discussion of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;
- G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and
- H. Consultation between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.



**City of Auburn
City Council Information Sheet**

Council Workshop or Meeting Date: 02/13/2017

Order: 06-02062017

Author: Derek Boulanger, Facilities Manager/ Purchasing Agent

Subject: Contract Award for Legal Services, Bid # 2017-016

Information: A request for proposals was issued to provide legal services on behalf of the City. Four law firms responded to the RFP. Staff reviewed the competing proposals and recommends The Malloy Firm be awarded a three year contract.

Advantages: A more predictable impact on the budget. A regular presence at City Hall would allow for easier access to staff and City Counsel. The selected firm will serve as chief legal advisor; provide assistance with drafting and reviewing contracts, economic development matters, human resources and personnel issues.

Disadvantages:

City Budgetary Impacts: A flat rate of \$7950.00 per month for 60 hrs of service, including 8hrs per week at City Hall.

Staff Recommended Action: A three year contract be awarded to The Malloy Firm.

Previous Meetings and History: Postponed at the 2/6/2017 meeting

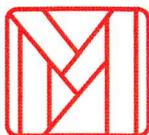
Attachments:

- Bid Tabulation for Legal Services #2017-016
- Engagement Agreement for Legal Services



Legal Services
 Bid # 2017-016
 January 17, 2017

Skelton, Taintor & Abbott 95 Main St Auburn, ME 04210 207-784-3200		The Malloy Firm 178 Court St, Suite 203 Auburn, ME 04210 207-312-9239		Jensen-Baird Gardner-Henry 10 Free Street Portland, ME 04112 207-775-7271		Brann & Isaacson 184 Main St Lewiston, ME 04240 207-786-3566	
Fee Schedule (1)		Fee Schedule (1)		Fee Schedule (1)		Fee Schedule (1)	
Attorney cost/hourly <i>(Dench and Meader, respectively)</i>	\$265 / \$200	Attorney cost/hourly	\$165	Attorney cost/hourly	\$190	Attorney cost/hourly	\$195
Associate Attorney cost/hourly	\$175	Associate Attorney cost/hourly	\$165	Associate Attorney cost/hourly	\$190	Associate Attorney cost/hourly	\$160
Paralegal cost/hourly	\$85	Paralegal cost/hourly	\$75	Paralegal cost/hourly	\$95	Paralegal cost/hourly	\$100
Clerical cost/hourly	\$0	Clerical cost/hourly	Including in attorney rates	Clerical cost/hourly	N/A	Clerical cost/hourly	N/A
Other Staff cost/hourly	\$0	Other Staff cost/hourly	Including in attorney rates	Other Staff cost/hourly	N/A	Other Staff cost/hourly	N/A
List other staff services and costs not identified above		List other staff services and costs not identified above		List other staff services and costs not identified above		List other staff services and costs not identified above	
Benjamin J Smith	\$200		\$		\$		\$
Theodore Small	\$200		\$		\$		\$
Darcie PL Beaudin	\$225		\$		\$		\$
Rebecca Webber	\$225		\$		\$		\$
Norman J Rattley	\$225		\$		\$		\$
Retainer Fee Required	No		Yes		No		No
Retainer Amount Required			\$10,000				
Fee Schedule (2)		Fee Schedule (2)		Fee Schedule (2)		Fee Schedule (2)	
Flat Rate Monthly (60 hours)	\$10,000	Flat Rate Monthly (60 hours)	\$7,950	Flat Rate Monthly (60 hours)	\$	Flat Rate Monthly (60 hours)	\$
Attorney cost/hourly	See Above	Attorney cost/hourly	\$145	Attorney cost/hourly	\$	Attorney cost/hourly	\$
Associate Attorney cost/hourly	\$	Associate Attorney cost/hourly	\$145	Associate Attorney cost/hourly	\$	Associate Attorney cost/hourly	\$
Paralegal cost/hourly	\$	Paralegal cost/hourly	Included in flat rate	Paralegal cost/hourly	\$	Paralegal cost/hourly	\$
Clerical cost/hourly	\$	Clerical cost/hourly	Included in flat rate	Clerical cost/hourly	\$	Clerical cost/hourly	\$
Other Staff cost/hourly	\$	Other Staff cost/hourly	Included in flat rate	Other Staff cost/hourly	\$	Other Staff cost/hourly	\$
Retainer Fee Required	No		Yes		No		No
Retainer Amount Required			\$7,950.00				



THE MALLOY FIRM

Attorney. Advisor. Advocate.

February 9, 2017

Denis D'Auteuil, Acting City Manager
City of Auburn
60 Court Street
Auburn, ME 04210

**Re: Engagement Agreement for Legal Services
RFP#2017-016**

Dear Denis:

Thank you for selecting The Malloy Firm to provide legal services to the City, as outlined in RFP#2017-016 (the "RFP"). I am pleased to provide this letter of engagement outlining the scope and the conditions of those services. As a City resident, I am excited about the opportunity for my business to contribute to the community in this unique role, and I look forward to serving as City Attorney.

This letter of engagement amends and supersedes all prior engagement letters between this Firm and the City. It will be effective as of February 1, 2017, and will continue through January 31, 2020, unless it is terminated or modified in writing, as permitted by the RFP, our response to the RFP, and as set forth below (the "Term").

By signing below and providing a copy of the Council's order, the City Council appoints me as City Attorney for the duration of the Term. This Firm will be the City's primary legal representative, and I will be the City's primary point of contact, on all legal matters referred to us. Our goal will be to improve the City Council and management's regular access to legal counsel on general business, economic development, and governance matters. We will assist with contract drafting and review, human resources issues including personnel policies, and will advise City staff on other general legal matters. This may include: drafting and negotiating tax increment financing agreements, joint development agreements, real estate leases, agreements for the sale of City property, and counseling the HR department on wage and hour, I-9, and personnel management issues.

While we are happy to provide general counsel services to the City, and to be the City's first point of contact for legal advice, we wish to note that there may be areas of concern that require specialized representation, where a professional conflict of interest prevents us from representing the City, under the ethics rules governing lawyers, or where other firms may be more suitable to represent the City on a case by case basis. Areas where specialty counsel may be required might include: tax exempt bond offerings and other public finance matters, and certain litigation matters such as insurance defense including worker's compensation litigation, all of which are excluded from this engagement. In addition, we understand that the Auburn School Department will continue to select its own lawyers. If the City asks us to provide representation in these areas, we will amend this letter of engagement accordingly.

INITIAL RETAINER FEE SCHEDULE

As we have discussed, the Firm will initially provide services to the City under Fee Schedule 2 of the RFP, until further notice. As explained in our RFP response, we will provide the following services and fees under this initial arrangement:

1. The Firm will maintain office hours within Auburn Hall for a minimum of 8 hours per week, to be scheduled according to business necessity and within the scheduling discretion of the Firm in consultation with the City Manager. The City will provide office space, reasonable secretarial assistance, parking rights, and Internet access during this time. During these office hours, we will be available for meetings with City Councilors, the Mayor, the City Manager and Assistant City Manager, and other staff;
2. If requested by the City Manager, we will meet monthly with him or her to conduct a docket review of all outstanding City legal matters, regardless of whether they are being led by this Firm or by specialty counsel;
3. We will be available to provide training to departmental supervisors on such areas as contract negotiation, HR best practices, and supervisor training; and
4. I will attend City Council meetings at the request of the City Manager or Council, either by telephone or in person, and will be available "on call" for consultations during Council meetings.

The Malloy Firm will provide up to 60 hours of these services per month for a flat monthly fee of **\$7,950** (the "Monthly Retainer Fee"). If the City requires our services for more than 60 hours in any month, we will bill the City on an hourly basis (the "Hourly Fees"). Time will be charged in increments of one-tenth of an hour, rounded off for each activity to the nearest one-tenth of an hour. For so long as the initial retainer fee schedule is in effect, the hourly rate for attorneys will be **\$145**.

HOURLY FEE SCHEDULE

In the event the City hires an in-house attorney and wishes to shift our engagement to an hourly arrangement only, the City may terminate the Monthly Retainer Fee arrangement described above, provided that it gives the firm at least 30 days' advance notice in writing. At the City's request, we will continue to provide legal services to the City on an hourly basis, in accordance with Fee Schedule 1 of our response to the RFP (the "Hourly Fee Schedule").

While initially I will be the only attorney providing services hereunder, this engagement allows other lawyers from the Firm or contracted by this Firm, to provide such services and to assist me, though I will remain the primary point of contact, and will remain the City Attorney, at all times during our engagement. The time of additional attorneys who may join this Firm or be contracted by this Firm, will be charged according to the fee schedule then in effect.

Denis D'Auteuil
February 9, 2017
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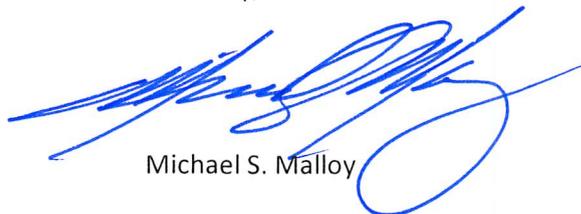
In addition to our fees for professional services, we bill for costs at the rate of **3%** of the invoiced amount for legal services. This allows us to avoid having to bill separately for minor expenses such as routine photocopying, credit card processing fees, secure email and document storage costs. Significant out-of-pocket expenses such as filing fees, express courier (e.g. FedEx), and travel outside of the Lewiston-Auburn area, will be billed separately. Whenever practical to do so, we will inform you of these extraordinary costs in advance, and will request that the City pre-pay them.

We will bill the City monthly for the prior month's fees, and any additional costs or fees we have incurred on the City's behalf. If you have any questions about an invoice, please let me know promptly. Unless specific arrangements have been made, payment on all invoices will be due within **21** days of the date on our invoice, and a late fee of **1½%** per month may be assessed on overdue amounts. We reserve the right to terminate our relationship with the City if it does not pay for the services we have provided, if the City fails to provide us with the information that we reasonably require to provide services, or as otherwise permitted by the Maine Rules of Professional Conduct, which govern lawyers in our state. We will not terminate our relationship without first trying to discuss and resolve the matter with you. We also ask that the City agree that any dispute arising out of this agreement, or the services rendered under it, shall be subject to binding arbitration, including fee arbitration under the Maine Rules of Professional Conduct, if applicable.

To confirm our understanding, I ask that you sign and return the enclosed copy of this letter to me, along with a check payable to The Malloy Firm in the amount of **\$7,950** (the "Retainer"), and a copy of the **City Council Order selecting this Firm, and appointing me as City Attorney for the term of February 1, 2017-January 31, 2020**. We will treat the Retainer as a deposit to be applied to the City's final invoice, and will hold it in our client trust account. You will receive interim bills monthly, which we request that you pay as you receive them. If you fail to pay an interim invoice as required, we may apply the Retainer to the outstanding balance, and the City may be required to replenish it and pay any remaining charges, before we will resume work. If at the termination of our engagement, the amount we are holding in Retainer for you exceeds the total amount that the City owes for costs and professional services, we will refund the difference to the City within 30 days of the end of our engagement.

If you or the Council have any remaining questions or concerns, please call me at your earliest convenience so that we can discuss them. I would also be happy to meet with the Council at any time, if they have further questions or concerns. I look forward to continuing our relationship, and thank you for the privilege of serving the City of Auburn.

Sincerely,



Michael S. Malloy

Denis D'Auteuil
February 9, 2017
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Agreed and Accepted:

CITY OF AUBURN, MAINE

By: Denis D'Auteuil
Its Acting City Manager

Dated: _____

James Pross, Ward One
Robert Stone, Ward Two
Andy Titus, Ward Three
VACANT, Ward Four



Leroy Walker, Ward Five
Grady R. Burns, At Large
David C. Young, At Large

Jonathan P. LaBonte, Mayor

IN CITY COUNCIL

ORDER: 06-02062017

ORDERED, that the City Council hereby authorizes the Acting City Manager to execute a contract with The Malloy Firm to provide legal services for the City of Auburn on a contract basis for 3 years beginning February 14th, 2017.



City of Auburn City Council Information Sheet

Council Workshop or Meeting Date: February 13, 2017

Subject: Executive Session

Information: Discussion regarding a personnel matter (City Manager search), pursuant to 1 M.R.S.A. Section 405(6) (A).

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405(6). Those applicable to municipal government are:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

- (1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
 - (2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
 - (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
 - (4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.
- This paragraph does not apply to discussion of a budget or budget proposal;

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

- (1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire;

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage;

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.



City of Auburn City Council Information Sheet

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B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire;

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage;

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.