

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 7a

Title:

Recommendation to Approve a Letter of Engagement with Heintzelman Law, LLC to provide representation and legal advice for the City of St. Charles in a police pension application matter

Presenter:

Jennifer McMahon, Director of Human Resources

Meeting: Government Operations Committee

Date: August 2, 2021

Proposed Cost: \$50,000

Budgeted Amount: \$20,000

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

City Code Section 2.10.030 requires that the Mayor and City Council, with the advice of the City attorney, may, for specific legal actions, appoint additional legal counsel with the duties and compensation specified in the appointment. The firm who has traditionally provided legal counsel, Clark Baird Smith (CBS), for the City was working on a duty-related police pension application. In early June, the attorney working on this case left CBS and now has their own firm. Given the extensive time put into the case, the expertise in this area, and the historical knowledge of the case, staff and the City Attorney recommend remaining with and engaging this attorney for this matter until the conclusion of the case. The entire legal budget for Human Resources is \$20,000. During staff budget discussions \$25,000 was proposed for General Legal and \$5,500 for arbitration/negotiations, but this amount was cut to balance the budget. The proposed cost is based on the attorney's rate of \$340 and approximately 150 hours of work, which may include research, document review, subpoena issuance/response, strategy development, meetings, and depositions/cross examinations and related preparation.

Included in the agenda packet is a letter of engagement from Heintzelman Law, LLC.

**Attachments** *(please list):*

Letter of engagement

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Approve a Letter of Engagement with Heintzelman Law, LLC to provide representation and legal advice for the City of St. Charles in a police pension application matter

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July 22, 2021

VIA EMAIL

Jennifer McMahon  
City of St. Charles  
2 E. Main Street  
St. Charles, Illinois 60174-1984

**Re: Representation of City of St. Charles**

Dear Ms. McMahon

You have asked Heintzelman Law, LLC to provide legal advice on behalf of the City of St. Charles (the “City”) with respect to the pension application filed by Dawn Churney. Heintzelman Law, LLC would be pleased to provide these services, as well as legal representation on any other appropriate matter you may refer to us from time to time. This letter, along with the attached Terms of Engagement for Legal Services, shall serve as our agreement with respect to our services. The Terms set forth additional details concerning our engagement and further explain our billing practices.

I will be the primary contact person at the firm, although we may utilize other attorneys, law clerks, staff members and co-counsel arrangements to assist us in representing the City. Unless otherwise agreed in a specific instance, we will bill the City based upon the time we spend rendering our services. We normally bill on a monthly basis, so that you will see the extent of the legal fees and disbursements as they are incurred. My 2021 billing rate is \$340 per hour, and the rates of all associate attorneys range from \$195 to \$295 per hour.

To evidence concurrence with the scope of services to be rendered, the arrangements for billing and payment of fees and expenses, and our Terms of Engagement for Legal Services, please return a signed copy of this letter to the undersigned. If there are any questions at any time about our billing practices or a fee or cash disbursement or any other aspect of our legal services, please bring it to my attention as soon as possible.



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## **TERMS OF ENGAGEMENT FOR LEGAL SERVICES**

The following is an explanation of the basis on which Heintzelman Law, LLC bills for its services and the expenses and advances incurred on behalf of its clients, and details various practices and policies at the Firm which govern the relationship between Heintzelman Law, LLC, and its clients. 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.

### **BILLING ARRANGEMENTS, FEES AND TERMS OF PAYMENT**

We normally submit invoices to our clients monthly during our engagement unless otherwise agreed. This procedure ensures that our clients have a current understanding of our charges and can intelligently budget legal expenses. Invoices are usually most influenced by the amount of time expended and the current hourly billing rates of the lawyers involved in the matter. Each invoice is ordinarily reviewed by the attorney who has primary billing responsibility for that client prior to its submission to the client for payment. The attorney reviews the time recorded to the client's account since the last billing. The purpose of the review is to determine whether the invoice should be calculated solely based on the time recorded or should be adjusted according to the circumstances.

We will keep accurate records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, factual and legal research and analysis, document preparation and revision, and other related matters. Normally we record our time in units of one quarter of an hour. The currently hourly billing rates of attorneys and paralegals in our Firm for matters such as this are as follows: My hourly billing rate is \$340 per hour; associate attorney, rates range from \$195 to \$295 per hour; law clerk and paralegal rates range from \$75 to \$140. If a co-counsel arrangement is utilized, the rate for the co-counsel shall be determined at that time. Typically, the more experience an individual has, the higher the hourly rate. Ordinarily, we review and adjust our billing rates annually to reflect current levels of legal experience, changes in overhead costs, and other factors. Changes in rates will be reflected in the monthly invoices.

Clients are also billed for direct expenses incurred in connection with handling their matters, such as special mail services, messenger, and overnight delivery services; for advances incurred on behalf of a client such as filing fees, court reporters, arbitrators, consulting fees, printing, computerized legal research, and travel expenses; and for items purchased and used

exclusively in connection with a particular client's matters. Where significant advances are involved, we may request that the client pay the costs directly.

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a 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 a fixed-fee is specifically negotiated. The ultimate cost may be more than the amount estimated.

We ask and expect payment of our invoices within thirty (30) days of the date of the invoice since delayed payment adds to our overall costs of providing services. In addition, we reserve the right to discontinue performance and to withdraw as your attorneys, regardless of the status of any matter in which we may be involved and subject to only our ethical obligations if any invoice remains unpaid for more than ninety (90) days after the date of the invoice.

It is always of the utmost importance for us to know that you are satisfied with the legal services being provided by Heintzelman Law LLC. So that there will always be full and open communication between us, and so that we may clearly understand and promptly deal with any concerns a client may have about our services, any questions concerning a particular invoice or about our legal services should be raised within thirty (30) days of the date of the invoice or the occurrence of the event which causes you concern.

### **THE PROVISION OF LEGAL SERVICES**

Customarily, each client of Heintzelman Law, LLC is served by a principal lawyer contact. The principal lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal lawyer at any time. Heintzelman Law, LLC also may utilize other attorneys, law clerks, paralegals, and legal assistants to work on a client's matters. These individuals operate under the supervision of the principal lawyer for the client. Such delegation may be for the purpose of involving lawyers, paralegals, or legal assistants with special expertise in each area or for the purpose of providing services on the most efficient and timely basis. Whenever practicable, we will advise our client of the names of those lawyers and legal assistants who work on the client's matters.

The retention of a lawyer does not ensure that the desired outcome will be achieved. Accordingly, Heintzelman Law, LLC cannot guarantee the results of its services. Rather Heintzelman Law, LLC will always act on your behalf to the best of our ability and will provide competent representation to its clients. Competent representation requires the legal knowledge, skill, thoroughness, and preparation necessary to handle the client's matters. Any expressions on our part regarding the outcome of our legal matters are expressions of our best professional judgment but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

## **YOUR RESPONSIBILITIES**

We expect our clients to be actively involved with the matters we are handling for them, to participate in meetings and to provide whatever information and cooperation may be necessary. We also expect that the information we receive from our clients will be accurate and complete. If a client does not cooperate with us or provides us with information which is incomplete or inaccurate, we reserve the right to withdraw as attorneys for that client.

## **MISCELLANEOUS**

In connection with audits of a client's financial statements, Heintzelman Law, LLC may be requested from time to time to furnish certain information or to confirm information. By engaging us, you are authorizing us to respond to such requests in a reasonable manner and to furnish such information as is consistent with reasonable requests from the auditors and the attorney-client privilege. Time spent responding to such requests will be charged at our regular rates.

Where we have been asked to represent more than one individual or entity in a matter, the Rules of Professional Conduct promulgated by the Illinois Supreme Court require us to disclose that representation of multiple clients is permitted so long as the clients do not have directly adverse interests. However, we may not represent multiple clients if the representation of one or more of those clients may be materially limited by the Firm's responsibilities to another client or to a third person, or by the Firm's or a lawyer's own interests. More simply stated, we can represent multiple parties in a matter so long as each party has similar interests. At such time as those interests diverge, we may no longer be able to represent any of the affected clients. If the matter which is the subject of the engagement letter involves the representation of multiple clients or entities, the execution and delivery of the engagement letter to Heintzelman Law, LLC, by each client is an acknowledgement that the clients have similar interests and that each consents to our representation of the other clients. In addition, where representing multiple clients or parties, unless otherwise agreed in writing by Heintzelman Law, LLC, the clients are jointly and severally obligated with respect to the payment of our invoices.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent that the engagement letter or these Terms of Engagement for Legal Services contain written advice relating to a federal tax issue, the written advice is not intended nor written to be used and cannot be used by the recipient or any other taxpayer for the purposes of avoiding Federal tax penalties or to support the promotion or marketing of the transaction or matters discussed herein.

## **TERMINATION**

You may terminate our representation at any time, with or without cause, by notifying us. Your termination of our services will not affect your responsibility for payment of legal services rendered and additional charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the rules of professional responsibility for the jurisdictions in which we practice, which list several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example nonpayment of fees or costs, misrepresentation, or failure to disclose material facts, action contrary to our advice, and conflicts of interest with another client. We try to identify in advance and discuss with our clients any situation which may lead to our withdrawal and, if withdrawal ever becomes necessary, we give the client written notice of our withdrawal.

Except for original corporate records or any records or files which we receive from you or third parties with the understanding that they belong to you, it is agreed that all our files, copies of documents, correspondence, or other materials which we may accumulate in connection with our representation of you, including copies of materials filed with any regulatory agency, shall be the property of Heintzelman Law, LLC. You may have copies at any time during our representation of you. Upon the termination of the engagement and upon request, we will return your property to you within thirty (30) days of such termination. However, it is specifically agreed that we have the right to dispose of our files at such time as we determine that such files no longer need to be retained. After disposal, these materials will no longer be available.

Your agreement to this engagement constitutes your acceptance of the foregoing terms and conditions as well as any additional terms and conditions set forth in the accompanying engagement letter. If any of them is unacceptable to you, please advise us now so that we can resolve any differences and proceed with a clear, complete, and consistent understanding of our relationship.