

12/17/13

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY'S OFFICE TO RETAIN THE LAW FIRM OF KING & SPALDING AND TO PROVIDE PAYMENT FOR ALL LEGAL SERVICES SINCE APRIL 11, 2013, WHICH HAVE BEEN AUTHORIZED BY THE CITY ATTORNEY ON BEHALF OF THE CITY OF CHATTANOOGA IN THE CASES OF *DP MARINA, LLC V. CITY OF CHATTANOOGA* AND *TENNESSEE CLEAN WATER NETWORK (TCWN) V. CITY OF CHATTANOOGA* (EPA CONSENT DECREE).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it hereby authorizes the City Attorney's office to retain the law firm of King & Spalding and to provide payment for all legal services since April 11, 2013, which have been authorized by the City Attorney on behalf of the City of Chattanooga in the cases of *DP Marina, LLC v. City of Chattanooga* and *Tennessee Clean Water Network (TCWN) v. City of Chattanooga* (EPA Consent Decree).

ADOPTED: _____, 2013

/mms

RESOLUTION NO. 26168

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO AN AGREEMENT WITH KING & SPALDING, LLP FOR LEGAL SERVICES RELATIVE TO THE WATER QUALITY PROGRAM.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the City Attorney be and is hereby authorized to enter into an agreement with King & Spalding, LLP for legal services relative to the Water Quality Program.

ADOPTED: January 5, 2010

/add

KING & SPALDING

King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, GA 30309-3521
Tel: +1 404 572 4600
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www.kslaw.com

Adam G. Sowatzka
Partner
Direct Dial: +1 404 572 3508
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asowatzka@kslaw.com

March 22, 2013

Michael A. McMahan
Nelson, McMahan & Noblett
801 Broad Street
Suite 400
Chattanooga, TN 37402

Re: **Agreement for Legal Services**
DP Marina, LLC v. City of Chattanooga, Tennessee, No. 1:12-CV-218

Dear Mr. McMahan:

We are pleased that you have asked King & Spalding LLP (the "firm") to serve as your counsel regarding claims made by DP Marina under the Clean Water Act against the City of Chattanooga, Tennessee in the case styled *DP Marina, LLC v. City of Chattanooga, Tennessee, No. 1:12-CV-218*. This letter will confirm our discussions with you about your engagement of the firm and the basis on which the firm will provide its legal services. If you have questions about these provisions or would like to discuss possible modifications, please call me. If you are in agreement, please return a countersigned copy of this letter to me.

1. *Client; Scope of Representation.* The firm's client in this matter will be the City of Chattanooga, Tennessee (the "City"). The firm will be engaged to assist your office with the matter filed against the City by DP Marina under the Clean Water Act and various state law claims. You may limit or expand the scope of the firm's representation, but the firm must agree to any substantial expansion.

2. *Term of Engagement.* Either the City or the firm may terminate the engagement at any time for any reason by written notice, subject on the firm's part to applicable rules of professional conduct. If the firm terminates the engagement, the firm will take such steps as are reasonably practicable to protect your interests in the matter.

Unless previously terminated, the firm's representation of the City in these matters will terminate when the firm sends you its final statement for services in this matter. Following termination, otherwise nonpublic information you have supplied to the firm that has been retained by the firm will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon payment of outstanding fees and costs. The firm will retain its own files, including lawyer work

product, pertaining to the matter. All documents retained by the firm will be transferred to the person responsible for administering the firm's records retention program. The City agrees that, to reduce unnecessary storage expenses and for other reasons, the firm may destroy or otherwise dispose of any documents or other materials retained by the firm a reasonable time after termination of this engagement.

The City is engaging the firm to provide legal services in connection with specific matters. After completion of the matters, changes may occur in applicable laws or regulations that could have an impact upon your rights and liabilities. You agree that, unless the City actually engages the firm after the completion of the matter to provide additional advice on issues arising from the matters, the firm has no continuing obligation to advise you with respect to future developments.

3. *Fees and Expenses.* The firm's fees will be based primarily on the billing rate for each attorney and legal assistant devoting time to this matter. The work will be handled primarily by myself. My current billing rate is \$495, which has been discounted almost 10% to \$450. We will utilize associates and paralegals as appropriate, endeavoring to perform the work efficiently. The firm's billing rates are subject to change from time to time and are generally adjusted at the beginning of every calendar year. I also understand that your office has approval to contract for legal services up to \$10,000 and that if that amount is exceeded that City Council approval will be required.

The firm's statements will include separate charges for expenses in performing its services, such as photocopying, messenger and delivery service, computerized research, travel, conference calls, word processing, and search and filing fees. Fees and expenses of others, such as consultants, appraisers, and local counsel, generally will be billed directly to you by the provider.

Statements normally will be rendered monthly for work performed and expenses posted the previous month. Payment is due promptly upon receipt of the firm's statement. If any statement remains unpaid for more than 90 days, you agree that the firm may cease performing services for you or withdraw from the engagement unless arrangements satisfactory to the firm are made for payment of outstanding statements and future fees and expenses.

The fees and costs relating to these matters are not predictable and the firm has not made a commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete these matters.

4. *Client Responsibilities.* The City agrees to cooperate fully with us and provide promptly all information known and available to you relevant to the engagement and to cooperate with the firm in complying with any regulatory or compliance obligations relating to the engagement. The City also agrees to pay the firm's statements for services and expenses in accordance with paragraph 3 of this letter.

In accordance with ABA guidance, the firm advises that communications between client and clients' representatives and their lawyers that may be lawfully accessed by third parties, such as hotel, home, or other public servers to which others may have rights of access, can jeopardize confidentiality, attorney/client privilege, and work product protection. The firm encourages you to assure that secure methods are used for all communications of confidential information.

5. *Conflicts.* We have reviewed our records and have determined that no current conflicts exist regarding this matter. Should a conflict arise in the future, we will discuss such a conflict with you before undertaking a representation.

When issues arise concerning the firm's professional duties and rights, including those involving professional liability and professional conduct, King & Spalding may seek confidential advice from internal King & Spalding lawyers with responsibility or expertise in the areas in question, and in some instances from outside counsel as well. In such circumstances, some courts have concluded that a conflict of interest arises between a law firm and its client, or have declined to recognize the law firm's communications as privileged or protected from disclosure to the client or former client. The firm believes for several reasons recognized by courts and commentators it is in its and its clients' interest for the firm to receive expert and confidential legal advice regarding its professional duties and rights in such circumstances without first having to terminate its engagement with the client. You consent to the firm seeking and receiving such confidential advice and each agrees not to assert and waives any right to learn the content of such confidential advice and consents to the firm seeking and receiving such advice to the extent that the seeking of such advice about any actual or potential professional liability, professional conduct, or other claim might be considered a conflict of interest or other breach of a duty.

This letter sets out all of the terms of our engagement agreement with you.

We thank you for this opportunity to work with you. I am available to discuss any questions or comments now and throughout the course of our representation.

Michael A. McMahan
March 22, 2013
Page 4

Very truly yours,



Adam G. Sowatzka

AGREED TO AND ACCEPTED:

CITY OF CHATTANOOGA, TENNESSEE

By: Michael Smith

Title: City Attorney

Date: 4/11/13

KING & SPALDING

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March 22, 2013

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801 Broad Street
Suite 400
Chattanooga, TN 37402

Re: **Agreement for Legal Services**
United States et. al. v. City of Chattanooga, No. 1:10-CV-281

Dear Mr. McMahan:

We are pleased that you have asked King & Spalding LLP (the "firm") to serve as your counsel regarding the case styled *United States et. al. v. City of Chattanooga, No. 1:10-CV-281*. This letter will confirm our discussions with you about your engagement of the firm and the basis on which the firm will provide its legal services. If you have questions about these provisions or would like to discuss possible modifications, please call me. If you are in agreement, please return a countersigned copy of this letter to me.

1. *Client; Scope of Representation.* The firm's client in this matter will be the City of Chattanooga, Tennessee (the "City"). The firm will be engaged to assist your office with the lawsuit referenced above, and more specifically the issues that may arise under the Consent Decree between the Environmental Protection Agency and the City as part of the settlement of that case. You may limit or expand the scope of the firm's representation, but the firm must agree to any substantial expansion.

2. *Term of Engagement.* Either the City or the firm may terminate the engagement at any time for any reason by written notice, subject on the firm's part to applicable rules of professional conduct. If the firm terminates the engagement, the firm will take such steps as are reasonably practicable to protect your interests in the matter.

Unless previously terminated, the firm's representation of the City in these matters will terminate when the firm sends you its final statement for services in this matter. Following termination, otherwise nonpublic information you have supplied to the firm that has been retained by the firm will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon payment of outstanding fees and costs. The firm will retain its own files, including lawyer work

product, pertaining to the matter. All documents retained by the firm will be transferred to the person responsible for administering the firm's records retention program. The City agrees that, to reduce unnecessary storage expenses and for other reasons, the firm may destroy or otherwise dispose of any documents or other materials retained by the firm a reasonable time after termination of this engagement.

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3. *Fees and Expenses.* The firm's fees will be based primarily on the billing rate for each attorney and legal assistant devoting time to this matter. The work will be handled primarily by myself. My current billing rate is \$495, which has been discounted almost 10% to \$450. We will utilize associates and paralegals as appropriate, endeavoring to perform the work efficiently. The firm's billing rates are subject to change from time to time and are generally adjusted at the beginning of every calendar year. I also understand that your office has approval to contract for legal services up to \$10,000 and that if that amount is exceeded that City Council approval will be required.

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This letter sets out all of the terms of our engagement agreement with you.

We thank you for this opportunity to work with you. I am available to discuss any questions or comments now and throughout the course of our representation.

Michael A. McMahan
March 22, 2013
Page 4

Very truly yours,



Adam G. Sowatzka

AGREED TO AND ACCEPTED:

CITY OF CHATTANOOGA, TENNESSEE

By: Michael A. McMahan

Title: City Attorney

Date: 4/11/13



City of Chattanooga

Office of the City Attorney

Michael A. McMahan
City Attorney

Phillip A. Noblett
Deputy City Attorney

February 21, 2013

Kenneth O. Fritz
Valerie L. Malueg
Keith J. Reisman
Melinda Foster
Patrick P. H. Bobo
Assistants

**VIA EMAIL (lklein@bakerdonelson.com)
AND U.S. MAIL**

Linda Klein, Esq.
Office Managing Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.
Monarch Plaza
3414 Peachtree Road, N.E.
Suite 1600
Atlanta, GA 30326

Re: Transfer of Representation
City of Chattanooga, Tennessee

Dear Ms. Klein:

By this letter, we are confirming our decision to transfer our representation of certain specific legal matters from your firm to King & Spalding LLP effective February 20, 2013. To accomplish the transfer as smoothly and expeditiously as possible, we would appreciate your assistance in making available to King & Spalding as soon as possible all paper and electronic files and records that pertain to the specific matters set out on the attached list. We will be responsible for your firm's fees and disbursements in open matters on the list until the effective date noted above.

We would appreciate your assistance in also providing the following information to Joan Houghton-Theall, who is the designated contact person at King & Spalding for this transfer and whose contact information is 404-562-4600:

1. The name and contact information of the person at your firm who will coordinate the transfer of files and records to King & Spalding;
2. An inventory of the files and records being transferred so that you and King & Spalding will have a record of what has been transferred and received; and

Linda Klein, Esq.
Page 2
February 21, 2013

3. The estimated timeline for the completion of the transfer.

If you have any questions about this request, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. McMahan", with a long horizontal flourish extending to the right.

Michael A. McMahan
City Attorney

MAM/mms
Attachment

cc: Adam Sowatzka, King & Spalding

Attachment
List of Legal Matters to be Transferred

- 2011095-000002
- 2011095-000003
- 2011095-000004