

CITY OF DUNNELLON, FLORIDA
CITY ATTORNEY CONTRACT #AGR2016-01

THIS AGREEMENT is made and entered into as of its Effective Date, by and between CITYOF DUNNELLON, FLORIDA, a Florida municipal corporation located in Marion County, Florida, whose address is 20750 River Drive, Dunnellon, Florida, 34431, hereinafter referred to as the “CITY”, and SHEPARD, SMITH & CASSADY, P.A., whose address is 2300 Maitland Center Parkway, Suite 100, Maitland, Florida 32751, hereinafter referred to as the “ATTORNEY”.

WHEREAS, the CITY on October 14, 2015 issued a Request for Proposals Bid # 2015-07 for CITY ATTORNEY; and

WHEREAS, the ATTORNEY did submit a proposal for appointment as CITY ATTORNEY to the CITY; and

WHEREAS, CITY desires to employ the services of the ATTORNEY as CITY ATTORNEY; and

WHEREAS, all references to City Council shall mean the collegial body of Council, unless otherwise stated herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. RECITALS. The foregoing recitals are true and correct and incorporated herein by this reference.

2. APPOINTMENT AND RETAINER. The ATTORNEY is hereby retained and appointed as a CITY ATTORNEY for the CITY.

3. SERVICES TO BE RENDERED. The ATTORNEY shall provide to the CITY legal services as CITY Attorney, as set forth in the Request for Proposals Bid # 2015-07, relating to City Council, Facilities, Business/Support Services, Human Resources, Comprehensive Planning for Equal Opportunities and Official Records, including, without limitation by enumeration, the following:

3.1. *City Council and Board Meetings.*

a. Attend and provide legal counsel at all regular and special meetings and workshops of the City Council, unless excused by the Mayor and ratified by City Council at the meeting or workshop.

b. Attend and provide legal counsel at meetings of the Planning Commission which require attorney representation.

c. Attend and represent the CITY at all code enforcement hearings which require attorney representation.

d. Attend and provide legal counsel at meetings of other Boards of the CITY which require attorney representation.

3.2. *General Legal Representation.* The ATTORNEY shall perform all general legal representation for the CITY as required. Such general legal representation includes, but is not limited to:

a. Legislative work associated with the City Council meetings, including preparation or review of ordinances and resolutions, and written policies and procedures, together with research work as necessary associated with the preparation of those documents. This activity shall include providing assessments of legal risks inherent in any proposed course of action, present legislation, or practices of the CITY.

b. Preparation of oral or written opinions on legal matters as required by the City Council and/or City Manager.

- c. Negotiations and preparation of agreements, leases, contracts, or similar documents.
- d. Review and advice regarding contract form(s) between the CITY and independent contractors.
- e. When requested by the City Council or the City Manager, performance of investigations that may require interviewing witnesses, taking testimony, review of reports, and legal research.
- f. Participation in meetings and/or telephone conferences with the City Manager and/or City Staff as designated by the City Manager and the provision of legal counsel, as required.
- g. Assistance to staff, legal research, and counseling related to the acquisition or sale of real property, preparation of leases, deeds and easements; utility franchise agreements; operations governed by law; liability situations; grant guidelines; pension law, and other matters as necessary requiring legal advice.
- h. Interpretation of the CITY'S ordinances and prosecution of local ordinance or zoning violations in any court, if the State Attorney is not handling the prosecution.
- i. Maintenance of legal files and provision to the City Manager of copies of all correspondence and of all pleadings and orders in all litigation the ATTORNEY is handling for the CITY. On a monthly basis, if requested by the City Manager or City Council, the ATTORNEY will provide a written report on the status of all litigation that the ATTORNEY is directly handling or is overseeing on behalf of the CITY.
- j. Keeping the City Council and City Manager informed of legislation and/or judicial opinions that have potential to impact the CITY.
- k. As requested by the CITY, overseeing, in a cost-effective manner, litigation in which the CITY is represented by the CITY'S insurer.
- l. Conducting legal research as required in the performance of duties to the CITY.

m. Providing legal services for such other matters not covered above, but which necessitate legal advice or use of legal services of the ATTORNEY, as determined by the City Council or City Manager.

3.3. *Additional Legal Services.* The ATTORNEY shall be responsible for performing Additional Legal Services on the CITY'S behalf, when requested to do so by the City Manager or City Council. The CITY reserves the right to retain the services of an attorney or attorneys, not associated with the ATTORNEY, to represent the CITY in any matter it determines necessary or appropriate.

3.4. *Miscellaneous Legal Services.*

a. Conducting labor negotiations, and assisting with labor relations matters that go beyond routine telephone conferences or counseling.

b. Providing specialized legal expertise in particular areas as required by the City Council.

3.5. *Litigation and Legal Defense.*

a. Providing legal representation and defense to challenges to the CITY'S ordinances and regulations;

b. Defending the CITY in lawsuits that are not defended by legal services provided by the CITY'S insurer, or when the CITY'S exposure exceeds the insurance coverage. For this purpose, the CITY shall be understood to include the members of the City Council, individually and/or collectively, members of all CITY boards and commissions, individually and/or collectively, the City Manager and all members of the CITY staff, for any legal actions emanating from their official duties with CITY business, unless the ATTORNEY cannot represent an individual under the Rules of Professional Conduct of The Florida Bar;

c. Filing and pursuing such litigation as may be authorized by the City Council.

d. The ATTORNEY shall not settle any claim without the prior written authorization of the City Manager, in response to explicit direction from the City Council.

3.6. *Legal Services Requested by an Individual Council Member.* Legal assistance may be requested by an individual City Council member outside of public meeting(s) to assist the City Council member in carrying out his or her official duties on a matter. The ATTORNEY shall notify the City Manager that a member of City Council has requested legal advice so that the Manager can provide any written advice provided by the ATTORNEY to other members of City Council. The ATTORNEY shall not bill more than one (1) hour on any request for legal services on a given subject by an individual City Council member without authorization of City Council, acting as a body.

3.7. *Advice to the General Public on CITY Matters.* The ATTORNEY shall refrain from responding to requests or comments from the general public unless otherwise directed by the City Council or the City Manager.

3.8. While this Agreement is with the Firm of Shepard, Smith and Cassady, P.A., the CITY ATTORNEY of record shall be Andrew Hand. Andrew Hand be unable personally to represent the CITY at a meeting or meetings, then Drew Smith or Virginia Cassady shall attend such meeting or meetings, and, in their absence, Kalanit Oded shall attend. Other attorneys-at-law in the Firm are available on an “as needed” basis to provide legal services to the CITY, commensurate with this Agreement.

3.9. With the exception of requests from the City Council acting as a body, the City Manager shall act as a “gatekeeper” for the CITY in requesting the services or assistance of the ATTORNEY, coordinating the flow of work to the ATTORNEY and establishing the relative priorities to be placed by the ATTORNEY on each task for which the assistance of the ATTORNEY is required. No member of the CITY staff may require the efforts of the ATTORNEY on the behalf of the CITY unless authorized by the City Manager. This paragraph does not prevent the ATTORNEY, in his or her discretion, from having one-on-one contact with City Council member(s) when such contact is needed in the best interests of the CITY. Notwithstanding the foregoing, any member of the City Council may request legal services and opinions of the ATTORNEY regarding CITY matters, as provided in this Agreement.

4. TERM OF THIS CONTRACT.

4.1. The effective date of this contract shall be the date it is executed by the last party to execute it. Unless terminated earlier as provided herein, the term of this contract shall be for a period of two (2) years from its Effective Date.

4.2. Unless terminated earlier as provided herein, thirty (30) days prior to the last day of its term, this contract shall be renewed for an additional two (2) year term on the same terms and conditions as set forth herein, unless said terms and/or conditions are modified pursuant to written agreement of both parties.

4.3. The ATTORNEY shall serve at the pleasure of City Council. Both the CITY, upon the vote of the majority of the City Council, and the ATTORNEY reserve the right to terminate this Agreement without cause upon written notice to the other.

4.4. No notice will be required to terminate the services of the ATTORNEY; however, if the ATTORNEY terminates this Agreement, ATTORNEY shall give the CITY no less than sixty (60) days' written notice unless the City Council waives this sixty-day notice requirement.

4.5. If the ATTORNEY is discharged by the CITY, or withdraws for any reason before conclusion of any projects or matters, the ATTORNEY shall be entitled to reimbursement of all reimbursable costs advanced and all attorney fees incurred for work performed until such termination.

4.6. Upon termination (regardless of who terminates), all finished or unfinished documents, correspondence, orders and other products prepared by the ATTORNEY for the CITY under this contract shall be delivered to and for the exclusive use of the CITY.

5. COMPENSATION. The CITY shall compensate the ATTORNEY in the following manner:

5.1. The ATTORNEY shall receive ATTORNEY'S hourly rate multiplied by the hours (prorated for partial hours) worked by the ATTORNEY providing the services as set out herein. Billable hours shall be measured in tenths of an hour. Only time spent actually providing services to the CITY will be compensated.

5.2. *Attendance at meetings.* For attending City Council, Planning Commission, and other meetings, and providing legal counsel at those meetings, the ATTORNEY shall bill at an hourly rate of \$175.00 per hour for

ATTORNEY'S attendance at such meetings. The ATTORNEY will not be reimbursed for time and expenses in traveling to and from public meetings.

5.3. *Non-litigation services.* The ATTORNEY shall provide non-litigation services at the hourly rate of \$175.00 per hour.

5.4. *Litigation services.* The ATTORNEY shall provide litigation services at the hourly rate of \$200.00 per hour.

5.5. *Issuer's bonds.* The ATTORNEY shall provide required legal opinions as Issuer's counsel regarding bonds at the hourly rate of \$200.00 per hour.

5.6. *Paralegal and secretarial services.* The ATTORNEY shall not charge the CITY for paralegal or secretarial services unless the ATTORNEY is handling a real estate closing for the CITY. In these transactions, the ATTORNEY will provide paralegal services at the hourly rate of \$75.00 per hour.

5.7. *Travel time.* The ATTORNEY shall bill the CITY the lump sum of \$175.00 whenever the ATTORNEY travels to and from Marion County in providing legal services to the CITY, *except* when attending CITY public meetings, for which there is no charge to CITY.

5.8. *Travel expenses.* The ATTORNEY shall not bill for travel expenses for travel to Orange, Alachua, and Marion Counties. Travel expenses for gas, food, and lodging when ATTORNEY is required to travel *outside of* Orange, Alachua, and Marion Counties will be reimbursed based upon the CITY'S policies in effect at the time incurred, or based upon the applicable statute if the CITY has no policy regarding travel expense reimbursement.

5.9. *Miscellaneous expenses.* The CITY shall reimburse the ATTORNEY'S expenses incurred on behalf of the CITY for overnight or courier delivery outside of Orange and Marion Counties; for court reporters' fees, transcripts, court filing fees, and process service charges, all without mark-up or multiplier. Although the ATTORNEY will not bill for office expenses, such as library materials, general office supplies, office space, copying or postage and other overhead, the ATTORNEY reserves the right to do so if, in its judgment, these expenses for a particular month, incurred directly on behalf of the CITY, are excessive; provided, however, that reimbursement for such expenses must be authorized in writing by the City Manager. All invoices submitted for such

reimbursements will contain complete and detailed information supported by appropriate receipts as to the item or charge sought to be reimbursed.

5.10. *Monthly Billing Statements.*

a. *Content and format of bills.* The ATTORNEY shall keep and maintain accurate time records showing the time expended by each of its attorneys in representing the CITY under this Agreement. The ATTORNEY will detail on its billing statements specific billing entries on a daily basis showing: the date; the task performed; the requestor of the effort (e.g., the specific authorized CITY representative); the ATTORNEY performing the task; and the time expended on the task. The minimum billing increment shall be one-tenth of an hour. The ATTORNEY shall provide a separate billing statement for each department or project matter as directed by the City Manager, in addition to a summary cover sheet showing the total amount billed for each statement and the grand total billed for that month.

b. *Time of billing.* The ATTORNEY shall submit billing statements for the ATTORNEY'S fees, costs, and expenses on a monthly basis not later than the fifth (5th) day of the following month. Each statement of fees, costs, and expenses will represent an implied warranty that the statement sets forth only the actual time spent and only the actual costs and expenses incurred. Payment from the CITY shall be made within thirty (30) days of receipt. If the CITY has any disagreement about the amount billed, the CITY shall advise the ATTORNEY in writing within fifteen (15) days of receipt of the billing statement. Failure to timely notify the ATTORNEY shall be deemed acknowledgment by the CITY that the bill is both accurate and fair.

c. If the City Manager, City Manager designee or City Council limits the amount of time and attorney fees the ATTORNEY is to spend on a specific project, it shall be the responsibility of the ATTORNEY to ensure that ATTORNEY is not incurring fees and expenses in excess of such authorized amount without prior approval of the City Manager, City Manager designee or City Council, as appropriate.

6. ATTORNEY TO BE INDEPENDENT CONTRACTOR. ATTORNEY and ATTORNEY'S employees and agents are independent contractors, and not employees, agents or servants of the CITY.

7. CITY NOT LIABLE FOR ACTS OF ATTORNEY. The CITY shall not be liable for the acts, omissions to act, or negligence of ATTORNEY or the ATTORNEY'S agents, servants and employees. ATTORNEY shall maintain during the term of this contract, and all renewals and extensions thereof, professional liability insurance in at least the minimum amounts of One Million Dollars (\$1,000,000.00) per claim, and Two Million Dollars (\$2,000,000.00) per annual aggregate, covering the professional services rendered. The ATTORNEY shall, also, maintain Worker's Compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation. If not required by law to maintain workers compensation insurance, ATTORNEY shall provide a notarized statement that, if ATTORNEY or ATTORNEY'S employees or agents are injured, neither ATTORNEY, nor ATTORNEY'S employees or agents, will hold the CITY responsible for any payment or compensation.

8. COMPLIANCE WITH APPLICABLE LAWS. ATTORNEY shall comply with all Federal, State and local laws and ordinances applicable to the work, and shall not discriminate on the grounds of race, color, religion, sex, disability or national origin in the performance of services to the CITY.

9. MISCELLANEOUS. Time is of the essence of this contract. This contract, together with the Request for Proposals #2015-07, which is incorporated herein by reference, is the entire agreement between the parties, and supersedes all prior contracts or agreements between the parties. Each party has had equal input into the drafting of this contract parties, and this contract shall not be construed against either party. This contract may not be modified except by written agreement executed with the same formalities as this contract. Once executed, a photocopy of this contract shall have the same force and effect as the original. Paragraph headings are for convenience only, and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Whenever used herein, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires. This contract is made in the State of Florida, and shall be governed by Florida law. Marion County shall be the exclusive venue for any litigation, arbitration or mediation relating to this contract. This contract may not be assigned or delegated by either party without the prior written consent of the other party. This contract shall not be construed to create legally enforceable rights in any persons or entities other than the ATTORNEY and the CITY.

[SIGNATURES ON FOLLOWING PAGE]

APPROVED by the City Council of the City of Dunnellon on 11th day of January, 2016, and EXECUTED by the MAYOR on 11th day of January, 2016.

CITY OF DUNNELLON

Honorable Nathan Whitt, Mayor
City of Dunnellon, Florida

APPROVED and EXECUTED by the ATTORNEY on 11th day of January, 2016.

ATTORNEY

Shepard, Smith & Cassady, P.A.
By: Andrew Hand, Esquire
As its: Authorized Representative