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Posted: November 14, 2014

**CRYSTAL CITY COUNCIL  
FIRST WORK SESSION AGENDA**

**Tuesday, November 18, 2014**

**6:30 p.m.**

**Conference Room A**

Pursuant to due call and notice given in the manner prescribed by Section 3.01 of the City Charter, the first work session of the Crystal City Council was held at \_\_\_\_\_ p.m. on Tuesday, November 18, 2014 in Conference Room A located at 4141 Douglas Drive, Crystal, Minnesota.

**I. Attendance**

Council members

\_\_\_\_ Budziszewski

\_\_\_\_ Deshler

\_\_\_\_ Hoffmann

\_\_\_\_ Libby

\_\_\_\_ Peak

\_\_\_\_ Selton

\_\_\_\_ Adams

Staff

\_\_\_\_ Norris

\_\_\_\_ Therres

\_\_\_\_ Revering

\_\_\_\_ Serres

\_\_\_\_ Norton

**II. Agenda**

The purpose of the work session is to discuss the following agenda item:

- City Attorney and Prosecuting Attorney services contracts

**III. Adjournment**

The work session adjourned at \_\_\_\_\_ p.m.



## Memorandum

DATE: November 10, 2014  
TO: Mayor and City Council  
FROM: Anne Norris, City Manager *alr*  
SUBJECT: City Attorney Services Agreement – 2015 and 2016

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### **BACKGROUND**

The City's current contract with Kennedy & Graven for city attorney services expires December 31, 2014. Current hourly rates are \$150 – \$160, depending on the attorney involved and type of legal services provided. We also pay a monthly retainer of \$3,750 which covers much of the routine legal services and inquiries. The hourly rates are the same in 2015 as they are in 2014 and the retainer in 2015 is a 2% increase over the current amount.

A proposed two year contract with Kennedy & Graven for 2015 – 2016 is attached. The proposed hourly rates and the retainer in the contract are as follows:

	<b>2015</b>	<b>% increase</b>	<b>2015</b>	<b>% increase</b>
Hourly rates	\$150 - \$160	0%	\$155 - \$165	3%
Retainer	\$3,833	2%	\$3,917	2%

The proposed 2015 rates are reflected in the 2015 budget.

At its November 6 meeting, the City Council continued consideration of the agreement pending discussion at the November 18 work session before the meeting.

### **RECOMMENDATION**

Recommend approval of a two year contract for city attorney services with Kennedy & Graven for 2015-2016 as outlined the proposed contract and authorize the Mayor and City Manager to sign the contract.

Attach:

## **AGREEMENT FOR LEGAL SERVICES**

This Agreement, entered into between the CITY OF CRYSTAL, a Minnesota municipal corporation (City) and the law firm of KENNEDY & GRAVEN, CHARTERED (City Attorney) effective as of this 1st day of January, 2013, provides as follows:

### Section 1. Background: Findings.

1.01. Pursuant to Section 6.02 of the City Charter the appointment and removal of the City Attorney are made by the City Council.

1.02. At a duly called regular meeting of the City Council held on \_\_\_\_\_, 2014, the City Council determined that the firm of Kennedy & Graven, Chartered be engaged as City Attorney, with Michael T. Norton of that firm serving as primary legal counsel for the City, and instructed the City Manager to prepare an agreement between the firm and the City setting forth the terms and conditions of the engagement.

### Section 2. Terms and Conditions.

2.01. In consideration of the mutual promises and conditions contained in this Agreement the City and the City Attorney agree to the terms and conditions set forth in this section.

2.02. a) The City appoints the firm of Kennedy & Graven, Chartered as City Attorney, with Michael T. Norton acting as primary legal counsel for the City; Troy J. Gilchrist serving as Assistant City Attorney; and Martha N. Ingram serving as EDA Counsel.

b) The City Attorney agrees to perform all usual and customary legal services for the City in accordance with the terms of this Agreement.

c) The City agrees to compensate the City Attorney for services as follows:

An annual retainer fee as follows: \$46,000 payable in monthly installments of \$3,833 commencing as of January 1, 2015 and continuing through December 31, 2015; \$47,000 payable in monthly installments of \$3,917 commencing as of January 1, 2016 and continuing through December 31, 2016. Services to be covered by the retainer fee are as follows:

- 1) Attendance at all Council meetings, regular and special;
- 2) Meetings with staff and public groups as requested by the Council or the City Manager and public hearings before the Council;

3) Review and preparation of contracts, performance bonds, insurance and other routine legal documents;

4) Routine ordinance code amendments and preparation of resolutions;

5) Formal and informal legal advice to Council and staff, commissions and committees;

6) Inquiries from the public on non-police matters, i.e., matters not directly related to criminal prosecution activities; and

7) All other legal services except litigation, eminent domain, local, state and federal administrative proceedings, labor matters, code enforcement matters, services to the Economic Development Authority and services to the Crystal Charter Commission.

2.03. As an aid to the interpretation and administration of Sections 2.02 and 2.04 of this Agreement, the following definition of terms is agreed upon:

“Routine” means matters that regularly reoccur and are customarily undertaken by a City Attorney in the discharge of the office. A matter that does not occur regularly is not routine. Review of a typical public works contract, and preparation or review of a usual and customary ordinance, are examples of a routine matter. Preparation or review of a significant contract related to a unique project, and preparation and research related to a unique ordinance, are examples of a non-routine matter.

“Litigation” means services performed by the City Attorney a) in response to an action commenced against the City or its officers by the service of legal process, and b) services performed by the City Attorney in matters where litigation, in the judgment of the City Manager, is certain to be commenced.

“Eminent domain” means services performed directly related and preparatory to the commencement of an action of eminent domain by the City.

“Administrative proceedings” means services directly related and preparatory to representing the City before a federal, state or regional administrative agency or an administrative agency of the City or another political subdivision of the state.

“Labor Matters” means advice or other services related to a specific employee or labor union. General advice regarding labor or employment law, not related to a specific employee or union, is not considered a “labor matter” for the purposes of this Agreement.

“Code Enforcement” means any services related to civil enforcement of ordinances, including without limitation research and advice regarding the prospects for success.

“Development” and “redevelopment” mean, with reference to the EDA, the negotiating and drafting of development contracts, tax increment financing plans, development and

redevelopment plans and related technical services other than routine services to the EDA, typically paid by the developer of the project as a pass through cost.

The City Manager and the City Attorney are authorized and directed to consult on the application of these defined terms to any particular matter, but the final determination of their application is to be made by the City Manager.

2.04. For legal services, except as provided in Section 2.09, the City agrees to compensate the City Attorney at the following hourly rates for services indicated in the year and at the hourly rates indicated below:

<u>General civil matters</u>	<u>2015</u>	<u>2016</u>
directors	\$150	\$155
associate attorneys	147	150
clerks and paralegals	107	110
<u>Charter Commission</u>		
directors	\$150	155
associate attorneys	145	150
clerks and paralegals	107	110
<u>Economic Development Authority,</u>		
<u>General EDA advice</u>		
directors	\$150	155
associate attorneys	145	150
clerks and paralegals	107	110
<u>Litigation, eminent domain</u>		
<u>and administrative proceedings</u>		
directors	\$160	165
associate attorneys	150	155
clerks and paralegals	107	110
<u>Economic Development Authority</u>		
<u>- development and redevelopment</u>		
<u>projects-fees paid by the developer</u>		
directors	\$225	230
associate attorneys	195	200
clerks and paralegals	115	120

2.05. The City Attorney will record all time spent on general matters covered by the retainer fee described in Section 2.02 at the rates specified above for “General Civil Matters.”

2.06. The City will compensate the City Attorney for the following actual and necessary expenses incurred by the City Attorney on behalf of the City:

- a) Mileage at the City rate to and from locations where services on behalf of the City are performed, including parking fees.

- b) Meals purchased by the City Attorney when it is not reasonable, because of City business, for the City Attorney to dine at home.
- c) Printing, photocopying and telephone charges at the actual cost thereof.
- d) An annual subscription to the official City newspaper.

These expenses will be billed monthly and accompany monthly billing statements.

2.07. Billings by the City Attorney to the City for services will be on a monthly basis, except as may otherwise be agreed upon by the parties as to the retainer fee as set forth in Section 2.02.

2.08. The retainer fee and hourly rates specified in this Agreement will remain in effect until December 31, 2016.

2.09. The City Attorney will act as approving bond counsel for the City if so requested by the City. These services are not part of this Agreement, but may be made such by mutual agreement of the parties. In the event such services are desired by the City, fees for these services will be those usual and customarily charged by the firm of Kennedy & Graven, Chartered.

2.10. It is the intention of the parties and it is hereby agreed by the City Attorney, that the term "primary legal counsel" as used herein means and refers to Michael T. Norton who will, except in the case of extraordinary circumstances involving disability, unavoidable conflict or other good and substantial reasons, perform, supervise and be responsible to the City for the legal services to be provided, with Troy J. Gilchrist as Assistant City Attorney.

2.11. This Agreement may be amended by the parties at any time by mutual consent.

2.12. This Agreement may be terminated by the City or by the City Attorney upon 60 days written notice by either party. In the event of termination, the City may request the City Attorney to assist with designated "transition" services subsequent to the effective date of termination, which shall be billed at the then applicable rate as described in Section 2.04 above.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed by their proper officers and representatives as of the day and year first above written.

CITY OF CRYSTAL, MINNESOTA

By \_\_\_\_\_  
Jim Adams  
Its Mayor

By \_\_\_\_\_  
Anne Norris  
Its City Manager

KENNEDY & GRAVEN, CHARTERED

By \_\_\_\_\_  
Michael T. Norton  
City Attorney



## Memorandum

DATE: November 10, 2014  
TO: Mayor and City Council  
FROM: Anne Norris, City Manager *alw*  
SUBJECT: Prosecuting Attorney Services Agreement

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### **BACKGROUND**

The City's current contract with MacMillan, Wallace & Athanases, P.A. for prosecuting attorney services expires December 31, 2014. Current hourly rates are \$140, with an annual cap of \$115,000.

Attached is a proposed three year contract with the following rates:

	<u>2015</u>	<u>2016</u>	<u>2017</u>
Hourly rate	\$140	\$145	\$150
Annual cap	\$130,000	\$135,000	\$140,000

The annual cap increase is largely due to changes in how the courts schedule cases that require attorneys to be at the court for longer periods of time, rather than only for the time for specific cases.

At its November 6 meeting, the Council continued consideration of this agreement pending discussion at the November 18 work session before the regular meeting.

### **RECOMMENDATION**

Police department staff is very satisfied with the prosecuting services provided by Peter MacMillan and other staff at MacMillan, Wallace & Athanases, P.A.. I recommend approval of a three year contract for prosecuting attorney services with MacMillan, Wallace & Anathases, P.A. for 2015-17.

Attach:

**LEGAL SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Crystal, a Minnesota municipal corporation, hereinafter referred to as "Crystal" and MacMillan, Wallace & Athanases, P.A., a Minnesota professional corporation hereinafter referred to as "Attorney" or "law firm".

WHEREAS, the parties hereto desire to enter into an agreement regarding prosecution services;

NOW, THEREFORE, in consideration of the mutual promises of the parties, Crystal and Attorney hereby agree:

1. Crystal hereby retains said law firm to perform all of the municipal criminal prosecution work for Crystal for the three year period commencing January 1, 2015, and said law firm agrees to do so.
2. For said services, Crystal agrees to pay Attorney at the rate of One Hundred Forty Dollars (\$140.00) per hour during the year 2015, One Hundred Forty-five Dollars (\$145.00) per hour during the year 2016 and One Hundred Fifty Dollars (\$150.00) per hour for the balance of the term of the contract, plus costs, such payment to be on a monthly basis as billed.
3. The attorney fees will not exceed \$130,000.00 in 2015, \$135,000.00 in 2016 or \$140,000.00 per calendar year for the balance of the term of the contract. It is understood and agreed that the parties will in good faith adjust said cap in the event of unforeseen changes in attorney time requirements.
4. The parties may by mutual consent amend this agreement at any time.

IN WITNESS WHEREOF, the parties have, on the date first above written, executed this Agreement in duplicate, each of which shall be considered an original.

THE CITY OF CRYSTAL

MacMILLAN, WALLACE & ATHANASES, P.A.

By: \_\_\_\_\_  
Jim Adams  
Its Mayor

By: \_\_\_\_\_  
Peter A. MacMillan  
Secretary/Treasurer

By: \_\_\_\_\_  
Anne Norris  
Its City Manager