

REQUEST FOR COUNCIL ACTION

SUBJECT: Adoption of a resolution hiring a legal firm to assist the City with regards to water rights.

SUMMARY: Approval of the resolution will retain Mabey Wright and James, PLLC to assist the City with regards to the due diligence, potential purchase, and other legal applications associated with water rights.

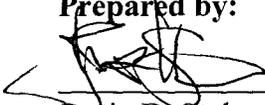
FISCAL IMPACT: Contract is based upon an hourly rate for work performed. Funds are available in the Water Resources budget.

STAFF RECOMMENDATION: Staff recommends approval of the contract with Mabey Wright and James, PLLC for legal assistance with regards to water rights.

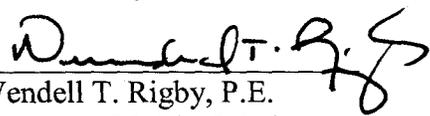
MOTION RECOMMENDED:
"I move to adopt Resolution No. 15-153 authorizing the Mayor to execute a contract with Mabey Wright and James, PLLC for legal assistance with regards to water rights.

Roll Call vote required.

Prepared by:


Justin D. Stoker, P.E.
Deputy Director of Public Works

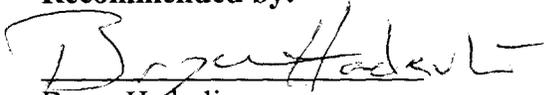
Reviewed by:


Wendell T. Rigby, P.E.
Director of Public Works

Reviewed as to Legal Sufficiency:


Darien Alcorn
Acting City Attorney

Recommended by:


Bryce Haderlie
Interim City Manager

BACKGROUND DISCUSSION:

As the Secondary Water Master Plan nears completion, and with the on-going project to charge up and test the previously installed secondary water systems within the City, there is a need for legal assistance with regards for the due diligence and potential acquisition of water rights for secondary water within the City.

Water right law in the state of Utah is a very specialized field that requires the assistance of specific attorneys knowledgeable and experienced in the field.

Based upon the recommendations from various sources, several attorneys were consulted with regards to their availability, their experience in working with water rights, and their billing rates. References were requested and verified to ensure that the City is contracting with an attorney that could best meet the City's needs.

Based upon the results of the consultations, billing rates, and reference checks, the attorney firm of Mabey Wright and James was selected. Their contract is presented for approval.

Attachments:

Resolution
Engagement Letter

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-153

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH MABEY WRIGHT AND JAMES, PLLC TO ASSIST THE CITY WITH VARIOUS LEGAL TASKS RELATED TO WATER RIGHTS

Whereas, the City of West Jordan desires to implement the City’s Secondary Water Master Plan; and

Whereas, the City Council has previously approved a project to begin testing the existing “dry pipe” secondary water systems in the City; and

Whereas, the City of West Jordan desires to provide a cost effective secondary water supply to the residents.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH THAT:

Section 1. The Mayor is hereby authorized to execute the contract with Mabey Wright and James, PLLC for legal services related to water rights.

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 12th day of August 2015.

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS
City Recorder

Voting by the City Council	"AYE"	"NAY"
Jeff Haaga	_____	_____
Judy Hansen	_____	_____
Chris McConnehey	_____	_____
Chad Nichols	_____	_____
Sophie Rice	_____	_____
Ben Southworth	_____	_____
Mayor Kim V. Rolfe	_____	_____

CLIENT AND ATTORNEY AGREEMENT
(Hourly Rate)

THIS CLIENT AND ATTORNEY AGREEMENT is entered into between City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088 ("Client"), and MABEY WRIGHT & JAMES, PLLC (the "Firm").

1. The Client hereby retains the Firm to represent Client and perform legal services as may be requested by Client, and specifically as follows: Advise and consult with the City regarding the possible purchase of water rights (the "Engagement").
2. The Client agrees to provide the Firm promptly with all relevant information regarding the Engagement.

A. Unless otherwise agreed, the Engagement will consist of and be limited to representing Client in connection with the Engagement but may be expanded as requested from time to time by Client.

B. A retainer of \$0 is required for the Engagement.

C. It is understood and agreed that the Client will be billed monthly for services rendered and that payment is due upon receipt of each billing statement. An attorney from the firm is the primary attorney on the Engagement. John Mabey's hourly rate is \$250. Jon Schutz's hourly rate is \$200. Future associate hourly rate is \$150. Others in the Firm at lesser hourly rates will be used where beneficial for legal research and other matters.

D. Client understands and agrees that the Engagement concerns matters and/or issues that pre-date the Engagement and that neither the Firm nor any of its attorneys have represented Client concerning the subject matters of the Engagement prior to the date of this Agreement and that neither the Firm nor any of its attorneys are responsible for actions taken by Client or others concerning the subject matter of the Engagement.

3. Generally, confidential communications between individuals and their attorney are privileged from disclosure if kept confidential. There are significant limitations on this privilege, however, particularly where the Client is a corporation or other legal entity. In many instances, action by the Client may waive the privilege, such as in making filings with governmental agencies. The Client acknowledges that the foregoing is not a complete discussion of this privilege, but should help alert Client to the fact that there are limitations on the privilege. Client agrees to keep confidential all communications with the Firm.
4. Because of the complexity of the application of the law to specific circumstances, opinions of the Firm will be rendered only in writing, signed by an attorney from the firm. Any oral communication by any attorney of the Firm as to the law and its applicability are tentative comments, expressed with a view toward determining whether the Client deems it worthwhile economically or otherwise to seek a formal, written opinion.
5. The Firm does not give tax or securities advice or counsel to our clients. Client should seek tax or securities professionals for such advice or counsel. Judgments and settlements paid or

received may have tax or other consequences. The Firm will recommend tax or other counsel for consultation if requested by Client.

6. Litigation in Utah State Courts: In the event the Engagement involves litigation, or should Client request that the Firm represent Client in litigation, Client acknowledges and agrees to the following:

A. The Utah Rules of Civil Procedure were amended in 2011, effective for cases filed after November 1, 2011. The new rules were adopted in an effort to reduce the cost of litigation by limiting discovery and the use of experts. The new rules specify that cases must be filed within one of three possible damages "tiers": (1) \$50,000 or less, (2) more than \$50,000 and less than \$300,000, and (3) \$300,000 and greater. Cases seeking relief other than damages are generally considered to be Tier 2 cases.

B. A complaint, cross-claim, counterclaim or third-party complaint must specify either a damages figure or one of the three damages tiers.

C. A pleading that qualifies for tier 1 or tier 2 discovery shall constitute a waiver of any right to recover damages above the tier limits specified in Rule 26(c)(3), unless the pleading is amended under Rule 15. Utah R. Civ. P. 8(a).

D. Special damages means particular items of damages that result from circumstances peculiar to the case at hand. Special damages must be specifically stated. Utah R. Civ. P. 9(g).

E. General damages are those which, from the common sense and experience of mankind, would naturally be expected to result from that type of wrong to any person so injured.

F. The Firm abides by the Utah Standards of Professionalism and Civility which, among other things, require that the Firm reserves the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing Client's rights, such as extensions of time, continuances, adjournments, and admissions of facts. The Firm endeavors to agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect Client's legitimate rights.

G. Pursuant to both state and federal rules of civil procedure, when litigation is reasonably likely, Client has a duty to preserve all evidence which could be relevant to the suit. This duty to preserve evidence is broad and extends to all documents, regardless of whether the document is stored electronically or in hard-copy and regardless of the type of document. For example, reports, spreadsheets, photographs, videotapes are all considered documents that must be preserved. Furthermore, the duty to preserve this documentary evidence extends to all documents in existence as of the time you reasonably anticipate litigation.

Parties are also required to identify, preserve, and collect electronically stored information ("ESI") very early in a case. The rules affect all computer systems of parties involved in litigation. Client must preserve all ESI concerning the Engagement, and specifically concerning any possible or threatened litigation. ESI includes e-mails, voice-mails, instant messages, text messages, documents, spreadsheets, databases, file fragments, metadata, digital images, and

digital diagrams. It can be stored in every type of electronic media including hard drives, thumb drives, computers, handheld devices, backup tapes, and optical disks.

7. Out-of-pocket expenses and costs incurred by the Firm in representing the Client's interests, including expenses for filing and service of documents, express courier and delivery, travel and lodging, reproduction, court reporting and transcripts, investigation, and expert witnesses, will be paid by the Client when statements therefor are rendered. The Client will not pay for faxes.
8. In matters involving disputes or litigation with third parties, the Client acknowledges that in some cases the court may award attorneys' fees to one party and order the other party to pay the amount awarded, but that is solely in the discretion of the court and cannot be relied on with certainty. In other cases, if there is a settlement agreed to by both parties, the settlement agreement may provide that one of the parties will contribute to the other party's legal expenses. It is impossible to predict whether either of the above situations will materialize. Therefore, no representation is made that any contribution by the other party will be applied toward the Client's legal expenses or that the amount awarded will be sufficient to reimburse the Client for all amounts payable to the Firm.
9. The Firm will forward to the Client copies of pertinent correspondence, pleadings, and other material.
10. The Firm cannot and does not guarantee that any specific result desired by the Client will be achieved.
11. The Firm will keep all completed matter files until conclusion of the matter and then will deliver the files to Client for proper storage.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK INDEPENDENT COUNSEL.

CLIENT:

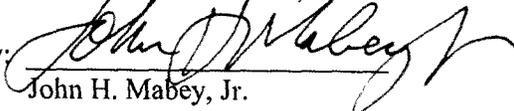
CITY OF WEST JORDAN

By _____

Its _____

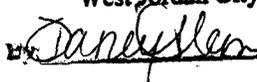
Date: _____

MABEY WRIGHT & JAMES, PLLC

By: 
John H. Mabey, Jr.

Date: 7-23-15

APPROVED AS TO LEGAL FORM
West Jordan City Attorney

 Date: 7-30-15