



To: Mayor and City Council

From: Michael Kovacs, City Manager

Date: March 27, 2024

**Agenda Items:** Consider approval of an engagement agreement with Wolfe, Tidwell & McCoy, LLP., for attorney services.

**Action Requested:** Approval of the engagement agreement and compensation rates therein.

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**Overview & Background:**

Party(ies) responsible for placing this item on agenda: City Manager Michael Kovacs

The proposed engagement will be extremely helpful in facilitating the City's smooth transition from its Interim City Attorney, David Overcash of Wolfe, Tidwell & McCoy LLP to again receiving general counsel services from a City employee. Under the proposed engagement, Mr. Overcash would continue to provide certain specified legal services after stepping down as Interim City Attorney at midnight on April 9, 2024:

- 1) Serving as an Assistant City Attorney to continue processing of various public information requests first received during his Interim City Attorney period, to conclude April 29, 2024, that providing a winding-down/handover period of approximately two weeks;
- 2) Providing, on request from the City, additional legal services relating to the prospective consolidation with Mobile City, should the May 2024 election keep that a live issue, to conclude May 31, 2025, as special counsel to the City on that subject matter;
- 3) After deputization by the City's incoming general counsel, to continue in a special counsel capacity as the Municipal Prosecutor/Deputy City Attorney serving the City's municipal court, on an at-will basis to continue until further notice.

Under Fate Charter Article 4, Sec. 4.04(4), the compensation of any special counsel retained by the City is determined by the City Council. The incoming City Attorney has discussed this plan with staff and endorses this arrangement. The City Attorney would not be substantially restricted from changing course at a later date by entry into this engagement.

**Financial Considerations:** The City's prior in-house counsel had requested the City retain a specialist prosecutor to mitigate workloads; and the City has budgeted an appropriate amount of funds to cover the costs. The proposed rates are identical to the rates paid by the City for the Interim City Attorney services provided by Mr. Overcash to date, and the rates applicable to his prosecutorial work since August 2023. City staff believes these rates provide a good value to the City for the quality of services received. There are no provisions for severance pay or termination penalties of any kind should the City desire to move in a different direction at a later date.

**Supporting Documents:** Proposed Engagement agreement.

## **ATTORNEY EMPLOYMENT AGREEMENT**

### **LAW FIRM RETAINED:**

This Agreement is entered into between the City of Fate, Texas, a home rule municipality (“Client”), and WOLFE, TIDWELL & MCCOY, LLP. (the “Firm”), to be effective on the date executed by Client below (this “Agreement”), and shall replace and supersede all prior attorney-client agreements between Client and Firm.<sup>1</sup> Client retains the Firm for a limited term of special counsel services on specific matters enumerated herein, and for an ongoing term of service as Municipal Prosecutor for the City of Fate, Texas, to represent the State of Texas in the Fate Municipal Court and advise the City on matters related to the performance and duties of that office.

The Firm agrees to provide legal services in connection with the matter set forth above, beginning on April 15, 2024, contingent upon the Firm’s timely receipt of an executed copy of this Agreement. The Firm is not undertaking any other legal, financial or tax-related matters, including but not limited to the state or federal tax handling of the value of any resolution of this matter facilitated by the Firm on the Client’s behalf (i.e., tax handling of a settlement payment). The Firm shall not provide any legal services or advice relating to the rights of the Client or the application of the laws of any state other than Texas.

While Client is entitled to define the general objectives to be pursued by the Firm under this Agreement, such as the preferred approach to criminal enforcement of the Client’s ordinances through its municipal court, Client agrees to rely on the Firm’s legal expertise and recognize that the Firm must retain sole discretion over the means and methods employed in pursuit of the Client’s interests. Notwithstanding any provision of this Agreement or other Client enactment or policy, in the course of discharging duties of municipal prosecutors which are established or governed by Texas law, the Client shall not interfere or attempt to improperly influence the prosecutorial discretion over cases and charges within the prosecutor’s jurisdiction. This includes, but is not limited to, plea negotiation strategy, trial strategy, the time required to adequately prepare for required court appearances, and allocation of the Firm’s personnel time to Client’s matter during the representation.

### **CORE OBJECTIVES OF REPRESENTATION:**

The Client and the Firm mutually agree that the goal of entering into this Attorney Employment Agreement (“Agreement”) is to employ the legal expertise of the Firm, and more particularly partner-attorney David Overcash, to

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<sup>1</sup> Including, without limitation, that Attorney Employment Agreement between them dated August 10, 2023, as to which

serve as the Municipal Prosecutor for the City of Fate, Texas, representing the State of Texas on behalf of the Client in all Texas criminal courts in which the Client's prosecutors have power to appear. Also, as Mr. Overcash is concluding a term of service as Interim City Attorney immediately prior to the entry into this Agreement, the Firm will provide certain enumerated transitional services as outlined below as special counsel to the Client, which shall conclude April 29, 2024.

MUNICIPAL PROSECUTOR (ONGOING):

The Firm agrees to perform all duties and obligations associated with the position of municipal prosecutor for the City of Fate, Texas, to be performed primarily by David Overcash, but as may be supplemented by other qualified attorneys of the Firm on an as-needed basis. This paragraph of the Agreement shall be of no effect, and no member of the Firm shall perform any duties as the Client's municipal prosecutor, unless and until the members of the Firm to provide these services are first deputized by the City Attorney. The City Attorney's signature to this Agreement below after qualification for that office on April 10<sup>th</sup>, 2024 shall constitute designation of Firm partner-attorney David Overcash as a Deputy City Attorney of the City of Fate, to continue indefinitely or until revoked. Mr. Overcash may use the title of "Municipal Prosecutor" or "Deputy City Attorney" in performing these services for the Client. Use of any other attorney to perform any municipal prosecutor services offered by the Firm under this Agreement is subject to consultation with, and consent of, the Client's City Attorney and appropriate memorialization of the deputization of such personnel. The appointment of Mr. Overcash and the Firm to serve as Municipal Prosecutor for the City of Fate shall last indefinitely, unless revoked by subsequent written directive signed by the City Attorney, or until the termination of this Agreement.

SPECIAL COUNSEL SERVICES (LIMITED TRANSITION PERIOD):

The Client is entering an engagement contract for a new City Attorney, whose term of service is to begin on April 10, 2024. Accordingly, effective at 11:59 PM on April 9, 2024, Mr. Overcash shall no longer hold the title City Attorney and the Firm shall cease providing any services in association with its Agreement with Client dated August 10, 2023, and thereafter the Client-Firm relationship shall be controlled only by this Agreement and any subsequent engagements which might be later entered into in writing. All responsibilities associated with the office of City Attorney shall be performed by others beginning April 10, 2024, except as set forth in this Agreement.

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Client and Firm both agree that all obligations have been satisfactorily discharged.

During the time period beginning at 12:00 AM Monday, April 10, 2024 until April 29, 2024, the Firm shall provide limited transitional legal services for Client as special counsel supporting the new City Attorney, to consist only of the following:

- 1) Consultation, legal analysis, and drafting correspondence for public information requests (“PIRs”) received by the Client from the dates August 10, 2023, through April 14, 2024, including preparation and issuance of any associated requests for Attorney General decisions.
- 2) Consultation regarding initial intake and material assembly components of PIRs received from the dates April 14, 2024 through April 29, 2024. The Firm shall not be responsible for issuing any final correspondence to requestors, the Texas Attorney General, or any other party as pertains to PIRs received on or after April 15, 2024, and compliance with any deadlines shall therefore be the responsibility of the Client.
- 3) Receipt, processing, and closure correspondence of decisions from the Texas Attorney General and which are received on or before April 29, 2024 for PIRs previously processed by the Firm. Following that date, any correspondence directed to the Firm relating to Client PIR matters will be forwarded to the serving City Attorney and City Secretary for processing, and the Firm shall not perform substantive legal work on such matters.
- 4) Until April 29, 2024, to perform any requested legal research, drafting memoranda, and consultation regarding transitional matters and legal services performed during David Overcash’s term of service as Interim City Attorney which shall conclude April 10, 2024.
- 5) Until May 31, 2025, to perform any requested legal research, drafting memoranda, and consultation regarding potential consolidation with the municipality of Mobile City, Texas, should the May 2024 election held by Mobile City conclude with a result in favor of consolidation with the City of Fate.

The Attorney agrees to provide legal services in connection with the specific assignments listed above after the effective date of this Agreement as an independent contractor and legal consultant, but shall otherwise not have any obligations or duties as legal counsel to Client. The Attorney is not undertaking any other legal, financial, criminal law, or tax-related matters, except as expressly set forth herein. Should the appointment of any Firm attorney serving as municipal prosecutor as a deputy city attorney be revoked, that person shall immediately cease any official actions in that role. The Firm shall operate independently of that office in the City Attorney in provision of municipal prosecutor under this Agreement, and shall only be subject to the Client’s personnel policies as may be expressly agreed by a separate writing.

The undersigned Attorney assumes full responsibility for the quality of Services performed and will report to the City Manager and/or the designees of the City Manager on day-to-day matters, and to the City Council as the control group of Client.

FEE FOR SERVICES

In consideration of legal services rendered by the attorneys and staff of the Firm to the Client for the Services defined above, the Client shall pay to the Attorney fees based on the following rates for services actually performed.

Partner-attorney time: \$200/hour

Attorney time: \$160/hour

Paralegal/legal assistant time: \$95/hour

The Firm guarantees provision of services at these rates through September 30, 2025. Should this engagement continue, the rates stated above shall increase by a maximum of 4% annually as a cost-of-living/inflation adjustment, so long as the Firm provides written notice to the City's budget director on or before July 31 of the rates to take effect on October 1 of the year such increase is to be effective. The Firm's applicable rates may also be modified by subsequent written agreement.

CLIENT PAYS COSTS AND EXPENSES:

The Client further agrees to assume and pay for all reasonable out-of-pocket expenditures incurred in connection with this engagement. These shall include, without limitation, filing fees, court costs, court reporter and transcript preparation fees, witness fees, expert fees, travel, sheriff and constable fees, expenses of depositions, investigative expenses, other incidental expenses, facsimiles, on-line legal research charges, photocopy charges, postage and mileage outside the City of Fate, Texas at the current travel reimbursement rate for the State of Texas as determined by the Internal Revenue Service.

ALL CHARGES ITEMIZED:

The Attorney will itemize all of the services rendered and the time actually expended in rendering those services in a monthly invoice. The Attorney will also account for all out-of-pocket disbursements and expenses actually incurred.

TERMINATION AT WILL OF BOTH PARTIES:

The Client's employment of the Attorney is at the will and discretion of the Client. The Attorney's continued representation of the Client is at the will and discretion of the Attorney; providing, however, the termination of the attorney-client relationship will not occur under circumstances that prejudice the fundamental rights of the Client.

AUTHORITY TO CONTRACT; NO CONFLICTS; ACKNOWLEDGMENTS:

The Client's representative signing below represents that he has authority to enter into this Attorney Employment Agreement. Client enters this Agreement with the knowledge that Attorney may also provide legal services for other parties, including but not limited to other municipalities or governmental entities in Texas. Attorney acknowledges that it will be of paramount importance to recognize and disclose any conflict of interest which might arise during the term of this Agreement. The Firm represents that there are no known actual or potential conflicts of interest relating to this engagement as of the date of its execution. Client agrees that this Agreement, standing alone, shall not serve as the basis for any conflict of interest precluding the Firm's representation of other clients, including without limitation other municipalities, with respect to any matter involving the Firm's attorneys after April 29, 2024, other than those substantially related to prospective consolidation with Mobile City.

BINDING CONTRACT:

This Contract is binding upon the Client and the Attorney and their successors, executors, administrators and heirs and may not be altered or amended except in writing, signed by the Client and the Attorney.

AGREED BY FIRM:

\_\_\_\_\_  
Date: \_\_\_\_\_  
David Overcash  
Partner  
Wolfe, Tidwell & McCoy, LLP

AGREED BY CLIENT:

\_\_\_\_\_  
Date: \_\_\_\_\_  
Michael Kovacs  
City Manager  
City of Fate, Texas

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**APPROVAL OF LIMITED SPECIAL COUNSEL APPOINTMENT:** By my signature below, I approve of the retention of the Firm for the special counsel services enumerated herein as a temporary assistant city attorney, with such services to conclude April 29, 2024, with the exception of the Mobile City consolidation matter which may continue through May 2025.

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Date: \_\_\_\_\_  
Cynthia Kirchoff  
City Attorney  
City of Fate

**DEPUTIZATION OF MUNICIPAL PROSECUTOR:** By my signature below, I hereby deputize and authorize David Overcash, a partner of the Firm and licensed Texas attorney in good standing, to serve as a Deputy City Attorney of the City of Fate, Texas, to serve as the primary Municipal Prosecutor in its courts, to continue in that capacity until such time as this Agreement is terminated or such deputization is revoked by a written instrument signed by the City of Fate City Attorney. This appointment does not limit the Client or City Attorney from use of other qualified legal counsel as deputy city attorneys, but unless such additional personnel are members of the Firm, the Firm shall not have any supervisory responsibilities for any prosecutorial actions taken by such additional deputy city attorneys.

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Cynthia Kirchoff  
City Attorney  
City of Fate

Date: \_\_\_\_\_

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