



## AGENDA MEMORANDUM

*City Manager*

**Regular Meeting Date:** June 3, 2020

**To:** City Council

**From:** Charles T. Chapman IV, City Manager  
Roger Reinke, Assistant City Manager  
Denise Matson, Human Resources Director

**Date:** May 22, 2020

Legislative  Quasi-Judicial

**SUBJECT:**  
Provision of legal services to the City.

**SUMMARY:**  
Options for the future provision of legal services to the City.

**BACKGROUND:**  
Section 2.11 of the Charter of the City of Naples provides: "The council may employ an attorney-at-law to be known as city attorney, who shall perform such duties as directed by the city council for a term and at compensation to be fixed by council."

The City of Naples is a Municipal Corporation with an annual budget in excess of \$150 million, employing over 450 people, operating a police department, fire department, water utility, parks and recreation facilities, a municipal dock, city pier, providing other services, and maintaining over 100 miles of public right of way, roads and sidewalks. The City is bound by over 350 contracts and interlocal agreements that expire, change, and may be cancelled or extended, with new contracts to be drafted, negotiated, and agreed upon. Local laws are adopted and enforced compelling or restricting certain activities with enforcement by police officers, code enforcement officers, court actions, or other means. The City itself must comply with applicable laws and rules enacted by the State and Federal governments. The governing body meets regularly taking actions on a scheduled agenda with a variety of items that include quasi-judicial determinations. All of this creates a substantial risk for litigation and significant need for legal advice and counsel. The City Attorney mission statement:

"The mission of the City Attorney is to provide legal counsel to the City Council, Advisory Boards and City staff on all matters involving City legal affairs in a thorough and proficient manner and to prosecute and defend vigorously, litigation before judicial and administrative agencies."

On April 15, 2020, City Council discussed the provision of legal services to the city and directed the City Manager to provide additional information, including data from the Florida League of Cities regarding comparable cities' legal representation, and identify firms that may be able to perform an executive search for an "In-House" City Attorney.

*Ethics above all else... Service to others before self... Quality in all that we do.*

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The following options were discussed:

1. Continuing the Contractual Relationship with Roetzel and Andress
2. Hiring “In-House” Counsel
3. Soliciting Legal Services via Request for Proposal

The City of Naples last employed an “In House” City Attorney in 1996. The City Attorney department in the 1996 budget of the City included a City Attorney, Legal Assistant, and Legal Secretary. The total expenditure budget of the City at the time was \$45 million, less than one third of the current budgeted expenditures of over \$150 million.

Roetzel & Andress has provided City Attorney services since 1997, when the firm replaced the “In House” City Attorney at the direction of City Council. The firm has 23 years of experience serving as the “City Attorney”, and while Jim Fox has been filling the seat since January of 2019, he has been involved in City legal matters since 2003.

### **Legal Services**

Examples of General Legal Services:

- Counseling and advice to the City Council, the City Manager and designated staff members
- Attendance at City Council meetings, Planning Advisory Board meetings, Code Enforcement Board meetings and, as necessary (through request of Mayor, Council or City Manager), specified board or committee meetings
- Orientation sessions for new board members on Government in the Sunshine and Ethics laws
- Annual assessment of new legislation
- Assistance in review and preparation of agenda items for meetings
- Preparation or review of resolutions, contracts, and ordinances
- Representation in internal administrative matters and proceedings
- Planning Advisory Board services
- Providing advice and opinions
  - Planning, zoning, and land use law
  - City Charter and City Code issues
  - Contract law and procurement

While the City Attorney may provide advice on a wide range of issues, some legal issues may be very complex. Examples of Special Legal Services:

- Bond Counsel
- Pension Law
- Labor and Employment Law
- Real Estate Transactions
- Litigation
- Risk Management
- Workers Compensation

**Budget and Expense**

Legal expenses of the city will vary depending upon factors that are largely out of the control of the City Attorney. These factors include litigation filed by others against the city, litigation directed by City Council, the type and venue of the action.

The annual budget of the City Attorney Department includes the wages and personal expenses of one employee, an Executive Assistant, operating expenses, the cost of the city attorney contract, litigation expense, etc. Ten years of City Attorney Department budget and actual expenditures are:

001-02 City Attorney Department			
FY	Budget	Actual	
2019-20	\$ 839,320	\$ 565,896	to-date
2018-19	\$ 652,835	\$ 734,640	
2017-18	\$ 610,461	\$ 733,725	
2016-17	\$ 611,907	\$ 605,971	
2015-16	\$ 551,930	\$ 488,891	
2014-15	\$ 526,411	\$ 451,742	
2013-14	\$ 524,567	\$ 485,690	
2012-13	\$ 522,310	\$ 557,275	
2011-12	\$ 503,828	\$ 491,786	
2010-11	\$ 603,164	\$ 382,523	

The City Attorney Contract provides for 32 hours per week (1,504 hours annually) of general services at an annual cost of \$280,000, an effective hourly rate of \$186.17. This annual fee has not changed since FY2015 and no invoices have been submitted requesting payment for additional hours, effectively reducing the rate further.

City Attorney Contract Cost 001-02-01-514-531010			
FY	Budget	Actual	
2019-20	\$ 285,000	\$ 163,333	to-date
2018-19	\$ 285,000	\$ 279,800	
2017-18	\$ 285,000	\$ 280,045	
2016-17	\$ 285,000	\$ 280,000	
2015-16	\$ 285,000	\$ 279,999	
2014-15	\$ 280,000	\$ 234,299	
2013-14	\$ 280,000	\$ 270,392	
2012-13	\$ 280,000	\$ 328,193	
2011-12	\$ 245,000	\$ 229,033	
2010-11	\$ 270,000	\$ 214,680	

The budget and expense in the Litigation Account in the City Attorney Department budget varies annually. Litigation fees may be paid to the firm and to other attorneys that are not associated with Roetzel and Andress.

Litigation 001-02-01-514-532100			
FY	Budget	Actual	
2019-20	\$ 400,000	\$ 333,380	to-date
2018-19	\$ 200,000	\$ 358,838	
2017-18	\$ 160,000	\$ 298,224	
2016-17	\$ 160,000	\$ 195,037	
2015-16	\$ 120,000	\$ 108,335	
2014-15	\$ 100,000	\$ 66,683	
2013-14	\$ 100,000	\$ 84,307	
2012-13	\$ 100,000	\$ 43,572	
2011-12	\$ 100,000	\$ 120,787	
2010-11	\$ 160,000	\$ 32,867	

**OPTIONS FOR CITY COUNCIL CONSIDERATION**

**Continuing Contractual Relationship with Roetzel and Andress**

Roetzel & Andress has provided City Attorney services since 1997, when the firm replaced an “In House” City Attorney at the direction of City Council. The firm has 23 years of experience serving as the “City Attorney”, and while Jim Fox has been filling the seat since January of 2019, he has been involved in City legal matters for since 2003. This tenure provides a level of institutional knowledge that aids in anticipating issues and risks and how to mitigate them. Mr. Fox’s credentials and curriculum vita are provided in the packet materials. Recent Council action regarding the agreement include:

- On October 4, 2017, City Council approved an Agreement for provision of legal services with the law firm of Roetzel & Andress through September 30, 2019 that included two annual renewal options for FY2019-20 and FY2020-21.
- On December 19, 2018, City Council approved an amendment to the Agreement changing the primary attorney from Robert D. Pritt to James D. Fox effective January 15, 2019.
- On May 15, 2019, City Council approved a one-year renewal of the Agreement, through September 30, 2020 (FY2019-20). One additional year renewal option remains (FY2020-21). If no action is taken to renew or extend the agreement it will expire on September 30, 2020.

**Hiring “In-House” Counsel**

The City of Naples last employed an “In House” City Attorney in 1996. The City Attorney department in the 1996 budget of the City included three employees, a City Attorney, a Legal Assistant, and a Legal Secretary. The total expenditure budget of the City at the time was \$45 million, less than one third of the current budgeted expenditures.

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A lone attorney filling the role of “In House” Counsel will not be sufficient to manage the legal services workload in the City of Naples. Law is a complex practice often requiring specialization (Bond Counsel, Pension Law, Labor and Employment Law, Litigation, etc.). An “In House” Counsel will also require assistance of additional employed or contracted attorneys who specialize in areas outside of the particular discipline one staff City Attorney may possess.

The Florida League of Cities included a question about “In-House” legal counsel in a 2019 survey of Florida cities. The League provided the survey results for cities with a population between 10,000 and 30,000. Of the 79 cities in the category, eight (10.12%) employed an “In-House” attorney. Seven of the 79 cities reported expenditures over \$100 million, of these five contracted for legal services and two had “In House” counsel.

In the event Council desires to hire an “In House” City Attorney, the Human Resources staff has the capability to conduct a search. However, as in the case of the City Manager, this employee is a direct report to City Council and Council may wish to consider engaging an executive recruiting firm to advertise and conduct the search under Council direction. Due to requirements for Florida Bar licensing, recruitment beyond Florida would most likely be limited. The process may be expected to take approximately four months to make a selection and negotiate an employment agreement, with perhaps an additional month for the selected candidate to begin employment.

#### **Soliciting Contractual Legal Services via Request for Proposal**

On April 15, 2020, City Council suggested having the City Manager identify firms that would be able to perform an executive search for an “In-House” City Attorney.

Procurement of professional services by the city is regulated by law. The purpose and the process of a solicitation requesting proposals for city attorney services differs substantially from invitations to bid. An invitation to bid is used when there is no substantive difference among product and services that meet specifications, and the award is based solely on price. Some services, such as legal services, are not evaluated only on price. Evaluation is based on the criteria in the solicitation as the quality and quantity of services provided may differ, establishment of the appropriate criteria are critical. To the extent that price may be one of the criteria, firms may offer a low initial rate with the expectation of rate increases over time.

In the event Council chooses to initiate a search for a firm to perform city attorney services, city staff has the capability to advertise a request for proposals consistent with city procurement policies and procedures. This would be a joint effort of Purchasing and Human Resources staff. As the firm would serve City Council, Council may wish to consider engaging an executive recruiting firm to advertise and conduct the proposal solicitation under Council direction and based upon criteria identified by City Council.

If City Council desires to choose to use a contracted recruiting firm, the following are alternatives for scope of service. Three municipal recruiting firms that work in Florida were contacted for information. They were not asked to submit proposals for services. A summary of the information is:

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- Firm A performs recruiting for “In-House” city attorney candidates and does not recruit firms for contract services. Recruiting is generally limited to Florida because of Florida Bar licensing requirements.
  - Firm B will recruit for an “In-House” candidate or a firm (Parallel Path). This recruiter does not recommend simultaneous recruitments (“In-House” and firm) as this may cause qualified individuals or firms to refrain from participating due to the cost and added uncertainty of a two-pronged search. If “In House” counsel is being considered, this firm recommends that the “In-House” search be conducted first. If that is unsuccessful, a decision could then be made if firm proposals should be accepted. Alternatively, if “In-House” counsel is not being considered, a firm recruitment may be initiated immediately.
  - Firm C will recruit for an “In-House” attorney or a firm and has previously run a dual process (Parallel Path), involving both recruitments, for a city in another state.
  - While specific information regarding cost was not discussed, the cost may be expected to range from \$25,000 to \$35,000, likely more if the simultaneous recruitment option is chosen.
  - It is suggested City Council decide to choose either an “In House” City Attorney search or perform a search for a contracted firm. Following both paths at the same time may require additional time in the process.

### **RETURN ON VISION (ROV)**

This action relates to Vision Goal:

- Maintain and enhance governance capacity for public service and leadership through enacting strategies to ensure a well-run local government and providing leadership on larger issues that impact the quality and future of Naples.

### **RECOMMENDED ACTION**

Discussion and direction. Available options include:

1. Continuing the Contractual Relationship with Roetzel and Andress
2. Hiring “In-House” Counsel
3. Soliciting Legal Services via Request for Proposal

### **ATTACHMENTS**

Roetzel and Andress Legal Service Agreement expiring September 30, 2019  
Roetzel and Andress Legal Service Agreement extending to September 30, 2020  
Curriculum Vitae of current City Attorney, James D. Fox, Esq.  
2019 Florida League of Cities City Attorney Survey Results  
Code of Ordinances Procurement Procedures  
Sample RFP for Professional Legal Service – Dania Beach  
([Electronic Version of Dania Beach Solicitation](#))