

# City of South Daytona

## Office of the City Manager

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**AGENDA ITEM**  
# H16 DATE 12/18/2020

### MEMORANDUM

**To:** The Honorable Mayor and Members of the City Council

**From:** James L. Gillis, Jr., City Manager *[Signature]*

**Re:** Consideration of Approving a Legal Services Agreement with the Vose Law Firm to Act in the Capacity of City Attorney for the City of South Daytona

**Date:** December 4, 2020

On October 13, 2020, the City Council authorized the release of a Request for Proposals (RFP) for contractual legal services to act in the capacity of City Attorney. The City received a total of six proposals in response to our request. Those firms and attorneys who submitted a proposal included (in alphabetical order):

- Bell and Roper, P.A.
- Douglas Law Firm
- Ezell Law Firm, P.A.
- Fowler, O'Quinn, Feeney & Sneed, P.A.
- Scott E. Simpson, P.A.
- Vose Law Firm, LLP

On November 10, 2020, the City Council authorized the formation of a Selection Committee whose primary purpose was to evaluate and rank the proposals received. The Selection Committee was comprised of the following members:

- Chairperson Brandon Young (Councilmember, Seat 1)
- James L. Gillis, Jr. (City Manager)
- Mark Cheatham (Police Chief)
- Laureen Kornel (Community Development Director)
- Ray Donadio (Attorney at Shuffield & Lowman and Legal Counsel for Port Orange/South Daytona Chamber of Commerce)

The Selection Committee met on December 2, 2020 to publicly discuss our individual evaluations. This meeting was advertised as open to the public and a recording with written minutes were taken. At the meeting, the Selection Committee decided that oral presentations were warranted to complete our evaluations. On December 4, 2020, the top four firms publicly completed their presentations before the Selection Committee. The Selection Committee then convened immediately afterwards and deliberated on the final rankings.

The Selection Committee, after careful deliberation, unanimously selected the Vose Law Firm as the top ranked firm based on their approach, board certified bench, flat rate fee, experience and references.

An agreement for the provision of legal services was drafted and is included in Appendix A of this memorandum for your review. The Legal Services Agreement was presented to the Vose Law Firm for their review as well. The Agreement calls for the Vose Law Firm to provide all legal services, including litigation, for a flat lump sum rate of \$10,000 per month (\$120,000 per year).

The Selection Committee is seeking City Council approval of the Legal Services Agreement with the Vose Law Firm and authorization to have the Mayor and City Manager execute it on behalf of the City. It is important to note that if the City Council votes to approve the Legal Services Agreement in Appendix A and gives authorization to the Mayor and City Manager to execute it as requested, such vote will also authorize giving written notice of the ending of our existing Legal Services Agreement with Scott E. Simpson, P.A. that has been in effect since June 13, 2018.

## **APPENDIX A**

### **LEGAL SERVICES AGREEMENT WITH VOSE LAW FIRM**



## LEGAL SERVICES AGREEMENT

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the **City of South Daytona**, a municipal corporation duly incorporated pursuant to the laws of the State of Florida with administrative offices located at 1672 South Ridgewood Avenue South Daytona Florida 32119 hereinafter referred to as the **CITY**, and the **Vose Law Firm**, a limited liability partnership with administrative offices at 324 West Morse Boulevard Winter Park Florida 32789 hereinafter referred to as the **FIRM**.

**PURPOSE.** The purpose of this Agreement is for the **FIRM** to provide contractual legal services to the **CITY** on an as-needed basis.

**RECITALS.** On October 13, 2020, the City Council authorized the release of a Request for Proposals (RFP) for contractual legal services.

The **FIRM** was one of six respondents who submitted a proposal which were publicly opened at 2:00 pm on Tuesday, November 10, 2020.

On November 10, 2020, the City Council authorized the formation of a Selection Committee to evaluate and rank the submitted proposals.

On December 3, 2020, the Selection Committee, after evaluating the written proposals and oral presentations, unanimously determined the **FIRM** to be the highest ranked.

As a result, the City Council at a regularly scheduled meeting on the 8th day of December, 2020 has authorized staff to award a contract for legal services to the **FIRM**.

**SCOPE OF SERVICES.** The **FIRM** will act in the capacity of City Attorney and will be the primary legal advisor to the City Council, City Manager and staff and also serves as the Board attorney for the Community Redevelopment Agency (CRAG), Planning and Appeals Board (PAB), Parks, Recreation and ADA Advisory Board (PRAAB) and South Daytona Community Trust (SDCT). The **FIRM** is expected to attend all board meetings, as required, when held. As necessary, the **FIRM** will represent the **CITY** in judicial and quasi-judicial proceedings including Special Master hearings regarding code compliance.

The **FIRM** will provide clear and concise legal advice and consultation as



requested or required by the City Council or City Manager. The **FIRM** will keep the City Manager apprised of any work conducted on behalf of the **CITY** unless the work being performed is at the request of the City Council who, as a unanimous body, request the work to be withheld from the City Manager. The City Manager shall act as a "gatekeeper" for the **CITY** in requesting the services or assistance of the **FIRM**, coordinating the flow of work to the **FIRM** and establishing the relative priorities to be placed by the **FIRM** on each task for which the assistance of the **FIRM** is required. No member of the staff may engage the **FIRM** unless expressly authorized by the City Manager.

The **FIRM** will provide legal counsel in drafting, interpreting and implementing contract documents, ordinances, resolutions and regulations; assist in the review and preparation of agenda items for meetings including bid and consultant services procurement; negotiate agreements, leases and contracts, including labor, as requested; assist in the drafting and review of the City's Comprehensive Land Use Plan, Code of Ordinances and Consolidated Land Development Regulations and any amendments to them; assist the Community Development Director in zoning and property use determinations and development; drafting, reviewing and enforcement of development orders; render opinions on legal issues affecting the **CITY**, and keep the City Council and City staff informed of federal, state and local government laws, legislative issues and judicial opinions that could affect the **CITY** in any way; prepare, review and approve all legal instruments affecting or pertaining to the **CITY**. The **FIRM** will participate in negotiations with other municipalities or governmental agencies on behalf of the **CITY**. The **FIRM** will perform all legal work pertaining to property acquisitions, disposals, easement dedications and right-of-way abandonments.

The **FIRM** will serve as legal representation of the **CITY**, its political subdivision, as well as individual councilmembers and other municipal employees who may be named as parties in their official capacities in any legal action as a result of the execution of official duties. The **FIRM** will represent and defend the **CITY** in preparation and prosecution of all civil complaints, lawsuits, controversies and ordinance violations in which the **CITY** is a party. The **FIRM** will consult and provide research and written opinions regarding potential risks to mitigate liability. The **FIRM** will advise our police department as needed so that decisions can be made to reduce liability and increase enforcement of laws.

The **FIRM** will provide legal services for such matters not covered above but which necessitates legal advice as required by the City Manager and determined by the City Council. The **FIRM** is to maintain files consistent with records management requirements and provide the City Manager copies of all pertinent pleadings and orders in all litigation that the **FIRM** is handling on behalf of the City.

The **FIRM** shall not represent any private developers, contractors, business

owners, representatives, entities or residents which might conflict or give the appearance of a conflict with the interests of the **CITY**. The **FIRM** shall refuse contact from residents, developers or any outside entities without first obtaining permission from the City Manager.

**TERMS OF THE AGREEMENT.** The **FIRM** is appointed by and serves at the pleasure of the City Council. The term of this Agreement shall be five (5) years from the date of the Agreement first entered above plus three 1-year renewals possible upon mutual agreement between the **FIRM** and **CITY**. All renewals must be executed by both parties prior to the expiration date of the contract. The Agreement can be cancelled, without notice or cause, at any time immediately upon simple majority vote of the City Council. If the **FIRM** desires to terminate this Agreement, they may do so by giving the **CITY** no less than sixty (60) days written notice. The City Council may waive the sixty-day notice requirement.

The **FIRM** agrees to devote a sufficient amount of time to represent the **CITY** adequately, properly and in a timely manner.

The **FIRM** shall be governed by the Code of Ethics (Chapter 112, Florida Statutes) and the Rules of Professional Conduct of the Florida Bar.

In the event that any term, paragraph or provision of this Agreement or its application to any circumstances shall be deemed invalid or unenforceable, the remainder of this Agreement shall be deemed valid and enforceable to the fullest extent permitted by law.

**COMPENSATION.** The **FIRM** will provide unlimited and complete City Attorney legal services to the **CITY** for the monthly retainer amount of \$10,000 per month (\$120,000 per year). That lump sum fee includes general legal services as described in this Agreement, attendance at meetings as required, litigation, local bond counsel work and representation of enterprise funds.

No additional compensation will be given for any ancillary legal services, research expenses (such as Westlaw/Lexis fees), travel or miscellaneous expenses such as copying, phone, courier, etc and any other costs or expenses with the exception of pre-approved out of pocket costs consisting of court filing fees and court reporter fees which shall be billed at cost with no mark-up or multiplier.

The **FIRM** will not be required to perform insurance defense, provide Special Master services or general bond counsel work.

The **FIRM** will be required to invoice the **CITY** monthly.

**INSURANCE REQUIREMENTS.** The **FIRM** shall procure and maintain, during

the life of the agreement or service the insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the CITY and placed with insurance carriers having a financial strength of "A, VII" as rated by A.M. Best, and approved and licensed by the Insurance Department of the State of Florida.

**Workers' Compensation:** The **FIRM** shall supply proof of coverage to apply for all of their employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$100,000 each accident; \$100,000 each employee and \$500,000 policy limit for disease. Waiver of Subrogation in favor of the CITY is required.

**Professional Liability Insurance:** The **FIRM** shall purchase and maintain professional liability or malpractice or errors and omissions insurance with a minimum \$1,000,000, per occurrence, for the engagement, with a \$2,000,000 policy-term aggregate. If claims-made coverage is provided, coverage must apply during the entire Agreement term and for three (3) years following expiration or termination.

**Comprehensive Commercial General Liability Insurance:** The **FIRM** shall purchase and maintain comprehensive commercial general liability insurance, minimum \$1,000,000 each occurrence; \$2,000,000 general aggregate; \$1,000,000 products and completed operations throughout the life of the Agreement. Aggregate must apply separately to an agreement. Occurrence form required. The CITY is to be included as Additional Insured.

**Automobile Insurance:** The **FIRM** shall supply proof of commercial policy and individuals shall supply proof of current auto coverage, to include all vehicles owned and leased, with limits of not less than \$1,000,000 per each accident and for property damage and bodily injury, with contractual liability coverage for all work performed under this Agreement.

A Certificate of Insurance is to be issued to the CITY and current certificates are required to be on file during the term of the Agreement. All policies must provide at least ten (10) days' notice of non-renewal or cancellation to the CITY. If policies do not contain such a provision, respondent shall be responsible to provide such notice directly to the CITY. All certificates of insurance must be on file with and approved by the CITY before commencement of any work activities under this Agreement.

The **FIRM** shall be solely responsible for payment of all premiums for insurance. Any and all deductibles related to the above referenced policies are to be the responsibility of the **FIRM**. Insurance is considered primary for any loss, regardless of any insurance maintained by the CITY. The **FIRM** is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or proportion of any loss that is not covered by any available insurance

policy.

The **CITY** shall retain the right to review and modify, at any time, coverages, forms, and amounts of insurance.

**SETTLEMENT OF CLAIMS.** The **FIRM** shall not settle any claim without prior written authorization of the City Manager, in response to explicit direction from the City Council.

**REGULATIONS.** Violation of any local, state or federal law in the performance of this Agreement shall constitute a material breach of this Agreement.

**AMENDMENT.** The **FIRM** understands and agrees that this Agreement constitutes the sole and complete understanding between the parties and supersedes all other or prior agreements between them, whether oral or written with respect to the subject matter. No amendment, change, or addendum to the resolution or contract is enforceable, unless agreed to in writing by both parties and incorporated into an amendment to this Agreement.

**ASSIGNMENT OR SUBCONTRACTING.** The **FIRM** shall not assign or subcontract any interest in this Agreement and shall not transfer any interest in it (whether by assignment, subcontract or otherwise) without the prior written consent of the **CITY**.

**LIABILITY OF FIRM.** The **FIRM** shall indemnify and hold harmless the **CITY**, its councilmembers, officers and employees, from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorney fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorney fees), to the extent caused by the negligence, recklessness, or wrongful conduct of the **FIRM**'s attorneys, officers, employees, agents, and other persons employed or utilized by the **FIRM** in the performance of or the failure to perform this Agreement.

In the event of a claim, the **CITY** shall promptly notify the **FIRM** in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided in this Agreement.

The **CITY** shall provide available information and assistance that the **FIRM** may reasonably require regarding any such claim. The agreement for indemnification shall survive termination or completion of this Agreement.

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the **CITY**, as set forth in Florida Statutes, Section 768.28.



**IN WITNESS WHEREOF**, the parties to this Agreement for the provision of legal services to the City of South Daytona have caused the same to be signed by their duly authorized representatives on the dates indicated below.

**VOSE LAW FIRM, LLP**

**ATTEST:**

**PRINCIPAL:**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: Wade C. Vose, Esquire

Name: Gretchen R.H. "Becky" Vose

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**CITY OF SOUTH DAYTONA**

**ATTEST:**

**FOR THE CITY COUNCIL:**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: James L. Gillis, Jr.

Name: William C. Hall

Title: City Manager

Title: Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_