



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** 2/21/2019

**From:** Clay Holstine, City Manager

**Subject:** Appointment of Interim City Attorney; Approval of a Professional Services Agreement

### Goal

Fiscally Prudent and Community Building

### Purpose

To provide for an orderly transition of City Attorney legal services.

### Recommendation

Appoint Thomas McMorrow as Interim City Attorney and approve a Professional Services Agreement with Michael Roush for legal services

### Background

Since June 2013, City Attorney legal services and labor negotiations have been provided to the City through a contract with a law firm, originally Renne Sloan Sakai Holtzman and as of March 2018, Renne Public Law Group. Through the firms, originally David Kahn served as City Attorney and, beginning in September 2014, Michael Roush served (and continues to serve) as City Attorney. For reasons unrelated to the quality of the legal services that the firm has provided to the City, the City Council has decided to terminate the contract with the firm for City Attorney legal services but continue its contractual relationship with the firm for labor negotiations. Mr. Roush has informed the City Council that he does not wish to be considered to be appointed as City Attorney but the City Council has requested that Mr. Roush continue to provide legal services to the City.

For some time, the City has had a separate contract with the law firm of Manatt, Phelps, and Phillips for the purpose of advocating on behalf of the City in Sacramento. This advocacy has been of particular importance in the past couple of years as the State Legislature has considered legislation to weaken local control over land use issues and the Baylands in Brisbane has been one of the subjects of that discussion. Thomas McMorrow, a partner in the Manatt, Phelps, and Phillips firm, has been lead attorney in those efforts and has been advising and guiding the City Council concerning the legislative efforts. The City Council has discussed with Mr. McMorrow his interest in serving, through the firm, as City Attorney and Mr. McMorrow has agreed to do so on an interim basis during this transition.

**Discussion**

The City currently has a monthly retainer with the Manatt, Phelps and Phillips law firm and the hours Mr. McMorrow spends in his capacity as City Attorney, including attending City Council meetings and closed sessions, would be billed against that retainer, as would time that associates with the firm provide City Attorney related services to the City. Manatt would bill the City only if its work in a given month exceeds the monthly retainer.

The City would enter into a separate professional services agreement with Mr. Roush in order for Mr. Roush to continue to provide day to day legal services, including office hours, to the City Council and staff. That Agreement is attached. By such Agreement, there will be a smooth transition of City Attorney related legal services.

**Fiscal Impact**

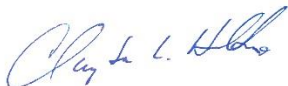
There are adequate budgeted funds for City Attorney related legal services, whether under the existing Manatt Phelps contract or through a separate agreement with Mr. Roush

**Measure of Success**

A smooth transition of City Attorney related legal services

**Attachment**

1. Professional Services Agreement with Michael Roush



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Clay Holstine, City Manager

**ATTACHMENT 1**  
**PROFESSIONAL SERVICES AGREEMENT**

**This Agreement** is entered into on March 1, 2019 between the City of Brisbane, a Municipal Corporation (“City”) and Michael H. Roush, Attorney at Law, whose address is 5571 Corte Sierra, Pleasanton, CA 94566, and whose phone number is 925-876-7525 (“Attorney”).

**RECITALS**

- A. City seeks special legal counsel concerning legal issues that may come before City, in particular issues concerning general municipal law and land use and planning matters.
- B. State law authorizes cities to contract for legal services.
- C. Attorney specializes in public agency law, including planning and land use matters, and is willing, qualified and duly licensed to provide legal services to City under this Agreement, as an independent contractor, subject to the terms and conditions herein stated.
- D. City has determined that Attorney is qualified by training and experience to render such services and Attorney has agreed to provide such services.
- E. The public interest will be served by this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions in this Agreement, City and Attorney agree as follows:

- 1. Attorney’s Services.** City hires Attorney to provide special legal services to the City as provided above.
- 2. Term.** The Agreement shall commence on March 1, 2019 and shall continue in full force and effect until terminated by either of the parties pursuant to the terms of this Agreement.
- 3. Fees for Service.**
  - a. City shall pay Attorney \$250 per hour for all services identified in Section 1 for which

the City is not reimbursed for these services by a third party; City shall pay Attorney \$325/per hour for all services identified in Section 1 for which the City is reimbursed for such services by a third party.

- b. City shall reimburse Attorney for customary and reasonable out of pocket expenses advanced or paid on behalf of City in the performance of Attorney's services upon presentation of an itemized statement.. Any cost or third party expense that exceeds \$250 may be sent to City for direct payment.
- c. Invoices submitted to City must contain a brief description of work performed. Payment shall be made within thirty (30) days of receipt of Attorney's invoice.

**4. Ownership of Work.** All legal files of Attorney pertaining to the City shall remain the property of the City. All works of authorship and all other documents completed or partially completed by Attorney in the performance of this Agreement ("materials") shall become the property of the City. If the City so requests, all materials shall be delivered to the City upon completion or terminations of the work under this Agreement. Attorney shall keep materials confidential and shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

**5. Changes.** The City may request changes in the scope of services to be provided by Attorney. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

**6. Attorney's Status.** In performing the obligations set forth in this Agreement, Attorney shall have the status of an independent contractor and Attorney shall not be considered to be an employee of the City for any purpose. Attorney shall be solely responsible for his own Social Security, withholding, benefits, and all other regulations governing such matters.

**7. Termination for Breach.** If there is a material breach of this Agreement, the party claiming breach shall give notice to the other party informing it of the specific nature of the breach. Within 10 days of notice of breach, or such other time period as may be agreed upon by the parties, the party in breach shall have the right to cure the breach. The failure to timely cure a material breach of this Agreement shall provide cause for termination.

**8. Termination without Cause.** The City may terminate this Agreement without cause by providing written notice of termination to Attorney. Attorney may terminate this Agreement without cause by providing 60 days prior written notice to the City.

**9. Sufficiency of Attorney's Work.** Services shall be performed by Attorney in accordance with generally accepted high professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of Attorney's profession currently practicing in California. By delivery of completed work, Attorney's work shall conform to the requirement of this Agreement.

**Indemnity and Hold Harmless.** Attorney shall defend, indemnify, and hold harmless the City and its officers, agents and employees from and against all claims or losses arising from the wrongful or negligent acts or omissions of Attorney in the performance of this Agreement.

**10. Insurance.** During the term of this Agreement, Attorney shall maintain in full force and effect at his own cost and expense the following insurance coverage:

- a. Automobile Liability Insurance. Automobile liability insurance with limits not less than \$500,000 per person/per occurrence.
- b. Professional Liability Insurance. Professional liability insurance with limits not less than \$1,000,000 per occurrence.

**11. Non-Assignability.** Attorney shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as the City may set forth in writing.

**12. Conflict of Interest.** Attorney shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving matters upon which Attorney is providing services under this Agreement. Attorney covenants that other than this Agreement, Attorney has no financial interest with any official, employee or other representative of the City. Attorney does not have any financial interests in real property, sources of income or investment that would be affected in any manner or degree by the performance of Attorney's services under this Agreement. If such an interest occurs, Attorney will immediately notify the City.

**13. Licenses.** Attorney covenants that he has a license to practice law in the State of California and that the license shall be maintained during the term of this Agreement.

**14. Governing Law.** California law shall govern any legal action pursuant to this Agreement will venue in the applicable court or forum for San Mateo County.

**15. Conformance to Applicable Laws.** Attorney shall comply with all applicable

Federal, State and Municipal laws, rules, and ordinances. Attorney shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

**16. Records and Audits.** Attorney shall maintain all records not otherwise remaining in the custody and control of City pursuant to Section 4, above, regarding this Agreement and the services performed for a period of one year from the date that final payment is made. At any time during normal business hours, the records shall be made available to the Board to inspect and audit.

**17. Waiver.** In the event either the City or Attorney at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

**18. Notices.** All notices pursuant to this Agreement shall be in writing and mailed, postage prepaid, first class mail or personally delivered as follows:

If to City: City of Brisbane  
50 Park Place  
Brisbane, CA 94901  
Attn: City Manager

If to Attorney: Michael H. Roush  
5571 Corte Sierra  
Pleasanton, CA 94566  
Phone: (925) 876-7525  
Email: mhrlegal@comcast.net

**19. Counterparts.** The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all the parties; each counterpart shall be deemed an original of this Agreement as against a party who has signed it.

**20. Facsimile Signatures.** This Agreement shall be binding upon the receipt of facsimile signatures or signatures by e-mail delivery of a Portable Document Format (PDF) file. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

**21. Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

**THIS AGREEMENT** executed the date and year first above written.

**CITY OF BRISBANE**

**ATTORNEY**

By: \_\_\_\_\_

Madison Davis, Mayor

\_\_\_\_\_

Michael Roush

ATTEST

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City Clerk

APPROVED AS TO FORM:

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Thomas McMorrow  
Interim City Attorney