

RESOLUTION NO. 2007- 30 R

A resolution authorizing the City Manager to execute a Letter of Representation with Fritz, Byrne, Head & Harrison, L.L.P. for legal services regarding contractual obligations related to the Regional Solid Waste Landfill Operations Service Contract between the City and BFI Waste Services of Texas, L.P.; and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute a **Letter of Representation** with Fritz, Byrne, Head & Harrison, L.L.P. for legal services regarding contractual obligations related to the Regional Solid Waste Landfill Operations Service Contract between the City and BFI Waste Services of Texas, L.P., in the form attached hereto, with changes to be approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 20th day of March, 2007.

AYES: **7**

NAYS: **0**

ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the 20th day of March, 2007.



ATTEST:

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Will Armstrong
WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

David Atmar Smith
DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department
 Finance Department
 Environmental Services Department

Copies Sent: **MARCH 21, 2007**



Fritz, Byrne, Head & Harrison, LLP

Attorneys at Law

PRIVILEGED AND CONFIDENTIAL ♦ ATTORNEY-CLIENT COMMUNICATION

March 7, 2007

Mr. David A. Smith
City Attorney
City of Victoria
P.O. Box 1758
Victoria, TX 77902-1758

Re: Firm Representation

Dear Mr. Smith:

You have requested that we provide services to you regarding the matter herein described, and you have informed us either that you have not retained the services of another attorney for such matter or that your request has been made with the consent of such other attorney. This Letter Agreement is our customary method of confirming the terms upon which our services are provided.

Retention of Firm

The City of Victoria ("Client") has retained the law firm of Fritz, Byrne, Head & Harrison, LLP (the "Firm") in accordance with the terms and conditions stated herein to provide legal services to Client regarding the following matter(s): representation of Client in negotiations and potential litigation with BFI Waste Services of Texas, L.P. regarding contractual obligations related to the Regional Solid Waste Landfill Operations Service Contract between Client and BFI Waste Services of Texas, L.P. This Letter Agreement replaces all prior agreements between the parties, and will also apply to any subsequent matters on which you request our assistance in the future unless otherwise agreed in writing at the time of such request.

K:\DIR15\15190\01\LETTERS\ENGAGEMENT.wpd



Value Driven...Client Oriented

98 SAN JACINTO BOULEVARD SUITE 2000 AUSTIN, TEXAS 78701 (512) 476-2020 FAX: (512) 477-5267 WWW.FBHH.COM

Engagement Deposit

The Firm does not require an initial deposit or retainer at this time. However, the Firm reserves the right to require a deposit or retainer in the future, if at any time the Firm, in its sole discretion, decides that the same may be necessary.

Fees and Expenses

Client will compensate the Firm based on the Firm's standard hourly rates for its attorneys and legal assistants, the current roster for which is shown on **Exhibit A** hereto, for the specific services required and performed for Client. The Firm changes its professional personnel from time to time, and reserves the right to associate with contract professionals and bill for their services at reasonable hourly rates (which may exceed the actual cost incurred by the Firm). The Firm determines and adjusts its standard hourly rates periodically (usually annually at the beginning of each calendar year), and the Firm reserves the right to change its rates at such time. The Firm shall record time to the nearest one-tenth hour (0.1 hour) invested in providing services to Client, including travel time. Client will reimburse the Firm for out-of-pocket expenses reasonably incurred in the performance of services for Client at the Firm's actual cost or at the Firm's standard charge for such services (e.g., long-distance telephone, delivery, copying, clerical overtime, travel, and other costs, fees, and expenses).

Payments

Periodically (e.g., monthly or at other intervals determined by the Firm), the Firm will submit to Client an invoice for fees and expenses. Invoice amounts shall be paid within thirty (30) days of the date sent; thereafter, any unpaid balance will bear interest at the highest rate permitted by law. With each invoice, the Firm customarily provides a delineation of services by specific attorney, by date and time, by project, and/or by type of service; e.g., review of Client documents, factual research, legal research, drafting, negotiation, presentation, etc.

Termination and Assignment

This Letter Agreement may be prospectively terminated at any time upon reasonable advance written notice given by either party. Client also agrees that the Firm shall be under no obligation to undertake or continue services on any matter if (i) the Firm deems such services to be in conflict with the interest of another client or with legal ethics, or (ii) Client fails to make any payment to the Firm when due.

Under certain circumstances, it may be necessary to terminate the attorney-client relationship prior to the completion of the matter for which the Firm has been retained. In that regard, it is agreed that, subject to an agreement regarding the payment of fees and out-of-pocket expenses described above, the Firm will withdraw if discharged by Client. Such discharge shall be communicated in writing to the Firm. If permission for withdrawal from employment is required by the rules of the court, the Firm shall withdraw upon permission of that court.

The Firm may withdraw from representation of Client in this matter at any time and for any reason, in its sole discretion, including any of the following reasons:

- (a) In the event the Firm determines at any time that Client's claims should not be pursued further;
- (b) In the event Client insists on presenting a claim or defense that is not warranted under existing law and cannot be supported by a good-faith argument for an extension, modification, or reversal of existing law;
- (c) In the event Client seeks to pursue an illegal course of conduct;
- (d) In the event Client insists that the Firm pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules set forth in the State Bar Act of the State of Texas;
- (e) In the event Client renders it unreasonably difficult for the Firm to carry out its employment;
- (f) In the event Client insists that the Firm engage in conduct that is contrary to the judgment and advice of the Firm, even though it is not prohibited under the disciplinary rules contained in the State Bar Act of the State of Texas;
- (g) In the event Client fails to perform any agreement or obligation to the Firm as set forth herein, including the failure to make any payment to the Firm when due; or
- (h) In the event the Firm determines that it is unable to fully perform its obligations under this agreement or as otherwise required by law or ethical rules or standards.

In the event of a withdrawal from employment, the Firm shall notify Client by sending written notice of the Firm's intention to withdraw to Client at Client's last known address.

City of Victoria

March 7, 2007

Page 4

Upon termination of the engagement and the satisfaction by Client of all prior financial obligations, the Firm will, at its standard hourly rates, (i) search its files and forward to Client, or counsel designated by Client, copies of the significant original documents, if any, specified and previously entrusted to the Firm by Client; (ii) take such steps as it deems appropriate to formally withdraw from such proceedings, if any, in which it may be counsel of record; and (iii) provide reasonable transitional assistance to new counsel, if any, designated by Client. This Letter Agreement and all rights and obligations hereunder shall be assignable by the Firm to any entity which succeeds, in whole or in part, to the professional activities now conducted by the Firm.

Notice Regarding Professional Misconduct

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of General Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 toll-free for more information.

Client Files

It is Client's responsibility, at the conclusion of the Firm's representation, to claim the file from the Firm within one year. Any materials not claimed by Client will be placed in storage and thereafter be destroyed in accordance with the Firm's standard retention policy.

Representation of Other Interests

The Firm agrees that, during the period of engagement, it shall refrain from representing another client in any administrative or judicial action in which Client's interests may be materially and adversely affected. Client agrees that the Firm shall be otherwise free to represent all interests of other clients.

Disclosure

Client agrees to allow the Firm to list Client as a reference and to disclose this representation and related account information in conjunction with the Firm's banking arrangements.

Mediation

In the event of a dispute between Client and the Firm related to this agreement or any other matter affecting the attorney-client relationship, the parties agree to submit such dispute to non-binding mediation in Travis County, Texas. Client and the Firm shall choose a mutually acceptable mediator, and mediation will be conducted prior to the arbitration of any dispute.

Venue and Arbitration

Client agrees that the place of performance of the obligations stated herein is Austin, Travis County, Texas, and that venue for any dispute between the parties concerning this engagement shall lie in Travis County, Texas. Client and the Firm agree that any disputes arising hereunder or relating to the services or work performed under this agreement shall be resolved pursuant to the Federal Arbitration Act in an arbitration conducted in Austin, Texas, before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

Other Provisions

The Firm is a member of Meritas (formerly known as Commercial Law Affiliates), an affiliation of independent business and commercial litigation law firms with offices in over 250 cities worldwide. Meritas member firms are available to provide assistance to you if requested. No firm will be engaged on your behalf without your consent. Meritas has a number of programs to share information and resources on practice management, facilitate quality improvement, and assist with practice development. Meritas member firms do not share profits or revenues. If a firm is engaged on your behalf, you will be billed directly by that firm, unless other arrangements are made. Meritas member firms do not share privileged information, except when jointly representing the same client. Meritas member firms practice independently and are not in a relationship for the joint practice of law.

As with any legal document or agreement and because the Firm drafted this agreement and cannot render advice to Client regarding this agreement, Client has the right, and is hereby advised, to seek independent legal advice regarding the rights and obligations of the parties under this agreement.

Please sign this letter in the space provided below to signify Client's agreement to and acceptance of these terms, and return the original to me in the self-addressed envelope provided for this purpose. A copy of this letter is enclosed for your records. If you have any questions, please let me know.

FIRM

FRITZ, BYRNE, HEAD & HARRISON, LLP

By: _____

J. D. Head
J. D. Head
Partner

CLIENT

THE CITY OF VICTORIA

By: _____

Name: _____

Title: _____

cc: Ms. Marilynn C. Thompson [Firm]

EXHIBIT A

FRITZ, BYRNE, HEAD & HARRISON, LLP

STANDARD HOURLY RATES – 2007

TIMEKEEPER MASTER LIST

ATTORNEYS

BPP	BRUCE PERKINS	335.00
CDA	CHRISTOPHER D. ATWELL	270.00
CMH	C. M. HENKEL III	250.00
CWV	CYNTHIA W. VEIDT	200.00
DHB	DANIEL H. BYRNE	370.00
DLR	DALE L. ROBERTS	225.00
JDH	J. D. HEAD	300.00
JKL	KELLY LATZ	250.00
KWB	KEVIN W. BROWN	225.00
LC	LINDA CANGELOSI	225.00
LCF	LISA C. FANCHER	300.00
MLL	MARC L. LIPPINCOTT	225.00
ROR	ROBERT O. RENBARGER	300.00
RWH	RICK HARRISON	370.00
TDF	THOMAS D. FRITZ	325.00

LEGAL ASSISTANTS

AMS	ANN M. SHAY	\$ 75.00
BSH	SUZY HARRIS	85.00
BWJ	BRENDA W. JONES	110.00
EHK	ELIZABETH H. KEMPER	110.00
LAH	LAURA A. HAUN	45.00
SB	SHARON BLUE	110.00
SKL	SUSAN K. LARSON	90.00
SNK	SARAH N. KUNZE	85.00
TES	TEAGUE E. SHOSH	85.00

LAW CLERKS

LAW CLERK	\$ 100.00
------------------	------------------