

CITY OF HIGH POINT

AGENDA ITEM



Title: Contract Attorney Agreement

From: JoAnne Carlyle, City Attorney

Public Hearing: Not Required

Attachments: Agreement

Meeting Date: Monday, September 20, 2021

Advertising Date:

Advertised By:

PURPOSE:

Request City Council to approve a Contract Attorney Agreement with Fred P. Baggett, P.A. for representation and promoting the City's interest concerning legislation in the North Carolina General Assembly.

BACKGROUND:

Fred P. Baggett, P.A. has provided services regarding state legislation relevant to the City, as well as drafting local bills and bill explanations to advance the City's legislative interest. This agreement is for a period of three years for a total of \$126,612.00, which will be paid at \$3,517.00 monthly. The City will also reimburse \$250.00 for lobbyist fees.

BUDGET IMPACT:

\$42,204.00 per annual years of 2021/2022, 2022/2023, and 2023/2024

RECOMMENDATION / ACTION REQUESTED:

Staff recommends approval of the Contract Attorney Agreement.

CONTRACT ATTORNEY AGREEMENT

THIS CONTRACT ATTORNEY AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2021, by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation with a mailing address of P.O. Box 230, High Point, North Carolina 27261 (“City”), and **FRED P. BAGGETT, P.A.**, a North Carolina Professional Corporation, with a mailing address of 2305 Gaddy Drive, Raleigh, NC 27609 (“Attorney”). City and Attorney shall hereinafter be referred to individually as “Party” and collectively as “Parties.”

SERVICES

WHEREAS, the City desires to engage Attorney to perform services on behalf of the City under the direction of the City Attorney and the City Manager; and

WHEREAS, Attorney desires to render contract attorney services (“Services”), and has the experience and resources to perform the services;

NOW, THEREFORE, the Parties, in consideration of their mutual covenants, hereby agree as follows:

SECTION I. PROVISION OF THE SERVICES

A. Provision of and Payment for the Services. Attorney shall provide the Services consistent with the terms of this Agreement and the City shall pay Attorney for the provision of the Services consistent with the terms of this Agreement.

B. Independent Contractor. Attorney is an independent contractor. Attorney, its employees, subcontractors, suppliers and consultants are not, individually or collectively, to be deemed an employee or employees of the City under any circumstances. This Agreement shall not under any circumstances be construed to make the Parties joint venturers, partners or parties to similar relationships with each other.

SECTION II. RESPONSIBILITIES OF THE ATTORNEY

The duties of Attorney include the following:

Legislative Representation

- (1) Actively promoting the City’s interest concerning legislation in the General Assembly; and
- (2) Informing the City Attorney, City Manager, or other appropriate representatives of the City of legislation or issues which may affect the City; and

- (3) Reporting to the City Attorney and the City Manager concerning legislation or issues of interest to the City; and
- (4) Advising the City Attorney, City Manager or other appropriate representatives of the City when and how to contact specific legislators concerning pending legislative action of interest to the City; and
- (5) Participating in visits by City officials to legislators or legislative meetings in Raleigh sponsored by the North Carolina League of Municipalities; and
- (6) Monitoring and reporting activities and recommendations of various legislative study committees relevant to City issues when the General Assembly is not in session, including Revenue Laws Study Committee, Workforce Development Study Committee, Local Government Study Committee, Transportation Oversight Committee, and other relevant study committees; and
- (7) Regular attendance at the General Assembly when in Session to monitor and promote the City's interests with legislators including appearances before legislative committees when appropriate; and
- (8) Maintain relationships and communications with members of the local delegation to the General Assembly to promote the City's legislative interests and attend meetings of the local delegation; and
- (9) Draft bills, amendments, and bill explanations as appropriate to advance the City's legislative interests; and
- (10) Upon the request of the City Attorney or the City Manager, attend meetings in High Point to report on and discuss legislative issues at any time, including written reports as desired; and
- (11) Maintain communication and relationships with representatives of related interests such as the North Carolina League of Municipalities, and Electricities of North Carolina.

General Responsibilities

- (1) The Parties agree that representation by Attorney shall mean Fred Baggett's services on behalf of Fred P. Baggett, P.A.; and
- (2) Attorney shall provide all necessary support to provide the services described, and will not be provided an office, computer, telephone or other equipment by the City. With the consent of the City Attorney, Attorney may request word processing or document production assistance from the

City Attorney's administrative assistant for complex or lengthy documents.

- (3) Attorney shall maintain his law license in good standing with the North Carolina State Bar, including fulfilling continuing legal education requirements. Attorney will comply with all lobbying report requirements of the law and the Lobbying Compliance Division, North Carolina Secretary of State. City Manager will comply with such requirements to file reports on behalf of the City as Principal.
- (4) Attorney shall be available for consultation with the City Attorney and the City Manager as desired concerning legal issues affecting the City.

SECTION III. PAYMENT

The City will pay Attorney the following compensation for the described services:

- (1) The City will pay Attorney \$3,517.00 a month for the Attorney's services as the legislative counsel for the City.
- (2) The City shall reimburse Attorney for mileage and any out of pocket of expenses incurred relating to lobbying services for travel outside of Raleigh undertaken at the request of the City Attorney or City Manager.
- (3) The City shall reimburse Attorney for annual filing fees required of lobbyist, including the fees for the principal and the lobbyist, which, at the time of executing this Agreement is currently \$250.00 each.
- (4) Attorney shall submit invoices to the City on a monthly basis at the beginning of each month.

SECTION IV. TERM OF THE AGREEMENT

This Agreement shall continue for three years from its inception of October 1, 2021, and thereafter on a month-to-month basis unless renewed.

SECTION V. TERMINATION

A. The Agreement may be terminated by either Party if the defaulting Party fails to materially perform its obligations under the Agreement. With regard to Attorney, grounds for termination include, but are not limited to: (i) refusing or failing to perform the Services; (ii) failing in any material respect to perform the Services in a timely fashion; (iii) causing, by any act or omission, the stoppage or delay of or interference with any other work or services being performed or provided by or on behalf of the City; (iv) disregarding any applicable law relating to the provision of the Services; (v) disbarment or suspension by the North Carolina State Bar;

(vi) materially failing to comply with any provision of the Agreement; or (vii) becoming insolvent, having a receiver appointed, or making a general assignment for the benefit of creditors. With regard to the City, grounds for termination include, but are not limited to: (i) failure by the City to make a required payment with ten (10) calendar days of the time specified by the Agreement, provided written notice of non-payment is received by the City from the Attorney; or (ii) otherwise breaching a material term of the Agreement.

B. Termination for Convenience. This Agreement may be terminated by either Party for convenience with no less than thirty (30) days written notice to the other Party. In the event the City terminates this agreement for convenience, the City shall continue to pay Attorney for a period of three (3) months following the effective date of such termination. Other than being paid for Services properly rendered to the date of termination, Attorney hereby waives any and all other claims for lost profits, lost opportunity, and for any and all other direct, indirect special and consequential damages.

C. Post-Termination Obligations. Upon any termination of the Agreement, Attorney shall: (1) promptly discontinue provision of the Services (unless a termination notice from the City directs otherwise); and (2) deliver or otherwise make available to the City all documents, accounting records, electronically stored information and other information accumulated by Attorney in the provision of the Services.

D. The City's Post-Termination Provision of the Services. Upon termination of the Agreement, the City may complete the Services required under the Agreement in any manner deemed appropriate by the City.

SECTION VI. INDEMNIFICATION

The City will defend, save harmless and indemnify Attorney against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Attorney's duties under this Agreement, even if said claim is brought following termination of this Agreement. This section shall survive the termination of this Agreement.

SECTION VII. NOTICE

Any notice given pursuant to the Agreement shall be in writing and signed by a representative of the Party giving such notice. Written notice may be: (a) hand-delivered; (b) sent by facsimile transmission; or (c) sent by overnight courier, messenger or registered or certified U.S. mail, postage prepaid, return receipt requested. Written notice shall be delivered to the City and the Attorney at the following addresses:

Notice to the City:

The City of High Point
Attn: City Manager's Office
P.O. Box 230
High Point, NC 27260

Notice to Attorney:

Fred P. Baggett
2305 Gaddy Court
Raleigh, NC 27609

A notice shall be deemed received by the Party to whom it is sent: (a) in the case of hand-delivery or delivery by overnight courier messenger or registered or certified U.S. mail, postage prepaid, return receipt requested, on the date of delivery of the notice to the Party; and (b) in the case of facsimile transmission, on the date of the transmission by the sending Party.

The addresses listed above with regard to the receipt of notice may be changed at any time by a Party through the provision of notice of the change in accordance with this Section. Any change shall become effective on the date the notice of the change is deemed received by the Party to whom it is sent.

SECTION VIII. MISCELLANEOUS

A. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law).

B. Successors and Assigns. The Agreement shall be binding upon the Parties, their successors and permitted assigns. Neither the City nor the Attorney shall assign, sublet or transfer any interest in the Agreement without the prior written consent of the other Party, which may be withheld for any reason.

C. Minor Changes in the Services. The Parties agree that the City is entitled to request minor changes in the Services to be provided by Attorney under the Agreement, and that Attorney will provide such revised services requested by the City. Compensation relating to any such revision shall be based upon agreement between the Parties, or through the claim resolution process set forth herein. Attorney may not withhold performance of a minor requested change to

the Services on the ground that an agreement regarding compensation relating to the change has not been reached.

Any changes or modifications of the Services, as well as any other revisions to the Agreement, shall be reduced to writing, dated, executed and made part of the Agreement.

D. Captions. The captions contained in the Agreement are for convenience and reference only, and do not define, describe, extend or limit the scope or intent of the Agreement or the scope or intent of any provision contained herein.

E. Severability. The invalidity of one or more phrases, sentences, clauses or sections in the Agreement shall not affect the validity of the remaining portions of the Agreement, so long as the material purpose of the Agreement can be determined and effectuated.

F. No Waiver. Any failure by either Party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any such provision.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

FRED P. BAGGETT, P.A.

By: _____
Fred P. Baggett

CITY OF HIGH POINT

By: _____
Tasha Logan Ford
City Manager