

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ENGAGEMENT OF THE LAW FIRM OF LYNN, ROSS AND GANNAWAY, LLP, AND THE BKD, LLP ACCOUNTING FIRM, TO COMPLETE A PREVIOUSLY INITIATED AUDIT AND INVESTIGATION, PURSUANT TO THE TERMS OF THE ATTACHED CONTRACT FOR PROFESSIONAL SERVICES; AND FURTHER AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS FOR THE ENGAGEMENT, IN AN AMOUNT NOT TO EXCEED \$50,000, WITHOUT SUBSEQUENT AMENDMENT OF THE APPROVED CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Council of the City of Denton, Texas understands that the contracted services are exempted from ordinary bidding and procurement requirements by the Professional Services Procurement Act, and case law interpretations of same. *See*, Tex. Gov't Code §2254.001, et seq.; and

WHEREAS, the Council of the City of Denton, Texas finds that the contracted services are necessary and appropriate, due to the departure of the City's Internal Auditor after initiating this investigation, as well as the consequent needs to take prompt remedial actions (if any should prove necessary), and to reach a timely, unbiased, and definitive resolution of any public controversy which might arise out of this pending and unresolved investigation and audit; and

WHEREAS, with due deference to the language and intent of Section 6.04 of Denton's Charter, the Council of the City of Denton, Texas finds that during the vacancy of the City Auditor position, this pending and unresolved investigation and audit should proceed at the hands of outside legal and auditing professionals reporting directly to the City Council; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The above recitals are fully adopted and incorporated herein for all purposes.

SECTION 2. The Mayor is hereby authorized to execute the engagement arrangement by and between the City and the law firm of Lynn, Ross and Gannaway, LLP, and the BKD, LLP accounting firm for professional services, as stated substantially in the terms of said Agreement, attached hereto as Exhibit "A", incorporated herein by reference.

SECTION 3. The award of this Agreement by the City is on the basis of the demonstrated competence, knowledge, and qualifications of the firms and the demonstrated ability of the firms, and their demonstrated ability to timely perform the services needed by the City, for fair and reasonable fees.

SECTION 4. The expenditure of funds as provided in the attached Agreement is hereby limited to an amount not to exceed Fifty Thousand Dollars (\$50,000), unless later amended.

SECTION 5. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: /s/ Jerry E. Drake, Jr.

**CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE**

November 7, 2017

Mayor Chris Watts and Denton City Council

City of Denton
215 E. McKinney St.
Denson, TX 76201

Re: Retention of Legal Counsel to work with Forensic Accounting Firm Investigation
Relationship between City of Denton and Denton Parks Foundation
October 1, 2012 – September 30, 2017

Dear Mayor and Council:

We appreciate being asked to assist the City of Denton (“City”) in conducting this confidential investigation. In this role, we will be engaged in the dual functions of fact-finding and legal analysis. It is our understanding the City of Denton intends to establish a relationship with our firm that would establish not only an attorney/client privilege with regard to verbal and written communications, but also would cloak our investigation notes and other documents with the attorney work product privilege. To facilitate a thorough investigation, we have been authorized to retain BKD, LLP’s Forensics & Valuation Services team, (“BKD”).

I have attached a copy of BKD’s engagement letter as Exhibit A, which is incorporated by reference into this Engagement.

Anticipated Fees

Based on the information that has been made available to both BKD and my firm, we initially estimate that BKD’s fees will be \$30,000. I estimate that my fees should not exceed \$20,000, as I bill at \$250.00 per hour. This estimate assumes all information will be provided to us completely and expeditiously.

Throughout this engagement, we will monitor the time spent and notify you if and/or when it becomes apparent to us that our total fees may exceed our estimated fee.

We will commence our duties as Special Legal Counsel and begin the investigation upon your execution of a copy of this engagement letter. Travel time is considered time worked and is billed accordingly.

**EXHIBIT
A to Ordinance**

Other Charges

The City will be responsible for all expenses which are incurred during the investigation including travel costs and an administrative fee of 4% assessed by BKD, to cover items such as postage, supplies, technology-related costs such as computer processing, software licensing and research and library databases.

Billing Cycle

Our billing rates are based on the assumption of prompt payment. Consequently, unless other arrangements are made, fees for services and other charges will be billed monthly and are payable within thirty (30) days of receipt. Our billing cycle ends on the 20th of each month.

If the foregoing correctly reflects the City's understanding of the terms and conditions of our engagement, please so indicate by executing this letter in the space provided below and return it to the undersigned.

Please contact me if you have any questions. We are pleased to have this opportunity to be of service and to work with you.

Very truly yours,

/s/ Julia Gannaway

Julia Gannaway
Gannaway@Laborcounsel.net
Writer's Direct Dial: (817) 332.8512

ACCEPTED AND AGREED TO THIS _____ DAY OF NOVEMBER, 2017.

Chris Watts, Mayor

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: /s/ Jerry E. Drake, Jr.

November 3, 2017

Ms. Julia Gannaway
Lynn, Ross & Gannaway, LLP
306 West Broadway Avenue
Fort Worth, TX 76104

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to Lynn, Ross & Gannaway, LLP.

OUR SERVICES AND RESPONSIBILITIES

We will provide forensic accounting investigation services for Lynn, Ross & Gannaway, LLP in connection with your client, City of Denton, Texas, and concerns raised from a tip received from the City of Denton, Texas' anonymous hotline and initially investigated by the City's Fraud, Waste, and Abuse committee about the relationship between the City of Denton and the Denton Parks Foundation. We will work with you to develop the scope and nature of specific procedures to be performed.

There can be no assurance that such procedures will identify fraud that may exist. Therefore, at the conclusion of our engagement, we will request representation from you that the procedures performed are sufficient for your purposes.

At the conclusion of our work, we will present our findings either orally or through a written report. We have been retained to provide forensic accounting investigation services only; however, we understand and accept that we may be requested to furnish testimony at trial and will prepare accordingly.

We will not update our report for or disclose any event or circumstances after the date of our report.

If for any reason we are not able to complete our fraud investigation, we may decline to issue a report as a result of this engagement.

Mr. Todd Burchett will be the lead service provider for this engagement.

EXHIBIT
A to Exhibit A

Ms. Julia Gannaway
Lynn, Ross & Gannaway, LLP
November 3, 2017
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ENGAGEMENT FEES

Due to the nature of the services requested, it is not possible to provide an accurate estimate of the total time or fees required to complete the tasks assigned. The ultimate fees depend on a variety of factors including, but not limited to, the extent and nature of the documents and information provided and positions taken by the parties, the adequacy and condition of the records, the developments that may occur as work progresses, the amount of time required working with you and your client, requests by you during the course of the work, the extent of the cooperation obtained from you and others and various other related factors.

Therefore, our fees will be based on time expended. In addition, you will be billed travel costs, if any, as well as an administrative fee of 4 percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

As agreed by you and the City of Denton, Texas, all statements will be addressed to and payable by the City of Denton, Texas.

Our pricing for this engagement and our fee structure are based upon the expectation that our invoices will be paid promptly. We will issue progress billings during the course of our engagement, and payment of our invoices is due upon receipt. Interest will be charged on any unpaid balance after 30 days at the rate of 10 percent per annum.

All outstanding invoices for services shall be paid prior to the delivery of any written report, any depositions of BKD personnel in connection with this engagement and trial testimony by BKD personnel. We reserve the right to withdraw from the engagement if our fees are not paid.

Our hourly rates are subject to at least annual adjustments. Because we do not know how long our services may be required, you will be responsible for fees at the hourly rates in effect at the time work is performed.

If testimony or deposition is required because of any subpoena, you shall be responsible for any additional time, fees and charges regardless of the issuing party.

In the event of a question or dispute about any invoice you receive, you agree to contact your BKD professional within 10 days of your receipt of the invoice. We will work with you to answer questions and address disputed issues as quickly as possible. For this engagement, the person to contact with respect to any such billing questions and issues is Mr. Todd Burchett.

Ms. Julia Gannaway
Lynn, Ross & Gannaway, LLP
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OTHER ENGAGEMENT MATTERS AND LIMITATIONS

During the course of our engagement, it may be necessary for us to prepare written reports that support our conclusions. These reports are not to be published or used in any other manner other than noted above without the written consent of BKD.

As of the date of this letter, we are not aware of any conflicts of interest with any party. If we determine that a potential conflict of interest has arisen, we will immediately advise you so that a determination may be made by both of us as to whether we should continue to be engaged. If services are terminated as a result of a conflict of interest, or for any other reason, you agree to pay us for time expended to date. In addition, you will be billed travel costs, if any, as well as an administrative fee of 4 percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

We will use and rely on information furnished by you and on information available from generally recognized public sources.

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information pursuant to legal process.

To the extent allowed by Texas law, you agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

Any liability of BKD and its personnel to you is limited to the amount of the fee you paid for this engagement as liquidated damages.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Ms. Julia Gannaway
Lynn, Ross & Gannaway, LLP
November 3, 2017
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Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date. In addition, you will be billed travel costs, if any, as well as an administrative fee of 4 percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery, as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

Any time you intend to reference our firm name in any manner in any published materials, including on an electronic site, you agree to provide us with draft materials for our review and approval before publishing or posting such information unless publishing or posting such information is required by the rules of civil procedure or court order.

Ms. Julia Gannaway
Lynn, Ross & Gannaway, LLP
November 3, 2017
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BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

We are an independent accounting firm allowed to use the name "Praxity" in relation to our practice. We are not connected by ownership with any other firm using the name "Praxity," and we will be solely responsible for all work carried out by us on your behalf. In deciding to engage us, you acknowledge that we have not represented to you that any other firm using the name "Praxity" will in any way be responsible for the work that we do.

We will be pleased to discuss this letter with you and look forward to the opportunity of serving you. If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us. If the signed copy you return to us is in electronic form, you agree that such copy shall be legally treated as a "duplicate original" of this agreement.

BKD, LLP

BKD, LLP

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

LYNN, ROSS & GANNAWAY, LLP

CITY OF DENTON, TEXAS

BY /s/Julia Gannaway

Julia Gannaway, Attorney

Chris Watts, Mayor

DATE November 8, 2017