

Bill No. 4521-08

MOTION OF THE COUNCIL OF ALLEGHENY COUNTY

To continue the services of Attorney John F. Cambest to provide legal advice, representation and consultation to County Council.

NOW THEREFORE, IT IS MOVED, BY THE COUNCIL OF ALLEGHENY COUNTY,

That this Council hereby agrees to continue the services of Attorney John F. Cambest to provide legal advice, representation and consultation to County Council by engaging the law firm of Dodaro, Matta & Cambest, P.C. for the period of January 1, 2009 through December 31, 2009.

PRIMARY SPONSOR: COUNCIL PRESIDENT RICH FITZGERALD

CO-SPONSOR: COUNCIL MEMBER FINNERTY

In Council December 16 2008.

Read and Approved.



Rich Fitzgerald

President of Council

Attest:



John Mascio

Chief Clerk of Council



COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY COUNCIL

119 COURTHOUSE · 436 GRANT STREET

PITTSBURGH, PA 15219

PHONE (412) 350-6490 · FAX (412) 350-6499

COUNCIL@COUNTY.ALLEGHENY.PA.US

WWW.COUNTY.ALLEGHENY.PA.US/COUNCIL

RETAINER AGREEMENT

This Agreement made and entered into this ____ day of December, 2008, effective January 1, 2009, by and between the County Council of Allegheny County of the Commonwealth of Pennsylvania, a home rule county, hereinafter referred to as the "Client"

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The law firm of Dodaro, Matta & Cambest, P.C. , with offices located at 1001 Ardmore Boulevard, Suite 100, Pittsburgh, Pennsylvania, 15221, hereinafter referred to as the "Attorney."

Recitals

WHEREAS, the Client is the duly elected Legislative Branch of Allegheny County Government; and

WHEREAS, Article IV, Section 2(n) of the County's Home Rule Charter provides, among other things, that the Client may contract on a case-by-case basis for professional services within the limitations specified by the Charter; and

WHEREAS, the Client requires legal advice and counsel regarding its legislative activities and representation from time to time on a case-by-case basis in order to discharge its obligations under the Charter; and

WHEREAS, the Client wishes to engage an Attorney who is duly licensed to practice law in the Commonwealth of Pennsylvania and before the United States District Court for the Western District of Pennsylvania and has experience in the area of municipal law; and

WHEREAS, the Client is desirous of engaging the services of the Attorney to render and provide legal advice and counsel regarding its legislative function and representation to the Client from time to time on a case-by-case basis as shall be determined by the Client; and

WHEREAS, the Attorney is willing to render professional services to the Client under the terms and conditions set forth below

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and agreeing to be bound thereby, the parties hereto agree as follows:

1. Engagement

The Client hereby engages the Attorney to provide the legal services described in Paragraph 2 below. The Attorney accepts this engagement and agrees to devote its professional skills to the best of their abilities toward the successful completion of the engagement.

2. Services of Attorney

Attorney agrees to provide legal advice and counsel on legislative matters and representation as shall be requested by the Client from time to time on a case-by-case basis. Such legal advice, counsel and representation shall include, but not be limited to, the following:

- a. The Attorney will advise and consult with the Client on various legal matters which will include the attendance at all required meetings, the preparation, if necessary, of regular and routine legislation, the rendering of legal advice on issues before the Council, telephone conferences and correspondence.
- b. The Attorney will advise the Client and represent the Client and/or the Client's employees in the Court of Common Pleas of Allegheny County, the Appellate Courts of the Commonwealth of Pennsylvania, the United States District Courts and any other adjudicative forums in which the Client and/or its employees may need representation.

3. Compensation

- a. For the services described in Paragraph 2, the Client agrees to pay the Attorney the sum of \$3,500.00 as a monthly retainer commencing January 1, 2009.
- b. The Client agrees to pay the Attorney for court time according to the following schedule: Partner - \$150 per hour; Associate - \$100; Paralegal - \$75. Said compensation is in addition to the monthly retainer paid by the Client for advice and consultation of the Client in the regular conduct of the Client's business. Attorney will consult with the Client's Budget Director whenever incurring charges for professional services as described in Paragraph 2b. "Court time" is defined as the time actually spent before the courts and other adjudicative forums referred to in Paragraph 2b, including trials, hearings, and status conferences. Court time shall also include the actual time the attorney spends in depositions related to the foregoing.
- c. In addition, the Attorney is to be reimbursed for all disbursements made by the Firm on behalf of the Client, at cost, without addition of any special administrative charge. Major disbursements for experts and Court Reporters will be billed by Attorney along with professional services at no additional cost. Attorney will consult with the Client's Budget Director prior to incurring any major expenses of the type described therein. Routine disbursements include postage, long-distance telephone charges, copying charges, mileage for automobile travel and secretarial overtime when it results from the need of the

Client and not because of lack of availability of secretarial services during normal business hours, Lexis, telecopying and recording fees.

- d. The total amount of this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000.00) for fees and expenses. Client will have no obligation to pay anything in excess of this amount without a written amendment of the agreement.
- e. The Attorney agrees, as a condition precedent to the payment of any monies under the agreement, to submit with the request for payment such documentation or information requested by the Client so as to permit the Client to determine the work performed and the completeness of the work performed.

4. Term and Termination

This Agreement shall be effective on the 1st day of January, 2009 and shall terminate on the 31st day of December, 2009. Attorney shall give Client at least 30 days prior written notice of termination in the event of termination by attorney before the end of the term. Client may terminate this Agreement at any time upon notice to attorney. In any event, attorney shall only be entitled to his retainer, pro-rated through the date of termination, together with any court time and expenses incurred through the date thereof.

5. Assignment and Delegation/Non-Waiver

- a. The services to be provided pursuant to this Agreement shall be performed, whenever possible, by John F. Cambest, Esquire, as Principal Attorney. When not possible, any properly licensed attorney of the law firm of Dodaro, Matta & Cambest, P.C. may perform the services outlined in this Agreement for the Client.
- b. Any assignment or delegation so permitted shall be subject to all the terms, conditions and other provisions of this Agreement, and the Attorney shall remain liable to the Client with respect to each and every term, condition and other provision hereof to the same extent that the Attorney would have been obligated if no assignment or delegation had been made.
- c. A failure by the Client to take any action with respect to any default or violation by the Attorney of any terms, conditions or covenants of this Agreement shall not in any way limit, prejudice, diminish or constitute a waiver of any right of the Client to act with respect to any prior, contemporaneous or subsequent violation or with respect to any continuation or repetition of the original violation or default.

6. Insurance

The Attorney shall, at its own cost and expense, maintain professional liability insurance at all times during the term of this agreement and, prior to or contemporaneously with the execution thereof, deliver to the Client evidence of such insurance.

7. No Personal Liability

No elected official, director, officer, agent or employee of the Client shall be charged personally or held contractually liable by or to the Attorney under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

8. Data and Materials

All proprietary data and materials collected, developed, prepared, compiled or acquired by the Attorney during the performance of its services under this Agreement shall be the property of the Client. All data and materials shall be yielded and delivered by the Attorney to the Client promptly upon demand, and in any event, upon cessation of this Agreement, whether such cessation be by termination, expiration or otherwise.

9. No Co-Partnership or Agency

It is understood and agreed that nothing herein contained is intended or shall be construed to in any respect create or establish the relationship of copartners between the Client and the Attorney, or as constituting the Attorney or its agents, servants or employees as agent, servants or employees of the Client for any purpose whatsoever. Attorney shall perform at all times under this Agreement as an independent contractor.

10. Notices

All notices, reports and documents required or furnished pursuant to this Agreement shall be in writing and mailed by first-class mail, postage prepaid, or sent by facsimile machine, confirmed by letter addressed to each party as follows:

a. As to the Client:

Budget Director
Office of County Council
Room 119 Courthouse
Pittsburgh, PA 15219

Or to such other place as the Client may from time to time designate in writing:

b. As to the Attorney:

John F. Cambest, Esquire
Dodaro, Matta & Cambest, P.C.
1001 Ardmore Boulevard, Suite 100
Pittsburgh, Pennsylvania 15221

Or to such other place as the Attorney may from time to time designate in writing.

11. Severability

The parties intend or agree that if any paragraph, sub-paragraph, phrase, clause or other provision of this Agreement or any portion thereof shall be made to be void or otherwise unenforceable, all other portions of this Agreement shall remain in full force and effect.

12. Headings

The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope or intent of any provision of this Agreement, or shall they be construed to effect in any manner the terms and provisions hereof or the interpretation or construction thereof.

13. Modification

This Agreement constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written amendment duly executed by the parties. The Attorney agrees that no representations or warranties shall be binding upon the Client unless expressed in writing herein or in a duly executed amendment hereof.

14. Governing Law

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto on the day and year first written above.

Witness:

DODARO, MATTA & CAMBEST, P.C.

John F. Cambest, Esquire

COUNTY OF ALLEGHENY

Budget Director, County Council

President, County Council