

CITY OF BELLAIRE TEXAS

MAYOR AND COUNCIL

DECEMBER 1, 2014

Council Chamber and Council Conference Room
6:00 PM

Special Session

7008 S. RICE AVENUE
BELLAIRE, TX 77401



Mayor

Dr. Philip L. Nauert

Mayor Pro Tem

Amanda B. Nathan

Councilman

James P. Avioli Sr.

Councilman

Pat B. McLaughlan

Councilman

Roman F. Reed

Councilman

Gus E. Pappas

Councilman

Andrew S. Friedberg

Mission Statement:

The City of Bellaire is dedicated to outstanding quality service and facilities to ensure an open, progressive, and secure community.

SPECIAL SESSION (EXECUTIVE SESSION) - 6:00 P.M.**A. Call to Order and Announcement of a Quorum - Dr. Philip L. Nauert, Mayor.****B. Convene in Executive Session:**

Convene in Executive Session (Closed Session to be held in the Council Conference Room) under the Texas Government Code, Chapter 551, Open Meetings Act, Section 551.074, Personnel Matters, to deliberate the evaluation of the City Attorney of the City of Bellaire, Texas.

(Requested by Tracy L. Dutton, City Clerk)

C. Reconvene in Open Session:

Reconvene in Open Session in the Council Chamber and consider taking action on the adoption of an ordinance of the City Council of the City of Bellaire, Texas, appointing Alan P. Petrov as the City Attorney of the City of Bellaire, Texas, for a one-year period of time commencing on December 1, 2014, and remaining in effect month to month thereafter and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Legal Service Agreement with Johnson Petrov LLP for legal services.

D. Adjourn.

Mayor and Council

7008 S. Rice Avenue
Bellaire, TX 77401



Meeting: 12/01/14 06:00 PM
Department: City Clerk
Category: Agreement
Department Head: Tracy L. Dutton
DOC ID: 1170

**SCHEDULED
ORDINANCE (ID # 1170)**

Item Title:

Convene in Executive Session (Closed Session to be held in the Council Conference Room) under the Texas Government Code, Chapter 551, Open Meetings Act, Section 551.074, Personnel Matters, to deliberate the evaluation of the City Attorney of the City of Bellaire, Texas.

Background/Summary:

The City Council of the City of Bellaire, Texas ("City Council"), will convene in Executive Session (Closed Session in the Council Conference Room) under the Texas Government Code, Chapter 551, Open Meetings Act, Section 551.074, Personnel Matters, to deliberate the evaluation of the City Attorney of the City of Bellaire, Texas, on Monday, December 1, 2014, at 6:00 p.m. Although the City's current Legal Service Agreement ("Agreement") expired on November 30, 2014, the "Term of Agreement and Termination of Representation" clause provides for the Agreement to remain in effect month to month thereafter. The referenced Agreement was passed and approved by City Council, by Ordinance No. 13-057, on November 18, 2013. The Agreement covered a one-year term commencing on December 1, 2013, and ending on November 30, 2014.

At the conclusion of the Executive Session, City Council will reconvene in Open Session (Council Chamber) and may consider taking action on the adoption of an ordinance appointing the City Attorney for a one-year period of time and authorizing the Mayor and the City Clerk of the City of Bellaire, Texas, to execute and attest, respectively, a Legal Service Agreement with the City Attorney for legal services. The City Attorney will present a new agreement for legal services to City Council for review during the Executive Session.

Previous Council Action:

As noted above, City Attorney Alan P. Petrov was last appointed as Bellaire's City Attorney under Ordinance No. 13-057 on November 18, 2013.

Alan P. Petrov has served as City Attorney for the City of Bellaire, Texas, since July 17, 1995.

Fiscal Impact:

Funds have been included in the FY 2015 General Fund Budget for legal services.

Recommendation:

Action as City Council deems appropriate.

ATTACHMENTS:

- Appointment of City Attorney - Alan Petrov - Legal Services Contract - 2014 (DOCX)
- 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement(PDF)



ORDINANCE NO. 14-_____

AN ORDINANCE APPOINTING ALAN P. PETROV AS CITY ATTORNEY AND AUTHORIZING THE MAYOR AND THE CITY CLERK OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE AND ATTEST, RESPECTIVELY, A *LEGAL SERVICE AGREEMENT* ("AGREEMENT") BY AND BETWEEN JOHNSON RADCLIFFE PETROV & BOBBITT PLLC AND THE CITY OF BELLAIRE, TEXAS, SAID CONTRACT OF WHICH SHALL BECOME EFFECTIVE AS OF DECEMBER 1, 2013.

WHEREAS, the City Council of the City of Bellaire, Texas, entered into a *Legal Service Agreement* with Johnson Radcliffe Petrov & Bobbitt PLLC on November 18, 2013, for a one-year period commencing on December 1, 2013, and extending month-to-month thereafter (Ordinance No. 13-057); and

WHEREAS, the City Council of the City of Bellaire, Texas, has determined that it is in the best interest of the City to enter into a *Legal Service Agreement* with an attorney or law firm in order to protect its funds from loss due to unnecessary and burdensome claims, to provide itself with the best possible legal guidance for City Council action, municipal administration, and municipal oversight, and to provide the City Council, City Manager, and employees with current and timely legal advice on all facets of municipal law; and

WHEREAS, the City Council of the City of Bellaire, Texas, has full authority under the *Charter of the City of Bellaire, Texas*, as amended November 7, 2006, and the laws of the State of Texas to enter into such *Legal Service Agreement*; and

WHEREAS, the City Council of the City of Bellaire, Texas, has determined that it is in the best interest of the City to utilize the law firm of Johnson Petrov LLP and

appoint Alan P. Petrov as the City Attorney of the City of Bellaire, Texas; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:

1. That the City Council of the City of Bellaire, Texas, finds and determines that the findings of fact and conclusions as herein set out are true, correct, and accurate and, as such, are adopted herein.

2. That the Mayor and City Clerk of the City of Bellaire, Texas, are each hereby authorized to execute and attest, respectively, the *Legal Service Agreement* ("Agreement") by and between Johnson Petrov LLP and the City of Bellaire, Texas, a true, correct, and accurate copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

3. That the tem of said Agreement shall be for a one-year period commencing on December 1, 2014, and continuing on a month-to-month basis thereafter.

4. That Alan P. Petrov, a partner in the law firm of Johnson Petrov LLP, is hereby appointed as City Attorney for the City of Bellaire, Texas.

PASSED and **APPROVED** this 1st day of December, 2014.

(SEAL)

ATTEST:

SIGNED:

Tracy L. Dutton, TRMC
City Clerk

Dr. Philip L. Nauert
Mayor

APPROVED AS TO FORM:

Alan P. Petrov
City Attorney

Attachment: Appointment of City Attorney - Alan Petrov - Legal Services Contract - 2014 (1170 : Contract for Legal Services)



ORDINANCE NO. 13-057

AN ORDINANCE APPOINTING ALAN P. PETROV AS CITY ATTORNEY AND AUTHORIZING THE MAYOR AND THE CITY CLERK OF THE CITY OF BELLAIRE, TEXAS, TO EXECUTE AND ATTEST, RESPECTIVELY, A LEGAL SERVICE CONTRACT ("CONTRACT") BY AND BETWEEN JOHNSON RADCLIFFE PETROV & BOBBITT PLLC AND THE CITY OF BELLAIRE, TEXAS, SAID CONTRACT OF WHICH SHALL BECOME EFFECTIVE AS OF DECEMBER 1, 2013.

WHEREAS, the City Council of the City of Bellaire, Texas, entered into a *Legal Service Contract* with Johnson Radcliffe Petrov & Bobbitt PLLC on November 5, 2012, for a one-year period commencing on December 1, 2012, and extending month-to-month thereafter (Ordinance No. 12-051); and

WHEREAS, the City Council of the City of Bellaire, Texas, has determined that it is in the best interest of the City to enter into a *Legal Service Contract* with an attorney or law firm in order to protect its funds from loss due to unnecessary and burdensome claims, to provide itself with the best possible legal guidance for City Council action, municipal administration, and municipal oversight, and to provide the City Council, City Manager, and employees with current and timely legal advice on all facets of municipal law; and

WHEREAS, the City Council of the City of Bellaire, Texas, has full authority under the *Charter of the City of Bellaire, Texas*, as amended November 7, 2006, and the laws of the State of Texas to enter into such *Legal Service Contract*; and

WHEREAS, the City Council of the City of Bellaire, Texas, has determined that it is in the best interest of the City to continue utilizing the law firm of Johnson Radcliffe

Petrov & Bobbitt PLLC and appoint Alan P. Petrov as the City Attorney of the City of Bellaire, Texas; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS:

1. That the City Council of the City of Bellaire, Texas, finds and determines that the findings of fact and conclusions as herein set out are true, correct, and accurate and, as such, are adopted herein.

2. That the Mayor and City Clerk of the City of Bellaire, Texas, are each hereby authorized to execute and attest, respectively, the *Legal Service Contract* ("Contract") by and between Johnson Radcliffe Petrov & Bobbitt PLLC and the City of Bellaire, Texas, a true, correct, and accurate copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

3. That the tem of said Contract shall be for a one-year period commencing on December 1, 2013, and continuing on a month-to-month basis thereafter.

4. That Alan P. Petrov, a partner in the law firm of Johnson Radcliffe Petrov & Bobbitt PLLC, is hereby appointed as City Attorney for the City of Bellaire, Texas.

PASSED and **APPROVED** this 18th day of November, 2013.



Tracy L. Dutton

Tracy L. Dutton, TRMC
City Clerk

SIGNED:

Philip L. Nauert

Dr. Philip L. Nauert
Mayor

Attachment: 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement (1170 : Contract for Legal Services)

APPROVED AS TO FORM:



Alan P. Petrov
City Attorney

Attachment: 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement (1170 : Contract for Legal Services)



EXHIBIT A

Legal Service Contract

Johnson Radcliffe Petrov & Bobbitt PLLC
Professional City Attorney Services
2013-2014
Ordinance No. 13-057

Attachment: 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement (1170 : Contract for Legal Services)



JOHNSON RADCLIFFE
PETROV & BOBBITT PLLC

November 18, 2013

The Honorable Philip Nauert, Mayor
City of Bellaire
7008 South Rice Avenue
Bellaire, Texas 77401

Re: Legal Service Agreement

Dear Mayor Nauert:

The purpose of this letter agreement is to once again welcome the City of Bellaire, Texas (the "City") as a client of this firm and to set forth our understanding of certain aspects of our representation of the City.

UNDERSTANDING. We are pleased and very enthusiastic to continue the opportunity to serve as your City Attorney and Bond Counsel. Our aim is to provide the highest quality and most efficient legal services possible. We know that your satisfaction with our service is the key to a successful professional relationship and experience has shown that our relationship will be stronger if we start it with a mutual understanding about fees and their payment. Unless our engagement letter alters these arrangements, we will assume that these terms are acceptable to you and that they will also apply to future matters on which we can be of service to you.

SCOPE OF SERVICES AND FEES. RETAINER SERVICES: These are services of an ongoing nature. They are repetitive by nature and include, but are not limited to the following tasks:

1. Attend all regular Council meetings; the City Council meets the 1st and 3rd Monday of each month at 7:00 p.m. and provide legal advice to the Council at such meetings; attend as necessary Planning and Zoning Commission meetings, Building and Standards Commission meetings and Board of Adjustment meetings. Alan Petrov will make reasonable best efforts to attend when requested;
2. Prepare or review all ordinances which are to be considered by the City Council;
3. Prepare or review all resolutions which are to be considered by the City Council;
4. Review legal documents conveyed to the City for consideration;

The Honorable Philip Nauert, Mayor
 City of Bellaire
 November 18, 2013
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5. Provide legal advice to the City on an ongoing basis, as required, including advice necessary for compliance with all statutory requirements applicable to the City, such as the Texas Open Meetings Act, the Texas Public Information Act, the Local Government Code and zoning laws;
6. Prepare or review various City contracts not requiring technical expertise, specialized knowledge, legal research or negotiation (e.g. franchise agreements, concession agreements);
7. Prepare deeds, easements, and various other documents necessary for day-to-day business of the City;
8. Remain available at reasonable times for consultation with the City Manager and administrative staff to provide oral and written opinions regarding interpretation of the City ordinances, State and Federal laws applicable to day-to-day administration of City business.

The firm proposes a flat monthly fee of \$7,000 plus out-of-pocket expenses, not to exceed \$1,000 per expenditure, pursuant to City policy, for the above described Retainer Services.

LITIGATION/LEGAL RESEARCH/SPECIALIZED SERVICES: These are legal services required in special circumstances which may include:

1. Technical Negotiations: Review, assist and when requested represent the City in negotiations with other governmental or non-governmental entities related to contracts, franchise agreements or other City matters.
2. Litigation: Represent the City, its City Council and/or employees when requested in all State and Federal court cases and/or administrative proceedings.
3. Legal Research and Specialized Areas: Provide legal services that may require legal research or specific legal knowledge in areas such as but not limited to, utilities, annexation, condemnation, police services and zoning and transmit opinions relating to these issues.

The firm proposes an hourly rate of \$225.00 for partners, \$170.00 for associates and \$75.00 for paralegals, plus out-of-pocket expenses, for the above described Litigation/Specialized Service.

BOND COUNSEL SERVICES: Bond Counsel is engaged as a recognized independent expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of bonds.

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1. General Duties: As bond counsel we will: examine applicable law; prepare the resolution, indenture or ordinance authorizing and securing the Bonds (the "Ordinance") and other authorizing documents; consult with the parties to the transaction prior to the issuance of the Bonds; after approval by any required regulatory agency, secure Texas Attorney General approval of the Bonds and the registration of the Bonds by the Comptroller of Public Accounts of the State of Texas; review certified proceedings; and undertake such additional duties as we deem necessary to render the opinion with respect to each Bond issue.
2. Content of Opinion: Subject to the completion of proceedings for each financing to our satisfaction, we will render our opinion that:
 - a) the Ordinance has been duly adopted by the City and constitutes a valid and binding obligation of the City enforceable upon the City;
 - b) the Ordinance creates a valid lien on the funds or assets pledged by the Ordinance for the security of the Bonds on a parity with other bonds (if any) issued or to be issued under the Ordinance;
 - c) the Bonds have been duly authorized, executed and delivered by the City and are valid and binding obligations of the City, payable solely from the source provided therefor in the Ordinance;
 - d) the interest paid on the Bonds will be excluded from gross income for federal income tax purposes; and
 - e) the Bonds are exempt from registration under the Securities Act of 1933 and Texas securities law and the Ordinance is exempt from qualification under the Trust Indenture Act of 1939.
3. Delivery of Opinion: An opinion will be executed and delivered by us in written form on the date each issue of Bonds is exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date. Upon delivery of the opinion for each Bond issue, our responsibilities as Bond Counsel will be concluded with respect to that financing.
4. Reliance: In rendering each opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. We do not review the financial condition of the City, the feasibility of the project to be financed with the Bond proceeds, or the adequacy of the security provided to Bond owners, and we will express no opinion relating thereto. In performing our

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City of Bellaire
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services as bond counsel, our client will be the City and we will represent its interests. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. Our representation of the City does not alter our responsibility to render an objective opinion as bond counsel.

- 5. Official Statement: As Bond Counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or any other disclosure document with respect to the Bonds which is generally the responsibility of the financial advisor or underwriter, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. However, if a disclosure document will be adopted or approved by the City, our responsibility will include the preparation or review of any description therein of: (a) Texas and federal law pertinent to the validity of the Bonds and the tax treatment of interest paid thereon, (b) the terms of the Bonds, or (c) our opinion.
- 6. Compensation: For bond issues authorized after the date of this agreement, based upon: (a) our current understanding to the terms, structure, size of an issue of at least \$1,000,000 and schedule of the proposed financing, (b) the duties we will undertake for each financing pursuant to this letter, (c) the time we anticipate devoting to each financing, and (d) the responsibilities we assume, our fee as Bond Counsel will be a percentage of the principal amount of Bonds delivered at Closing as follows:

Minimum fee for any issue:	\$15,000
Up to \$3,000,000:	1% of the par amount issued
Amounts over \$3,000,000:	1% of the first \$3,000,000 issued plus 0.5% of any amount between \$3,000,000 and \$4,000,000 and 0.25% of all amounts in excess of \$4,000,000

Our bond counsel fee is usually paid at the Closing out of bond proceeds, and we customarily do not submit any statement until the Closing.

- 7. Expenses: The Bond Counsel fee quoted in paragraph 6 is exclusive of our out-of-pocket expenses, including Attorney General fee, travel costs, photocopying, deliveries, long distance telephone charges, facsimile service, transcripts, and other necessary office disbursements, which are normally billed at Closing, unless substantial delays in closing the financing occur. We will deliver a bound transcript (or a loose transcript, if preferred) to each party to the transaction.

Attachment: 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement (1170 : Contract for Legal Services)

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DISBURSEMENTS ON YOUR ACCOUNT. Except for Bond Counsel Services, statements will normally be rendered monthly for work done in the previous month, but in no event more than 90 days from the date of the performance of such work, covering and identifying services rendered as well as disbursements and other charges. These disbursements and charges include items incurred and paid for by the firm on your behalf such as long distance telephone charges, postage, delivery charges, telex or telecopy charges, travel, photocopying, and use of other service providers such as printers or experts, if needed. In litigated matters, we include payments we must make for process servers, court reporters, witness fees and related expenses. We also make separate charges for the use of "Lexis" or "Westlaw", which are computerized legal research systems that in our experience significantly reduce lawyer research time. Except for specialized word processing services, we normally do not make a separate charge for stenographic or word processing work unless there is an unusual situation arising out of your needs that requires overtime staff work. We will request that significant disbursement items be billed directly to you for payment.

PAYMENT. Payment will be due 30 days after the date of our statement. If we do not receive comment about the statement within 30 days of the statement date, we will assume you have seen the statement of professional fees and expenses and find it acceptable. Statements unpaid within 60 days will be subject to a late charge of 1.0% per month (12% per year) on the unpaid balance commencing from the date of the statement and continuing until paid. Payments should be made in the form of checks or drafts payable to "**Johnson Radcliffe Petrov & Bobbitt PLLC.**" If any of our statements remain unpaid for more than 90 days, we may, consistent with our ethical obligations and judicial requirements, cease performing services for you until arrangements satisfactory to us have been made for payment of arrearages and prospective future fees.

RETAINER. Depending upon the nature of the matter undertaken by the firm on behalf of any client, we reserve the right to require a retainer before commencement of services. Such retainer, if any, will be credited to the client's account to help defray out-of-pocket expenses such as telephone, telecopy, duplication, travel and related expenses. The firm is not requesting a retainer from the City in connection with the services to be performed under this agreement.

DELINQUENT ACCOUNTS. Occasionally, an account becomes delinquent. Should this occur, the firm has collection procedures that it will follow to ensure that the account is paid promptly. In fairness to most of the firm's clients who pay their accounts each month, these collection procedures and the late payment charge have been established so that the minority of clients whose accounts become delinquent will bear the firm's cost of such delinquent accounts.

QUESTIONS. If you have questions about any aspect of representation of your interests or our statements for professional fees and expenses, please do not hesitate to communicate with me. It is important that we proceed on a mutually clear and satisfactory basis in our work for you. We always welcome the opportunity to discuss any aspect of our representation of your interests, including the amount of our statements, and we encourage you to be frank about them.

The Honorable Philip Nauert, Mayor
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COMPLAINTS OR DISPUTES. The firm requests that should you have any complaint with its service or dispute with any invoice that you feel free to contact the lawyer involved or the Managing Partner of the firm. While the firm fully expects any complaint or dispute to be resolved by direct contact with its representatives, Texas law requires that we notify you that the State Bar of Texas investigates and prosecutes professional misconduct of Texas attorneys and that should you have any questions, the Office of General Counsel of the State Bar will provide you with information regarding the applicable procedures.

TERM OF AGREEMENT AND TERMINATION OF REPRESENTATION. This agreement shall be effective as of December 1, 2013, and it shall remain in effect for a period of one year from such date, and month to month thereafter. The firm, however, reserves the right to withdraw from this representation after 30 days notice, with or without cause, including without limitation any time fees or expenses are unpaid for more than 90 days from the date of invoice, or for any other reason permitted under Texas law or by the rules of the courts of the State of Texas, and the City reserves the right to terminate the representation after 30 days notice, with or without cause. Notice of termination by either party shall be given in writing to the other party. In the event of such termination, the City agrees to promptly pay the firm for all services rendered and all other fees, charges and expenses incurred pursuant to this agreement prior to the date of such termination. Upon termination of the representation for any reason, by either the firm or the City, the firm agrees to cooperate with any successor counsel to accommodate a smooth transition of the representation.

A full and candid communication about all aspects of our work for you is essential. If at any time you have any question, please contact me immediately. If this letter accurately sets forth our agreement for legal services, please counter sign the enclosed copies in the spaces indicated, keep one of the enclosed copies for your records and return one to me for our files.

Very truly yours,

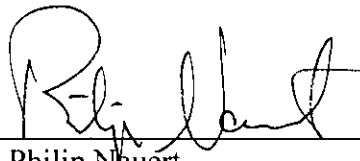
JOHNSON RADCLIFFE PETROV & BOBBITT PLLC



By: 
 Alan P. Petrov, Partner

Attachment: 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement (1170 : Contract for Legal Services)

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AGREED TO AND APPROVED this, the 18th day of November, 2013.

By: 
Philip Nauert
Mayor, City of Bellaire, Texas

ATTEST ★  ★
By: 
Tracy L. Dutton
City Clerk, City of Bellaire, Texas

Attachment: 13-057 - Appt - Petrov as City Attorney - Legal Service Agreement (1170 : Contract for Legal Services)