



City of Biggs

Agenda Item Staff Report For the Regular City Council Meeting: August 12, 2014

TO: Honorable Mayor and Members of the City Council
FROM: City Administrator
SUBJECT: Contract for Services with SCHWARTZER & MCPHERSON LAW FIRM

Council is asked to consider authorizing a contract for Services with SCHWARTZER & MCPHERSON LAW FIRM .

Background:

It may be beneficial for the City of Biggs to engage specialized legal counsel in connection with its interests in the pending Chapter 11 case of 06-007 Biggs Business Trust, Case No. BK-S-14-14027-led in the United States Bankruptcy Court for the District of Nevada. The interest of the City is primarily the purchase of three parcels of vacant land for a municipal waste water treatment facility.

Recommendation:

Authorize the Mayor and City Administrator to Contract for Services with SCHWARTZER & MCPHERSON LAW FIRM.

Mark Sorensen, City Administrator

SCHWARTZER & MCPHERSON LAW FIRM

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Lenard E. Schwartzert†
Jeanette E. McPherson†
Jason A. Imes*

2850 SOUTH JONES BOULEVARD, SUITE 1
LAS VEGAS, NEVADA 89146-5308
TELEPHONE: (702) 228-7590 FACSIMILE: (702) 892-0122
WEBSITE: WWW.S-MLAW.COM

Of counsel:
Gary B. Gelfand*

California Office

*Also admitted in California
† Board Certified
Business Bankruptcy Law
American Board of Certification

July 23, 2014

161 S. Doheny Drive
Beverly Hills, CA 90210
Telephone: (323) 272-6361

Via E-mail: greg@einhornlawoffice.com

City of Biggs
P.O. Box 307
Biggs, CA 95957

Re: **Retention to Provide Legal Services**

Dear Mayor and City Council:

We are pleased that you have asked us to represent the City of Biggs (the "City" or "You") in connection with its interests in the pending Chapter 11 case of 06-007 Biggs Business Trust, Case No. BK-S-14-14027-led in the United States Bankruptcy Court for the District of Nevada. The interest of the City is primarily the purchase of three parcels of vacant land for a municipal waste water treatment facility. Please note the Firm's representation is only of the City and not of any individual.

General Terms. This retention letter (the "Agreement") sets forth the terms of your retention of Schwartzer and McPherson Law Firm ("S&M" or the "Firm") to provide legal services and constitutes an agreement between us. The Agreement sets forth our entire agreement for rendering professional services for the current matter, as well as for all other existing or future matters, except where we otherwise agree in writing (*e.g.*, by signing a different retention letter). Our engagement is subject to and effective upon completion of our normal intake procedures, including receipt of a copy or fax of this Agreement signed by all parties, together with any retainers required, and completion of a check for potential conflicts of interest. You represent that you have disclosed, and will promptly disclose, to us all persons and entities that may have an interest in this matter so that we may avoid any conflicts of interest.

Personnel. I will be primarily responsible for this engagement. Other attorneys and legal assistants also will perform services during the course of this engagement. We will involve such lawyers and legal assistants in S&M Law Firm to the extent that your needs make such involvement desirable and acceptable to you.

Fees. The Firm will bill you for fees incurred at its regular hourly rates and in one-sixth increments of an hour (or in smaller time increments otherwise required by a court). At present, the range of billable hourly rates for attorneys and professional staff anticipated to work on this matter is as follows: Lenard E. Schwartzert (\$525); Jeanette E.

City of Biggs
July 23, 2014

McPherson (\$475); and Jason A. Imes (\$375). The hourly rate for the paraprofessionals assigned to the Case, Angela Hosey and Sheena Clow, is \$125. We reserve the right to adjust the Firm's billing rates from time to time in the ordinary course of the Firm's representation of you; however, other than as a result of our normally scheduled annual rate increase for associates and paraprofessionals to take place in January, we will not raise our billable rates again for a minimum of six (6) months.

Although we will attempt to estimate fees to assist you in your planning if requested, such estimates are subject to change and are not binding unless otherwise expressly and unequivocally stated in writing.

Expenses. Expenses related to providing services shall be included in our statements as disbursements advanced by us on your behalf. Such expenses include photocopying, printing, scanning, witness fees, travel expenses, filing and recording fees, certain secretarial overtime and other overtime expenses, postage, express mail, and messenger charges, court transcript costs, deposition costs, computerized legal research charges, and other computer services, facsimiles, word processing, telephone toll charges, notary charges, consultant or expert witness fees, and miscellaneous other charges. Our clients pay directly (and are solely responsible for) certain larger costs, such as consultant or expert witness fees and expenses, and outside suppliers or contractors' charges. If we advance funds for you, they will be added to the invoice. By executing this Agreement below, you are authorizing us to proceed on your behalf and to retain outside experts deemed appropriate by us in the course of this representation. Further, you agree to pay for all charges in accordance with S&M Law Firm's schedule of charges, a copy of which is available upon request and which may be revised from time to time without notice.

Billing Procedures. Our statements for fees and expenses are typically rendered monthly and, unless other arrangements are made, payment in full is due upon receipt. We may adjust our billing cycle upon agreement with you. You may have the billing statement in any reasonable format you choose, but we will select an initial format for the statement unless you otherwise request in writing. Depending on the circumstances, however, estimated or summary bills may be provided during certain billing cycles, with supporting time descriptions and expense summaries to follow thereafter. If you have any questions about a statement, please call them to our attention promptly but, in any event, no later than ten (10) days after you receive the statement. Payment is due within fifteen (15) days after you receive the statement. If we do not receive payment by the end of the month following the month in which we issue our statement, you agree to pay a carrying charge of 1.5% per month (subject to adjustment from time to time as indicated on our statements) on the unpaid balance of the statement from the invoice's date.

Retainer. You will provide to the Firm, an "evergreen retainer" in the amount of US \$5,000.00. We may require an additional retainer in the future. **This retainer and any additional retainer, until earned, is a deposit for payment of a portion of the legal fees and costs to be incurred, and is expected to be replenished immediately and maintained at this level during the course of the engagement.** As such, evergreen retainer was set to approximate our estimate of fees and expenses expected to be accrued

City of Biggs
July 23, 2014

and unpaid on a monthly basis by you. The Firm's estimate of expected fees and expenses may change based upon actual or expected fees and expenses incurred or expected to be incurred, as applicable. The evergreen retainer will be deposited in the Firm's trust account. Except to the extent any legal fees or costs are incurred or are anticipated to be incurred prior to the completion of the engagement, the evergreen retainer fee is a refundable deposit that is your property and which you may have returned. At the end of our engagement, our final charges will be applied against the evergreen retainer and the balance of the evergreen retainer, if any, will be refunded, or the balance due must be paid by you. This evergreen retainer may also be used to pay for any fees outstanding in other matters in which you are the client. You are also granting us a lien for attorneys' fees and costs advanced on all retainers, escrow accounts, trust accounts, real and personal property, intangible property, claims and causes of action that are subject to our representation of you and on all proceeds of any recovery obtained (by settlement, arbitration, award, court judgment or otherwise). Further, you agree to remit immediate payment to the Firm upon receiving invoices from the Firm.

Termination. Our retention may be terminated by either of us at any time by written notice by or to you, provided that our right hereunder to terminate or withdraw is subject to applicable ethical rules. Our representation will end at the earliest of (a) your termination of our representation, (b) our withdrawal, and (c) the substantial completion of our substantive work. We normally do not withdraw from a representation unless the client misrepresents or fails to disclose material facts, fails to pay fees or expenses, or makes it unethical or unreasonably difficult for us to continue to represent the client, or unless other just cause exists. If permission for withdrawal is required by a court, we shall apply promptly for such permission, and termination shall coincide with the court order for withdrawal. If this Agreement or our services are terminated for any reason, such termination shall be effective only to terminate our services prospectively and all the other terms of this Agreement with respect to our service prior to such termination shall survive any such termination.

Upon cessation of our active involvement in a particular matter (even if we continue active involvement on other matters on your behalf), we will have no further duty to inform you of future developments or changes in law as may be relevant to such matter. Further, unless you and we mutually agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines that may arise from the matters for which we had been retained but as to which our active involvement has ceased.

Cell Phone and E-mail Communication. S&M hereby informs you and you hereby acknowledge that S&M's attorneys sometimes communicate with their clients and their client's professionals and agents by cell telephone, that such communications are capable of being intercepted by others and therefore may be deemed no longer protected by the attorney-client privilege, and that you must inform S&M if you do not wish S&M to discuss privileged matters on cell telephones with you or your professionals or agents.

City of Biggs
July 23, 2014

S&M hereby informs you and you hereby acknowledge that S&M's attorneys sometimes communicate with their clients and their client's professionals and agents by unencrypted e-mail, that such communications are capable of being intercepted by others and therefore may be deemed no longer protected by the attorney-client privilege, and that you must inform S&M if you wish to institute a system to encode all e-mail between S&M and you or your professionals or agents.

File Retention. All records and files will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy generally not to retain records relating to a matter for more than five years. Upon your prior written request, we will return client records to you prior to their destruction. It is not administratively feasible for us to advise you of the closing of a matter or the disposal of records. We recommend, therefore, that you maintain your own files for reference or submit a written request for your client files promptly upon conclusion of a matter.

Conflicts of Interest. As is customary, there are numerous business entities, with which you currently have relationships, that S&M has represented or currently represents in matters unrelated to you (collectively, the "Interested Parties") and will continue to do so in such unrelated matters. Because you are engaged in activities (and may in the future engage in additional activities) in which your interests may diverge from those of the Interested Parties or our other clients, the possibility exists that the Interested Parties or one of our clients may take positions adverse to you.

Further, in undertaking our representation of you, we want to be fair not only to your interests but also to those of our other clients. Because you are engaged in activities (and may in the future engage in additional activities) in which your interests may diverge from those of our other clients, the possibility exists that one of our current or future clients may take positions adverse to yours (including litigation or other dispute resolution mechanisms) in a matter in which S&M may be retained. In the event a present conflict of interests exists between you and our other clients or in the event one arises in the future, you agree to waive any such conflict of interest or other objection that would preclude our representation of another client in other current or future matters substantially unrelated to this representation of you (including in litigation, arbitration or other dispute resolution mechanism). You also agree that our representation is solely of the City and that no member or other entity or person related to it (such as council members, officers or employees) has the status of a client for conflict of interest purposes. Please note that the Nevada Rules Of Professional Conduct provide, in relevant part, as follows:

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) The representation is not prohibited by law;
- (3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing.

Rule 1.9. Duties to Former Clients.

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

- (1) Whose interests are materially adverse to that person; and
- (2) About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;
- (3) Unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) Use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) Reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Based upon our review of the schedules filed by 06-007 Biggs Business Trust in its Chapter 11 case we see no conflict of interest.

No Guarantee of Success. It is impossible to provide any promise or guarantee about the outcome of your matters. Nothing in this Agreement or any statement by our staff or attorneys constitutes a promise or guarantee. Any comments about the outcome of your matter are simply expressions of judgment and are not binding on us.

City of Biggs
July 23, 2014

Consent to Use of Information. In connection with future materials that, for marketing purposes, describe facets of our law practice and recite examples of matters we handle on behalf of clients, you agree that they may identify you as a client, may contain factual synopses of your matters, and may indicate generally the results achieved, without disclosing confidences and privileged information.

Reimbursement of Expenses. You agree promptly to reimburse us for all reasonable and documented fees and expenses, including the amount of S&M's attorney and paralegal time at normal billing rates, as incurred by us in connection with participating in, preparing for, or responding to any action, claim, suit or proceeding brought by or against any third-party that relates to the legal services provided by us under the Agreement. Without limiting the scope of the foregoing, and by way of example only, this paragraph extends to all such reasonable and documented fees and expenses incurred by us in responding to document subpoenas, and preparing for and testifying at depositions and trials.

Miscellaneous. This Agreement sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing and not orally or by course of conduct. Each party signing below is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party countersigning below, whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not effect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be servable.

We are not advising you with respect to this Agreement because we would have a conflict of interest in doing so. If you wish advice, you should consult independent counsel of your choice.

Please confirm your agreement with the arrangements described in this letter by signing below and returning it to me via fax: 702-892-0122 or electronic mail at info@s-mlaw.com.

Sincerely,

/s/ Lenard E. Schwartzer

Lenard E. Schwartzer, Esq.

City of Biggs
July 23, 2014

Acknowledgement

The undersigned has read and understands this Agreement. The undersigned represents that he has the authority to sign on behalf of the City of Biggs. The foregoing accurately sets forth all the terms of your engagement and is agreed to and accepted as of this _____ day of July, 2014.

CITY OF BIGGS

By: _____

Title: _____

Social Security #: _____

City of Biggs
July 23, 2014

Client Contact Information

Person to Contact: _____

Client Address: _____

City, State, Zip: _____

Telephone No.: _____

Facsimile No.: _____

E-Mail Address: _____

Billing Information

(Unless otherwise directed, all invoices are sent electronically)

Billing E-Mail Address: _____

Billing Address: _____

City, State, Zip: _____