



City Council Memorandum

To: City Councilmembers
From: Mayor Fashbender
Date: February 6, 2023
Item: Environmental Attorney Representation

Council Action Requested:

Authorize signature for Acknowledgment, Waiver of Conflict and Consent for General Terms of Engagement with Larkin, Hoffman, Daly, and Lindgren Ltd.

Background Information:

Several PFAS chemicals have been present in all six Hastings municipal wells for years, but do not exceed the Minnesota Department of Health index of 1.0 (our measures range from 0.16 to 0.84). Now the federal Environmental Protection Agency is expected to release draft regulatory values for PFAS in the coming weeks that will lower the tolerances in drinking water supplies. MDH also plans to issue new guidance as a result of the coming EPA regulations as well as updated research on PFAS. We expect the new standards to result in MDH issuing a Drinking Water Advisory for Hastings, requiring mitigation of PFAS.

We have been working the past couple months with the Minnesota Pollution Control Agency and its consulting engineers to learn more about our PFAS levels and where the chemicals may be coming from. We are meeting with them February 14 about the results of this study. It may identify areas for more in-depth analysis, it may identify a connection to the 3M disposal site in Cottage Grove, or it may seem to disprove a connection to the 3M site.

I expect that a connection to the disposal site would confirm Hastings' eligibility to participate in and receive funding through the 2018 Settlement and underlying 2007 Consent Order. As we anticipate the initial environmental report, I recommend legal counsel to assist with assessing our ability to recover expenses through the Settlement and presenting the basis of Hastings inclusion to the co-trustees at the MPCA and DNR. Beyond this, counsel may assist with strategy, negotiation, and legal guidance depending on how the PFAS matter proceeds.

I spoke with three environmental attorneys:

Peder Larson of Larkin, Hoffman, Daly, and Lindgren Ltd.
Charles Nauen of Lockridge, Grindal, Nauen PLLP
Michael Drysdale of Dorsey & Whitney LLP

I recommend retaining Attorney Larson based on his extensive experience with complex environmental claims and his contacts with the MPCA and other state agencies. During reference check, he was described as “absolutely amazing” and “priceless” and his experience with complex environmental issues as well as his extensive relationships with state agencies were noted as particular strengths.

The firm Larkin Hoffman has recent/current representation with developer Summit Management LLC. This is unrelated to the City’s PFAS concerns but would require acknowledgment and consent of the simultaneous representation.

Financial Impact:

Retainer \$2,500

Actual expenses depend on extent of counsel

Expenses incurred will be tracked for potential reimbursement

Committee Discussion:

City Council Workshop scheduled for 2/21/2023

Attachment:

1/27/2023 correspondence from Atty. Peder Larson, with Acknowledgment, Waiver of Conflict and Consent for General Terms of Engagement with Larkin, Hoffman, Daly, and Lindgren Ltd.

January 27, 2023

Dan Wietecha
City Administrator
City of Hastings
101 4th Street East
Hastings, MN 55033

Re: Representation of the City of Hastings With Respect to the City's Eligibility to Participate in Public Funds to Address PFAS on Drinking Water

Dear Mr. Wietecha:

Thank you for asking Larkin Hoffman to represent the city of Hastings (the "City") in assessing the City's eligibility to obtain public funding to address PFAS in the City's drinking water (the "Representation"). This letter is sent to confirm our engagement for the Representation and to disclose a conflict of interest arising due to the Representation. We will also need to obtain a waiver of this conflict of interest from the City and Summit Management, LLC before we can commence the Representation.

Terms of Engagement

Please be advised that we will bill on a monthly basis for fees and costs incurred. My hourly rate is \$610.00. As we discussed, I will also involve will involve other firm attorneys, including associate attorneys, or paralegals to assist in this matter. Costs that may be incurred generally include such items as filing fees and electronic research as necessary. If at any time you have any questions or comments about our services, staffing, billings or any other aspects of our representation, please contact me.

Our firm requires a retainer to commence representation on a new matter. The retainer for this matter is \$2500 and an invoice in that amount is enclosed.

The attached General Conditions for Representation will apply to this matter as they do for all matters we handle on behalf of clients. Please do not hesitate to contact me at any time you have questions or comments about our services.

Current Conflict of Interest

We would like to represent the City with respect to the Representation, but first need to disclose to you a conflict of interest arising from our current representation of Summit Management, LLC ("Summit") in claims against the City. We also need to obtain the City's waiver of this conflict of interest and consent to our representation.

While Summit will not be involved in our Representation of the City, we are currently representing Summit with respect to claims against the City, claims unrelated to the Representation. If we represent the City with respect to the Representation at the same time we are representing Summit adverse to the City, we will be adverse to an existing client, thus giving rise to a conflict of interest.

Rule 1.7 of the Minnesota Rules of Professional Conduct provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; and (2) each affected client gives informed consent, confirmed in writing.

We do not believe that our representation of Summit in its claims adverse to the City will in any way affect our ability to provide competent and diligent representation to the City with respect to the Representation, a matter unrelated to Summit's claims against the City. If a dispute were to arise between the City and Summit that involve the Representation that is the subject of this engagement during the course of our dual representation, Larkin Hoffman may not be able to represent either party in resolving that dispute.

Please acknowledge the disclosures made in this letter and indicate the City's consent to our representation by having the waiver and consent set forth below signed on behalf of the City and returning the signed copy of this letter to me. Please note that we are simultaneously requesting a similar waiver and consent from Summit. If both parties consent, we will then commence our representation of the City as requested.

If you have any questions regarding the waiver and consent, you should seek independent legal advice.

Potential Conflicts of Interest

Larkin Hoffman occasionally represents private clients adverse to the City with respect to legal issues such as property tax appeals, condemnation, land use and zoning matters. It is possible that, during the time Larkin Hoffman is representing the City in the Representation, an existing or future client may seek to engage Larkin Hoffman in connection with actual or potential matters in which such client's interests are, or potentially may become, adverse to the interests of the City. If Larkin Hoffman represents these clients on matters adverse to the City at the same time Larkin Hoffman represents the City in the Representation, Larkin Hoffman may be deemed to be adverse to an existing client, thus giving rise to a conflict of interest.

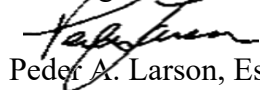
Larkin Hoffman would be unable to provide the Representation of the City if it could interfere with our ability to represent existing or future clients adverse to City on matters unrelated to the Representation. We therefore ask the City to confirm that Larkin Hoffman may continue to represent and undertake in the future representation of existing or future clients in any matter, including but not limited to transactions, negotiations, litigation or other dispute resolutions, even if the interests of the client in that other matter are adverse to the City, as long as that other matter is not substantially related to this engagement for Representation on behalf of the City. As such, by engaging Larkin Hoffman, the City confirms that: (1) the Representation will not be

asserted by the City either as a conflict of interest with respect to, or as a basis to preclude, challenge or otherwise disqualify Larkin Hoffman from, any current or future representation of any client in any matter, as long as: (a) that other matter is not substantially related to the Representation; and (b) Larkin Hoffman has taken the necessary measures to protect the City's confidential and attorney client privileged information; (2) the City waives any conflict of interest that exists or may exist in the future that might be asserted to preclude, challenge or otherwise disqualify Larkin Hoffman in any representation of any other client with respect to any such matters unrelated to the Representation; (3) The City has had the opportunity to consult with other counsel with respect to the terms and conditions of the Conflict Waiver set forth herein and acknowledged below; (4) the City's consent to these provisions and the acknowledgment below is both voluntary and fully informed; (5) the City intends for its consent to be effective and fully enforceable and to be relied upon by Larkin Hoffman; and (6) Larkin Hoffman agrees to provide written notice to the City of any representation of clients on matters adverse to the City.

If you have any questions regarding the waiver and consent, you should seek independent legal advice.

We appreciate this opportunity to be of service to the City and look forward to working with you.

Best regards,



Peder A. Larson, Esq., for
Larkin Hoffman

Direct Dial: 952-896-3257
Email: plarson@larkinhoffman.com

Attachment

ACKNOWLEDGMENT, WAIVER OF CONFLICT AND CONSENT

On behalf of the City of Hastings, I hereby acknowledge receipt of the disclosures set forth in the above letter and acknowledge the conflict of interest arising from the simultaneous representation of the City of Hastings and Summit Management, LLC by Larkin, Hoffman, Daly & Lindgren, Ltd. I hereby consent to the representation by Larkin, Hoffman, Daly & Lindgren, Ltd. of the City of Hastings with respect to the Representation described in the above letter while representing Summit Management, LLC with respect to its claims against the City of Hastings, claims unrelated to the Representation.

On behalf of the City of Hastings, I also hereby acknowledge that Larkin, Hoffman, Daly & Lindgren, Ltd. often represents private clients adverse to the City of Hastings and that Larkin, Hoffman, Daly & Lindgren, Ltd. would be unable to provide representation of the City if it could

interfere with its ability to represent existing or future clients adverse to City of Hastings on matters unrelated to the Representation. As such, the City acknowledges and confirms that: (1) the Representation described in the above letter will not be asserted by the City of Hastings either as a conflict of interest with respect to, or as a basis to preclude, challenge or otherwise disqualify Larkin Hoffman from, any current or future representation of any client in any matter, as long as: (a) that other matter is not substantially related to the Representation; and (b) Larkin, Hoffman, Daly & Lindgren, Ltd. has taken the necessary measures to protect the City of Hastings' confidential and attorney client privileged information; (2) the City of Hastings waives any conflict of interest that exists or may exist in the future that might be asserted to preclude, challenge or otherwise disqualify Larkin, Hoffman, Daly & Lindgren, Ltd. in any representation of any other client with respect to any such matters unrelated to the Representation; (3) the City of Hastings has had the opportunity to consult with other counsel with respect to the terms and conditions of this conflict waiver; (4) the City of Hastings' acknowledgment and consent is both voluntary and fully informed; (5) the City of Hastings intends for its consent to be effective and fully enforceable and to be relied upon by Larkin, Hoffman, Daly & Lindgren, Ltd.; and (6) Larkin, Hoffman, Daly & Lindgren, Ltd. agrees to provide written notice to the City of Hastings of any representation of clients on matters adverse to the City of Hastings.

CITY OF HASTINGS

Dan Wietecha, City Administrator

**LARKIN HOFFMAN DALY & LINDGREN LTD.
GENERAL CONDITIONS OF ENGAGEMENT**

This Statement sets forth the general conditions of your engagement of Larkin, Hoffman, Daly & Lindgren, Ltd. (the "Firm"). These terms apply to all legal matters except as specifically modified in writing.

1. REPRESENTATION OF ONLY NAMED CLIENT

We are agreeing to represent only the person, persons, entity or entities identified in this engagement letter. We are not agreeing to represent any other persons, such as spouses, children, family members, owners, shareholders, directors, members, managers or partners. We are not agreeing to represent any parent, subsidiary or affiliated entities.

2. SCOPE OF LEGAL SERVICES

Our representation is limited to the specific matter for which we have been engaged, as well as those tasks we believe are necessary to complete those services (the "Matter"). Our representation does not entail a continuing obligation to advise you of subsequent legal developments that might have a bearing on your affairs generally or, after the completion of this legal work, this specific Matter. If during the course of this legal representation it becomes necessary to take on additional tasks, and if we agree to do so, the terms of this engagement letter will apply to those legal services as well.

3. YOUR RESPONSIBILITIES

To enable us to render our legal services effectively, you agree to disclose fully and accurately to us all information (comprising physical documents or electronic data) that may be relevant to the Matter. You further agree to keep us informed of any developments that may affect the Matter, and to assist and cooperate with us as necessary in dealing with the Matter. We will rely upon you for the accuracy of all information you provide to us. In reliance upon that information and the guidance you provide, we will provide legal counsel to you and assist you with respect to the Matter as set forth in the engagement letter.

It may be necessary at times for you to participate in meetings with us or others, or to attend public meetings, depositions or court proceedings. You agree to attend such meetings, depositions or proceedings as requested.

During the course of our representation, including at or before the date of this engagement letter, we may express our opinions or beliefs regarding the Matter or various courses of action that may occur, including the possible outcomes that may be anticipated. Any such statement made by any person acting or speaking on behalf of this Firm is intended solely as an expression of opinion, based upon information available to us at the time. Such opinions are not a promise or guarantee of any particular result.

4. FEES AND COSTS

Unless otherwise specified in this engagement letter, the Firm's fees will be based primarily upon the standard hourly rates for the personnel rendering services. The hourly rates for all personnel are based upon their experience and specific area of legal concentration. All hourly rates are subject to periodic, usually annual, adjustments. The rates charged will be those in effect at the time the services are rendered. Other factors may be considered in determining the final amount of our fees, including (a) the novelty and difficulty of the questions involved, (b) the skill requisite to perform the legal services properly, (c) the likelihood that accepting the representation will preclude the Firm from accepting other employment, (d) the fee customarily charged in the locality for similar legal services, (e) the amount involved and the result obtained, (f) any time limitations imposed upon us by the client or the circumstances, (g) the nature and length of our relationship, and (h) the experience, reputation and ability of the lawyer or lawyers performing the services.

The services for which you will be charged will include, but will not be limited to, telephone and office conferences with you, with adverse counsel, and with any others necessary for us to handle the specific legal matter for you; conferences among our personnel as necessary to advance and manage the representation; factual investigation; legal research; responding to requests to provide information to auditors in connection with reviews or audits of financial statements; drafting of letters, agreements, and other documents; travel time; for court cases, waiting time in court or elsewhere; drafting or responding to discovery and/or motions; and preparing for and attending depositions, negotiations, mediation and other court proceedings.

In addition to our fees, we will bill you for disbursements and other charges incurred in performing our services, such as, but not limited to, photocopying, messenger and delivery charges, electronic/online research, travel, parking, long distance and local telephone, court costs and fees, facsimile transmissions, court reporter charges, and document storage and processing required to store, retrieve and review electronic documents. Unless special arrangements are

made, fees and expenses of others such as experts, investigators, witnesses, consultants, and court reporters and other large disbursements may be billed directly to you.

Fees, disbursements, and other charges will usually be billed monthly. There may be a delay in billings to us from outside vendors, and thus the charges for disbursements may not appear in the same billing as the related services. Our invoices are payable upon receipt. Any invoice not paid within 30 days of its date is subject to the imposition of late payment charges. If any of our invoices are not paid in full, and we choose to pursue collection of the outstanding balance, you agree, by accepting our representation of you under these General Conditions, that the Firm will be entitled to recover all costs of collection, including a reasonable attorneys' fee, associated with any actions taken to collect the outstanding balance.

Although we may from time to time furnish for your convenience estimates of fees or charges that we anticipate will be incurred on your behalf, these estimates are subject to unforeseen circumstances and are by their nature inexact. We will not be bound by any estimates except as otherwise expressly set forth in this engagement letter or otherwise agreed to by us in writing.

In addition to traditional check, ACH and wire transfer payments which we accept at no cost, we offer a facility to accept payments electronically by credit card, debit card or electronic check. However, because the third-party vendor assesses a fee to process credit card payments, we reserve the right to add a processing fee equal to but not greater than our vendor processing fee for any payments you choose to make by credit card.

5. LATE PAYMENT CHARGES

In the event any of our periodic billings to you are not paid when due, the Firm will impose late payment charges on the unpaid balance. Such charges will be assessed at eight percent (8%) per annum on matters for natural persons, and at eighteen percent (18%) per annum for entities. Such late charges will accrue beginning 30 days after the date of any invoice not paid in full.

6. TERMINATION OR WITHDRAWAL

Our representation of you will terminate upon completion of our work on the Matter. You have the right to terminate our representation at any time upon written notice to the Firm. Such termination shall not, however, relieve you of the obligation to pay for all services rendered and disbursements and other charges made or incurred on your behalf prior to the date of the notice or termination, whichever is later. Although we do not anticipate any need to do so, we also reserve the right to withdraw from this representation for good cause. Good cause includes your failure to honor the terms of this engagement letter, your failure to pay amounts billed in a timely manner, your failure to cooperate or follow our advice on a material matter, or any fact or circumstance that would, in our view, impair an effective attorney-client relationship or would render our continuing representation unlawful, unethical, or impracticable. If we elect to withdraw, you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal. We will be entitled to be paid for all services rendered and disbursements and other charges made or incurred on your behalf prior to the date of withdrawal.

7. DOCUMENT RETENTION AND DESTRUCTION

We maintain our files primarily in a digital image format. Accordingly, we will likely digitize a copy and return to you original documents that you provide to us during the course of our representation. At the conclusion of our representation on the Matter, we will return to you any remaining original documents in our possession. We typically will maintain our electronic files for a period of seven years after the conclusion of our representation. After that time, we may destroy the entire file without further notice to you. If we have not already done so, we will attempt at that time to return any original documents to you. If for any reason we cannot return such documents, they may also be destroyed. If you wish to retain a record of the Matter for a longer period of time, you should arrange to create such a file for yourself.

8. TEXT COMMUNICATIONS

The use of text messages to communicate with lawyers is increasingly common, and appropriate communications between attorneys and clients are expected to be confidential and privileged. However, under certain circumstances, like when the phone is owned by an employer, those messages may not be confidential. Text messages are not encrypted unless certain third-party programs are used. Therefore, text messages are more susceptible to being intercepted by third parties. For these reasons, we discourage communicating confidential and privileged information via text message. If you do so, you understand the risk of interception and the possible waiver of privilege and accept those risks.