



**Special Called
City Council Meeting
August 12, 2016**



City of Robinson

111 W. Lyndale, Robinson, TX 76706-5619

Phone (254) 662-1415 ❖ Fax (254) 662-1035

SPECIAL CALLED MEETING PUBLIC NOTICE

THE ROBINSON CITY COUNCIL WILL MEET ON FRIDAY, AUGUST 12, 2016 AT 10:00 A.M. IN THE COUNCIL ROOM AT ROBINSON CITY HALL, 111 WEST LYNDALE, ROBINSON, TEXAS TO CONSIDER AND ACT ON THE ITEMS ON THE FOLLOWING AGENDA.

1. Call to order
2. Invocation
3. Roll Call.
4. Consider and possible action on bid award for the clearing and grubbing operations phase for off channel reservoir number 2.
5. Consider and possible action on letter of engagement with the Bojorquez Law Firm to represent the City's interests in all aspects of Land.
6. Adjourn.

**The Governing Body reserves the right to go into Executive Session on any of the above items as provided by Government Code Chapter 551.*

**Public Hearings will be held in accordance with procedures set forth in Resolution R-95-011, adopted by the City Council on June 13, 1995.*

Note: Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services should contact the City Secretary at 254-662-1415 at least twenty-four (24) hours before this meeting so that appropriate arrangements can be made.



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 08/08/2016

Meeting Date: 08/12/2016

Agenda Item #4

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: Consider and possible action on bid award for the clearing and grubbing operations phase for off channel reservoir number 2.

STAFF RECOMMENDATION: Staff recommends award as presented.

ITEM SUMMARY: The Robinson City Council approved the proposal from Walker Partners for engineering services for the clearing and grubbing operations phase for off channel reservoir number 2 at the August 2, 2016 meeting. Bid advertisements were published in the July 29, 2016, and August 5, 2016 editions of the Hometown News. Bids will be opened at 2:00 PM at Robinson City Hall on Thursday, August 11, 2016. A Bid Summary will be provided by the City Engineer at the meeting.

FISCAL IMPACT: To be presented.

ATTACHMENTS:

Bid Summary to be provided.



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 08/08/2016

Meeting Date: 08/12/2016

Agenda Item #5

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: Consider and possible action on letter of engagement with the Bojorquez Law Firm to represent the City's interests in all aspects of Land Use.

STAFF RECOMMENDATION: Staff recommends approval of the letter of agreement.

ITEM SUMMARY: There are several concerns with our current zoning ordinance, especially as it relates to the zoning map and future land use maps. At the time the current zoning ordinance was adopted, the enabling ordinance, which used typical language, adopted the new ordinance and the attached map as the official zoning of the city and repealed all previous zoning ordinances, which would have included the previous zoning map. The issue is that a new zoning map was not included with the new zoning ordinance. Staff has been using the old zoning map, but I have concerns that it may not be the appropriate approach. I have discussed this with our City Attorney, but zoning and land use law are not his area of expertise. The Bororquez Law Firm does have attorneys who specialize in all aspects of land use law. This would be limited engagement to assist us in determining if our current process will withstand legal challenge and if not, then assisting in making the necessary changes to correct the situation.

FISCAL IMPACT: Costs would be incurred on an hourly basis. The cost would be covered by personnel costs savings from the open Planning Director position.

ATTACHMENTS:

Letter of engagement

CITY OF ROBINSON STANDARD TERMS OF ENGAGEMENT

This document establishes the standard terms of our engagement as your attorneys. Unless modified in writing by mutual consent, these terms will be an integral part of our agreement. Therefore, we ask that you carefully review this statement and contact us promptly if you have any questions. We suggest that you retain this document in your file.

I. Our Relationship

1. Identity of Client

The *Bojorquez Law Firm, P.C.* (“Firm”) will be representing the interests of the *City of Robinson* (“Robinson”) as an organization. The Mayor and City Manager will be our primary client representatives. In the course of this relationship, you may designate other city officials to receive legal services on the City’s behalf.

2. Nature of Representation

While in the future we may be directed to represent the City on other matters, our present relationship can be described as follows:

Serve as *Special Counsel* to advise and advocate the City’s interests in all aspects of *Land Use*.

3. Predictability of Anticipated Outcomes

As Special Counsel, it is imperative that you have a clear understanding of the legal services the Firm will provide. Any questions that you have should be dealt with promptly. We will provide services related only to matters as to which we have been specifically engaged. The Firm will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of the City’s municipal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. We cannot guarantee the success of any given matter, but we will strive to represent your interests professionally and efficiently.

4. Client Responsibilities

You agree to cooperate fully with the firm and to provide us promptly with all information known or available to you relevant to our representation. The City agrees to pay our invoices in accordance with these STANDARD TERMS OF ENGAGEMENT.

5. Responsibilities of the Bojorquez Law Firm

The Firm is committed to meeting the City's legal needs. In doing so, the Firm will: act competently and in a timely manner; protect the City's privileged information and ensure appropriate confidentiality; promote the City's interests; discuss the City's objectives and how they should best be achieved; and provide information about the work to be done, who will do it, when the work is expected to be completed and the way the services will be provided.

6. Ancillary Services

The Firm offers Planning, Municipal Court Consulting, Spanish Translation, and other types of ancillary services. These Law-related services would be provided in whole or in part by individuals who are not attorneys. Accordingly, these services are not legal services. As such, communications between the City and the Firm regarding such work may not be subject to the *Texas Rules of Disciplinary Conduct* governing the attorney-client relationship.

7. Ethical Conflict of Interest Disclosure

The representation of more than one municipal entity may present special ethical considerations under the *Texas Rules of Disciplinary Conduct*. The Firm may undertake representation of multiple municipal entities if the City agrees in writing after consultation about the risks of joint representation. The City may also consult with legal counsel other than the Firm regarding this representation.

A potential exists that conflicts of interest could arise with respect to the subject matter of this representation. Based on the information now available at this time, the Firm is not aware of any actual conflicts among the City and any other municipal entity. If the City becomes aware of anything that may suggest an actual conflict of interest, please bring it to the Firm's attention immediately.

If circumstances arise during the course of this matter that require or make it desirable that any of the clients obtain separate representation in this matter, the Firm would be free to continue to represent the remaining members of the client group in this matter. By signing these **STANDARD TERMS OF ENGAGEMENT** and accepting our joint representation, the City agrees that, if it becomes necessary or desirable for the City to retain other counsel, the City will not seek to disqualify the Firm from continuing to represent the remaining members of the client group.

II. Fees, Billing and Administrative

1. Fees for Legal Services

The charges for professional services provided by the Firm will typically be based upon the following: (1) the time devoted to the matter; (2) the novelty and difficulty of the questions presented; (3) the requisite experience, reputation and skill requested to deal with those questions; (4) time limitations imposed by the circumstances; (5) and the quality of the results obtained. Fees and costs for particular matters are unpredictable and we have made no commitment concerning maximum fees or costs. Unless otherwise indicated in writing, our fees for legal services are determined on the basis of the hourly rates of the respective

attorney that will perform the services. These rates may vary depending on the expertise and experience of the individual. We adjust these rates from time to time, increasing them as the individuals gain experience and expertise and to reflect current economic conditions. We will notify the client in writing if this fee structure is modified.

Currently, the standard billing rates for the City are detailed below:

Principal Attorney:	One hundred ninety-five dollars (\$195.00) per hour
Of Counsel Attorney:	One hundred eighty-five dollars (\$185.00) per hour
Senior Associate Attorney:	One hundred seventy-five dollars (\$175.00) per hour
Associate Attorney:	One hundred sixty-five dollars (\$165.00) per hour
Municipal Court Prosecution:	One hundred fifty-five dollars (\$155.00) per hour
Land Planner:	One hundred twenty-five dollars (\$125.00) per hour
Municipal Court Consulting:	One hundred twenty-five dollars (\$125.00) per hour
Legal Secretary/Office Assistant:	One hundred dollars (\$100.00) per hour
Specialized Sub-Contractor:	Negotiated
Litigation:	Negotiated

2. Rate Adjustment

Billing rates are subject to increase a maximum of ten percent (10%) annually. No rate increase will exceed ten percent without first obtaining consent from the designated primary client representative. The City will be notified in writing when a rate adjustment has occurred.

3. Other Charges and Handling Fees

All out-of-pocket expenses (such as long distance telephone charges, copying charges, travel expenses, courier expenses, etc.) incurred by the Firm in connection with representing you will be billed to you as a separate item on your monthly statement.

A 10% handling fee will be assessed on all out-of-pocket expenses incurred on behalf of the City for consulting and engineering fees, appraisal costs, and other professional requirements of a matter.

4. Billing Procedures & Terms of Payment

Our billing period begins on the 27th of the month and ends on the 26th day of the following month. We will render monthly statements to you for legal services and expenses. We usually mail these statements toward the beginning of the month, following the latest date covered in the statement. Each statement is payable within thirty (30) days of its stated date and must be paid in U.S. Dollars. If any statement is not paid within thirty (30) days after its stated date, interest at the rate of six percent (6%) per month (18% per annum) will accrue on the balance due. However, if at any time 18% per annum exceeds the highest interest rate permitted by applicable law, then the interest rate that will be applied to any overdue amounts will be reduced to the maximum rate permitted under applicable law. If you have any questions or concerns about any statement that we submit to you for payment, please contact us at your earliest convenience so that we can resolve any problems without delay. If unresolved, overdue invoices may result in discontinuation of representation of the City.

Typically, such issues can be resolved to the satisfaction of both sides with little inconvenience or formality.

5. Fee Estimates

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Your primary attorney will do his best to estimate fees and expenses for particular matters when asked to do so. However, an estimate is just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control. Unless otherwise agreed in writing with respect to a specific matter, all estimates made by us shall be subject to your agreement and understanding that such estimates do not constitute maximum or fixed fee quotations and that the ultimate cost is frequently more or less than the amount estimated.

6. Retainers

Generally, there is no retainer for municipal clients. However, with substantial new matters for existing or new clients, the Firm may require a retainer. The retainer amount is not meant to be an estimate or limit of the fees and expenses required to complete the work on this matter, but is intended as the client's good faith deposit against a portion of such fees and expenses. The retainer will be placed in our Trust Account and we will bill our fees and disbursements against the retainer. We will advise the client if additional amounts are necessary to be placed in trust against which to bill future work. If our work is completed, and the Town's account is paid-in-full, yet a balance remains in the Town's retainer, we will refund the retainer to the Town upon request.

7. Retention of Documents

Although we will attempt to retain for a reasonable time copies of most documents generated by this Firm, we cannot be held responsible in any way for failure to do so, and we hereby expressly disclaim any such responsibility or liability. You must ultimately retain all originals and copies you desire among your own files for future reference.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America. Venue of any case or controversy arising under or pursuant to this Agreement shall be in *Williamson County*, Texas, United States of America.

III. Termination of Services

You have the right to terminate our services at any time upon providing written notice to us. Upon receipt of written notice from you, we will immediately cease to render additional services to the extent we can do so without jeopardizing your legal interests or our ethical obligations. We reserve the right to discontinue work on pending matters or terminate our attorney-client relationship with you at any time that payment of your account becomes delinquent. We also reserve the right to withdraw when obligated by the *Texas Rules of Disciplinary Conduct*. Additionally, in the event that you fail to follow our advice and counsel, persists in intentionally violating the law, or otherwise fail to cooperate reasonably with us, we reserve the right to withdraw from representing you immediately, with written notification, regardless of the then status of your matter. No termination shall relieve you of the obligation to pay fees and expenses incurred prior to such termination. When a member of the firm is designated to serve as *Special*

Counsel, that position is viewed as a municipal officer for purposes of termination in accordance with the Texas Local Government Code. Unless otherwise agreed in writing, representation will cease upon your payment in full of all fees due, and my firm's conveyance of your files to the destination you designate. The firm's files (work product), will be retained at the firm.

IV. Internal Revenue Service (IRS) and Texas Workforce Commission (TWC) Status

1. Independent Contractor (IC)

For purposes of federal income tax or social security withholdings, the firm is an IC responsible for payment of its own taxes, and not an employee of the City. The firm, and not the City, is obligated to arrange for the required federal withholdings of the firm's employees. Below is a summary of the IC versus employee requirements, and a good general overview of how our services will be provided.

2. The Internal Revenue Service

The IRS assesses three (3) factors of the employer/individual relationship: behavioral control, financial control, and relationship of the worker and firm to determine who is an employee and who is an Independent Contractor. (*see* IRS Form SS-8). Again, depending on the type of business and the services performed, not all sections of the form may apply, and the weight assigned to a specific factor may vary depending on the facts.

3. The Texas Workforce Commission

The TWC has adapted the old IRS twenty-factor test, known as the "direction or control" test to determine who is an employee and who is an IC (*see* TWC Form C-8). Depending on the type of business and the services performed, not all of the twenty common law factors may apply, and the weight assigned to a specific factor may vary depending upon the facts. Below are considerations for the TWC's twenty (20) factor test, which also generally address issues of behavioral control, financial control, and relationship of the worker and firm.

i. Financial Control

In general, an employee is usually paid for their time, whereas an independent contractor is usually paid by the job. An employee usually does not negotiate their pay, whereas an independent contractor usually negotiates their pay to ensure a profit. An employee is not expected to invest in the business they work for so the employer takes care of tax matters and expenses, whereas an independent contract is investing in their independent business so the IC takes care of all expenses and taxes.

ii. Relationship of Worker & Business Entity

In general, an employee does not usually advertise their services, whereas an IC does. An employee carries business cards that reflect the employer's name, whereas an IC carries business cards that reflect the IC's business name. An employee is primarily reached at the employer's phone number, whereas an IC is primarily reached at their business phone number.

iii. Behavioral Control

In general, an employer contracting for IC services is normally interested in the end result, not in the details of how the work is done. The employer should have no interest in how the IC allocates his or her time, or who the IC hires to assist (other than requiring proper licensure).

V. Questions

If during the course of our representation you have any questions about any aspect of our arrangements, please feel entirely free to raise those questions. The Firm wants all of our clients to have a clear and satisfactory understanding about every aspect of our billing and payment policies. Accordingly, we encourage an open and frank discussion of any or all of the matters mentioned in this document.

VI. Acceptance of and Consent to the Standard Terms and Engagement

If this arrangement is acceptable to you and the City, please sign these Terms and return it to Firm at your earliest convenience. We are truly honored that you are willing to make our firm part of your team.

AGREED TO & ACCEPTED:

by: _____
City of Robinson

date: July ____, 2016

Alan Bojorquez, Principal, Bojorquez Law Firm, PC

date: July ____, 2016

Please return a signed original of the STANDARD TERMS OF ENGAGEMENT to the Bojorquez Law Firm via mail, fax, overnight mail or email.