



COUNTY OF ALLEGHENY

OFFICE OF THE COUNTY COUNCIL

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PITTSBURGH, PA 15219
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RETAINER AGREEMENT

This Agreement made and entered into and effective this 1st day of February, 2024, 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 Frank, Gale, Bails & Pocrass, P.C. , with offices located at 707 Grant Street, Suite 3300, Pittsburgh, PA 15219, 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; and

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

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. 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. 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 both require and desire representation in matters relating to the scope of their employment with Client. Time billed pursuant to this Subparagraph shall be deemed "Court Time."

3. Compensation

- a. For the services described in Paragraph 2, Client agrees to pay Attorney as described in Subparagraphs 3.b. through 3.g..
- b. Client agrees to pay Attorney for time spent rendering services to Client as delineated in Paragraphs 2.a. and 2.b. according to the following schedule:
 - Partner — not to exceed \$200 per hour;
 - Associate — not to exceed \$185 per hour;
 - Paralegal — not to exceed \$75 per hour;
 - Law Clerk — not 10 exceed \$75 per hour.
- c. Compensation paid pursuant to the terms of this Paragraph shall not exceed the amount of \$5,000 in any given calendar month unless compensation greater than \$5,000 for such calendar month is approved via written motion duly enacted by Client.
- d. Compensation paid pursuant to the terms of this Paragraph shall not be subject to any minimum amount imposed by Attorney.
- e. Attorney will provide billing statements to Client monthly, and shall clearly delineate the personnel performing each task for which payment is sought.

Attorney shall also clearly delineate any hour(s) billed as "Court Time" pursuant to the provisions of Paragraph 2.b. in all billing statements, with such time solely including the time actually spent before the courts and other adjudicative forums referred to in Paragraph 2.b., including trials, hearings, and status conferences. "Court Time" shall also include the time the attorney spends in attendance at depositions related to the foregoing.

- f. Attorney shall be reimbursed for certain disbursements made on behalf of the Client, at cost, without addition of any additional administrative charge(s) or fee(s), as follow:
 - i. Major disbursements for experts and Court Reporters will be billed by Attorney along with professional services at no additional cost. Attorney shall provide advance notice to Client, shall consult with the Client's President and Budget Manager, and must obtain written authorization prior to incurring any major disbursement expenses of the type described herein.
 - ii. Routine disbursements shall not require prior consultation with or written authorization from Client, and shall include only postage and photocopying expenses.
 - iii. Travel expenses, if incurred by Attorney, may be reimbursed when authorized in writing and in advance by Client.
- g. 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 date of execution, and shall terminate on the 31st day of January, 2026. 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 via duly enacted motion and with 30 days notice of termination to Attorney. In the event of any termination pursuant to the terms of this Section, Attorney shall be entitled to payment only in accordance with the provisions of Paragraph 3 through the date of termination.

5. Assignment and Delegation/Non-Waiver

- a. The services to be provided pursuant to this Agreement shall be performed staff of the law firm of Frank, Gale, Bails & Pocrass, P.C. appropriately licensed to provide such services.
- 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 Manager
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:

Frederick N. Frank, Esq.
Frank, Gale, Bails & Pocrass, P.C.
707 Grant Street, Suite 3300
Pittsburgh, PA 15219

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, nor 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:

FRANK, GALE, BAILS & POCRASS, P.C.

Kenneth Varhola
Chief of Staff, County Council

Frederick N. Frank, Esquire

Witness:

COUNTY OF ALLEGHENY

Jared E. Barker
Chief Clerk, County Council

Patrick Catena
President, Allegheny County Council

Witness:

COUNTY OF ALLEGHENY

Jennifer Liptak
Allegheny County Manager

APPROVED AS TO FORM:

Allegheny County Law Department

Agreement between the County, on behalf of County Council, and Frederick Frank, Esquire and the law firm of Frank, Gale, Bails & Pocrass, P.C., to provide legal services to County Council. Cost not to exceed \$60,000. Authorized by Executive Action _____-24 dated _____, 2024.