

12/22/08
12/23/08

AGENDA SHEET FOR COUNCIL MEETING OF: 10/20/08

Submitting Dept.
Legal

Contact Person/Phone No.
Howard F. Delaney, 625-6225

RECEIVED
OCT 29 2008
CITY CLERK'S OFFICE
SPOKANE, WA
OPR 2008-0941

ADMINISTRATIVE SESSION

- o Contract
- o Report
- o Claims

LEGISLATIVE SESSION

- o Emergency Ord
- o Resolution
- o Final Reading Ord
- o First Reading Ord
- o Special Consideration
- o Hearing

CITY PRIORITY

- o Communications
- o Economic Development
- o Growth Management
- o Human Services
- o Neighborhoods
- o Public Safety
- o Quality Service Delivery
- o Racial Equity/Cultural Diversity
- o Rebuild/Maintain Infrastructure

CLERK'S FILE

RENEWS

CROSS REF

ENG

BID

REQUISITION

Neighborhood/Commission/Committee Notified:

Action Taken:

STANDING COMMITTEES

(Date of Notification)

- o Finance _____
- o Neighborhoods _____
- o Planning/Community & Econ Dev _____

- o Public Safety _____
- o Public Works _____

AGENDA WORDING:

(If contract, include the term.)

RESOLUTION approving Carl Oreskovich, and the law firm of Etter, McMahon, Lamberson, Clary, Troppmann & Oreskovich, PC, as special counsel to the City of Spokane to work with the City Attorney's Office and represent the City of Spokane and its employee(s) in claim filed by the Estate of Otto Zehm and enter into a contract with the law firm of Etter, McMahon, Lamberson, Clary, Troppmann & Oreskovich, PC, and that the contract maximum shall not exceed forty-five thousand dollars (\$45,000.00), with additional compensation authority requiring further City Council action.

BACKGROUND:
(Attach additional sheet if necessary)

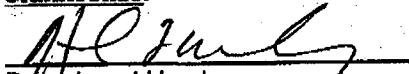
A claim has been filed by the Estate of Otto Zehm against the City of Spokane. The expertise of independent counsel is sought to assist the City Attorney's Office in analyzing the claim and preparing for any potential litigation. This expenditure is covered by the Risk Management Fund.

RECOMMENDATION:


Fiscal Impact: o N/A	Budget Account: o N/A
o Expenditure: \$45,000	#5800-78100-14780-54601
o Revenue: \$	#
o Budget Neutral	

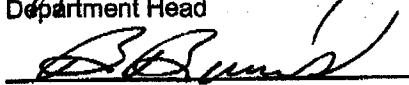
ATTACHMENTS: Include in Packets: Resolution.
in file for Review in Office of City Clerk:

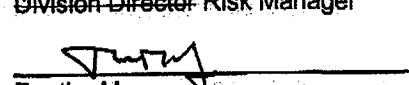
SIGNATURES:



Department Head


Division Director Risk Manager


Finance


Legal


For the Mayor


Council President

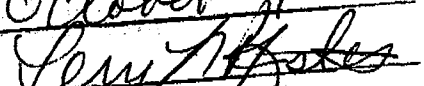
DISTRIBUTION:

Howard F. Delaney, Legal
Legal, gcrockett
Contract Acctg - msimon

Etter, McMahon, Lamberson,
Clary, Troppmann &
Oreskovich, PC

Pam Schroeder, Risk Manager

COUNCIL ACTION:

ADOPTED BY
SPOKANE CITY COUNCIL:
October 20, 2008

CITY CLERK

RES 2008-0096

RES 2008-0096i

RECEIVED

FEB 16 2009

CITY CLERK'S OFFICE
SPOKANE, WA

CONTRACT

THIS CONTRACT is between the CITY OF SPOKANE, a Washington State municipal corporation, as "City," and CARL ORESKOVICH and the law firm of ETTER, MCMAHON, LAMBERSON, CLARY, TROPPEMANN & ORESKOVICH, PC, whose address is Bank of Whitman Building, Second Floor, 618 West Riverside Avenue, Spokane, Washington 99201, as "Firm."

The parties agree as follows:

1. PERFORMANCE. The Firm shall act as SPECIAL COUNSEL to assist the City Attorney's Office and represent the City of Spokane in the claim filed by the Estate of Otto Zehm.
2. CONTRACT TERM. The contract shall begin October 20, 2008, and continue until terminated.
3. COMPENSATION. The City shall pay the Firm in accordance with the Firm's normal fee schedule, plus approved itemized reimbursable expenses, not to exceed a total of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00), for everything furnished and done under this contract.
4. PAYMENT. The Firm shall send its applications for payment to the City Attorney's Office, Fifth Floor, City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington 99201. Payments will be made within thirty (30) days after receipt of the Firm's applications.
5. COMPLIANCE WITH LAWS. Each party shall comply with all applicable federal, state, and local laws and regulations.
6. ASSIGNMENTS. This contract is binding on the parties and their heirs, successors, and assigns. Neither party may assign, transfer or subcontract its interest, in whole or in part, without the other party's prior written consent.
7. AMENDMENTS. This contract may be amended at any time by mutual written agreement.
8. ANTI-KICKBACK. No officer or employee of the City of Spokane, having the power or duty to perform an official act or action related to this contract shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in this contract.
9. TERMINATION. Either party may terminate this contract by ten (10) days written notice to the other party. In the event of such termination, the City shall pay the Firm for all work previously authorized and performed prior to the termination date.

10. **SEVERABILITY.** In the event any provision of this contract should become invalid, the rest of the contract shall remain in full force and effect.

11. **NONDISCRIMINATION.** No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities.

12. **BUSINESS LICENSE REQUIREMENT.** Section 8.01.070 of the Spokane Municipal Code states that no person may engage in business with the City without first having obtained a valid business license. The Firm shall be responsible for contacting the City's Taxes and Licenses Division at (509) 625-6070, to obtain a business license, or an exemption status determination.

13. **AUDIT / RECORDS.** The Firm and its subcontractors shall maintain for a minimum of three (3) years following final payment all records related to its performance of the contract. The Firm and its subcontractors shall provide access to authorized City representatives, including the City Auditor, at reasonable times and in a reasonable manner to inspect and copy any such record. In the event of conflict between this provision and related auditing provisions required under federal law applicable to the contract, the federal law shall prevail.

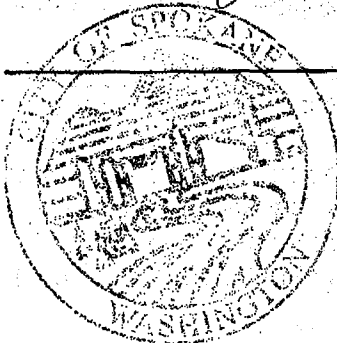
Dated: February 20, 2009 CITY OF SPOKANE

By: [Signature]
Title: Thomas J. Danok, Jr.
City Administrator
City of Spokane

Attest: [Signature]
City Clerk

Approved as to form:
[Signature]
Assistant City Attorney

Dated: _____



ETTER, MCMAHON, LAMBERSON,
CLARY, TROPPEMAN &
ORESKOVICH, PC

City of Spokane Business License No.
L0922154

E-Mail address, if available:
Carl @ EtterMcMahon.com

By: [Signature]
Title: Partner

2 By: [Signature]
Susan W. Troppmann
Title: President

FEE SCHEDULE

ETTER, MCMAHON, LAMBERSON, CLARY
TROPPMANN & ORESKOVICH, P.C.
618 West Riverside Avenue
Spokane, WA 99201
(509)747-9100
(509)623-1439 Fax

CARL J. ORESKOVICH	\$225/hour
STEPHEN M. LAMBERSON	\$225/hour
RAYMOND F. CLARY	\$225/hour
MICHAEL J. MCMAHON	\$225/hour
WILLIAM F. ETTER	\$225/hour
RONALD A. VAN WERT	\$205/hour
JENNIFER C. UNDERWOOD	\$190/hour
TYLER H.L. TORNABENE	\$175/hour

RESOLUTION NO. 2008- 0096

A resolution approving Carl J. Oreskovich, and the law firm of Etter, McMahon, Lamberson, Clary, Troppmann & Oreskovich, PC, as special counsel to represent City of Spokane employee(s) in the claim filed by the Estate of Otto Zehm.

WHEREAS, pursuant to Section 33 of the City Charter, the Mayor, upon approval of the City Council, at any time, may employ other or special counsel to take charge of special matters or to assist the City Attorney; and

WHEREAS, the City and City employees were involved in an incident in which the Estate for Otto Zehm has filed a claim for damages against the City; and

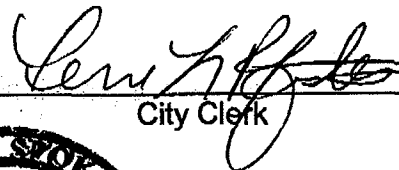
WHEREAS, the City Attorney's Office is representing the City of Spokane and its employees; and

WHEREAS, there are issues for which the expertise of private counsel will assist the City Attorney's Office;

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Spokane that the Mayor's selection of Carl J. Oreskovich, and the law firm of Etter, McMahon, Lamberson, Clary, Troppmann & Oreskovich, PC, be appointed as special counsel to assist in the representation of the City of Spokane and its employee(s) in the claim filed by the Estate of Otto Zehm and to work with the City Attorney's Office in handling the claim and any potential litigation;

BE IT FURTHER RESOLVED, that city staff is authorized to enter into a contract with the law firm of Etter, McMahon, Lamberson, Clary, Troppmann & Oreskovich, PC, and that the contract maximum shall not exceed forty-five thousand dollars (\$45,000.00), with additional compensation authority requiring further City Council action.

ADOPTED BY THE CITY COUNCIL ON October 20, 2008.



City Clerk

Approved as to form:



Assistant City Attorney

