



RESOLUTION OF THE CITY COUNCIL

No. 351

EFFECTIVE August 4, 2023

WHEREAS, On December 15, 2022 the City's Internal Auditor submitted a report to the City Council outlining significant concerns raised in response to a Consent Order that was entered into in Case No. PC-2020-04757 without any consideration or notice provided to the City Council; and

WHEREAS, On March 16, 2023 the City Council passed a resolution authorizing the Council President to engage outside legal counsel as recommended by the Internal Auditor's report; and

WHEREAS, Pursuant to the March 16, 2023 resolution, the Council President engaged Wistow, Sheehan & Loveley, P.C. ("WSL") as counsel for the City Council relative to this matter pursuant to the terms of the engagement agreement that was executed by the Council President on May 12, 2023, was executed by WSL on May 15, 2023, and was received by the City Council at the May 18, 2023 Council meeting ("WSL's Engagement Agreement"); and

WHEREAS, Max Wistow and Stephen Sheehan presented the findings of WSL's investigation concerning Case No. PC-2020-04757 to the Committee on Finance in executive session on July 13, 2023; and

WHEREAS, WSL summarized its findings and recommendations concerning Case No. PC-2020-04757 in a confidential and attorney-client privileged *Memo to City Council* dated July 17, 2023; and

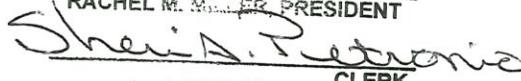
WHEREAS, The City Council is desirous of approving and ratifying the specific terms of WSL's Engagement Agreement.

NOW, THEREFORE, BE IT RESOLVED, That the City Council approves and ratifies WSL's Engagement Agreement.

BE IT FURTHER RESOLVED, That the City Council authorizes WSL to make such claim(s) as may be warranted based upon their investigation. Said claim(s) may be made by demand letter, motion practice, lawsuit, any combination thereof, or otherwise, as WSL deems appropriate.

IN CITY COUNCIL
JUL 25 2023

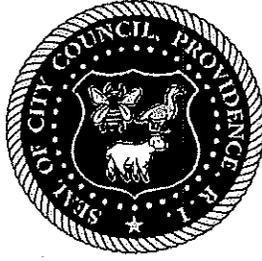
READ AND PASSED


RACHEL M. MILLER, PRESIDENT

SHEILA A. PETRONIO, ACTING CLERK

Effective without the
Mayor's Signature


Tina L. Mastroianni
City Clerk

CITY OF PROVIDENCE
COUNCILOR RACHEL M. MILLER
CITY COUNCIL PRESIDENT



May 12, 2023

Ms. Tina L. Mastroianni
City Clerk
Providence City Hall
Providence, Rhode Island 02903

Dear Madam Clerk:

Pursuant to Providence City Council Resolution 2023-138, approved March 16, 2023, I am hereby submitting the Engagement and Fee Agreement, which constitutes and appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys for the City Council in respect to Superior Court Case Harrisburg Associates, LLC, et al. v. City of Providence, et al., C.A. No. PC-2020-04757 ("Harrisburg v. Providence").

Sincerely,

Rachel M. Miller
City Council President

IN CITY COUNCIL
MAY 18 2023

READ
WHEREUPON IT IS ORDERED THAT
THE SAME BE RECEIVED.
Tina L. Mastroianni CLERK

ENGAGEMENT AND FEE AGREEMENT

The City Council of the City of Providence ("Providence City Council"), pursuant to the Providence City Council Resolution dated March 16, 2023, hereby constitutes and appoints Wistow, Sheehan & Loveley, P.C. ("WSL") as attorneys as follows:

I. CONSIDERATION

The consideration for this Engagement and Fee Agreement is WSL's agreement to provide the services referred to herein and the agreement of the Providence City Council on behalf of the City of Providence to pay the fees and to constitute and appoint WSL to investigate and to make and pursue claims as set forth in Sections II and III below.

II. INVESTIGATION

The Providence City Council constitutes and appoints WSL to investigate and prepare a memorandum concerning possible grounds to vacate or otherwise obtain relief from the consent order ("the Consent Order") entered into in the case filed in the Rhode Island Superior Court captioned Harrisburg Associates, LLC, et al. v. City of Providence, et al., C.A. No. PC-2020-04757 ("Harrisburg v. Providence"), making use of records, research, consultations, and investigatory subpoenas in WSL's discretion. The Providence City Council commits to issuing such investigatory subpoenas as may be deemed reasonably necessary by WSL, and commits to cooperating with WSL in any proceedings to employ or enforce such subpoenas. WSL will be paid a flat fee of \$15,000 for services under this section, payable at the signing of this Engagement and Fee Agreement. In addition, WSL will be reimbursed within thirty (30) days of invoicing and in all events for any out-of-pocket expenses (such as costs of records, computer-assisted legal research, expert consultants, etc.), not to exceed \$7,500, incurred by WSL during the investigative phase whether claims are made or not.

III. MAKING AND PURSUING CLAIM(S)

The Providence City Council further constitutes and appoints WSL to make claim(s) (to the extent WSL deems warranted based upon its investigation) to vacate or otherwise obtain relief from the Consent Order in Harrisburg v. Providence. Said claim(s) may be made by demand letter, motion practice, lawsuit, any combination thereof, or otherwise, as WSL deems appropriate.

IV. CONTINGENT FEE

The Providence City Council estimates that the Consent Order in Harrisburg v. Providence will have cost the City of Providence tax revenue it would otherwise have collected in the amounts of Six Hundred Twenty-Six Thousand Dollars (\$626,000) for the 2021 tax year and One Million Four Hundred Forty-Four Thousand Five Hundred Eighty Nine Dollars and Four Cents (\$1,444,589.04) for the 2022 tax year.¹ It is not possible to forecast with certainty the subject properties' actual future assessed values, tax rates, and rental incomes, for years after 2022. Therefore, for the purposes of this Engagement and Fee Agreement, it is agreed that, if kept in place in its present form, the Consent Order in Harrisburg v. Providence will cost the City of Providence an additional One Million Four Hundred Forty-Four Thousand Dollars (\$1,444,589.04) or more for each year for the next twenty-eight (28) years. This represents a gross total of more than Forty-Two Million Five Hundred Thousand Dollars (\$42,500,000).

Accordingly, the Providence City Council agrees that the City of Providence will pay WSL as legal fees under Section IV of this Engagement and Fee Agreement a contingent fee, payable in the event that, after the execution of this Engagement and Fee Agreement by

¹ Because of an expiring tax stabilization agreement, the savings in 2021 were lower than 2022.

WSL, the vacation of the Consent Order or modification of the terms thereof is achieved by way of suit, compromise, settlement or otherwise, however, no compromise may be made without the authorization of the Providence City Council.

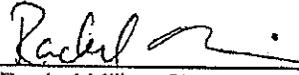
The amount of WSL's contingent fee shall be fifty percent (50%) of all the past or future property tax revenue payable to the City of Providence relating to the properties that are presently subject to the Consent Order, beyond the amounts already payable under the Consent Order (without reduction to present value); however WSL's total contingent fee shall not exceed \$1,400,000. For purposes of this contingency, the City Council and WSL deem the amount of each future year of such additional property tax revenue to be \$1,400,000. The fees shall be due and payable upon the achievement of a final modification of the Consent Order.

The Providence City Council agrees that the City of Providence will reimburse WSL within thirty (30) days of invoicing and in all events for any out-of-pocket expenses incurred by WSL (such as filing fees, deposition costs, obtaining records, charges for computer-assisted legal research, costs of expert consultants or witnesses) incurred by WSL in connection with making or pursuing claims.

V. MISCELLANEOUS

The Providence City Council hereby approves and acknowledges delivery of a duplicate copy of this Engagement and Fee Agreement and acknowledges receipt of "A Client's Statement of Rights & Responsibilities."

The City Council of the City of Providence, by



Rachel Miller, City Council President

Date: 5/12/23

Wistow, Sheehan & Loveley, P.C., by



Max Wistow, Esq.

Date: 5/15/23

WISTOW, SHEEHAN & LOVELEY, PC

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April 28, 2023

Via Email

Rachel Miller, Council President
Providence City Hall
25 Dorrance St
Providence, RI 02903

Re: Harrisburg Associates, LLC, et al. v. City of Providence, et al.,
C.A. No. PC-2020-04757

Dear Council President Miller:

Enclosed is the proposed fee agreement for our engagement regarding the Consent Order that was entered in the above-captioned matter. As discussed, the engagement entails both our preparation (for a flat fee of \$15,000) of a memorandum (following our investigation which is expected to include the subpoenaing of records through the City Council) concerning possible grounds to vacate or otherwise obtain relief from the Consent Order, as well as a contingent fee payable in the event the Consent Order is ultimately vacated or modified.

We have discussed the difficulties in forecasting the additional revenues that the City will obtain if the Consent Order is vacated or modified. The spreadsheet provided to us on Monday, April 24, 2023 projects future losses based on numbers provided by the city auditor. The annual losses beginning with this year are projected to be \$1,444,589.04 for this year alone, with annual amounts increasing by 2.5% every three years thereafter, to \$1,480,703.77 in 2026, \$1,517,721.36 in 2029, and so on. By 2050, the city has projected the annual loss will be \$1,804,093.76. Altogether, the consent order, if left unchanged, is projected to cause the City a total loss of \$47,374,753.74.

We have structured the contingent fee so that it will not exceed 50% of the projected losses for only two years (rounded down to \$1,400,000 per year). We believe this represents a fair result for all concerned in light of the enormous—but difficult to precisely quantify—benefit to the City of achieving a successful result.

Also enclosed are proposed revisions to the authorization resolution.

Rachel Miller, Council President
April 28, 2023

Thank you for your cooperation and attention to this matter, and we look forward to being engaged by the City Council.

Very truly yours,



Max Wistow

Enclosures

CC: Sean Bouchard (by email)
Jim Lombardi, III (by email)
Gina Costa (by email)