

DATE: April 11, 2019

TO: Mayor and Common Council

FROM: Jodie Olson

RE: Organizational Meeting

Please note that the Organizational meeting will be Tuesday, April 16, 2019 at **6:00 p.m.** We will **NOT** be having pictures taken as I had anticipated at this meeting.

Due to a scheduling conflict with the Ad Hoc EMS Meeting at Green Lake County at the same time, I will be unable to attend the meeting. Susie or Midge will perform the ceremonial swearing of those newly elected.

Pictures are scheduled for just prior to the Common Council meeting on Tuesday, April 14 at 6:30 p.m. I will send a reminder with that agenda packet.

The Mayoral recommendations for appointments are forthcoming as he has not completed them yet.

AGENDA  
ORGANIZATIONAL COUNCIL MEETING  
CITY OF BERLIN, WISCONSIN  
APRIL 16, 2019 - 6:00 p.m.  
COUNCIL CHAMBERS, BERLIN CITY HALL  
MEETING IS OPEN TO THE PUBLIC & CITY HALL IS HANDICAPPED ACCESSIBLE

1. Call to order/Roll Call.
2. Ceremonial swearing in of Mayor and Alderpersons.
3. Election of Council President.
4. Mayoral appointments with Council Confirmation. (appointments forthcoming)
5. City Attorney Retainer Contract. RECOMMENDATION: Review City Attorney contract proposal, then motion to convene into closed session pursuant to Sec 19.85(1)(e), of the WI Statutes, to deliberate or negotiate the purchase of public property, investment of public funds or conduct other specified public business, whenever competitive or bargaining reasons require a closed session. (If necessary, review and discuss City Attorney Contract renewal).
6. Reconvene into open session and take appropriate action from closed session discussion.
7. Adjourn.

## CITY ATTORNEY RETAINER CONTRACT

This Agreement dated May 1, 2018~~9~~, between the CITY OF BERLIN (hereinafter referred to as "City"), CITY ATTORNEY MATTHEW G. CHIER (hereinafter referred to as "Chier"), and Chier's law firm, CHIER LAW OFFICE LLC (hereinafter referred to as "Chier Law").

WHEREAS, the parties are willing to enter into this Agreement with respect to the retained services of Chier and Chier Law upon the terms and conditions hereinafter set forth, and

WHEREAS, the parties are willing to enter into this Agreement with the intention that Chier, and other attorneys of Chier Law, be considered independent practitioners for all purposes, and not employees of the City or State.

NOW, THEREFORE, the parties hereto agree as follows:

1. Retainer. The City shall retain Chier and Chier Law, and Chier and Chier Law shall serve the City, upon the terms and conditions hereinafter set forth.
2. Term and Extension. The retainer of Chier and Chier Law hereunder shall commence May 1, 2018~~9~~, and shall continue to and including April 30, 2019~~20~~, representing a full one-year term. This contract shall be automatically renewable for an additional one-year period, so long as Chier remains the City Attorney, as appointed by the Mayor and approved by the City Council, pursuant to the Berlin Municipal Code and Wisconsin Statutes. All the terms and conditions of this Agreement applicable thereto shall continue in full force and effect for such additional periods. The terms and conditions of this Agreement may be amended at any time, in writing, upon mutual agreement of both parties.
3. Duties. During the period or periods covered hereunder, Chier, and other attorneys of Chier Law under the direction of Chier, shall serve the City and shall perform any and all services pursuant to the duties of City Attorney as described by the Berlin Municipal Code and the Wisconsin Statutes.
4. Compensation. Except for those services described in paragraph 5, the City shall pay Chier Law fees for Chier's and Chier Law's services as follows:
  - a. In consideration for Chier/Chier Law providing up to 600 hours of service, Chier Law shall receive, in the aggregate, the amount of ~~\$64,327.92~~65,614.48. Such aggregate amount shall be divided and paid in equal biweekly installments.
  - b. At such time as Chier/Chier Law's services exceed 600 hours of service, Chier Law shall be paid for additional services at the following rates:
    - i. 601-675 hours: \$1246/hour
    - ii. 676-725 hours: \$1293~~2~~/hour
    - iii. 726-750 hours: \$1358/hour
    - iv. Over 750 hours: \$1458/hour

Chier Law shall, on a monthly basis, submit to the City Clerk a chart of his hours performed under this Agreement during the previous calendar month. At a minimum, said chart shall, for each day of the month, designate each file name or general subject matter for which work was performed by Chier or any attorney of Chier Law on that day, and the number of hours worked on that day on that file or subject. Also in said chart, files for which the City is legally allowed to pass on legal expenses to citizens or developers (such as for developer's agreements, conditional use permit reviews, subdivision reviews, collection matters, enforcement and cleanup matters, and the like) shall be specially marked and individually totaled so that the City Clerk may produce bills for

reimbursement for said services to be submitted to the applicable citizen or developer. Each monthly chart shall also include a running total of annual hours performed, and once such running total exceeds the 600 hour threshold, the City shall be obligated to pay Chier Law for the supplementary hours, at the rates indicated above, within 15 days of his submission of each monthly chart.

5. Services Separately Billed. When Chier and Chier Law perform legal services relating to the City of Berlin Community Development Block Grant housing and industrial revolving loan fund programs, Chier Law shall separately bill the City for those services at the rate of \$1146/hour. When Chier and Chier Law perform legal services for the Berlin Community Development Corporation, for which the City agrees to pay, Chier Law shall separately bill for his services at the rate of \$1525.00/hour. When Chier and Chier Law perform legal services relating to the City's extraterritorial zoning authority, Chier Law shall separately bill for those services at the rate of \$1525.00/hour, except for attendance of regularly scheduled ETZA Joint Plan Commission meetings which shall be billed at a rate of \$13942.00/hour. When Chier and Chier Law perform legal services for the Berlin Sewer & Water Utility, Chier Law shall separately bill for Chier Law's services to the Utility at the rate of \$1168.00/hour, unless otherwise directed by the City Administrator to be included in the services compensated for under paragraph 4 above, Chier and Chier Law's operating expenses for files separately billed under this paragraph shall be included in the separate billings for such files, and are exclusive of the operating expense reimbursements described in paragraph 6 below.
  
6. Operating Expense Reimbursements. Except as stated below, the City, in addition to the fees described above, will be responsible for variable operating expenses incurred during the course of Chier's and Chier Law's services hereunder including, but not limited to, photocopy expenses, fax fees, telephone charges, filing fees, form fees, paper and supply expenses, postage, check charges, witness fees, travel expenses, expert witness fees, service of process fees and investigative expenses. These variable operating expenses shall be billed at the same standard rates utilized for all Chier Law's clients. Such variable operating expenses shall also include actual out of pocket expenses (except for the per diem meal charges listed below) incurred by Chier necessarily related to Chier's attendance of the annual League of Wisconsin Municipalities Attorney conference, including lodging and travel expenses if the conference is over 45 miles from Berlin. The parties understand that the City has budgeted the amount of \$1,750.00 for these variable operating expenses for the contract year. When this budgeted amount is approached during the contract year, the parties agree that the issue will be presented to the City's Common Council for a decision on prioritizing Chier's project list where possible, and possibly limiting the number, scope and nature of Chier's projects, for the remainder of the contract year, for the purpose of minimizing the incurrence of additional variable operating expenses and staying within budget.

In addition to variable operating expenses described above, Chier and Chier Law may also bill the City for certain general overhead expenses related solely to Chier and Chier Law's services provided to the City hereunder, including secretarial expenses, internet expenses, and books and legal library expenses, but such general overhead expenses shall be capped at \$2,295.00 per year. If Chier believes such general overhead expenses will exceed such annual cap, Chier may so advise the City and Chier/Chier Law will incur such additional general overhead expenses only after having obtained the City's advance authority to do so. Further, the parties agree that the annual cap specified is based on the anticipation that Chier/Chier Law will perform 600 hours of annual service. Accordingly, at such time as Chier/Chier Law exceeds such 600 hours, some reasonable increase for general overhead expenses will be required, and the parties shall be required to mutually negotiate in good faith as to the amount of that increase based on the anticipated additional hours Chier/Chier Law is expected to perform for the remainder of the year.

For purposes of reimbursement for meal expenses hereunder during city related functions or travel, Chier Law shall be paid on a per diem basis as follows:

Breakfast: \$8.00

Lunch: \$12.00  
Dinner: \$26.00

The City will reimburse Chier Law for all such operating, overhead and per diem expenses on a monthly basis upon submission by him of bills or statements of accounts therefore while so retained during such period, and such bills shall be paid within 15 days of the City's receipt thereof. In order to minimize the City's administrative burden, Chier Law agrees to advance all such operating and overhead expenses and add such expenses to Chier Law's monthly billing. No direct payment to third parties of such expenses shall be paid by the City, unless specifically authorized by the City Administrator.

7. Relationship Between Parties. Chier and Chier Law are retained by the City only for the purposes and to the extent set forth in this Agreement, and Chier and Chier Law's relation to the City and it shall, during the period or periods of Chier's and Chier Law's retainer and services hereunder, be that of an independent practitioner. Chier, and attorneys of Chier Law, shall be free to dispose of such portion of their entire time, energy and skill during regular business hours as they are not obligated to devote hereunder to the City in such manner as they see fit and to such persons, firms or corporations as they deem advisable. Chier, and attorneys of Chier Law, shall not be considered as having employee status or as being entitled to participate in any plans, arrangements or distributions by the City pertaining to or in connection with any pension, stock, bonus, profit sharing or other similar benefits for their regular employees.
8. Professional Responsibility. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Chier and Chier Law in accordance with their independent and professional judgment. Chier and Chier Law shall perform their services substantially in accordance with the ethical responsibilities and rules as established by the Wisconsin Supreme Court and State Bar of Wisconsin.
9. Chier Law is Limited Liability Company. Chier Law operates as a limited liability company. The law governing limited liability entities shields its owners from vicarious liability. This means that in the event of an error, Chier Law and its insurer may be liable, as may the attorneys who worked on or directly supervised the matter, but not other attorneys who did not work on or directly supervise the matter. As a limited liability company organized under Chapter 183 of the Wisconsin Statutes, Chier Law is required to register annually with the State Bar of Wisconsin and to carry certain minimum professional liability insurance coverage.

IN WITNESS WHEREOF the City of Berlin, has caused this Agreement to be executed in its name by its Administrator, Jodie Olson and Mayor, Richard D. Schramer, and City Attorney Matthew G. Chier has set his hand, both individually and as sole Member of Chier Law Office LLC, as of the day and year first above written.

CITY OF BERLIN

CITY ATTORNEY

BY: \_\_\_\_\_  
Jodie Olson, City Administrator

\_\_\_\_\_  
Matthew G. Chier, individually  
and as sole Member of Chier Law  
Office LLC

CITY OF BERLIN

BY: \_\_\_\_\_  
Richard D. Schramer, Mayor