

**RESOLUTION NO. 08/09-47
CITY OF DAYTON, OREGON**

Title: *A Resolution Approving Renewal of a Personal Services Agreement for Legal Services, July 1, 2009 thru June 30, 2010*

WHEREAS, the City has contracted for legal services with the firm of Beery, Elsner & Hammond, LLP, since 1999; and

WHEREAS, the City desires to continue to utilize the services of this firm as the City's attorneys;

The City of Dayton resolves as follows:

- 1) **THAT** the Mayor is authorized to execute the Agreement for Legal Services, attached hereto as Exhibit A and made a part hereof, on behalf of the City, which will be bound by its terms;
- 2) **THAT** the Agreement shall be effective for the period July 1, 2009 through June 30, 2010.

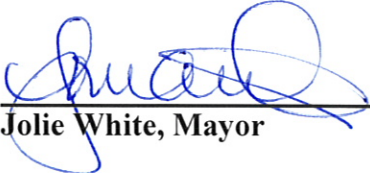
ADOPTED this 1st day of **June, 2009**.

In Favor **Blackburn, Dickson, Evers, Henry, Hensley, White, Wytoski**

Opposed **None**

Absent **None**

Abstained **None**




Jolie White, Mayor

6/1/2009

Date of Adoption

ATTESTED:



**Peggy Selberg
City Recorder**

6/1/2009

Date of Enactment

Attachment - Exhibit A

AGREEMENT FOR LEGAL SERVICES

Exhibit A

THIS AGREEMENT for Legal Services is a Personal Services Contract between the City of Dayton, a Municipal Corporation of the State of Oregon, hereinafter called CITY, and Beery, Elsner & Hammond, LLP, hereinafter called ATTORNEY, a licensed and certified ATTORNEY, and shall be for the period July 1, 2009 through June 30, 2010.

1. SCOPE OF SERVICES

ATTORNEY shall provide the following professional services:

- A. ATTORNEY will be responsible for CITY legal representation as authorized by the City Council and/or City Manager. Authorization to perform specific tasks will come from the Mayor, City Manager, or other persons directly authorized by the Mayor or City Manager.
- B. Unless otherwise specified by the Mayor, City Council or the City Manager, ATTORNEY will:
 - 1. Draft and/or review ordinances, resolutions, contracts, orders agreements, and other legal documents.
 - 2. Conduct legal research, prepare memoranda, and provide advice to the Mayor, the City Council, and City Manager.
 - 3. Be responsible for representing CITY in litigation and administrative proceedings.
 - 4. Attend meetings of the City Council and other municipal meetings on request.
 - 5. Ensure that all CITY ordinances are in compliance with state statutes.
 - 6. Prosecute defendants for ordinance violations in Municipal Court.
- C. ATTORNEY will coordinate with the City Manager and shall report directly to the City Council.
- D. ATTORNEY will address City Council directly during City Attorney's Report at City Council meetings and submit written documents to the City Manager in time to have documents copied and distributed to City Council members prior to monthly meetings whenever possible. In the interest of minimizing legal fees, only the City Manager and Mayor will contact ATTORNEY on behalf of CITY between Council meetings. ATTORNEY will return telephone calls within one business day from the time message is left by the City Manager or Mayor.
- E. Legal activities, such as complex litigation and special projects which fall outside the above categories must be authorized by the City Council.

2. ATTORNEY IDENTIFICATION

Upon request, ATTORNEY shall furnish to CITY its employer identification numbers, as designated by the Internal Revenue Service.

3. COMPENSATION

A. Payment will be made to ATTORNEY for services identified in the Scope of Services in Section 1 above. Payment will be based upon a detailed monthly billing showing work performed and identifying specific legal matters to which it pertains.

B. ATTORNEY will calculate fees for service at the following hourly rates:

Partners	\$170.00 per hour
Of Counsel	\$170.00 per hour
Associates	\$150.00 per hour
Paralegal	\$90.00 per hour
Legal Assistant	\$75.00 per hour

CITY shall reimburse ATTORNEY for out-of-pocket expenses at their direct cost, without markup, including mileage to and from City Council meetings. Travel time to and from City shall be billed at a flat rate of \$100 round trip.

C. Payment by CITY shall release CITY from any further obligation for payment to ATTORNEY. The services are services performed or expenses incurred as of the date of the statement of services. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

4. PROJECT MANAGER

The CITY's Project Manager is Christy Ellis, City Manager, and Lead Attorney will be Paul C. Elsner. Each party shall give the other written notification of any change.

5. STATUS OF ATTORNEY AS INDEPENDENT CONTRACTOR

A. ATTORNEY shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 2 of this Agreement.

B. ATTORNEY shall provide insurance coverage for its employees in compliance with the requirements of the Workers Compensations Statutes, ORS Chapter 656.

6. SUBCONTRACTING

ATTORNEY shall not subcontract work under this Agreement, in whole or in part, without the written approval of the CITY. ATTORNEY shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of

ATTORNEY as specified in this Agreement. Notwithstanding CITY approval of a subcontractor, ATTORNEY shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligation to ATTORNEY hereunder.

7. INDEMNITY AND INSURANCE

- A. Indemnity: ATTORNEY acknowledges responsibility for any and all liability arising out of their performance under the terms of this Agreement and shall hold CITY harmless from, defend and indemnify CITY as against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit or claim resulting from ATTORNEY's acts, omissions, activities, or services in the course of performing this contract or for the acts or omissions of their assignees, transferees, agents, employees and/or subcontractors.
- B. Liability Insurance: ATTORNEY shall maintain professional liability insurance, insuring ATTORNEY against any errors or omissions in the amount and on the conditions required by the Professional Liability Fund of the Oregon State Bar.

8. RECORDS

ATTORNEY shall retain all books, documents, papers, and records that are directly pertinent to this Agreement and any work done under its term for at least three (3) years.

ATTORNEY shall allow the CITY, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

9. WORK IS PROPERTY OF CITY

All work, including but not limited to, documents, drawings, papers, computer programs and photographs, performed or produced by ATTORNEY under this contract shall be the property of the CITY.

10. INTELLECTUAL PROPERTY

The interest in any intellectual property, including, but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the CITY. ATTORNEY shall execute any assignment or other documents necessary to effect this paragraph. ATTORNEY may retain a nonexclusive right to use any intellectual property that is subject to the paragraph. ATTORNEY shall transfer to the CITY any data or other tangible property generated by ATTORNEY under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

11. LAW OF OREGON

This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in the Circuit Court, Yamhill County, Oregon.

12. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, MAKING PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

CITY: Christy Ellis
City Manager
City of Dayton
PO Box 339
Dayton OR 97114-0339

ATTORNEY: Paul C. Elsner
Beery, Elsner & Hammond, LLP
1750 SW Harbor Way, Suite 380
Portland, OR 97201-5164

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage prepaid.

13. PAYMENT OF CLAIMS BY THE CITY

If ATTORNEY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to ATTORNEY or subcontractor by any person in connection with this contract as the claim becomes due, the CITY may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to ATTORNEY pursuant to this contract. The CITY's payment of a claim under this Paragraph shall not relieve ATTORNEY or ATTORNEY's surety, if any, from responsibility for those claims.

14. SUCCESSORS AND ASSIGNMENTS

ATTORNEY shall not assign any of its obligations hereunder without the prior consent of CITY.

15. TERMINATION

At any time, with or without cause, CITY or ATTORNEY shall have the right to terminate this Agreement. If CITY terminates the Agreement, it shall deliver full payment to ATTORNEY for services rendered to the date of termination.

16. MODIFICATION

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

17. NO WAIVER OF LEGAL RIGHTS

A waiver by a part of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed in duplicate originals by its duly authorized undersigned officer and ATTORNEY has executed this Agreement.

CITY OF DAYTON

ATTORNEY

**Jolie White, Mayor
City of Dayton**

**Paul C. Elsner
ATTORNEY**

Date

Date