

**RESOLUTION NO. 21/22-20
CITY OF DAYTON, OREGON**

TITLE: *A Resolution Approving a Personal Services Agreement for Legal Services, July 1, 2022, through June 30, 2024.*

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 City Manager 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, 2022, through June 30, 2024.

ADOPTED this 6th day of **June 2022**.

In Favor **Frank, Holbrook, Mackin, Maguire, Marquez, Sandoval-Perez, Wytoski**

Opposed **None**

Absent **None**

Abstained **None**



Elizabeth Wytoski, Mayor



Date of Adoption

ATTESTED:



Patty Ringnald, City Recorder



Date of Enactment

Attachment: Exhibit A

CITY OF DAYTON, OREGON
PERSONAL SERVICES CONTRACT

A CONTRACT between THE CITY OF DAYTON, OREGON (“City”) and BEERY, ELSNER & HAMMOND, LLP (“Consultant”).

1. Term

This contract runs from July 1, 2022, until June 30, 2024, unless sooner terminated under the provisions of this contract or otherwise amended.

2. Consultant’s Service

The scope of Consultant’s services and time of performance are set forth in Exhibit A, the provisions and covenants of which are hereby incorporated by reference and become part of this contract as if fully set forth.

3. Consultant’s Identification

Consultant’s EIN is 93-1234801.

4. Compensation

City agrees to pay Consultant in accordance with Exhibit B.

5. Managers

City’s Project Manager is Rochelle Roaden and Consultant’s Project Manager is Heather Martin. City and Consultant shall give the other written notification of any change in their respective Project Manager.

6. Information

Consultant agrees to share information, fully cooperate with all corporations, firms, contractors, governmental entities and persons as directed by City. No information, news or press releases related to work performed under this Contract shall be made to representatives of newspapers, magazines, television and radio stations or any other news medium without the authorization of City’s Project Manager.

7. Duty to Inform

Consultant shall give prompt written notice to City’s Project Manager if, at any time during the performance of this contract, Consultant becomes aware of actual or potential problems, faults or defects in the work to be performed. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant’s statement or claim, and shall not constitute a waiver of any of City’s rights.

8. Consultant is Independent Contractor

Consultant is an independent contractor and is entitled to no compensation other than the compensation expressly provided by this contract.

9. Indemnity and Insurance

A. Indemnification

Consultant agrees (except as limited by subsection 9(B) below) to indemnify City, its officers, employees and agents against and will hold and save each of them harmless from any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of Consultant, its agents, employees, subcontractors, or invitees, provided for herein or arising from the acts or omissions of Consultant hereunder, or arising from Consultant’s performance of or failure to perform any term, provision, covenant or condition of this contract, except to the extent such claims or liabilities arise from the fault of City, its officers, or employees.

B. Oregon Tort Claims Act

Notwithstanding the terms of subsection 9(A) above, City acknowledges that pursuant to Charter Section 35, Consultant is an Officer of the City and therefore agrees to be responsible under the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300) for defending, saving harmless and indemnifying Consultant while it is acting within the scope of its engagement as City Attorney.

C. Liability Insurance

Consultant shall maintain occurrence form commercial general liability for the protection of Consultant, the City, its councilors, officers, agents and employees (collectively "City"). Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Consultant's operations, in an amount not less than that required each year by the terms of ORS 30.272 combined single limit per occurrence and in no event less than One Million Five Hundred Thousand Dollars (\$1,500,000.00). Such insurance shall name the City as additional insured.

D. Workers' Compensation Coverage

Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Worker' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. Consultant shall provide to City within 10 days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. A copy of the certificate of self-insurance issued by the State shall be provided to the City if the consultant is self-insured.

E. Professional Errors and Omissions

Consultant shall provide City with evidence of professional errors and omissions liability insurance for professional liability, in an amount of not less than Two Million Dollars (\$2,000,000.00).

F. Certificates

Upon request, Consultant shall furnish the City certificates evidencing the date, amount and type of insurance required by this contract.

G. Primary Coverage

The coverage provided by insurance required under this contract shall be primary with other insurance carried by City excess.

10. Law of Oregon

The contract shall be governed by the laws of the State of Oregon. Venue shall be in Yamhill County, Oregon.

11. Successors and Assignments

Each party binds itself, and any partner, successor, executor, administrator, or assign to this contract.

Neither the City nor the Consultant shall assign, or transfer their interest or obligation hereunder in this contract without the written consent of the other. Consultant must seek and obtain the City's consent before subcontracting any part of the work required of Consultant under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

12. Records

Consultant shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three years after the City makes final payment on this contract and all other pending matters are closed.

Consultant 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.

13. Breach of Contract

Consultant shall remedy any breach of this contract within the shortest reasonable time after Consultant first has actual notice of the breach or the City notifies Consultant of the breach whichever is earlier. If Consultant fails to remedy a breach in accordance with this paragraph, the City may terminate that part of the contract affected by the breach upon written notice to Consultant, may obtain substitute services in reasonable manner, and may recover from Consultant the amount by which the price for the substitute services exceeds the price for the same services under this contract.

If the breach is material and Consultant fails to remedy the breach in accordance with this paragraph, the City may declare Consultant in default and pursue any remedy available for a default.

Pending a decision to terminate all or part of this contract, the City unilaterally may order Consultant to suspend all or part of the services under this contract. If the City terminates all or part of the contract pursuant to this paragraph, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after the City ordered suspension of those services. If the City suspends certain services under this contract and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

To recover amounts due under this paragraph, the City may withhold from any amounts owed by the City to Consultant, including but not limited to amounts owed under this or any other contract between Consultant and the City.

14. Termination for Convenience

The City may terminate all or part of this contract at any time for its own convenience by written notice to Consultant. Upon termination under this paragraph, Consultant shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Consultant's reasonable costs actually incurred in closing out the contract.

15. Payment for Labor or Material

Consultant shall make payment promptly, as due, to all persons supplying to Consultant labor or material for the prosecution of the work provided for in this contract.

16. Payment of Claims by the City

If Consultant fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Consultant or a 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 Consultant pursuant to this contract. The City's payment of a claim under this paragraph shall not relieve the Consultant or Consultant's surety, if any, from responsibility for those claims.

17. Medical Care for Employees

Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums which consultant agrees to pay for such

services and all moneys and sums which Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

18. Modification

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

19. No Waiver or Legal Rights

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

20. Mediation

Should any dispute arise between the parties regarding the terms of this contract or the terms of any Exhibit or work or services covered thereby, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within 10 days, or if the parties fail to agree on a mediator within 10 days, a mediator shall be appointed by the presiding judge of the Yamhill County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

21. Non-discrimination

In connection with the execution of this contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, or national origin. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, marital status, handicap, sexual persuasion, or national origin. Such actions shall include, but not be limited to the following: employment, promotion, demotion, transfer, duties assignment; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

22. Integration

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

BEERY, ELSNER & HAMMOND, LLP

CITY OF DAYTON, OREGON



Ashley O. Driscoll, Partner



Rochelle Roaden, City Manager

06/13/2022

Date

6/12/2022

Date

EXHIBIT A

Scope of Services

- A. Heather Martin will act as lead attorney for Consultant as it acts as “City Attorney” and will select/appoint other attorneys at Beery Elsner & Hammond, LLP to perform various legal functions and activities for City as he deems appropriate. After consultation with the City, Consultant may change the lead attorney.

- B. The City Attorney is expected to manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. Consultant services will include:
 - 1. Draft and review ordinances, resolutions, contracts, orders, agreements, and other legal documents;
 - 2. Conduct legal research, prepare memoranda, and provide advice to the City Council and City staff;
 - 3. Be responsible for representing City in litigation and administrative proceedings;
 - 4. Attend such meetings of the City Council as the Mayor, the City Council and/or other authorized personnel shall request;
 - 5. Ensure that all City ordinances are in compliance with state statutes;
 - 6. Monitor pending and current legislation and case law as appropriate; and
 - 7. Supervise other outside legal services, if any.

- C. All legal services shall be coordinated under the direction of the City Manager. Notwithstanding any other provision contained herein, any legal services can only be authorized by the City Council or City Manager. Nothing in this Agreement shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matter of City from or to Consultant.

- D. Consultant shall provide services in the following areas of law:
 - 1. Municipal law and governance;
 - 2. Land use and development review;
 - 3. Property acquisition and real estate transactions;
 - 4. Telecommunications law;
 - 5. Utility franchising;
 - 6. Public finance;
 - 7. Infrastructure financing;

8. Employment;
9. Litigation and administrative law;
10. Water law;
11. Municipal water law;
12. Urban Renewal and economic development; and
13. Recreation and hobbies.

If the City requires legal assistance in an area in which the Consultant lacks expertise, Consultant will assist the City with finding an alternative legal services provider.

- E. Consultant will advise City Council directly about any contracts, complaints, and investigations regarding the City Manager.

EXHIBIT B

Compensation

Payment will be made to Consultant for the services identified in Exhibit A based upon an itemized monthly billing statement. The billing rates are as follow:

- A. \$285 per hour for Partners and Of Counsel;
- B. \$275 per hour for Senior Associates;
- C. \$265 per hour for Associates;
- C. \$175 per hour for Paralegals;
- D. \$150 per hour for Legal Assistants; and
- E. The direct cost for such items as messenger services, printing, photocopies, mileage and the like will be billed to the City.

It is understood that the above rates may be adjusted or changed by Consultant on no more than a biennial basis with not less than sixty (60) days written notice to City.