

**RESOLUTION NO. 12/13-1
CITY OF DAYTON, OREGON**

Title: A Resolution Approving Renewal of a Personal Services Contract for audit services with Pauly, Rogers and Co., P.C. Fiscal Year 2011/2012

WHEREAS, the City of Dayton will conduct an audit of the financial records for the fiscal year 2011/2012; and

WHEREAS funds for the audit have been budgeted in the 2012/2013 City of Dayton Budget; and

WHEREAS, competitive proposals were received for said work; and

WHEREAS, on June 21st 2010 Pauly, Rogers and Co., P.C was awarded the contract; and

WHEREAS, the City wishes to renew the contract for the fiscal year 2011/2012 audit for the fees outlined in Exhibit A;

The City of Dayton resolves as follows:

- 1) **THAT** the City Council hereby renews the contract for audit services for Fiscal Year 2011/2012 to Pauly, Rogers and Co., P.C. (attached hereto as Exhibit A and by this reference made a part hereof); and
- 2) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 2nd day of July, 2012

In Favor Bixler, Blackburn, Evers, Frank, Utt, White, Wytoski

Opposed None

Absent None

Abstained None

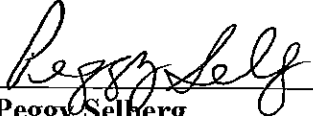


Jolie White, Mayor

8/23/2012

Date of Signing

ATTESTED BY:



**Peggy Selberg
City Recorder**

7/2/2012

Date of Enactment

Attachment - Exhibit A

**CITY OF DAYTON, OREGON
PERSONAL SERVICES CONTRACT**

A CONTRACT between THE CITY OF DAYTON, OREGON ("City"), and Pauly, Rogers and Co., P.C. ("Provider").

WHEREAS, the City and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Provider's provision of auditor services to the City.

1. Term

The initial term of this contract shall be one (1) year from July 1, 2010 to June 30, 2011 with four (4) additional one-year options to extend. The maximum duration of the contract may not exceed five (5) years.

2. Provider's Service

The scope of Provider's services and time of performance under this contract are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this contract as if fully set forth. Any conflict between this contract and Provider's Proposal (if any) shall be resolved first in favor of this written contract. Provider will, in the rendering of its services to the City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this contract and Exhibit A.

3. Provider Identification

Provider shall furnish to City Provider's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

4. Compensation

City agrees to pay Provider at the times and in the amount(s) set out in and in accordance with Exhibit A.

5. Project Managers

City's Project Manager is Christy Ellis. Provider's Project Manager is Roy Rogers. Each party shall give the other written notification of any change in their respective Project Manager.

6. Project Information

Provider agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Provider shall give prompt written notice to City's Project Manager if, at any time during the performance of this contract, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of City's rights.

8. Provider is Independent Contractor

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this contract. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Provider shall not affect his/her independent ability (or the ability of his/her insurer) to assert that the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

9. Overtime

Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC §§201 to 209, shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week.

10. Indemnity and Insurance

- i. Indemnity: Provider acknowledges responsibility for any and all liability arising out of the performance of this contract and shall hold City harmless from, indemnify and defend City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this contract.
- ii. Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, the City, its Councilors, officers, agents and employees. 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 Provider's operations, in an amount not less than \$1,000,000 combined single limit per occurrence. Such insurance shall name the City as an additional insured.
- iii. Workers' Compensation Coverage: Provider certifies that Provider has qualified for State of Oregon Workers' Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. Provider shall provide to City within ten (10) days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days advance written notice to City. A copy of the certificate

- of self-insurance issued by the State shall be provided to City if the Provider is self-insured.
- iv. Professional Errors and Omissions: Provider shall provide City with evidence of professional errors and omissions liability insurance for the protection of Provider and its employees, insuring against bodily injury and property damage and arising out of or resulting from Provider's negligent acts, omissions, activities or services, in an amount not less than \$1,000,000 combined single limit per occurrence. Such insurance shall be endorsed to include contractual liability.
 - v. Certificates: Provider shall furnish the City certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days written notice to the City before they may be canceled.
 - vi. Primary Coverage: The coverage provided by insurance required under this contract shall be primary, and any other insurance carried by City shall be excess.

11. Work is Property of City.

All work, including but not limited to documents, drawings, papers, and photographs produced by Provider to fulfill the terms of this contract shall be the property of City, excepting proprietary forms, schedules and work papers.

12. Law of Oregon.

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

13. Errors

Provider shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

14. Extra or Changes in Work

Only the City Manager or the Project Manager (if different) may authorize extra (and/or change) work. Failure of Provider to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such work.

15. Successors and Assignments

- i. Each party binds itself, and any partner, successor, executor, administrator, or assign to this contract.
- ii. Neither the City nor Provider shall assign, or transfer their interest or obligation hereunder in this contract without the written consent of the other's. Provider must seek and obtain the City's written consent before subcontracting any part of the work required of Provider under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

16. Records

- i. Provider shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three (3) years after the City makes final payment on this contract and all other pending matters are closed.

- ii. Provider 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 at the cost of the City.

17. Breach of Contract

- i. Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or the City notifies Provider of the breach, whichever is earlier. If Provider 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 Provider, may obtain substitute services in reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.
- ii. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, the City may declare Provider in default and pursue any remedy available for a default.
- iii. Pending a decision to terminate all or part of this contract, the City unilaterally may order Provider 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, Provider 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 Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- iv. To recover amounts due under this paragraph, the City may withhold from any amounts owed by the City to Provider, including but not limited to amounts owed under this or any other contract between Provider and the City.

18. Mediation/Trial without a Jury

Should any dispute arise between the parties to this contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through 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 in writing 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 ten (10) days or if the parties fail to agree on a mediator within ten (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.

For any claim(s) remaining unresolved after mediation, the parties may then proceed to be resolved by way of litigation. Any litigation arising under or as a result of this contract shall be tried to the court without a jury.

19. Termination for Convenience

The City may terminate all or part of this contract at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider 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 Provider's reasonable costs actually incurred in closing out the contract.

20. 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. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

21. Payment for Labor or Material

Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the prosecution of the work provided for in this contract. (ORS 279B.220)

22. Contributions to the Industrial Accident Fund

Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

23. Income Tax Withholding

Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS 279B.220)

24. Payment of Claims by the City

If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider 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 Provider pursuant to this contract. The City's payment of a claim under this paragraph shall not relieve Provider or Provider's surety, if any, from responsibility for those claims. (ORS 279C.515)

25. Workers' Compensation

Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a Workers' Compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify the City for any liability incurred by the City as a result of Provider's breach of the warranty under this paragraph. (ORS 279B.230)

26. Medical Care for Employees

Provider shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Provider's

employee(s), all sums which Provider agrees to pay for such services and all moneys and sums which Provider 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. (ORS 279B.230)

27. Conflict of Interest.

Except with City's prior written consent, Provider shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Provider's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

28. Modification

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

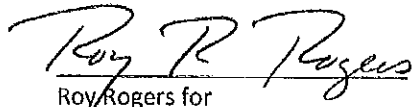
29. No Waiver of Legal Rights

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

30. Integration

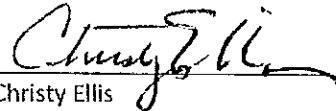
This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

PROVIDER



Roy Rogers for
Pauly, Rogers and Co., P.C.

CITY OF DAYTON, OREGON



Christy Ellis
CITY MANAGER



Exhibit A

AUDIT SERVICES FEE PROPOSAL

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AUDIT SERVICES FEES



Audit Fees

Our not-to-exceed fees for the years ending June 30, 2010 through 2014 for the City of Dayton are listed below. The fees are based on the anticipated cooperation of the City's staff, and on the assumption that the books will be closed, balanced and all appropriate accounts reconciled to the detail and that financial statements will have been prepared and made available to us before we begin our final fieldwork. It also includes the auditing standards in effect for this year, but not changes in standards or potential scope of work changes that might occur in future years, including federal audit requirements. These fees are inclusive of all staff time, all services outlined below and all of our out-of-pocket expenses for travel, supplies, printing and binding up to twenty (20) copies of the City of Dayton's financial statements.

Audit Services	For the Year Ending June 30				
	2010	2011	2012	2013	2014
Annual Audit	\$7,350	\$7,650	\$7,950	\$8,250	\$8,550
Single Audit	2,150	2,275	2,500	2,600	2,700
Financial Statement Preparation	2,250	2,375	2,500	2,625	2,750

Telephone calls from the City seeking advice or assistance are welcomed anytime during the year, and such calls are anticipated as part of the total proposed fee. Our willingness to provide minor technical assistance throughout the year without billing for additional services has been one of the trademarks of *Pauly, Rogers and Co., P.C.* A great deal of discussion is expected to occur during the year, all of which helps the auditors, as well as the City, properly deal with issues as they arise.

Timeline for Completing the Engagement

Audit Milestone	Description	Timing	Hours
Written Work Plan and Planning	The audit program will be written by Eric Mireiter and Carolyn Murray, including any special procedures developed after meeting with the City. The engagement letter and planning will also be executed during this time.	May-Jun	6
Interim and Compliance Work	Internal control, audit risk and materiality would be evaluated. Initial compliance work will begin.	Jul-Aug	40
Audit Fieldwork	Audit fieldwork will be conducted at an agreed-upon time when the City's books are closed. The exit conference would occur immediately upon completion of the fieldwork, and would include a discussion of our study of the City's internal control system and the observations and conclusions from it. Also, we would communicate any potential findings and recommendations.	Sep-Oct	48
Draft and Review Reports	Review of all reports and returns will be completed, including technical and second Partner review.	Nov	18
Presentation and Delivery	The final reports will be printed and delivered to the City of Dayton by the agreed-upon date.	Nov	8

120

The Manager and In-Charge time at your site will be approximately 40 hours

Rates for Additional Professional Services

Pauly, Rogers and Co., P.C. can provide the City with a variety of services in addition to the annual audit. Special reports, projects or other work undertaken at the client's request is billed at the following hourly rates for 2010: Partner \$170, In-Charge and Manager \$120, Staff Accountant \$95 and Support Staff \$50. At the time of the request, we would estimate the fee to be charged and seek written approval of that fee. Special projects could be unit-priced or receive a reduced fee if they were scheduled at times when we are less busy with audit work.

City of Dayton and Pauly, Rogers and Co., P.C.

Our firm wants your business and will be responsive to your needs. The City of Dayton will be a very important client to us and, as such, will receive excellent service and attention. You have our assurance that the City will receive prompt and courteous attention in all matters for which we are engaged!