

**RESOLUTION NO. 15/16-18
CITY OF DAYTON, OREGON**

Title: *A Resolution Approving a Personal Services Agreement for Legal Services, July 1, 2016 thru June 30, 2017*

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, 2016 through June 30, 2019.

ADOPTED this 6th day of **June 2016**.

In Favor **Bixler, Collins, Frank, Marquez, Taylor, Wytoski**

Opposed **None**

Absent **Price**

Abstained **None**



Elizabeth Wytoski, Mayor

6/6/16

Date of Adoption

ATTESTED:



Rochelle Roaden
City Recorder

6/6/16

Date of Enactment

Attachment - Exhibit A

**CITY OF DAYTON
PERSONAL SERVICES CONTRACT**

PROVISION OF CITY ATTORNEY SERVICES

THIS CONTRACT FOR PERSONAL OR PROFESSIONAL SERVICES ("Contract") is entered into between the City of Dayton, Oregon, located at 416 Ferry Street, P.O. Box 339, Dayton, Oregon 97114 ("City") and Beery Elsner & Hammond, LLP, located at 1750 SW Harbor Way, Suite 380, Portland, Oregon, 97201 ("Contractor"). The City's primary supervisor for this Contract ("Contract Administrator") is Scott Pingel, City Manager.

THE PARTIES HEREBY AGREE THAT:

- 1. EFFECTIVE DATE; DURATION.** This Contract shall become effective on the date this Contract has been signed by each party. Unless terminated or extended, this Contract expires on June 30, 2019.
- 2. STATEMENT OF WORK.** In accordance with the terms and conditions of this Contract, Contractor shall perform the services as scheduled ("Work") and as set forth in Contractor's proposal dated June 9, 2010, attached hereto as Exhibit "A" and incorporated herein by this reference.
- 3. CONTRACT DOCUMENTS.** In the event of a conflict between or among the terms of this instrument, any proposal and/or request for proposals, the following order of precedence shall prevail: (a) this instrument, (b) attached exhibit.
- 4. BILLING AND PAYMENT SCHEDULE.** At least thirty (30) days prior to due date of payment, Contractor shall prepare and submit to **THE CITY OF DAYTON, ATTENTION: FINANCE DEPARTMENT, PO BOX 339, DAYTON, OREGON 97114**, an invoice of services rendered. Payment shall be made upon Contract Administrator's approval. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended.
- 5. AVAILABILITY OF FUNDS.** City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.
- 6. ASSIGNMENT AND SUBCONTRACTORS.** Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent.
- 7. TERMINATION.** The parties may effect termination of this Contract in the manners indicated:

- a. **Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. **City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30-day's notice to Contractor.
- c. **City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
 - (i) City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or City is prohibited from paying for such work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' notice to City if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.
- f. **Consultant's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the work.

8. FORCE MAJEURE. Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or

other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy, epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Contractor.

9. MODIFICATION. Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. In the event that Contractor receives any communication of whatsoever nature from City that Contractor contends gives rise to any modification of this Contract, Contractor shall, within 15 calendar days after receipt, make a written request for modification to City. Contractor's failure to submit such written request for modification in a timely manner is a basis upon which City may refuse to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment and other costs. If Contractor incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

10. ACCESS TO RECORDS. Contractor shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

11. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules or regulations shall not relieve Contractor of these obligations or the requirements of this Contract. Without limiting the foregoing, Contractor shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279C.500 through 279C.565. The provisions of ORS 279C.505, ORS 279C.510, ORS 279C.515, ORS

279C.520 and ORS 279C.530 are hereby incorporated herein by this reference and the applicable terms therein shall be binding upon Contractor. The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

12. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING. The Work to be rendered under this Contract is that of an Independent Contractor. Contractor is not to be considered an employee of City for any purpose. As used herein, "Independent Contractor" means that:

- a. Contractor is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.
- b. Contractor is responsible for obtaining all required business registrations or professional occupational licenses.
- c. Contractor furnishes the tools or equipment necessary to perform the contracted labor or services.
- d. Contractor has the authority to hire and fire Contractor's employees.
- e. Contractor is registered under ORS chapter 701 to provide labor or services for which such registration is required.
- f. For labor and services performed as an Independent Contractor in the previous year, Contractor has either filed federal and state income tax returns in the name of Contractor's business or, in the alternative; Contractor has filed a Schedule C tax form as part of Contractor's personal income tax return.
- g. Contractor represents to the public that the labor or services described herein are to be provided by an independently established business.
- h. Payment to the Contractor is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract. Unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations.

13. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE. Contractor represents and warrants to City that:

- a. Contractor has the power and authority to enter into and perform this Contract;
- b. When executed and delivered, this Contract shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- c. If Contractor provides personal services under this Contract, the Work under this Contract shall be performed in a good and workmanlike manner;
- d. If Contractor provides professional services under this Contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and
- e. Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties set forth in this Section are in addition to, and not in lieu of any other warranties provided.

14. OWNERSHIP OF WORK PRODUCT. All work products or any form of property originated or prepared by Contractor that results from this Contract are the exclusive property of City. Contractor understands and agrees that the work to be performed for City under this Contract shall be considered "work for hire" and City shall be deemed the exclusive owner of all rights to copyright the work once performed no matter when it comes into City's physical possession. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Contractor.

15. INDEMNITY. With regard to the Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Contractor shall, to the extent required by law, defend, indemnify, protect and hold the City, its officials and employees harmless from and against any and all claims, suits, actions, losses, costs or judgments of any nature for damages or injuries to any person or property, including injury to the Contractor's or its subcontractors' employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the fault of the Contractor and its subcontractors and their agents, officers or employees, in performing Work herein, and all expenses of investigating and defending against same, including attorney fees and costs at trial and on appeal; provided, however, that the Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established fault of the City, its officials, agents, employees or volunteers.

With regard to the Contractor's performance of professional services, Contractor shall, to the extent required by law, defend, indemnify and hold harmless the City, its officials, agents, employees and volunteers from and against any and all claims, costs, suits, actions, losses, expenses and damages, including attorney's fees and costs at trial and on appeal, arising from the fault of the Consultant and/or its subconsultants associated with the Work.

16. INSURANCE. Contractor, at Contractor's own expense, shall procure and maintain in full force and effect for the duration of Contractor's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

**WORKERS' COMPENSATION INSURANCE
AND EMPLOYER LIABILITY INSURANCE**

Required; Not Required.

Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, unless existence of extraterritorial coverage is established pursuant to ORS 656.126(3). All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Contractor's or subcontractor's Work under this Contract Employer Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract operates in compliance with ORS 656.017 by providing Oregon workers' compensation coverage for all their subject workers. Contractor shall require proof of such Workers' Compensation Insurance and Employer Liability Insurance by receiving and keeping on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Contractor or subcontractor.

Workers' Compensation Insurance and Employer's Liability Insurance coverage is required under this Contract of all Contractors who are employers. If Contractor is legally exempt from any requirement to provide Workers' Compensation Insurance coverage for the Work to be performed under this Contract, Contractor hereby represents that Contractor understands and agrees that under ORS 656.006(13), an "employer" is any person who contracts to pay remuneration for and secures the right to direct and control the services of any person. Contractor understands and agrees that if Contractor is exempt from coverage under ORS 656.027 and engages individuals in performance of this Contract who are not exempt from coverage under ORS 656.027, then Contractor shall provide Workers' Compensation Insurance coverage for all such individuals. If the Contractor does not provide that insurance, Contractor may be deemed a non-complying employer for purposes of Oregon law and agrees to hold City harmless from and indemnify City against any and all claims for compensation benefits made against the Contractor as a noncomplying employer. If Contractor is declaring Contractor exempt from any requirement to provide workers' compensation coverage, Contractor must initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

COMMERCIAL GENERAL LIABILITY INSURANCE

Required; **Not Required.**

General Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000; \$1,000,000; \$2,000,000; or \$5,000,000 covering, but not limited to, liability for personal injury and property damage. The policy shall be written on an occurrence basis on ISO Form CG 00 01, or its equivalent, and shall include blanket contractual liability coverage for the assumed liability under this Contract and broad form property damage coverage including completed operations. The City of Dayton, and its officials, employees and agents shall be named as additional insureds under ISO Form CG 20 10 (Additional Insureds — Owners, Lessees or Consultants), or its equivalent, with respect to the Work to be provided under this Contract. The Commercial General Liability Insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. The insurance coverage is primary to any self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

Required; **Not Required.**

Automobile Liability Insurance with an each accident limit, or the equivalent, of not less than \$500,000, or \$1,000,000 covering, but not limited to, liability for bodily injury and property damage, together with coverage for "any, auto," including owned, non-owned and hired autos used in connection with the performance of the Work. The policy shall be written on an occurrence basis on ISO Form CA 00 01, or its equivalent, including an omnibus insurance clause. The City of Dayton, and its officials, employees and agents shall be named additional insureds under the policy if Contractor's Work entails transporting people for the City. The policy cannot be excess to a self-insurance program; any deductible cannot exceed \$5000. If Contractor is declaring Contractor excused from any requirement to provide Automobile Liability Insurance coverage because Contractor does not use an automobile in connection with Work under this Contract, Contractor may initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

PROFESSIONAL LIABILITY INSURANCE

REQUIRED; **NOT REQUIRED.**

Professional Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000; \$1,000,000; \$2,000,000; or \$5,000,000 claim with a \$2,000,000 or \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and economic loss. Contractor shall be responsible for any deductible amounts. If Contractor proposes using subcontractors, in addition to any other requirements of this Contract, City may require subcontractors to provide professional liability insurance of similar type and coverage amount. Contractor, at Contractor's own expense, shall maintain the

Professional Liability Insurance in full force for not less 24 months following completion of this Contract. The Professional Liability coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured. Coverage must be in effect prior to the commencement of the performance of this Contract. Contractor shall furnish proof of continuous "tail" coverage for 24 months after Contract completion.

CONSULTANT POLLUTION LIABILITY

REQUIRED; NOT REQUIRED.

Contractor's Professional Liability Insurances shall be endorsed to provide liability coverage in an amount not less than \$1,000,000; \$2,000,000; or \$5,000,000 per claim limit, with a \$2,000,000 or \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and cleanup costs. In lieu of endorsement, the City may accept equivalent coverage under a separate insurance policy.

COMMERCIAL CRIME INSURANCE

REQUIRED; NOT REQUIRED.

Commercial Crime Insurance not less than \$50,000 including, but not limited to, coverage for theft or loss of client property.

CONTRACTOR POLLUTION LIABILITY INSURANCE

REQUIRED; NOT REQUIRED.

Contractor Pollution Liability Insurance in an amount not less than \$1,000,000; \$2,000,000; or \$5,000,000 per claim limit, with a \$2,000,000 or \$5,000,000 annual aggregate limit, covering, but not limited to, liability for bodily injury, property damage and cleanup costs.

WAIVER OF SUBROGATION

REQUIRED; NOT REQUIRED.

If Waiver of Subrogation is required, Contractor hereby waives Contractor's right to recover from the City, and its officers, agents, employees and volunteers for any damages arising out of Work performed under this Contract and covered by insurance. Any Commercial General Liability Insurance policy and/or Automobile Liability Insurance policy required under this Contract shall be endorsed to provide for a waiver of underwriter's rights to subrogation as to additional insureds.

17. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS.

Before Contractor commences Work under this Contract, Contractor shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City's Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

- a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer subject to the Oregon Surplus Lines Law (ORS 735.400 to 735.495);
- b. Upon request, complete copies of insurance policies, trust agreements, etc. shall be provided to City;

- c. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;
- d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;
- e. Contractor shall provide City not less than 30 days written notice of Contractor's intent to cancel, terminate or make any material change affecting required insurance coverage;
- f. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements
- g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Contractor's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and
- h. The insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any insurance maintained by the City shall be excess of and shall not contribute with the insurance provided by Contractor and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Contractor of the new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

18. LIMITATION OF LIABILITIES. Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms; provided, however, this provision does not apply to liability arising under or relating to Section 8(e)(ii)(Termination) or Section 14 (Representations and Warranties; Standard of Care).

19. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine.

To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

20. NO THIRD PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

21. CONFLICT OF INTEREST. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

22. DISCLOSURE OF SOCIAL SECURITY NUMBER. Contractor must provide Contractor's Social Security Number unless Contractor provides a federal tax ID number. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

23. DISPUTE RESOLUTION. Any disputes under this Contract not resolved by the parties through direct communication shall be dealt with first by the aggrieved party giving the other party written notice of the dispute and, within 20 days after receipt of said notice, the receiving party submitting to the aggrieved party a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Any disputes not resolved by this process shall be submitted to mediation before commencement of litigation.

The mediator shall be named by mutual agreement of the parties or by obtaining a list of five qualified persons from the parties and alternatively striking names. The mediator shall have the duty and responsibility to assist the parties in resolving all issues submitted for mediation. The parties shall cooperate and operate to resolve all matters in dispute with the assistance of the mediator. The parties shall share the mediator's fees and expenses equally, unless they agree otherwise. The mediation shall terminate by: (a) written agreement signed by the parties; (b) determination by the mediator that the parties are at an irresolvable impasse; or (c) two unexcused absences by either party from the mediation session. The mediator shall not participate in any claim or controversy arising out of this Contract and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. ORS 36.100 to 36.245 shall apply to the entire process of mediation.

The mediation shall commence at a mutually acceptable time and place within sixty days of the date of the aggrieved party's notice. Mediation may continue as often and as long as thereafter as the mediator and the parties reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. Should the mediation fail to settle such dispute within 60 days of the commencement of mediation, or if the party receiving said notice do not meet within sixty days of said notice, either party may terminate mediation. The parties shall share equally the costs of the mediator. Each party shall be responsible for its own costs of mediation.

24. SURVIVAL. Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Contractor in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final

payment to the Contractor, completion of the Work and termination or completion of the Contract.

25. TIME IS OF THE ESSENCE. Time is of the essence under this Contract.

26. GOVERNING LAW. This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

27. CAPTIONS. The captions or headings in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

28. COUNTERPARTS. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

29. MERGER. This Contract (including, to the extent provided herein, any attached exhibits) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. There are no understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

30. WAIVER. City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

31. SEVERABILITY. If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full force and effect insofar as possible to preserve the lawful anticipated benefits of the Contract to the parties.

Certification

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws; (d) Contractor is an independent Contractor as defined in ORS 670.600; and (e) the Contractor data set forth herein is true and accurate.

The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES HERTO:

CITY OF DAYTON, OREGON

BY: [Signature]

BY: [Signature]

TITLE: City Manager

BY: Partner

DATE: 6-14-16

DATE: 6/20/16

APPROVED AS TO LEGAL SUFFICIENCY: _____

Federal Tax ID#: 93-1234801

This payment information must be provided for Contact approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification number submitted. (See IRS 1099 for more information.) Information not matching IRS records could subject Contractor to backup withholding.

EXHIBIT A
Statement of Work

Compensation

Payment will be made to CONTRACTOR for services identified based upon a detailed monthly billing statement showing work performed. Payment will be made within thirty (30) days of CITY's receipt of the detailed monthly billing from CONTRACTOR.

Hourly rates are:

Partners and Of Counsel	\$225.00 per hour
Senior Associates	\$215.00 per hour
Associates	\$200.00 per hour
Paralegals	\$135.00 per hour
Legal Assistants	\$110.00 per hour

It is understood that the above rates may be adjusted or changed by CONTRACTOR on not more than a yearly basis with not less than sixty (60) days written notice to CITY.

Costs

CITY shall reimburse CONTRACTOR for out-of-pocket expenses at CONTRACTOR's direct cost without additional markup.