

**RESOLUTION No. 23/24-15
City of Dayton, Oregon**

A Resolution Authorizing an Agreement for City Manager Recruitment Services

WHEREAS, the current City Manager Rochelle Roaden is leaving her position on June 12, 2024, and the City is in need of City Manager recruitment services; and

WHEREAS, the City Council reviewed proposals for recruitment services from four different vendors at its regular meeting on May 6, 2024 and expressed interest in contracting with Jensen Strategies for a cost of \$26,000 plus additional direct expenses; and

WHEREAS, the City Manager and City Council believe the informal selection process to choose a recruitment service did not interfere with competition among prospective contractors, reduce the quality of services, or increase costs; and

WHEREAS, the City Manager and the City Council believe it is in the City's best interest to contract with Jensen Strategies.

Therefore, the City of Dayton resolves as follows:

- 1) **THAT** the City Council does hereby authorize the Mayor to sign a recruitment services agreement with Jensen Strategies in substantially the same form as the attached Exhibit A.
- 2) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 3rd day of June 2024.

In Favor: Frank, Mackin, Maguire, and Sandoval-Perez

Opposed:

Absent:

Abstained:



Annette Frank, Mayor

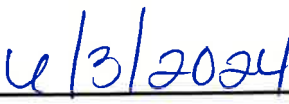


Date Signed

ATTEST:



Rocio Vargas, City Recorder



Date of Enactment

Attachment: Exhibit A

PROFESSIONAL SERVICES AGREEMENT

This Agreement made on the __3__ day of June 2024 (“Effective Date”), between:

City of Dayton
416 Ferry Street
PO Box 339
Dayton, OR 97128
cityofdayton@daytonoregon.gov
503-864-2221

(“City”)

and

Jensen Strategies
1750 SW Harbor Way
Ste 350
Portland, Oregon 97201
erik@jensenstratagies.com
503-477-8312

(“Consultant”)

Consultant agrees to provide professional services (a.k.a. “personal” services) to City pursuant to this Agreement. Such services are authorized by and subject to the terms and conditions of this Agreement.

The “Project”:

The City is in need of recruitment services to select the best candidate to serve as the City of Dayton’s next City Manager. The City desires to attract a wide range of qualified applicants who will meet the City’s needs and will be the best candidate for the position. Consultant understands the City’s description of the Project and has conducted initial inquiries with City regarding the Project. Consultant represents that Consultant is competent and willing to undertake professional services in connection with the Project and can perform such professional services within the time allotted herein.

1. Consultant’s Responsibilities

1.1. Consultant will provide professional services for City during all phases of the Project to which this Agreement applies, serve as the City's professional representative for the Project as set forth below, and will give professional consultation to City during the performance of services hereunder.

1.2. Consultant will provide all professional services customarily furnished and reasonably necessary within the Scope of Services set out in Exhibit A, attached. Time is of the essence of this Agreement. City and Consultant will develop a Project Schedule consistent with requirements of the Scope of Services and Consultant will complete each phase of the services in accord with the Schedule. Subconsultants, if any, may only be used with City's prior written consent; however, City agrees herein to the use of former city administrators as set forth under Section 3.1 of Exhibit A. Consultant will contract directly with and will pay such subconsultants. City has no obligation to pay any subconsultants.

1.3. Consultant will pay all royalties and license fees which may be due by reason of materials or methods employed by Consultant or its subconsultants or by reason of the necessary inclusion of protected materials or methods in the Project as designed except to the extent such materials or methods are included with the informed consent or at the direction of City. Consultant will defend all suits or claims for infringement of patent, trademark, or copyright for which Consultant is responsible pursuant to this paragraph, which may be brought against City, and Consultant will be liable to City for all losses arising therefrom, including costs, expenses, and attorney fees.

1.4. Consultant will not be relieved of responsibility for errors or omissions or other defects in plans and specifications or any other documents prepared by Consultant for City's review and approval.

1.5. All services provided by Consultant will be performed in a prompt manner and will be in accordance with the professional standards of care and diligence applicable to such services performed by recognized firms in the locale and on the type of project contemplated at the time such services are performed. Consultant will be responsible for all services provided whether such services are provided directly by Consultant or by subconsultants engaged by Consultant. Consultant will make all decisions called for promptly and without unreasonable delay.

1.6. Consultant will perform only the services authorized. Additional services will be compensated only as authorized in writing by City. To the extent services are made necessary by any fault or error of Consultant in the performance of Consultant's duties, responsibilities, or obligations, the services will not be compensated.

1.7. Consultant will maintain all documents, books, papers, recordings and all other records, including any in digital format, arising out of or related to this Agreement for a period of five (5) years after completion or abandonment of the Project. Such records will be made available, in full, to City upon reasonable notice.

1.8. If applicable, Consultant will designate a representative fully knowledgeable about the Project with the authority to carry out Consultant's duties under this Agreement.

1.9. Consultant will furnish City its IRS-designated employer identification number or its social security number if it does not have an employer identification number.

1.10. Consultant will not provide any comments, information, press releases or opinions to representatives of newspapers, magazines, television and radio stations, weblogs or any other news medium on the Project without City's prior written consent.

1.11. Consultant will give prompt written notice to City if Consultant becomes aware of, or forms a belief regarding, actual or potential problems, faults or defects in the Project, any nonconformity with the Agreement, or with any federal, state or local law, regulation or ordinance, or has any objection to any decision or order made City with respect to Consultant's duties under this Agreement. Any delay or failure on the City's part to provide a written response to Consultant will not be deemed an endorsement of Consultant's notice and will not constitute a waiver of any of City's rights.

1.12. Any employee of Consultant will be paid at least time and a half for all time worked in excess of 40 hours in any one week, other than a person excluded from overtime pursuant to ORS Chapter 653 or United States Code Title 29.

1.13. Consultant will promptly pay, as due, all persons supplying labor or material for the performance of its work under this Agreement.

1.14. Consultant will pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of its work under this Agreement.

1.15. Consultant will pay to the Department of Revenue all sums withheld from employees under ORS 316.167. Consultant represents and warrants that it has complied with all applicable Oregon tax laws, including all taxes imposed by Oregon local governments, and will continue to do so during the term of this Agreement.

1.16. Consultant will promptly pay, as due, all persons or entities furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to Consultant's employees, those sums that Consultant agrees to pay for those services and all moneys and sums that Consultant collected or deducted from its employees' wages under any law, contract or agreement for the purpose of providing or paying for the services.

1.17. Consultant is an employer subject to Oregon's workers compensation laws and will comply with ORS 656.017, or Consultant will promptly demonstrate to City's satisfaction that it is exempt from such law in accordance with ORS 656.126.

1.18. Consultant represents and warrants that it has the power and authority to enter into and perform under this Agreement.

1.19. If the amount of the Agreement exceeds \$10,000 and the Consultant is not domiciled in or registered to do business in Oregon, the Consultant shall provide the Oregon Department of Revenue all information required by that Department.

1.20. Consultant shall ensure that its employees have identifying uniforms or other designation of identity (ID badge, clothes with Consultant logo) while on City property.

1.21. Consultant is responsible for transportation of any individuals working for it on the Project to and from the Project site.

2. City's Responsibilities

2.1. City will designate a representative fully knowledgeable about the project and with the authority to review and approve all project work.

2.2. City will furnish Consultant with information regarding requirements for the project, including programs setting forth City's objectives, schedules, constraints and criteria.

2.3. City will render its own decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services.

2.4. City will furnish Consultant with all information in its possession regarding the project.

3. Payments to the Consultant

3.1. For the period of this Agreement, Consultant agrees to provide services at a cost of \$26,000 which is a do not exceed amount in addition to direct expenses as set out in Exhibit A and subject to the terms of this Agreement. The parties understand and agree that this cost represents a full and fair payment for all services performed by Consultant for City, pursuant to this Agreement.

3.2. Consultant will invoice City on a monthly basis. Consultant's invoices will include a summary of services provided [and a summary of authorized additional services, with supporting documentation]. Consultant expressly waives any right to payment for services rendered if such services are not billed within sixty (60) days following their rendition.

3.3. City shall pay undisputed Consultant invoices within thirty (30) days of receipt.

3.4. Consultant's billing records, which include timesheets, rate schedules, and invoices necessary to support invoices for time and materials, additional services, and expenses will be maintained current by Consultant according to generally recognized accounting principles and will be maintained for a period of three (3) years following completion or abandonment of the project. Such records will be available to City for inspection, copying and/or audit during normal business hours.

4. Inspection and Acceptance

The Project shall be subject to inspection by City. Should the quality of the work done on the Project not be satisfactory to City, City will provide notice of the defects and a cure date by which Consultant shall have corrected any defective work. If the Consultant does not comply, City shall have the ability terminate this Agreement.

5. Term/Termination

5.1. City may terminate this Agreement for convenience and without cause by giving written notice of such termination to Consultant. Upon receipt of such notice, Consultant will immediately cease further performance except that Consultant may perform such services and incur such reimbursable expenses as are reasonably necessary to preserve work that has been completed or is in progress and to achieve an orderly termination. Upon such termination, City will pay Consultant, pursuant to the payment provisions of this Agreement for all authorized services or reimbursable expenses up to the date established in the notice of termination. Authorized reimbursements will include those costs necessarily and reasonably incurred by Consultant for organizing and carrying out the termination. City will not be obligated to reimburse Consultant for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments.

5.2. Within a reasonable time after termination of this Agreement or of any Exhibit A work, Consultant will deliver to City all materials and equipment and documentation, including raw or tabulated data and work in progress upon payment pursuant to paragraph 5.1 above.

5.3. Termination of this agreement by City will not constitute a waiver or termination of any rights, claims, or causes of action City may have against Consultant under this Agreement.

5.4. Upon a determination by a court or an arbitrator that any termination by City of Consultant or its successor in interest was wrongful, such termination will be deemed converted to a termination for convenience as set forth above and Consultant's remedy will be so limited.

6. Insurance

6.1. Consultant will maintain throughout the period of this Agreement, as extended from time to time, and for a period of two (2) years after completion of the Project, the following minimum levels of insurance:

- (a) Workers' compensation coverage as required by law.
- (b) Employer's liability with limits of not less than \$1 million per occurrence.
- (c) Comprehensive general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$1 million per occurrence.

- (d) Comprehensive automobile liability insurance for at least \$1 million per occurrence.
- (e) Errors and omissions insurance with limits of not less than \$1 million. Consultant will require that any subconsultants engaged or employed by Consultant carry and maintain similar insurance with reasonably prudent limits and coverages in light of the services to be rendered by such subconsultant.

6.2. Consultant's insurance will be primary and any insurance carried by City will be excess and noncontributing. The general liability coverage will name City as additional insureds and will contain a severability of interest clause. Workers' compensation coverage will contain a waiver of subrogation in favor of City. All required coverage will be with companies rated A-/V or better by A.M. Bests Rating Service and will provide City with thirty (30) days' notice of material change, expiration, or cancellation.

6.3. Prior to commencement of any services under this Agreement, Consultant will furnish City with Certificates of Insurance and endorsements evidencing coverage and provisions as required. In the event Consultant fails to maintain insurance as required, City will have the option, but will not have the obligation, to obtain such coverage with costs to be reimbursed by Consultant.

7. Compliance with Applicable Law

Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Services under the Agreement.

7.1 Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Agreement and incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated:

7.1.1 Titles VI and VII of the Civil Rights Act of 1964, as amended;

7.1.2 Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

7.1.3 the Americans with Disabilities Act of 1990, as amended;

7.1.4 Executive Order 11246, as amended;

7.1.5 the Health Insurance Portability and Accountability Act of 1996;

7.1.6 the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

7.1.7 the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;

7.1.8 ORS Chapter 659, as amended;

7.1.9 all regulations and administrative rules established pursuant to the foregoing laws; and

7.1.10 all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations.

7.2 City's performance under the Agreement is conditioned upon Consultant's compliance with the provisions of ORS 279B.020, ORS 279B.220, 279B.225, 279B.230, and 279B.235 which are incorporated by reference herein.

8. Security Check

Consultant agrees that each of its employees, subconsultants' employees, and other individual involved in the Project may at the option of City be subject to a background/security check at any time through the Yamhill County Sheriff's Department or other designated agency. City retains the right to require immediate removal of any individual. Notwithstanding the foregoing, Consultant, not City is solely responsible for performing background checks on and screening for public safety for all individuals working for Consultant on the Project and to the extent allowed by law shall provide such screening information to City upon request.

9. Delay

Neither party will be responsible to the other for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of God, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If Consultant's services are delayed by such contingencies, Consultant will immediately notify City in writing and City may either (1) extend time of performance, or (2) terminate the uncompleted portion of Consultant's services at no cost to City.

10. Independent Contractor

Consultant is an independent contractor and is entitled to no compensation other than the compensation expressly provided by this Agreement. Nothing in this Agreement will be construed as forming a partnership, agency or joint venture between the parties. As an independent contractor, Consultant is not entitled to indemnification by City or the provision of a defense by City under the terms of ORS 30.285. This acknowledgement does not affect Consultant's independent ability (or the ability of its insurer) to assert the monetary limitations, immunities or other limitations affecting a claim made under the Oregon Tort Claims Act.

11. Notices

Any notice required under this Agreement will be deemed properly given if directed by prepaid mail, certified return receipt requested, or delivered in hand to the parties at the address as specified on the face page of this Agreement.

12. Indemnity

Consultant is responsible for any and all liability arising out of or related to the performance of work pursuant to this Agreement. Consultant will indemnify, defend (with counsel acceptable to City) and hold City, its elected officials, directors, employees, and agents harmless from and against any and all liability, losses, costs, settlements and expenses in connection with any action, suit or claim resulting or allegedly resulting from Consultant's acts, omissions, activities or services in the course of performing under this Agreement.

13. Mediation/Litigation

If any dispute arises between the parties to this Agreement, the dispute will be submitted to mediation prior to any litigation. No claim or dispute arising under this Agreement may proceed to litigation if the parties have not first mediated that claim or dispute. Mediation will be conducted in Yamhill County, Oregon. The parties will attempt to select a mediator within 30 days of a party's request for mediation. If the parties fail to agree on a mediator, a mediator will be appointed by the presiding judge of the Yamhill County Circuit Court upon a party's request. The mediator's fees and expenses will be shared equally by the parties. Each party will bear its own attorney fees.

Any litigation arising out of or related to this Agreement will be tried to the court without a jury. Each party will bear its own fees, costs and expenses related to any litigation, including attorney fees.

14. Governing Law

This Agreement and all services performed hereunder will be interpreted under the laws of the State of Oregon without respect to conflict of laws principles. The exclusive venue for any lawsuit or action will be in Yamhill County, Oregon. Consultant consents to the personal jurisdiction of the Circuit Court for the State of Oregon, Yamhill County.

15. Assignment

Consultant cannot assign any rights nor delegate any responsibilities it has under this Agreement without City's prior written approval which approval is in City's sole discretion.

16. Severability

If any term, condition or provision of this Agreement or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement will not be affected but will instead remain valid and fully enforceable.

17. Article Headings

All article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

18. Waiver

No waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver.

19. No Third-Party Beneficiaries

This Agreement confers no rights or benefits on any third party.

20. Entire Agreement

This Agreement signed by both parties and so initialed by both parties in the margin opposite this paragraph constitutes a final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by City or City’s agents that differ in any way from the terms of this written Agreement will be given no force and effect. This Contract will be changed, amended, or modified only by written instrument signed by both City and Consultant. This Agreement will not be modified or altered by any course of performance by either party.

CITY OF DAYTON

CONSULTANT

Annette Frank

Jensen Strategies

By: Annette Frank

By: _____

Title: Mayor

Title: _____

EXHIBIT A

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EXHIBIT A – Proposal