

**RESOLUTION No. 2024/25-02
City of Dayton, Oregon**

**A RESOLUTION Approving a Personal Services Agreement for Legal Services,
July 1, 2024, until terminated by either party.**

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 Interim 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, 2024, and concluding upon termination by either party.

ADOPTED on the 5th day of August 2024.

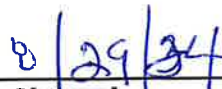
In Favor: Frank, Hover, Mackin, Maguire and Sandoval-Perez

Opposed:

Absent: Hildebrandt and Wildhaber

Abstained:


Annette Frank, Mayor


Date Signed

ATTESTED:


Rocio Vargas, City Recorder


Date of Enactment

Attachment: Exhibit A

PERSONAL SERVICES AGREEMENT

**CITY OF DAYTON
and
BEERY, ELSNER & HAMMOND, LLP**

THIS Agreement is made and entered into this 9th day of August, 2024, by and between the City of Dayton, an Oregon municipal corporation (“CITY”), and Beery, Elsner & Hammond, LLP, an Oregon limited liability partnership (“ATTORNEY”).

WHEREAS, ATTORNEY has served as legal representation for Dayton since May 1999; and

WHEREAS, the existing engagement contract between the parties expired on June 30, 2024; and

WHEREAS, despite this expiration, both parties continued to operate under the terms of the prior contract, under the assumption and impression that it was in full force and effect; and

WHEREAS, CITY continues to have a need for legal services with the particular training, ability, knowledge and experience possessed by ATTORNEY; and

WHEREAS, CITY has need for legal services with the particular training, ability, knowledge and experience possessed by ATTORNEY; and

WHEREAS, CITY has determined that ATTORNEY is qualified and capable of performing the professional services as CITY does hereinafter requires, under these terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. LEGAL SERVICES

ATTORNEY will provide legal advice upon request of the City Manager, City Council, Mayor or other consultants representing CITY. Additional terms of engagement are provided in Exhibit A, which is incorporated into this Agreement.

2. ATTORNEY IDENTIFICATION

ATTORNEY shall furnish CITY with its employer identification number, as designated by the Internal Revenue Service.

3. COMPENSATION

- A. Payment will be made to the ATTORNEY for the services identified based upon a detailed monthly billing showing work performed. Payment will be made within 30 days of CITY’S receipt of the detailed monthly billing from ATTORNEY.

B. Hourly rates:

| | |
|-------------------------|----------|
| Partners and Of Counsel | \$305.00 |
| Senior Associates | \$285.00 |
| Associates | \$265.00 |
| Paralegals | \$185.00 |
| Legal Assistants | \$160.00 |
| Law Clerk | \$100.00 |

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

C. CITY shall reimburse ATTORNEY for out-of-pocket expenses at ATTORNEY'S direct cost without additional markup.

4. INDEPENDENT CONTRACTOR

ATTORNEY shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under paragraph 3 of this Agreement.

5. TERM AND TERMINATION

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

6. INDEMNITY AND INSURANCE

A. Indemnity: ATTORNEY shall defend, indemnify, and hold the CITY, its officers, and employees harmless from any third-party claims that result in liability, loss, or expenses to the CITY, provided that such duty is limited to the proportional extent that the liability, loss or expense results from the negligence or willful misconduct of ATTORNEY in the performance of its services under this agreement. Notwithstanding the foregoing, CITY acknowledges that ATTORNEY in its capacity as City Attorney is acting as an Agent 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 ATTORNEY while it is acting within the professional scope of its engagement as City Attorney.

B. Liability Insurance: ATTORNEY shall maintain professional liability insurance insuring ATTORNEY against errors or omissions in the amount and on the conditions required by the Professional Liability Fund of the Oregon State Bar. ATTORNEY shall also maintain commercial general liability insurance covering Bodily Injury, Property Damage, and Personal Injury for at least \$1,000,000 per occurrence and at least \$2,000,000 in the aggregate per project.

C. Workers Compensation Coverage: ATTORNEY hereby certifies that ATTORNEY has qualified for State of Oregon Worker's Compensation coverage either as a carrier-insured employer or as a self-insured employer.

7. NOTICES

All notices shall be made in writing and may be given by email or by mail, addressed as follows:

CITY: Cyndi Park
Interim City Manager
P.O. Box 339
Dayton, OR 97114-0339
Email: cpark@daytonoregon.gov

ATTORNEY: Ashleigh Dougill
Beery, Elsner & Hammond, LLP
1804 NE 45th Ave.
Portland, OR 97213-1416
Email: ashleigh.dougill@behlaw.com

8. BAR MEMBERSHIP:

ATTORNEY is responsible for maintaining professional standing, as members of the Oregon State Bar Association, of all its attorneys providing services pursuant to this contract.

9. WORK IS CITY PROPERTY

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

10. SUCCESSORS AND ASSIGNMENTS

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

B. ATTORNEY may, with CITY'S consent, subcontract services provided under this agreement when a specialized need for legal services arises.

11. MODIFICATION

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

12. 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.

13. COMPLIANCE WITH LAWS

ATTORNEY shall comply with all applicable Federal, State and local laws, codes, ordinances and regulations applicable to the work in this contract. All provisions of ORS 279B.220 through ORS 279B.235 and ORS 279C.500 through ORS 279C.870 are incorporated herein to the extent applicable to services contracts. Unless otherwise specified, ATTORNEY shall obtain all permits necessary to perform the work.

14. FORCE MAJEURE

Neither ATTORNEY nor CITY shall be held responsible for delay or default caused by an act beyond their reasonable control including but not limited to fire, riot, acts of God, war or pandemic. The party whose performance is delayed or is in default shall make all reasonable efforts to remove or eliminate the cause of the delay or default, and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

15. INTEGRATION

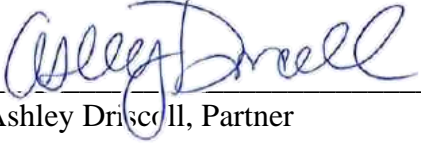
This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject. If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by its duly authorized undersigned agents and ATTORNEY has executed this Agreement on the date hereinabove first written.

CITY OF DAYTON

BEERY, ELSNER & HAMMOND, LLP

By: 
Signed by:
15AE0267C54E4DA
Title: Cyndi Park, Interim City Manager
Date: 8/9/2024

By: 
Title: Ashley Driscoll, Partner
Date: 8/9/2024

Approved by Dayton City Council on 08/05/2024

EXHIBIT A

TERMS OF ENGAGEMENT

Thank you for selecting our firm to represent your organization. We are pleased to serve you and look forward to a successful professional relationship.

We explain our client service practices and billing procedures below. These practices and procedures will apply to your account unless you have reached a different written understanding with us. We encourage you to discuss them with our attorneys at the start of an engagement and whenever you have any questions during that engagement.

GENERAL PHILOSOPHY AND CONCEPT OF REPRESENTATION

The firm operates as a team. While the firm assigns an attorney to serve as the primary contact for each client, we share work and will involve whichever lawyers and personnel as circumstances warrant are best suited to serve your legal needs. While we can never guarantee a particular outcome, our goal is to see that your legal needs are met in the most cost-effective and efficient manner possible, and this team approach permits us to achieve that goal. Please do not hesitate to reach out to your primary contact or a partner at the firm with any concerns about a lawyer or firm personnel working on a matter for you.

COMMUNICATION PRACTICES

Our firm will communicate with authorized representatives of your entity regarding the work we are asked to perform on your behalf. We typically use standard means of professional communication, including telephone discussions, videoconferencing and e-mail communications, although there are times we may use less standard forms of communications such as text messaging. In today's world of technology of viruses and hacking, there is some risk that third parties may intercept or otherwise gain access to confidential communications between our firm and your authorized representatives. We believe the benefits of using these forms of communication outweigh the risk of accidental or malicious disclosure. But we will use whatever means of communication that you prefer if you inform us of your preferences. Nonetheless, we recommend that your authorized representatives avoid using computers or other communication tools that are owned, controlled, or accessible by others, such as public Wi-Fi networks or shared public computers when communicating with our office. Use of any computer, device, or account that is accessible by others increases the risk of disclosure of confidential information. Any devices used to communicate with our firm should be password protected.

BILLING PRACTICES

We bill monthly throughout the engagement for a particular matter, and our periodic bills are due when rendered. Our bills contain a concise summary of each matter for which legal services are rendered and a fee is charged. We bill in one-tenth hourly (six-minute) increments. Payment is due within 30 days of mailing, and the firm retains the right to charge interest on overdue bills at an annual rate of 9%. Please review your bills upon receipt. If you do not object to a bill within

30 days, the bill is deemed final. Please do not hesitate to contact us if you have a concern about a fee or billing issue.

COSTS AND EXPENSES

We strive to serve you through the most cost-effective and efficient support systems available. Our internal charges typically include such items as courier services, certain charges for legal research, engagement of outside contractors and charges for photocopying materials. We may request an advance cost deposit when we expect that we will be required to incur substantial advanced costs on your behalf. We pass along out-of-pocket expenses at cost. Travel time is billed at our hourly rates and mileage is billed at current IRS rates.

RATE CHANGES

We adjust our standard rates and chargeable costs from time to time but not more than yearly. Such adjusted rates will be charged for time spent only after the effective date of the adjustment. We will provide you with at least 60 days' notice of any rate change. If you have any questions or concerns regarding billing matters or our rates, please contact us.

CONFLICTS OF INTEREST

We have checked a list of our other clients to see whether representing you would create a conflict of interest. We are not aware of any such conflicts. Please inform us immediately if you become aware of any actual or potential conflict of interest that may arise.

PRIVACY/CONFIDENTIALITY POLICY

Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than other privacy laws. We have always protected each client's right to privacy and will continue to do so. We want you to know that all information that we receive from a client is held in confidence, and is not released to people outside the firm, except as agreed by the client, or as required under applicable law. To accomplish this, we maintain physical, electronic, and procedural safeguards that comply with our professional standards.

TERMINATION OF SERVICES

We retain the right to stop performing legal services and to terminate our legal representation for any reason consistent with the applicable ethical rules, including unanticipated conflicts of interest or unpaid legal fees and expenses. You retain the right to discharge the firm for any reason at any time. You agree that if you discharge the firm or we terminate our legal representation as provided above, you remain liable for all fees, costs, and expenses actually incurred under this contract, which may include work we are required to perform on your behalf after you transition to another attorney, and that you will make payment in full.

CHOICE OF LAW/VENUE

This agreement shall be considered to have been negotiated, signed, and delivered, and to be wholly performed, in the state of Oregon in the United States, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of Oregon without giving effect to that state's or any other state's or country's choice-of-law principles. You further agree that any claim or dispute you may have against the firm will be resolved by a state or federal court located in Multnomah County, Oregon. You agree to submit to the personal jurisdiction of the courts located within Multnomah County, Oregon, for the purpose of litigating any and all such claims or disputes. Each party shall be responsible for its own costs and attorney fees for any claim, action, suit or proceeding, including any appeal.

FILE RETENTION

We securely store our electronic files either on a local server, a remote backup server or using a cloud service. Physical files, of which there are not many, are stored securely at the firm's offices or an offsite storage facility. Email communications are stored in the cloud unless and until they are downloaded to a local server. We believe your files and information are secure using these methods, however, if you have any concerns about the security of your files, please let us know and we will take reasonable and appropriate steps to alleviate your concerns. Upon termination, we will return any requested files to you. Unless otherwise required by law to be kept for a longer period of time, electronic and physical files will be destroyed after 10 years. Collection and returning of files is charged at our then in-place billable rates.

MARKETING

Our firm will, on occasion, publicize the clients with which we work. For example, we generally list the names of clients on our website or refer to them in proposals for new clients. Any information we share about clients includes only that which is publicly available. We will assume that by engaging the services of our firm, you consent to our firm using your entity's name and any publicly available information in such marketing. You may withdraw this consent at any time by providing written notice to our office manager.

QUESTIONS

We take pride in delivering legal services effectively and efficiently and in providing accurate and understandable billings. Please direct any questions about our services or billing practices to the lawyer responsible for your account. Any questions regarding the billing or payment status of your account should be promptly directed to the primary attorney on your matter or to Yen Huynh at (503) 226-7191.