



AGENDA
CANBY CITY COUNCIL
REGULAR MEETING – 7:00 PM

April 5, 2023

Hybrid/Virtual Meeting/Council Chambers
Council Chambers - 222 NE 2nd Avenue, 1st Floor

Register here to attend the meetings virtually:

https://us06web.zoom.us/webinar/register/WN_OwkIGP08TmmIsRcMqmAB8Q

The meetings can be viewed on YouTube:

<https://www.youtube.com/channel/UCn8dRr3QzZYXoPUEF4OTP-A>

For questions regarding programming, please contact:

Willamette Falls Studio (503) 650-0275; media@wfmstudios.org

Mayor Brian Hodson

Councilor Christopher Bangs

Councilor James Davis

Council President Traci Hensley

Councilor Herman Maldonado

Councilor Jason Padden

Councilor Shawn Varwig

REGULAR MEETING – 7:00 PM

1. CALL TO ORDER

2. RESOLUTION

- a. Consider **Resolution No. 1383**: A Resolution Authorizing a Personal Services Agreement with Beery, Elsner and Hammond LLP for Interim Legal Services for the City of Canby.

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3. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Maya Benham at 503-266-0720. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov.



CITY COUNCIL STAFF REPORT

Meeting Date: 4/5/2023

To: The Honorable Mayor Hodson & City Council

Thru: Scott Archer, City Administrator

From: Maya Benham, City Recorder

Agenda Item: Consider **Resolution No. 1383**: A Resolution Authorizing a Personal Services Agreement with Beery Elsner and Hammond LLP for Interim Legal Services for the City of Canby.

Goal: N/A

Objective: N/A

Summary

Consider Resolution No. 1383: A Resolution Authorizing a Personal Services Agreement with Beery Elsner and Hammond LLP for Interim Legal Services for the City of Canby.

Background

On March 28, 2023, the City Council held a Special Called Council meeting. At this meeting, the Council directed City staff and the Mayor to secure an Interim City Attorney for the City of Canby and the City Council as soon as possible. The scope of work was to include all usual needed City Attorney advisement for City and Council business and attendance at City Council meetings during the duration of the service.

City staff received response from three law firms including Beery, Elsner and Hammond, LLP, Miller Nash, LLP, and Stoel Rives, LLP. Miller Nash and Stoel Rives both responded they could not provide services at this time. Beery, Elsner and Hammond (BEH) responded with an engagement letter, which included their proposed fees. The City of Canby has worked with BEH for URA legal services previously.

Attached is the Letter of Engagement from BEH and the Personal Services Agreement with a “not-to-exceed” amount of \$49,000.

Attachments

1. Personal Services Agreement, Exhibit A
2. Letter of Engagement from BEH

Fiscal Impact

The PSA includes a “not-to-exceed” amount of \$49,000.

Proposed Motion

“I move to approve Resolution No. 1383, a Resolution Authorizing a Personal Services Agreement with Beery, Elsner and Hammond LLP for Interim Legal Services for the City of Canby.”

RESOLUTION NO. 1383

A RESOLUTION AUTHORIZING A PERSONAL SERVICES AGREEMENT WITH BEERY, ELSNER AND HAMMOND LLP FOR INTERIM LEGAL SERVICES FOR THE CITY OF CANBY.

WHEREAS, the City of Canby is in need of interim legal counsel for the City Council and the City of Canby;

WHEREAS, the City received response from three law firms regarding interim legal services; and

WHEREAS, Beery, Elsner and Hammond LLP was selected as the preferred interim legal counsel for the City of Canby.

NOW, THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:

Section 1. The City Council authorizes a Personal Services Agreement with Beery, Elsner and Hammond LLP, attached hereto as Exhibit "A", to serve as interim legal counsel for the City of Canby.

This Resolution shall take effect on April 5, 2023.

ADOPTED by the Canby City Council at a regular meeting thereof on April 5, 2023.

Brian Hodson, Mayor

ATTEST:

Maya Benham
City Recorder

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and **BEERY, ELSNER & HAMMOND, LLP** (Contractor).

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree a Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable.
- 3. Compensation:
 - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto. Contractor agrees that **\$ 49,000** is the not to exceed price of this contract, without prior written approval from the City.
 - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
 - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
 - A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor 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.
 - B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised Statutes.
 - C. 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.

5. **Subcontractors and Assignment.** Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA regulations and requirements.
6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.
7. Term.
 - A. This Agreement may be terminated by:
 1. Mutual written consent of the parties.
 2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
 3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.
8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

By entering into this agreement, contractor represents and warranties that they have complied with the tax laws of the State of Oregon and the City of Canby. Further, for the duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate

termination of this agreement and/or other sought damages or other such relief under applicable law.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. **(Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.).** For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.
11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, electronically, faxed, or personally delivered to the address below. All notices shall be in writing and

shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.

13. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.

CITY: Scott Archer, City Administrator
City of Canby
PO Box 930
Canby, OR 97013

CONTRACTOR: Chad Jacobs
Beery, Elsner & Hammond, LLP
1804 NE 45th Ave
Portland, OR 97213-1416

**Please submit invoices to: Attn: Accounts Payable
City of Canby
PO Box 930
Canby, OR 97013
ap@canbyoregon.gov**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

CONTRACTOR: CITY OF CANBY

By: By:
Date: Date:

April 3, 2023

SENT VIA EMAIL to: archers@canbyopregon.gov

Scott Archer
City Administrator
City of Canby
PO Box 930
Canby OR 97013-0930

Re: Legal Services Engagement

Dear Scott:

This letter confirms that the City of Canby (City) has engaged Beery, Elsner & Hammond, LLP (BEH) to act as interim legal counsel to provide legal services for the City from April 5, 2023 to May 31, 2023.

Any questions concerning this work should be directed to David Doughman or me. BEH will act at your direction in completing our work for the City. The City will own and is entitled to possess all physical work product resulting from our work on its behalf, including any computations, plans, correspondence or pertinent data and information gathered by or computed by BEH during our engagement.

Our current hourly rates for this work are:

- \$285 per hour for partners and “of counsel”;
- \$275 per hour for senior associates;
- \$265 per hour for associates;
- \$175 per hour for paralegals; and
- \$150 per hour for our legal assistants.

These rates are effective through at least until July 1, 2023, and are billed in tenth-of-an-hour increments. We will provide you with written notice of any rate changes, which typically do not occur more often than once in any twelve-month period.

We submit statements each month that describe the services we performed and identify the cost of the services. We bill for out-of-pocket costs without markup. Travel time is billed at our hourly rates and mileage is billed at current IRS rates.

Scott Archer
April 3, 2023
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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.

Thank you for the opportunity to provide legal services to the City. If these terms are acceptable to you, please sign and return a copy of this letter for our files. We look forward to working with you.

Sincerely,



Chad A. Jacobs

CAJ/yh

On behalf of the **City of Canby**, I consent to the terms of the representation set forth above.

Scott Archer, City Administrator

Date