

ORDINANCE NO. 1606

AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO ENTER INTO A CONTRACT BETWEEN THE CITY OF CANBY AND BEERY, ELSNER AND HAMMOND, LLP FOR INTERIM CITY ATTORNEY SERVICES UP TO \$149,999.

WHEREAS, the City of Canby has contracted with Beery, Elsner and Hammond for interim City Attorney services in the recent past to its satisfaction;

WHEREAS, the City of Canby wishes to contract with this firm again;

WHEREAS, the City of Canby obtained three written quotes for attorney services in accordance with the formal quote process under Oregon Public Contracting law; and

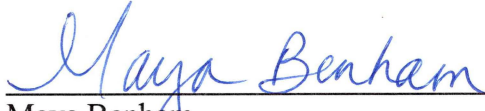
WHEREAS, the City of Canby would like Beery, Elsner, and Hammond to serve in a role as Interim City Attorney past an expenditure of \$50,000, requiring an ordinance per the Canby City Charter.

NOW, THEREFORE, THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Interim City Administrator is hereby authorized on behalf of the City to enter into a Personal Services Agreement with Beery, Elsner and Hammond to serve as Interim City Attorney for the City of Canby beyond a \$50,000 expenditure but under \$150,000. A copy of the Agreement is attached hereto as Exhibit "A."

Section 2. The effective date of this Ordinance shall be August 18, 2023.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, July 5, 2023, ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, July 19, 2023, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2nd Avenue, 1st Floor Canby, Oregon.



Maya Benham
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of July 2023, by the following vote:

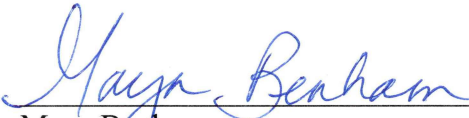
YEAS 5

NAYS 0



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 \$149,999 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 Council. 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: Brian Hodson, Mayor
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:

By:



Date: 08/08/2023

CITY OF CANBY - Mayor

By:



Date:

8/2/2023

AFFIDAVIT OF POSTING

STATE OF OREGON)
)
County of Clackamas) **ss:**
)
CITY OF CANBY)

I, Maya Benham, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 5th day of July, 2023 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1606 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 6th day of July, 2023, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

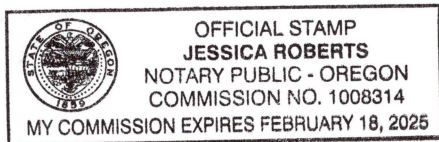
- 1. Canby Civic Building
- 2. Canby Post Office
- 3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of more than five (5) days and until the very 19th day of July, 2023.

Maya Benham

Maya Benham, City Recorder

Subscribed and sworn to before me this 7 day of July, 2023.



Jessica Roberts

Notary Public for Oregon
My Commission Expires: