



CITY OF
GEARHART

Staff Report

For City Council Meeting - 8/2/2023

Subject - New Business - City Attorney Services Contract

Synopsis: City Attorney Peter Watts has requested to change from an hourly monthly billing to an annual retainer. A retainer, or services contract, lays out the duties of both parties so that all parties have an agreement on the services that will be provided, how they will be provided, when, and at what cost. It would also streamline budget estimations as monthly hourly billing can fluctuate depending on the complexity of an issue and services needed. Resolution #989 that was passed during the budget process for this year already laid the foundation for this change with the assumption an agreement would follow. The attached services contract is that agreement.

Recommendation: City staff recommends Council motion to approve entering into the attached attorney services contract with Peter Watts.

Legal Analysis: As cited per ORS throughout; the draft was written based on similar attorney service contracts across the state.

Financial Analysis: The base cost is \$5,000 per month. Previously, the City was invoiced a couple of times a year spanning multiple months of service at varying hours.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be the name 'Chad', written in a cursive style.

Chad



OREGON ATTORNEY SERVICES CONTRACT

City of Gearhart, Oregon

THIS AGREEMENT made and entered into this 2nd day of August, 2023 with an effective date of July 1, 2023 by and between the City of Gearhart, a municipal corporation of the State of Oregon, hereinafter called City, and Peter O. Watts hereinafter called Legal Counsel.

Recitals

WHEREAS, the City's 2023-2024 Fiscal Year budget provides for attorney services; and

WHEREAS, Resolution #989 allows the City Attorney to be paid monthly based on an annual retainer as per a negotiated agreement; and

WHEREAS, City has need for the services of an attorney or attorney firm with a particular training, ability, knowledge, and experience possessed by Legal Counsel; and

WHEREAS, City has determined that Legal Counsel has been providing attorney services and is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. LEGAL SERVICES TO BE PROVIDED

Legal Counsel shall provide general municipal services to the City, such as, but not limited to:

- I. Advises City Council and City commissions and committees on matters coming before them in performance of their duties, and relevant developments in the law.
- II. Advises City Administrator and City departments and staff on legal affairs of the City and other agencies, and status of laws.
- III. Reviews ordinances, resolutions, contracts and orders for City Council.
- IV. Reviews contracts, agreements, letters and other legal documents for the City Administrator and City departments.
- V. Represents the City and its boards, commissions, committees and officers on all legal matters including appeals of City decisions.

2. EFFECTIVE DATE AND DURATION

This Agreement shall be effective as of July 1, 2023 upon signatures and Council approval, and shall expire, unless otherwise terminated or extended, on June 30th, 2024.

3. COMPENSATION

- a. The City agrees to pay Legal Counsel in accordance with this section for performance

of services described herein. Payment shall be based upon a flat monthly rate to encompass all work completed on behalf of the City by Legal Counsel.

b. The monthly rate shall be \$5,000 per month.

i. The Parties may, by mutual agreement, adjust the monthly rate each year upon written mutual acceptance of an extension year. Any proposed new price must be in writing thirty (30) days prior to a new contract year.

4. OWNERSHIP OF WORK PRODUCT

City shall be the owner of and shall be entitled to possession of any and all work products of Legal Counsel which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Legal Counsel prior to termination of this Agreement by Legal Counsel or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT / DELEGATION

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Legal Counsel shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractors nor anything contained herein shall be deemed to create any contractual relation between the subcontractors and City.

6. STATUS OF LEGAL COUNSEL AS INDEPENDENT LEGAL COUNSEL

Legal Counsel certifies that:

a. Legal Counsel acknowledges that for all purposes related to this Agreement, Legal Counsel is and shall be deemed to be an independent Legal Counsel as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law.

b. The undersigned Legal Counsel hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Legal Counsel, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, Legal Counsel certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

Legal Counsel and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

c. Legal Counsel is not an officer, employee, or agent of the City as those terms are

used in ORS 30.265.

7. INDEMNIFICATION

City has relied upon the professional ability and training of Legal Counsel as a material inducement to enter into this Agreement. Legal Counsel warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Legal Counsel's work by City shall not operate as a waiver or release.

8. INSURANCE

Legal Counsel and any subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Legal Counsel's activities.

a. Legal Errors & Omissions/Lawyers Professional Liability Insurance

i. Limit 3,000,000 - Legal Counsel shall obtain, at Legal Counsel's expense, and keep in effect during the term of this contract, Legal Errors & Omissions/Lawyers Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. This coverage shall include Annual Aggregate & Per Occurrence limits of \$3,000,000 per attorney.

b. Independent Legal Counsel Status

i. The service or services to be rendered under this contract are those of an independent Legal Counsel. Legal Counsel is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

c. Primary Coverage Clarification

i. The parties agree that Legal Counsel's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail or by email. Payments may be made by personal delivery, mail, or electronic transfer. This contract agreement will serve as the monthly invoice. The following addresses shall be used to transmit notices, bills, payments, and other information:

a. Attn: Justine Hill, City Treasurer

Address: 698 Pacific Way

PO Box 2510

Gearhart OR, 97138

10. MERGER

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the

Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

11. PROFESSIONAL SERVICES

The City requires that services provided pursuant to this agreement shall be provided to the City by a Legal Counsel that does not represent clients on matters contrary to City interests.

12. TERMINATION WITHOUT CAUSE

At any time and without cause, City and Legal Counsel shall have the right to terminate this Agreement by giving notice to the other party. If City terminates the contract pursuant to this paragraph, it shall pay Legal Counsel for services rendered to the date of termination.

13. ACCESS TO RECORDS

City shall have access to such books, documents, papers and records of Legal Counsel as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. BAR MEMBERSHIP

Legal Counsel is responsible for maintaining Legal Counsel's professional standing as a member of the Oregon State Bar Association.

15. NON-WAIVER

The failure of City to insist upon or enforce strict performance by Legal Counsel of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasions.

16. NON-DISCRIMINATION

Legal Counsel agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Legal Counsel also shall comply with the Americans with Disabilities Act of 1990, ORS 659 .425, and all regulations and administrative rules established pursuant to those laws.

17. ATTORNEY FEES

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and costs.

18. GOVERNING LAW

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

19. SEVERABILITY

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not

be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

20. REPRESENTATIONS & WARRANTIES

Legal Counsel represents and warrants to the City that:

- a. Legal Counsel has the power and authority to enter into and perform this Agreement.
- b. This Agreement, when executed and delivered, is a valid and binding obligation of Legal Counsel, enforceable in accordance with its terms.

21. COMPLETE AGREEMENT

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Legal Counsel, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer, Mayor, and Legal Counsel has executed this Agreement on the date hereinabove first written.

City of Gearhart

City Attorney

Chad Sweet, City Administrator Date

Peter Watts, City Attorney Date

Kerry Smith, Mayor Date