

## **RESOLUTION NO. 1854**

### **A RESOLUTION APPROVING THE FIRST AMENDED CITY ATTORNEY EMPLOYMENT AGREEMENT**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. In August of 2003, the City Council appointed Marnie Allen as the City Attorney and approved the City Attorney Employment Agreement. Prior to August 2003, Ms. Allen provided legal services to the City for six years under a contract with the law firm, Preston Gates & Ellis, LLP.
2. Ms. Allen has requested approval of an amendment to her employment agreement that would reduce her hours from 30 hours a week to 20 hours a week. Her salary and benefits would also be reduced proportionately.
3. Given Ms. Allen's years of service to the City and her familiarity with the City's legal needs, it is in the City's best interests to continue Ms. Allen's appointment as the City Attorney with a reduction in the number of hours she will work.
4. Ms. Allen will utilize services of a law clerk, an administrative assistant and other attorneys that she selects to provide the legal services the City needs.


#### **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE**

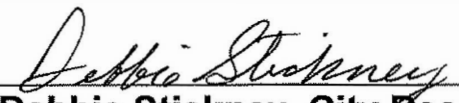
Section 1. The attached First Amended City Attorney Employment Agreement is hereby approved and shall be executed by the Mayor and City Attorney.

Section 2. The City Attorney is authorized to retain the services of a law clerk through the Lewis and Clark Federal Work-Study Program, an administrative assistant following the traditional employee recruitment process, and may employ attorneys pursuant to a personal service agreement that is awarded in accordance with the City Public Contracting Code, all of whom may assist the City Attorney in providing legal services for the City, provided that the expenses incurred for support services shall not exceed the legal department's total budget appropriations for personal and professional services.

Section 3. This resolution shall take effect immediately upon adoption.

**YEAS: 7**  
**NAYS: 0**  
**ABSTAINED: 0**

  
\_\_\_\_\_  
**Paul Thalhoffer, Mayor**  
*January 11, 2007*  
\_\_\_\_\_  
**Date**

  
\_\_\_\_\_  
**Debbie Stickney, City Recorder**

**Adopted: January 9, 2007**

# FIRST AMENDED CITY ATTORNEY EMPLOYMENT AGREEMENT

**THIS FIRST AMENDED CITY ATTORNEY EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into this 15th day of January, 2007, by and between the City of Troutdale, State of Oregon, a municipal corporation ("City"), and Marnie Allen ("Attorney").

## RECITALS:

**WHEREAS**, City desires to continue to employ the services of Attorney as City Attorney of the City of Troutdale, as provided in the 1994 Troutdale Charter, chapter 2.06 of the Troutdale Municipal Code and this Agreement; and

**WHEREAS**, it is the desire of the Mayor and City Council ("Council"), the governing body of Troutdale, to provide certain benefits, establish certain conditions of employment, to approve a reduction in the number of hours Attorney will be required to work for the City and to set working conditions of Attorney; and

**WHEREAS**, it is the desire of the Council to (1) secure and retain the services of Attorney and to provide inducement for her to remain in such employment, (2) to make possible full work productivity by assuring Attorney's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Attorney, and (4) to provide a just means for terminating Attorney's services at such time as Attorney may be unable fully to discharge the duties of such position due to disability or when City may otherwise desire to terminate services of Attorney;

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

## AGREEMENT:

### SECTION 1. DUTIES

A. City hereby agrees to employ Attorney as City Attorney of Troutdale to perform the functions and duties specified in this Agreement and other duties and functions as the Mayor or Council shall assign from time to time.

B. Attorney shall devote suitable time, attention and energies to advising and representing the City in legal matters. Except in very complex or unique legal matters that require expertise or resources that are beyond those the Attorney can provide, Attorney shall provide legal advice to the City and represent the City in legal matters. Time permitting, Attorney may also support the City Administrator and Department Managers by participating in project planning and implementation.

C. City and Attorney recognize the role of the Council as the elected policy making body for the City, the role of the City Administrator as responsible for implementing and administering policy, and the role of the Attorney as providing legal advice and representation to support and defend the Council adoption of policy and the City Administrator's implementation and administration of policy. The Council agrees to the principle of noninterference in Attorney's provision of legal advice and representation and agrees to direct concerns and communications regarding legal advice and representation through the Mayor and/or City Administrator. Attorney agrees to respond promptly to inquiries from the Council whether made individually

or collectively. Individual requests that require more than 10 hours of time, that involve new policy, or that may significantly effect the City Administrator's implementation of policy, will be referred to the Mayor and/or Administrator for approval.

## **SECTION 2. TERM**

A. This Agreement shall be effective as of January 15, 2007, and shall continue in effect until January 15, 2008, unless terminated sooner pursuant to Sections 2, 3 or 4, or amended in accordance with Section 20. In the event written notice to terminate or amend the Agreement is not given before December 1, 2007, this Agreement shall be extended on the same terms for an additional one (1) year term. Thereafter, the Agreement shall continue for one (1) year terms unless either party gives thirty (30) days written notice to the other party that the party does not wish to extend this Agreement for an additional term.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Mayor and Council to terminate services of Attorney at any time, subject only to the provisions set forth in Sections 2, 3 and 4 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Attorney to resign at any time from the position as City Attorney.

D. Attorney may terminate this Agreement without cause upon giving thirty (30) days written notice. City may terminate this Agreement upon lesser notice, but will be responsible for continuation of salary and other benefits for a thirty (30) day period, in addition to any severance pay that might be owed under Section 4.

## **SECTION 3. SUSPENSION**

City, by and through its City Council, may suspend Attorney at any time during the term of this Agreement, but only if

- (1) A majority of Council and Attorney agree, in which case Attorney shall receive full pay and benefits in accordance with such Agreement; or
- (2) After a public hearing, a majority of Council votes to suspend Attorney for cause; provided, however, that Attorney shall have been given written notice setting forth any charges at least ten (10) days prior to such hearing. If suspension occurs for cause, the City Council may determine that Attorney not receive further compensation and benefits. For purposes of this section, "cause" shall include any activity set forth as "cause" under Section 4B of this Agreement.

## **SECTION 4. TERMINATION AND SEVERANCE PAY**

A. In the event the employment of Attorney is terminated for just cause as set forth in this Section, or if the Attorney voluntarily resigns after being notified that the Council wants to terminate Attorney for casue, no severance package will be provided. In the event employment of the Attorney is terminated without cause by the Mayor and Council before expiration of the yearly term of employment and during such time that Attorney is willing and able to perform the duties of the position under this Agreement, then in that event City agrees to pay Attorney a lump sum cash payment equal to three (3) months at Attorney's highest rate of pay

during Attorney's term of City employ, unless Attorney has been employed under this Agreement for at least five (5) years, in which case the lump sum cash payment shall be equal to six (6) months of pay. Acceptance of this severance pay shall constitute a complete waiver of all claims of any type or nature, whether known or unknown, against City, its officers, agents and employees. Attorney shall also be entitled to receive payment for all accrued vacation and personal holiday benefits, and any continuation of salary and benefits owed under Section 2D of this Agreement. In the event the City reduces the compensation of the Attorney in a greater percentage than an applicable across-the-board reduction for all employees, the City refuses, following written notice, to comply with any provision of this Agreement benefiting the Attorney, or the Attorney resigns following a formal or informal suggestion of the City Council that he resign, or the Attorney becomes disabled as defined in Section 5 of this Agreement, the employment of the Attorney shall be deemed to be terminated without cause under this subsection.

B. The employment of Attorney shall terminate with cause and without notice and opportunity for hearing immediately in the event of Attorney's conviction of any felony, or any misdemeanor involving dishonesty or breach of trust. In addition to such termination, the City Council may terminate Attorney's employment for cause, which includes, but is not limited to, willful and repeated failure or refusal to comply with policies, rules, regulations or standards of the City, malfeasance in office including willful misappropriation of City funds, willful and wanton neglect of duty, insubordination, or incompetency. In the event of termination for cause, City shall have no obligation to pay the lump sum cash payment provided in Section 4A.

C. At least 10 days in advance of terminating Attorney for cause other than Attorney's conviction of a felony or misdemeanor, City shall give Attorney notice of the reasons for such proposed termination for cause. Attorney shall have the right to request in writing a hearing before the City Council with respect to such reasons. If no such request be made, the termination shall be final. If a hearing is held, Attorney shall be entitled to respond to the notice and reasons. The Attorney shall have the right to be represented by counsel at her sole cost and expense. The City Council shall adopt procedural requirements for this hearing upon receipt of a request for hearing. Review of the Council's decision shall be by writ of review or any successor procedure provided by the Oregon Legislature.

D. In the event Attorney resigns or is terminated without cause, Attorney shall be deemed terminated in good standing and shall be entitled to a lump sum payment equivalent to unpaid hours that have already been worked plus all accrued vacation and personal holiday benefits. If the employment of Attorney is terminated without cause, Attorney shall be entitled to the severance pay as provided in Section 4A.

E. In the event Attorney voluntarily resigns the position of City Attorney before expiration of the term of employment, Attorney shall give City thirty (30) days notice in advance, unless the parties otherwise agree in writing.

## **SECTION 5. DISABILITY**

If Attorney is permanently disabled or is otherwise unable to perform the duties of City Attorney because of sickness, accident, injury, mental incapacity or health for a period in excess of either four (4) successive weeks beyond any accrued sick leave, or of twenty (20) working days over a thirty (30) working day period, City may terminate this Agreement, subject to the lump sum cash payment requirements of Section 4A. In addition, Attorney shall be compensated for accrued vacation and personal holidays.

## **SECTION 6. SALARY**

A. City agrees to pay Attorney for services rendered under this Agreement an annual base salary of \$58,836 and a monthly stipend to cover the cell phone, blackberry and computer expenses Attorney anticipates she will incur for use of her personal equipment to conduct City business (initially estimated to be around \$100 a month). Attorney shall be paid in installments at the same time as other employees of the City are paid.

B. City agrees to increase this base salary and other benefits of Attorney in amounts equal to salary and benefit increases given to Management, Supervisory and Confidential Administrators of the City. The Council may allow additional increases in salary and other benefits as a result of its annual evaluation of the Attorney's job performance. The Council may decrease the compensation of the Attorney in an amount equal to any across-the-board reduction in compensation for all employees.

## **SECTION 7. PERFORMANCE EVALUATION**

A. The Mayor and Council annually shall evaluate and assess the performance of Attorney based upon criteria that will be prepared and approved by the Council within forty five (45) days of the first day of the term of this Agreement. The annual evaluations shall be conducted using a format and process that is agreeable to all parties.

B. In the event the Mayor and Council determines that the performance of Attorney is unsatisfactory in any respect or needs significant improvement in any area, the Mayor and Council shall describe these concerns in writing and in reasonable detail or with specific examples so as to be objective in nature. An adequate opportunity shall be provided for Attorney to discuss the evaluation with the Mayor and Council.

C. In effecting provisions of this section, City and Attorney mutually agree to abide by applicable law.

## **SECTION 8. HOURS OF WORK**

A. Because Attorney will devote a great deal of time outside normal office hours to business of the City, flexibility in hours worked and work schedule benefit both City and Attorney. Attorney has sole discretion as to work schedule and hours worked.

B. Work in excess of an average twenty (20) hour week shall be deemed part of the professional responsibility for which Attorney shall not be paid overtime. Attorney shall be permitted to take up to 110 hours of administrative leave during each year of this Agreement. This administrative leave will not accumulate. Administrator shall keep a monthly record of any administrative leave. Upon termination and otherwise, no payment shall be given for any unused administrative leave.

## **SECTION 9. VACATION, SICK, HOLIDAY AND MILITARY LEAVE**

Attorney shall have the same benefits for vacation, sick, holiday and military leave as Management, Supervisory and Confidential Administrators, pro-rated based on Attorney's twenty (20) hour work week.

**SECTION 10.                   DISABILITY, HEALTH AND LIFE INSURANCE**

A.       During the term of this Agreement, City agrees to put into force and to make required premium payments for Attorney for insurance policies for life, dental, disability income benefits, major medical and dependent's coverage group insurance covering Attorney and dependents of Attorney, which policies are under the group programs offered by the City for Management, Supervisory and Confidential Employees.

B.       During the term of this Agreement, City agrees to provide hospitalization, surgical and comprehensive medical insurance for Attorney and Attorney's dependents and to pay the premiums thereon equal to that which is provided all other employees of City or, in the event City ceases to provide insurance to its other employees, to nevertheless provide such insurance for Attorney at a level equivalent to the coverage last provided by City to its employees.

**SECTION 11.                 RETIREMENT**

City agrees to contribute into the State Public Employees Retirement System (PERS), on Attorney's behalf, an amount equal to the contribution percentage that his paid for other employees, applied to Attorney's gross salary, as defined by ORS 237.003, for each payroll period. Attorney shall contribute to the State Public Employee's Retirement System an amount equal to six percent (6%) of Attorney's gross salary, as defined by ORS 237.003, for each payroll period. City shall deduct the contribution owed by Attorney on behalf of Attorney.

**SECTION 12.                DUES AND SUBSCRIPTIONS**

Subject to budgetary limitations, City agrees to budget and to pay for professional dues, subscriptions and legal education seminars of Attorney that are necessary for continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for continued professional participation, growth and advancement, and for the good of City.

**SECTION 13.                PROFESSIONAL DEVELOPMENT**

A.       Subject to budgetary limitations, City hereby agrees to budget for and to pay travel and subsistence expenses of Attorney for professional and official travel, meetings and occasions adequate to continue professional development of Attorney and to adequately pursue necessary official and other functions for City, including, but not limited to, the annual Conferences of the Oregon City Attorneys Association, the Oregon Government Lawyers and the Oregon Real Estate and Land Use Lawyers and such other national, regional, state and local governmental groups and committees thereof which Attorney serves as a member.

B.       Subject to budgetary limitations, City also agrees to budget and to pay for travel and subsistence expenses of Attorney for short courses, institutes and seminars that are necessary for professional development and for the good of City.

**SECTION 14. GENERAL EXPENSES**

City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Attorney, and hereby agrees to reimburse or to pay said general expenses and the Finance Director is hereby authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavit. City reserves the right to audit and disallow any expense if it determines the expense is not of a job-affiliated nature. City shall pay Attorney mileage allowance expenses for automobile travel related to City business. The payment shall be at the rate established by the United States Internal Revenue Service for business expense deductions or at the rate of \$.31/mile, whichever is higher.

**SECTION 15. CIVIC CLUB MEMBERSHIP**

City recognizes the desirability of representation in and before local civic and other organizations, and, subject to budgetary limitations, Attorney is authorized to become a member of civic service clubs upon the advice of the Mayor and/or City Administrator. In such event, City shall pay all expenses. Attorney shall report to City annually at the time of Performance Evaluation provided for in Section 7 of this Agreement, each membership obtained at City's expense.

**SECTION 16. INDEMNIFICATION**

Subject to ORS 30.260 to 30.300, City shall defend, save harmless and indemnify Attorney against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Attorney's duties as City Attorney. Subject to ORS 30.260 to 30.300, City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

**SECTION 17. BONDING**

City shall bear full cost of any fidelity or other bonds required of Attorney under any law or ordinance.

**SECTION 18. OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

A. The Council, in consultation with the Attorney, shall fix any other such terms and conditions of employment as may be determined from time to time, relating to the performance of Attorney, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the 1994 Troutdale Charter, or any other law.

B. All provisions of the 1994 Troutdale Charter, and Troutdale Municipal Code, and regulations and rules of City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Attorney as they would to the City Administrator or other Administrators of City, except to the extent that such policies, procedures and benefits are inconsistent with or different than provisions of this Agreement, in which case the provisions of this Agreement shall prevail.

**SECTION 19. NO REDUCTION OF BENEFITS**

City shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Attorney, with the exception of reductions due to unavoidable budgetary reasons, provided however, the City does not only reduce the salary or benefits of Attorney to address budget needs.

**SECTION 20. MISCELLANEOUS PROVISIONS**

- A. Waiver by the City of any breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach nor a waiver of this provision.
- B. No amendment or variation of this Agreement is valid unless it is in writing and signed by the parties.
- C. Should any portion of this Agreement be held unenforceable and inoperative for any reason, it does not affect any other part of this Agreement, and the remainder of the Agreement shall remain effective.
- D. This Agreement is the entire agreement between the parties.
- E. The laws of the State of Oregon shall be used to interpret this Agreement.

**SECTION 21. NOTICES**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

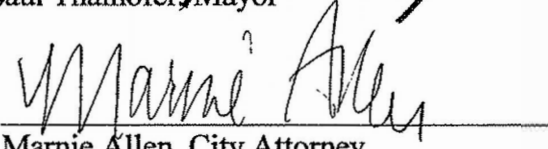
- (1) City: City of Troutdale  
Attention: City Administrator  
Troutdale City Hall  
104 SE Kibling Avenue  
Troutdale, OR 97060 - 2099
- (2) Attorney: Marnie Allen  
2302 NE 149th Street  
Vancouver WA 98686

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. Names and addresses of persons or entities to be given notices may be changed upon written notice to the other party.

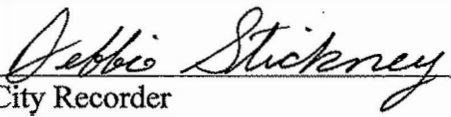
IN WITNESS WHEREOF, the City Council of Troutdale has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested to by its City Recorder, and Attorney has signed and executed this Agreement, both in duplicate, the day and year first above written.

**CITY OF TROUTDALE**

By:   
Paul Thalhoffer, Mayor

  
Marnie Allen, City Attorney

**ATTEST:**

  
City Recorder