

RESOLUTION NO. 1867

A RESOLUTION APPROVING A PERSONAL SERVICES AGREEMENT FOR LEGAL SERVICES

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City Attorney position is vacant as of April 1, 2007.
2. The City must retain the services of an attorney to, among other things, train and supervise the law clerk that represents the City in Troutdale Municipal Court.
3. Given Ms. Allen's experience and knowledge of the City, including the procedure that is followed in Troutdale Municipal Court, it is in the City's best interests to contract with Ms. Allen to continue providing limited legal services to the City. Ms. Allen's primary responsibility will be to train and supervise the law clerk and oversee prosecutions in Troutdale Municipal Court.

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


Section 1. The Personal Services Agreement for Legal Services, Appendix A, is hereby approved and shall be executed by the Mayor.

Section 2. This Resolution shall take effect upon adoption.

YEAS: 7

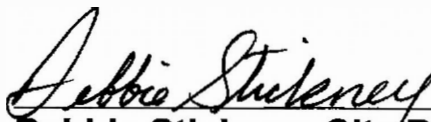
NAYS: 0

ABSTAINED: 0



Paul Thalhofer, Mayor
Apr. 12, 2007

Date



Debbie Stickney, City Recorder

Adopted: April 10, 2007

**PERSONAL SERVICES AGREEMENT
FOR LEGAL SERVICES**

This Agreement is between the CITY OF TROUTDALE, a municipal corporation of the State of Oregon (the "City") and Marnie Allen, an Oregon licensed attorney (the "Attorney") (collectively, the "Parties").

The Parties mutually covenant and agree as follows:

1. Effective Date and Duration.

This Agreement shall take effect April 1, 2007, nunc pro tunc and shall continue until such time at the City notifies Attorney that it no longer wishes to secure the legal services described in the scope of work.

2. Scope of Work.

The City is contracting with the Attorney to provide legal services to the City. The Attorney's primary responsibility will be to train and supervise a court certified law clerk that the City has employed to prosecute cases in Troutdale Municipal Court.

At the Mayor's request, the Attorney may provide other legal services to the City. Provided, however, the Attorney shall not be asked to provide more than 15 hours of legal services to the City in a thirty (30) day period.

Attorney will perform the work via her office at 2302 NE 149th Street, Vancouver WA, 98686. Attorney may be contacted at the following phone number: 503.805.7941. The City will provide and maintain the following email account for the services that are required under this Agreement: mallen@ci.troutdale.or.us. In addition, the City will provide letterhead, paper and will pay for postage for any letters or documents that need to be produced and sent on the City's behalf.

3. Consideration.

- a. City agrees to pay Attorney \$125 an hour and a \$100 monthly stipend for costs the Attorney will incur for the cell phone and email.
- b. Payments to the Attorney shall be made within thirty days of receipt of an invoice.
- c. City certifies that sufficient funds have been appropriated to make payments required by this Agreement during the current fiscal year. Payment for work performed after June 30 of any given year is subject to funds being appropriated by the City Council. If funds are not appropriated, the City may terminate this Agreement upon providing written notice to the Attorney.

4. Standard Terms and Conditions

a. Independent Contractor.

(i) Attorney shall perform the work required by this Agreement as an independent contractor. Although the City reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the work to be performed; and (iii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Attorney's performance. The Attorney is responsible for determining the appropriate means and manner of performing the work.

(ii) The Attorney represents and warrants that Attorney (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Consultant Certification Statement attached as Exhibit D.

(iii) Attorney will be responsible for any federal or state taxes applicable to any compensation or payment paid to the Attorney under this Agreement.

(iv) Attorney is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Attorney under this Agreement.

b. Subcontracts and Assignment. Attorney shall not subcontract, or assign or transfer any of its interest in this Agreement, without the prior written consent of the City. Attorney agrees that if subcontractors are employed in the performance of this Agreement, the Attorney and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

c. Third Party Beneficiaries. City and Attorney are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

d. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns, if any.

e. Early Termination.

(i) The City and the Attorney, by mutual written agreement, may terminate this Agreement at any time. Either party shall provide the other party thirty (30) days written notice prior to terminating the Agreement.

f. Payment on Termination.

Upon termination of this Agreement, the City shall pay the Attorney for work performed in accordance with the Agreement prior to the termination date.

h. Access to Records. Attorney shall provide copies of any documents that are prepared in

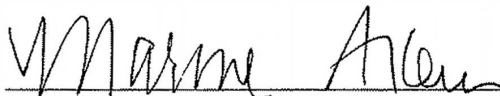
providing legal services under this Agreement. The City shall maintain and records for its future use.

- i. Ownership of Work. All work products of the Attorney that result from this Agreement, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of City. Draft documents and preliminary work submitted to the City for review and comment shall not be considered as owned, used or retained by the City until the final document is submitted. The City shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Preexisting trade secrets of the Attorney shall be noted as such and shall not be considered as a work product of this Agreement. All such work products shall be considered "works made for hire" under the provisions of the United States Copyright Act and all other equivalent laws. Use of any work product of the Attorney by the City for any purpose other than the use intended by this Agreement is at the risk of the City. Use of any work product by Attorney is prohibited without the written consent of the City, which the City shall not unreasonably withhold.
- j. Compliance with Applicable Laws. Attorney shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including, without limitation, ORS 279.312, 279.314, 279.316, and 279.320, as set forth on Exhibit B. Without limiting the foregoing, Attorney expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. A condition or clause required by law to be in this Agreement shall be considered included by these references.
- k. Indemnity and Hold Harmless. The City agrees to indemnify the Attorney in accordance with the Oregon Tort Claims Act.
- l. Insurance. Attorney shall provide insurance in accordance with Exhibit C.
- m. Waiver. The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.
- n. Professional Standards. Work under this Agreement shall be performed in a good and workmanlike manner and in accordance with the highest professional standards of professionals doing similar work in the State of Oregon. At all times during the term of this Agreement, Attorney shall be qualified, professionally competent, and duly licensed to perform the services. In addition to any other remedies, Attorney shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.
- o. Governing Law. The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon and ordinances of the City of Troutdale, Oregon. Any action or suits involving any question arising under this Agreement must be brought in

the appropriate court in Multnomah County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

- p. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction 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 Agreement did not contain the particular term or provision held invalid.
- q. Business License. Because the Attorney will not be engaging in business in the City of Troutdale, other than providing legal services to the City, the Attorney is not required to obtain a City of Troutdale business license.
- r. Merger Clause. THIS AGREEMENT AND ATTACHED EXHIBITS 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 THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. BY ITS SIGNATURE, ATTORNEY ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signed by Attorney this 14th day of April, 2007



Marnie Allen, Oregon State Bar Association No. 24051

Approved by City this 10 day of April, 2007


Mayor Paul Thalhofer

**EXHIBIT A
SCOPE OF WORK**

Attorney shall provide legal services as described in Section 2 of the Agreement.

EXHIBIT B
COMPLIANCE WITH APPLICABLE LAW
for
PERSONAL SERVICES AGREEMENTS

WHERE APPLICABLE, ALL CONTRACTORS SHALL COMPLY WITH THE FOLLOWING STATUTORILY REQUIRED PROVISIONS:

279A.110 Discrimination in subcontracting prohibited; remedies.

* * * * *

(4) A bidder or proposer shall certify . . . that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against any minority, women or emerging small business enterprise in obtaining any required subcontract.

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.225 Condition concerning salvaging, recycling, composting or mulching yard waste material. Every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, composte or mulch yard waste material at an approved site, if feasible and cost-effective.

279B.230 Condition concerning payment for medical care and providing workers compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

279B.235 Condition concerning hours of labor.

(1) Every public contract, other than a contract for services at a county fair or for other events authorized by a county fair board, must contain a condition that the contractor shall pay employees for overtime work performed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints. (1) Every public contract shall contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as the claim becomes due, the proper officer or officers representing the state or a county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

* * * * *

(4) The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

279C.520 Condition concerning hours of labor. (1) Every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

* * * * *

(5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires the persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b) (B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

279C.530 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

EXHIBIT C

PERSONAL SERVICES AGREEMENT INSURANCE REQUIREMENTS

To: Insurance Agent. Please provide Certificates of Insurance to the City. During the term of the Agreement, please provide Certificates of Insurance prior to each renewal.

During the term of this Agreement, Consultant shall maintain in force at its own expense all insurance noted below:

Workers Compensation insurance in compliance with ORS 656.017. All employers, including Consultant, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Consultant shall ensure that each of its subcontractors complies with these requirements. Contact City of Troutdale at 503-665-5175 if exempt.

Professional Liability (*Check Here if Required*) insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this Agreement. The coverage must remain in effect for two years after the Agreement is completed.

Commercial General Liability (*Check Here if Required*) insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury, personal injury and property damage. It shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards.

Commercial Automobile Liability (*Check Here if Required*) insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles. "Symbol One" coverage shall be designated.

Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Consultant or its insurer(s) to the City. This notice provision shall be by endorsement physically attached to the certificate of insurance.

Additional Insured. For general liability insurance and automobile liability insurance the City, and its agents, officers, and employees will be Additional Insureds by endorsement, but only with respect to Consultant's services to be provided under this Agreement. This coverage shall be by endorsement physically attached to the certificate of insurance.

Certificates of Insurance. Consultant shall furnish insurance certificates acceptable to City prior to commencing work. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City approval. If requested, copies of insurance policies shall be provided to the City. Consultant shall be responsible for all deductibles, self-insured retention's, and/or self-insurance.

EXHIBIT D
CERTIFICATION STATEMENT FOR CORPORATION
OR INDEPENDENT CONTRACTOR

A. CONSULTANT IS A CORPORATION

CORPORATION CERTIFICATION: I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

Entity

Signature

Date

B. CONSULTANT IS INDEPENDENT CONTRACTOR. (Complete Part B if Consultant is not a corporation.)

Independent Consultant Standards. As used in various provisions of ORS Chapters including but not limited to 448, 656, 657, 671, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent Consultant" if the standards of ORS 670.600 are met

Consultant and City certifies that the Consultant meets the following standards:

1. Consultant is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. Consultant furnishes the tools or equipment necessary for performance of the contracted labor or services.
4. Consultant has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Consultant is made upon completion of the performance or is made on the basis of a periodic retainer.
6. Consultant is registered under ORS chapter 701, if the Consultant provides labor or services for which such registration is required.
7. Consultant has filed federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return, for the previous year, for labor or services performed as an independent Consultant in the previous year.
8. Consultant represents to the public that the labor or services are to be provided by an independently established business as four or more of the following circumstances exist.

(Check four or more of the following:)

- A. The labor or services are primarily carried out at a location that is separate from Consultants residence or is primarily carried out in a specific portion of Consultants residence, which is set aside as the location of the business.
- B. Commercial advertising or business cards are purchased for the business, or Consultant has a trade association membership.
- C. Telephone listing is used for the business that is separate from the personal residence listing.
- D. Labor or services are performed only pursuant to written contracts.
- E. Labor or services are performed for two or more different persons within a period of one year.
- F. Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

If any action is taken by a person or enforcement agency relating to Consultant's independent Consultant status in connection with this Agreement, Consultant shall defend, hold harmless and indemnify the City of Troutdale, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Consultant shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.

Marino Allen
Attorney Signature

4/14/07
Date

Paul Pfeiffer Mayor
City Signature

5-17-07
Date

EXHIBIT E

CONSULTANT DATA, CERTIFICATION, AND SIGNATURE

Business Name (please print):

ALLEN LAW OFFICE, LLC

Contact Name: MARNIE ALLEN Phone: 503.805.7941 Fax: _____

Address: 2302 NE 149th ST VANCOUVER WA 98080

Social Security #: 529.35.9246 Troutdale Business License # N/A

Federal Tax ID #: 20-0202263 State Tax ID #: WA 602.325.345

Citizenship: Nonresident alien _____ Yes No

Business Designation (check one): _____ Individual Sole Proprietorship
_____ Partnership

_____ Corporation _____ Government/Nonprofit

The above information must be provided prior to approving this Agreement. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Agreements and Exhibits A, B, C and D are an integral part of this Agreement and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this Agreement; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600

Signed by Attorney:

M. Allen

4/14/07

Marnie Allen

Date

(Check four or more of the following:)

- A.** The labor or services are primarily carried out at a location that is separate from Consultants residence or is primarily carried out in a specific portion of Consultants residence, which is set aside as the location of the business.
- B.** Commercial advertising or business cards are purchased for the business, or Consultant has a trade association membership.
- C.** Telephone listing is used for the business that is separate from the personal residence listing.
- D.** Labor or services are performed only pursuant to written contracts.
- E.** Labor or services are performed for two or more different persons within a period of one year.
- F.** Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

If any action is taken by a person or enforcement agency relating to Consultant's independent Consultant status in connection with this Agreement, Consultant shall defend, hold harmless and indemnify the City of Troutdale, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Consultant shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.

Attorney Signature

Date

City Signature

Date

EXHIBIT E

CONSULTANT DATA, CERTIFICATION, AND SIGNATURE

Business Name (please print): _____

Contact Name: _____ Phone: _____ Fax: _____

Address: _____

Social Security #: _____ Troutdale Business License # N/A

Federal Tax ID #: _____ State Tax ID #: _____

Citizenship: Nonresident alien _____ Yes _____ No

Business Designation (check one): _____ Individual _____ Sole Proprietorship

_____ Partnership

_____ Corporation _____ Government/Nonprofit

The above information must be provided prior to approving this Agreement. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Agreements and Exhibits A, B, C and D are an integral part of this Agreement and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this Agreement; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600

Signed by Attorney:

Marnie Allen

Date