



## AGENDA STAFF REPORT

**AGENDA LOCATION:** Action Item #11B

**MEETING DATE:** June 13, 2022

**TO:** Honorable Mayor and City Council

**FROM:** Matthew Klebes, City Manager

**ISSUE:** Hiring City Attorney and Terminating Outside Legal Services

**BACKGROUND:** On February 1, 2020 the City of The Dalles commenced legal services with Campbell Phillips PC. Jonathan Kara has served as the City's primary attorney for legal counsel under this contract.

At the May 23, 2022 Regular City Council meeting, the Mayor and City Manager were directed to proceed with hiring a City Attorney to bring legal services back "in house" and to negotiate a contract for said services so the City Council may appoint an individual per the City Charter.

Given the expertise, experience, and first-hand knowledge demonstrated as outside legal counsel for the City of The Dalles over the past two years, the Mayor and City Manager approached and negotiated a proposed contract, included in your packet, with Jonathan Kara to be the new City Attorney.

In coordination with this potential decision, staff has drafted a Mutual Termination Agreement to end services with the City's currently contracted legal services, Campbell Phillips PC.

**BUDGET IMPLICATIONS:** The proposed FY 22/23 Budget for Legal Services has sufficient funds to accommodate the proposed contract by changing the paralegal from 1 FTE to 0.5 FTE.

## **COUNCIL ALTERNATIVES:**

### **Staff recommendation:**

1. *Move to appoint Jonathan Kara as the City Attorney for the City of The Dalles effective July 5, 2022, pursuant to Section 10 of the City Charter, authorize the Mayor to execute the Employment Agreement, and authorize the City Manager to execute the Mutual Termination Agreement with Campbell Phillips PC.*
2. Direct Mayor and the City Manager to continue negotiations with Jonathan Kara for employment as City Attorney.
3. Decline to so appoint and authorize and provide alternative direction to the Mayor and City Manager.

## **EMPLOYMENT AGREEMENT**

This EMPLOYMENT AGREEMENT (**Agreement**) is made and entered into by and between the City of The Dalles, a municipal corporation of the State of Oregon (**City**), and Jonathan Kara, an individual (**Attorney**).

**WHEREAS**, at City Council's (**Council's**) May 23, 2022, regular meeting, it directed the Mayor and City Manager to negotiate an employment contract for the position of City Attorney for Council's future consideration and approval;

**WHEREAS**, at Council's June 13, 2022, regular meeting, the Mayor and City Manager recommended Council appoint Jonathan Kara, the attorney providing general counsel legal services to the City since August 3, 2020, to serve as its City Attorney;

**WHEREAS**, as authorized by and pursuant to Section 10 of the City Charter, Council desires to appoint and the City desires to employ the services of Jonathan Kara as its City Attorney and to provide certain benefits, establish specific conditions of employment, and set working conditions of said employee; and

**WHEREAS**, Jonathan Kara desires to accept Council's appointment and the City's employment as the City Attorney of the City of The Dalles, Oregon, under the terms and conditions recited herein.

**NOW, THEREFORE**, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

### **Section 1. Duties.**

The City hereby agrees to employ Attorney as its City Attorney to perform the functions and duties specified in the City Charter and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign, including but not limited to those duties and functions described in the position description, attached to and made part of this Agreement as Exhibit "A".

### **Section 2. Term.**

#### **2.1 Service at the Pleasure of the Council.**

Nothing in this Agreement shall prevent, limit, or otherwise interfere with Council's right to terminate Attorney's services at any time, subject only to the provisions set forth in this Agreement. The City and Attorney recognize Section 10 of the City Charter provides:

The office of City Attorney is established as the chief legal officer of the City government [and] a majority of the council must appoint and may remove the attorney or attorneys appointed to perform the duties of City Attorney.

## 2.2. Right to Resign.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with Attorney's right to resign at any time from the employment position with the City, subject only to the provisions set forth in this Agreement.

## 2.3 Term of Agreement.

This Agreement shall be in effect from July 5, 2022 (Effective Date), reviewed on an annual basis, and continue in effect until modified by written agreement of the Parties or terminated by either Party.

# Section 3. Suspension and Termination.

## 3.1 Suspension with Pay.

The City may, by Council's majority vote, suspend Attorney with full pay and benefits at any time during the term of this Agreement for a period not to exceed ninety (90) days.

## 3.2 Suspension without Pay.

The City may suspend Attorney without full pay and benefits at any time during the term of this Agreement, but only after:

- (1) Attorney and a Council majority so agree in writing;
- (2) a hearing and a Council majority votes to suspend Attorney; however, Attorney shall be given written notice setting forth any charges at least seven (7) working days prior to such hearing by Council; or
- (3) a request by Council to discuss allegations made about Attorney's activities relating to job performance and Attorney refuses to discuss those allegations with Council.

## 3.3 Definition of Termination.

Termination by the City without cause, as used in this Agreement, means:

- (1) Attorney's discharge or dismissal by Council without cause;
- (2) Attorney's resignation following a salary reduction greater in percentage than an across-the-board reduction for all City employees;
- (3) Attorney's resignation following a formal resignation request by Council; or
- (4) a termination in the event of a medically determined lack of fitness for duty pursuant to this Agreement.

In the event of termination by the City for cause, Attorney shall be given three (3) days' written notice of the cause for termination and shall be provided an opportunity to

respond to Council in person or in writing. “For cause” may include the occurrence of any of the following events:

- (1) Attorney’s material breach of this Agreement;
- (2) Attorney’s failure or inability to perform his job duties within the expectations of the City as determined by Council;
- (3) Attorney’s arrest or conviction for a felony or any other crime involving moral turpitude or dishonesty which, in the good faith opinion of the City as determined by Council, would impair Attorney’s ability to perform his duties or the City’s reputation;
- (4) Attorney’s failure, refusal to comply with, violation, or breach of the City’s charter, municipal code, policies, procedures, or federal, state or local regulations which apply to the City;
- (5) Attorney’s inability or failure to secure and/or maintain his required licenses by agencies with jurisdiction over the City or Attorney;
- (6) Any violation of Rules of Professional Conduct by any State Bar and/or state Supreme Court.

#### 3.4 Severance Compensation.

In the event of termination by the City with cause, Attorney shall not be entitled to any severance compensation. In the event of termination by the City without cause, Attorney shall receive, at least, three (3) months’ salary and City-paid COBRA continuation coverage for Attorney’s and Attorney’s dependents’ health, dental, and vision insurance policies as severance compensation; provided, however:

- (1) Attorney shall receive an additional one (1) months’ salary and City-paid COBRA continuation coverage for every full year of performance under this Agreement, capping at a maximum of nine (9) months’ salary and City-paid COBRA continuation coverage after six (6) years of Attorney’s performance from the Effective Date; and
  - a. City-paid COBRA continuation coverage, as used in this Agreement, means the City will pay the full premium and administrative fees connected with maintaining Attorney’s coverage.
- (2) Attorney executes a full and final release of all claims arising from Attorney’s employment or termination of employment, in a form approved by an independent employment attorney of Council’s discretion, as a condition precedent to receiving any severance compensation.

## **Section 4. Voluntary Resignation.**

In the event Attorney voluntarily resigns from the City Attorney position with the City, Attorney shall give the City sixty (60) days' advance notice (exclusive of any vacation time) of said resignation. In the event of a voluntary resignation, Attorney shall not be entitled to any severance compensation except at Council's sole discretion.

## **Section 5. Compensation.**

### **5.1 Salary.**

The City agrees to pay Attorney for services rendered pursuant to this Agreement an annual salary of \$137,500.00, payable in monthly installments at the same time as other employees of the City are paid. Any increase in salary will be negotiated between the City and Attorney based upon Council's annual evaluation of Attorney's performance; provided, however, Attorney's salary shall receive a reasonable merit increase commensurate with Attorney's performance (excluding cost-of-living adjustments based on the United States Bureau of Labor Statistics Consumer Price Index applicable to the City, as determined by the Finance Director) upon meeting the City's yearly expectations as determined by Council. The performance evaluation will be based upon a current position description Council may revise from time to time.

### **5.2 Retirement.**

The City shall contribute seven percent (7%) of Attorney's base pay and shall pay an additional six and one-half percent (6.5%) of Attorney's base pay (on Attorney's behalf) to the retirement program provided by Standard Insurance pursuant to 26 U.S.C. § 401(a) commencing on the Effective Date.

## **Section 6. Professional Development.**

### **6.1 Dues and Subscriptions.**

Attorney agrees to remain a member in good standing with the Oregon State Bar and the Washington State Bar Association. The City agrees to annually budget for and pay Attorney's professional dues and subscriptions for:

- (1) Oregon State Bar;
- (2) Washington State Bar Association;
- (3) Oregon City Attorneys Association; and
- (4) additional and budgeted professional organizations.

### **6.2 Conferences and Training.**

The City agrees to pay Attorney's budgeted travel, lodging, and food for professional and official travel, meetings, and occasions adequate to continue the professional development of Attorney and to effectively pursue necessary official and other functions of the City, including but not limited to annual conferences of the above professional organizations, Attorney's minimum Continuing Legal Education obligations, the League

of Oregon Cities, and such other national, regional, state, and local conferences as appropriate.

## **Section 7. Evaluation.**

The Mayor and Council shall review and evaluate Attorney's performance annually by no later than May 31. Evaluations shall be based upon the current position description and goals developed by Attorney and Council. The evaluations shall be conducted in a manner consistent with Oregon law and shall be communicated to Attorney in an executive session held pursuant to ORS 192.660(2)(i). The evaluations may result in modifications to this Agreement.

## **Section 8. Health and Life Insurance.**

The City agrees to provide Attorney and pay for medical insurance coverage, disability insurance benefits, and life insurance benefits under the same policies and programs under which such coverage and benefits are provided to all exempt employees. All coverages and benefits described herein become effective the first day of the first month following the Effective Date.

## **Section 9. Attorney's Fitness.**

### **9.1 Medical Examination for Fitness Determination.**

If a question exists concerning Attorney's ability to perform job-related functions, the City may require Attorney to submit to a medical examination performed by a physician licensed to practice medicine in the State of Oregon. In the event the City and Attorney cannot mutually agree upon the physician to conduct the examination, the City shall select the physician. The examination shall be done at the City's expense. The physician's report shall be limited to issues concerning Attorney's ability to perform the essential job functions of the position, with or without a reasonable accommodation, and the report shall be provided to Council for its review in an executive session noticed pursuant to ORS 192.660(2)(f), with a copy to Attorney. To the maximum extent feasible under the Oregon Public Records Law, the City agrees to withhold Attorney's medical records in its custody, including the physician's report, from public disclosure consistent with the personal privacy exemption codified as ORS 192.355(2)(a).

### **9.2 Termination for Lack of Fitness.**

In the event the City determines, in reliance upon the physician's report on and after an interactive process with Attorney in executive session, Attorney cannot perform the essential functions of the position of City Attorney with reasonable accommodation, the City shall have the option to terminate Attorney.

## **Section 10. Hours of Work and Outside Activities.**

### **10.1 Attorney's Time.**

The City Attorney must devote a great deal of time outside normal office hours to the business of the City, and flexibility in hours worked and work schedules benefit both the City and Attorney. The City agrees Attorney shall have full discretion over his work schedule so long as the business of the City is not adversely impacted (as reasonably

determined by the City Manager and affirmed by Council). Work in excess of forty (40) hours per week is deemed part of Attorney's professional responsibility for which Attorney shall be provided the same number of executive days off each fiscal year as other City Department Managers, to be used during that fiscal year or else deposited into Attorney's Health Reimbursement Arrangement Voluntary Employee's Beneficiary Association Plan account for tax-free reimbursement of Attorney's and Attorney's dependents' eligible healthcare expenses and insurance premiums before or during retirement, unless extended by Council.

#### 10.2 Outside Business.

Attorney shall not be compensated for any time spent on non-City connected activities without Council's prior written approval. As required by the Oregon Rules of Professional Conduct (**ORPC**), Attorney shall always act as the City's fiduciary and hold the City's interests above all others during this Agreement's performance.

### **Section 11. Other Terms and Conditions of Employment.**

#### 11.1 Amendments to Agreement.

The Parties shall, by written amendment to this Agreement, fix such other terms and conditions of employment from time to time, as the City may determine, relating to the performance by Attorney in the position of the City Attorney, provided such terms and conditions are not inconsistent with or in conflict to the provisions of this Agreement, the City Charter, or any other law.

#### 11.2 City Rules and Regulations.

All provisions of the City Charter, Council ordinances and resolutions connected with City employees, the City's retirement plan with Standard Insurance, and the provisions of the Exempt & Non-Union Employee Handbook as they now exist, and hereafter may be amended, shall apply to Attorney as applicable to other employees of the City, in addition to said benefits enumerated specifically for Attorney's benefit, except as provided in this Agreement.

#### 11.3 Professional Liability.

The City understands Attorney will be accepting public employment and is therefore compelled to request an exemption from the Professional Liability Fund's (**PLF**) otherwise compulsory participation requirement for all other non-exempt Oregon attorneys in its PLF Primary Coverage Plan. The City further understands, pursuant to PLF Policy 3.150(G)(10), Attorney shall act on behalf of the City as a public official, employee, or in any other capacity, consistent with this Agreement, coming within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar Oregon or federal statute rules or case law. In accordance with the Oregon Constitution and the Oregon Tort Claims Act, the City shall defend, hold harmless, and indemnify Attorney from and against all demands, claims, suits, actions, judgments, damages, errors, or other omissions (**Claims**) in all legal proceedings brought against Attorney in his individual or official capacity; provided, however:



- (1) Attorney's alleged conduct giving rise to the Claims occurred while Attorney acted within the scope of this Agreement's performance during this Agreement's term;
- (2) if, in the good faith opinion of Attorney, conflict exists with respect to the defense of the Claims between the City's legal position and Attorney's, Attorney may engage separate counsel and the City shall indemnify Attorney against the cost of legal counsel; and
- (3) in no event shall the City indemnify against Attorney's sole negligence, malfeasance in office, or willful or wanton neglect of duty.

#### 11.4 Conflicts of Interest.

The City recognizes Attorney's previous employment with a private law firm may result, from time to time, in actual conflicts of interests under the ORPC applicable to all Oregon attorneys. Attorney agrees to abide by the ORPC, including the rules governing conflicts of interest, during this Agreement's performance. The City reserves the right to obtain alternate legal counsel for a given matter if it reasonably believes (as determined by the City Manager) a conflict of interest prevents Attorney from acting on behalf of the City, at no cost to Attorney.

### **Section 12. General Provisions.**

#### 12.1 Entire Agreement.

The text herein shall constitute the entire agreement between the Parties.

#### 12.2 Severability.

If any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or portion thereof shall be deemed severable. All other sections shall be unaffected and remain in full force and effect.

### **Section 13. Notices.**

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

*To the City:*

Mayor, City of The Dalles  
City Hall  
313 Court Street  
The Dalles, OR 97058

*To Attorney:*

Jonathan Kara  
The Dalles, OR 97058

*with a copy to:*

City Manager, City of The Dalles  
City Hall  
313 Court Street  
The Dalles, OR 97058

Alternately, notices contemplated pursuant to this Agreement may be served personally in the same manner as is applicable to civil judicial practice. Notice shall be deemed to be given as of the date of personal service or date of deposit of such written notice with the United States Postal Service.

**IN WITNESS WHEREOF**, the Parties have executed this **EMPLOYMENT AGREEMENT** this \_\_\_\_\_ day of June, 2022.

**CITY**

**ATTORNEY**

\_\_\_\_\_  
Richard A. Mays, Mayor

\_\_\_\_\_  
Jonathan M. Kara  
OSB #200969  
WSBA #57946

*ATTEST:*

\_\_\_\_\_  
Izetta Grossman, CMC, City Clerk

**Approved as to form:**

\_\_\_\_\_  
Adam S. Collier, City Employment Counsel



## **CITY of THE DALLES**

**HUMAN RESOURCES**

**313 COURT STREET**

**THE DALLES, OREGON 97058**

(541) 296-5481 x4448

FAX (541) 296-6906

### **POSITION DESCRIPTION**

**TITLE:** CITY ATTORNEY

**DEPARTMENT:** LEGAL

**REPORTS TO:** CITY COUNCIL

**SUPERVISES:** PARALEGAL

### **DEFINITION:**

This appointive position delivers comprehensive professional legal services to the City of The Dalles as its chief legal officer by (i) advising City Council, City Manager, all Departments, and all Boards and Commissions on all legal matters, (ii) preparing legal instruments, providing legal opinions, and representing the City in all administrative, civil, judicial, legislative, and quasi-judicial proceedings, and (iii) reviewing draft policies, agreements, solicitations for procurements, and other documents created by all Departments for legal sufficiency.

### **ESSENTIAL JOB FUNCTIONS:**

- Represents the City in all administrative, civil, judicial, legislative, and quasi-judicial proceedings.
- Performs the duties of City Prosecutor, including the prosecution of violations of City ordinances and traffic laws in Municipal Court and the Wasco County Circuit Court.
- Gathers evidence in civil, criminal, and other cases to formulate defenses or to initiate affirmative legal action to support the City's interests.
- Performs legal and real property research and manages all other details in preparation for City actions or trial.
- Prepares and files with courts legal pleadings and briefs and develops legal strategies, arguments, and testimony in preparation for presentation of cases.
- Interprets federal, Oregon, and local laws, rulings, and regulations for City officials and staff.
- Confers with colleagues with specialties in other areas of law to establish and verify bases for the City's legal proceedings and serves as a liaison between insurer-appointed or other retained legal counsel and City officials and staff on specialized legal issues.
- Prepares a variety of opinions, studies, reports, and related information for City decision-making.
- Drafts and reviews ordinances, resolutions, solicitations, contracts for goods and services, deeds, leases, franchises, and all other legal instruments.
- Approves City documents as to legal form, legal sufficiency, and content as required.
- Attends all City Council, Planning Commission, Urban Renewal Agency Board, and other meetings as required.

- Serves as Agency Attorney for The Dalles Urban Renewal Agency, providing comprehensive general counsel services to the Agency Board and staff.
- Provides legal services to the Columbia Gorge Regional Airport, delivering comprehensive general counsel services to the Airport Board and staff, and coordinates with Klickitat County Prosecuting Attorney's Office, Federal Aviation Administration, and other government agencies and officials.
- Responds to questions of the public and media regarding the City's legal affairs.
- Reviews legal cases and attends trainings to remain informed of changes in the laws pertaining to the business of the City and appraises City Council and appropriate Departments before ensuring ordinances and City policies are amended to reflect dynamic changes in law.

### **OTHER JOB FUNCTIONS:**

All other duties required to protect the City from and mitigate foreseeable liabilities.

### **KNOWLEDGE, SKILL, AND ABILITY:**

- Considerable knowledge of Oregon law relating to municipal affairs.
- Working knowledge of modern policies and practices of municipal law and public administration.
- Skill in preparing briefs and other legal documents.
- Skill in operating the listed tools and equipment.
- Ability to prepare and analyze comprehensive legal documents.
- Ability to carry out assigned projects to their completion.
- Ability to communicate effectively verbally and in writing.
- Ability to represent the City effectively in court.
- Ability to effectively organize and present facts and evidence.
- Ability to conduct legal research and write reports.
- Ability to effectively supervise subordinate staff.
- Ability to effectively use technology.

### **QUALIFICATIONS:**

Education: Graduation from an accredited school of law with a Juris Doctor degree. Must be admitted to and in good standing with the Oregon State Bar.

Experience: Minimum of five years' experience as practicing attorney or equivalent in administrative or public law, preferably for an Oregon municipality.

### **LICENSES OR CERTIFICATES:**

- Valid Driver's License
- Licensed by Oregon State Bar to Practice Law in Oregon

## MUTUAL TERMINATION AGREEMENT

This MUTUAL TERMINATION AGREEMENT (**Agreement**) is entered into by and between the City of The Dalles, a municipal corporation of the State of Oregon (**City**), and Campbell Phillips, a professional corporation (**Contractor**).

**WHEREAS**, the City and Contractor entered into that certain Personal/Professional Services Agreement for legal services (**PSA**) commencing on February 1, 2020;

**WHEREAS**, the PSA is terminable upon mutual written agreement per Section. 11(a) of said contract and such termination for convenience may be as soon as immediate; and

**WHEREAS**, the Parties intend to mutually terminate the PSA as provided herein.

**NOW, THEREFORE**, in consideration of both the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is here acknowledged, the Parties agree:

1. The Parties agree this Agreement satisfies the PSA's condition of mutual termination contemplated by PSA Section 11(a).
2. The Parties agree to mutually terminate the PSA and conclude the hiring party-independent contractor relationship effective **12:00 a.m. on July 5, 2022**.
3. The terms, conditions, representations, and all warranties contained in the PSA shall survive this mutual termination pursuant to PSA Section 13.

**IN WITNESS WHEREOF**, the Parties have executed this **MUTUAL TERMINATION AGREEMENT** this \_\_\_\_ day of June, 2022.

**CITY OF THE DALLES**  
An Oregon municipal corporation

**CAMPBELL PHILLIPS**  
A professional corporation

\_\_\_\_\_  
Matthew B. Klebes, City Manager

\_\_\_\_\_  
Kiffanie Phillips, Managing Shareholder

*ATTEST:*

\_\_\_\_\_  
Izetta Grossman, CMC, City Clerk