

## **ORDINANCE NO. 1636**

### **AN ORDINANCE AMENDING ORDINANCE NO. 1606 TO DELETE THE NOT TO EXCEED AMOUNT IN THE CONTRACT BETWEEN THE CITY OF CANBY AND BEERY, ELSNER AND HAMMOND, LLP FOR INTERIM CITY ATTORNEY SERVICES.**

**WHEREAS**, on July 19, 2023, the City of Canby adopted Ordinance No. 1606 authorizing the interim city administrator to enter into a contract with Beery, Elsner and Hammond for interim city attorney services;

**WHEREAS**, the contract the parties entered into stated a not to exceed amount of \$149,999;

**WHEREAS**, the City of Canby has chosen Beery, Elsner and Hammond for permanent city attorney services;

**WHEREAS**, the contract for permanent city attorney services will not take effect until December 20, 2024, but Beery, Elsner and Hammond has incurred fees in excess of \$149,999; and

**WHEREAS**, in order to continue receiving city attorney services through December 20, 2024, it is necessary to amend Ordinance 1606 to remove the not to exceed amount; and

**WHEREAS**, the Canby City Council adopts this ordinance on an emergency basis in order to ratify amounts the City has spent in excess of \$149,999 and immediately provide the City Administrator the authority to continue to pay Beery, Elsner and Hammond for services until the permanent contract takes effect, including fees incurred to date.

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


**Section 1.** Ordinance No. 1606 is hereby amended to strike the following phrase from Section 1: “but under \$150,000.”

**Section 2.** Exhibit “A” of this Ordinance, attached hereto and incorporated by this reference, shall replace the Exhibit “A” in Ordinance No. 1606.

**Section 3.** The City Administrator is hereby authorized on behalf of the City to continue to pay for interim city attorney services, including fees incurred to date, from Beery Elsner and Hammond until the permanent contract takes effect.

**Section 4.** In order to continue receiving interim city attorney services, the Canby City Council declares an emergency; and this ordinance will take effect immediately upon enactment on November 20, 2024.

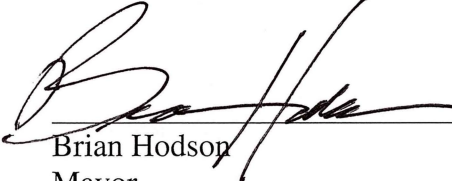
**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 6, 2024, ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, November 20, 2024, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor Canby, Oregon.

  
Maya Benham, CMC  
City Recorder


**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 20<sup>th</sup> of November, 2024 by the following vote:

YEAS 6

NAYS 0

  
Brian Hodson  
Mayor

**ATTEST:**

  
Maya Benham, CMC  
City Recorder

## PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and BEERY, ELSNER & HAMMOND, LLP (Contractor).

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree as Follows:

- 1. Scope of Services. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. Contractor Identification. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable.
- 3. Compensation:
  - A. City agrees to pay Contractor according to the proposed rate schedule submitted with the Contractor's proposal. See Exhibit "A" attached hereto.
  - B. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
  - C. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.
- 4. Contractor is Independent Contractor.
  - A. Contractor's services shall be provided under the general supervision of the City Council. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.
  - B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised Statutes.
  - C. Contractor hereby represents that no employee of the City, or any

partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.

5. Subcontractors and Assignment. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions this agreement as well as applicable OSHA regulations and requirements.
6. Work is Property of City. All work performed by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.
7. Term.
  - A. This Agreement may be terminated by:
    1. Mutual written consent of the parties.
    2. Either party, upon thirty (30) days written notice to the other, delivered by certified mail or in person.
    3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
      - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
      - b. If Contractor fails to abide by the terms of this Agreement.
      - c. If services are no longer required.
8. Professional Standards. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

By entering into this agreement, contractor represents and warranties that they have complied with the tax laws of the State of Oregon and the City of Canby. Further, for the duration of this contract, Contractor promises to continue to comply with said State and local tax laws. Any failure to comply with tax laws will be considered a default of this contract and could result in the immediate

termination of this agreement and/or other sought damages or other such relief under applicable law.

9. Insurance. Insurance shall be maintained by the Contractor with the following limits:

A. For Comprehensive General Liability Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis.

B. For Automobile Insurance, Contractor shall provide a Certificate of Insurance naming the City of Canby as an additional named insured showing policy limits of not less than \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage on an occurrence basis for any vehicle used for City business or use otherwise related to this contract.

C. For Professional Liability—errors and omissions—a \$1,000,000 Combined Single Limit for Bodily Injury/Property Damage limit. (Required for Architects, Appraisers, Attorneys, Consultants, Engineers, Planners, Programmers, etc.). For purposes of professional liability, Contractor shall provide proof of a Certificate of Insurance naming the City of Canby as a Certificate Holder.

D. For Worker's Compensation, Contractor shall provide a Certificate of Insurance naming the City of Canby as a Certificate Holder showing Worker's Compensation Insurance with statutory limits of coverage.

Procuring of such required insurance at the above-stated levels shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, loss, or related costs caused by or related to Contractor's negligence or neglect connected with this Agreement.

10. Legal Expense. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.

11. Modifications. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.

12. Notices. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, electronically, faxed, or personally delivered to the address below. All notices shall be in writing and

shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.

13. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
14. Savings Clause. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.

CITY: Eileen Stein, City Administrator  
City of Canby  
PO Box 930  
Canby, OR 97013

CONTRACTOR: Ashley Driscoll  
Beery, Elsner & Hammond, LLP  
1804 NE 45<sup>th</sup> Ave  
Portland, OR 97213-1416

**Please submit invoices to: Attn: Accounts Payable  
City of Canby  
PO Box 930  
Canby, OR 97013  
ap@canbyoregon.gov**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers.

**CONTRACTOR:**

By:

Date:

**CITY OF CANBY:**

By: 

Date: 12/2/24