

ORDINANCE NO. 1646

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO AN AGREEMENT IN THE AMOUNT OF \$60,000 BETWEEN CITY OF CANBY AND LUCY HEIL, CITY PROSECUTOR.

WHEREAS, on September 16, 2020, the City of Canby entered into an agreement with Lucy Heil as City Prosecutor and there have been amendments to the agreement to date;

WHEREAS, in November 2024, Criminal Court returned to Municipal Court with a full case load along with traffic docket;

WHEREAS, Ms. Heil's current contract does not consider the increased workload. Since January 1, 2025, Ms. Heil has filed 56 new misdemeanor matters in the Municipal Court. The court is currently averaging 20 criminal cases per court docket. It is projected that the court will receive 175 new misdemeanor cases in 2025. Additionally, Ms. Heil represents the City in probation and diversion violations and contested traffic violations. Ms. Heil's current contract was written based on her no longer needing to review and file new misdemeanor matters and her only representing the City on minimal cases that were previously filed in the Municipal Court and still on the court docket.

WHEREAS, the agreement would now increase over \$50,000; and

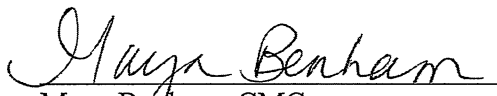
WHEREAS, the City of Canby desires to have Ms. Heil continue serving in the capacity as City Prosecutor and allows the City of Canby to continue agreement with Ms. Heil as City Prosecutor.

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

Section 1. The City Administrator is hereby authorized to enter into an agreement in the amount of \$60,000 between the City of Canby and Lucy Heil, City Prosecutor.

Section 2. The effective date of this Ordinance shall be June 20, 2025.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, May 7, 2025 ordered posted as required by the Canby City Charter, and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on May 21, 2025, commencing at the hour of 7:00 PM at the Council Chambers located at 222 NE 2nd Avenue, Canby, Oregon.


Maya Benham, CMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on the 21st of May, 2025, by the following vote:

YEAS 6 NAYS 0


Brian Hodson
Mayor

ATTEST:


Maya Benham, CMC
City Recorder

PROFESSIONAL SERVICES AGREEMENT FOR PROSECUTING ATTORNEY SERVICES

Recitals:

WHEREAS, the City of Canby, Oregon, herein after referred to as "City," wishes to contract for attorney professional services with Lucy Heil, hereinafter referred to as "Prosecuting Attorney" for the limited purpose of providing legal prosecution services concerning criminal misdemeanors and lawyer-represented violation trials in Canby Municipal Court; and

WHEREAS, the Prosecuting Attorney remains in good standing with the Oregon State Bar Association; and

WHEREAS, the City and Prosecuting Attorney agree to be bound by the following terms and conditions of providing service and receiving compensation therefore.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises in set forth in this agreement (the "Agreement"), the parties agree as follows.

Terms and Conditions:

1. PURPOSE OF AGREEMENT:

It is hereby agreed that the Prosecuting Attorney will provide legal prosecution services for all criminal misdemeanor cases cited into Canby Municipal Court as well as assist with prosecution of violations when they have lawyer representation

- (A) Prosecuting Attorney's services under this Agreement are set forth in "Exhibit A" attached hereto.
- (B) Prosecuting Attorney shall furnish to City its employer identification number as designated by Internal Revenue Service, or Prosecuting Attorney's Social Security Number, as City deems applicable. **Prosecuting Attorney understands it is required to obtain a City of Canby Business License for conducting business in the City. Prosecuting Attorney agrees to obtain a Canby Business License prior to commencing work under this Agreement.**

2. COMPENSATION

- (A) The City will compensate the Prosecuting Attorney at the rate of \$5,000 per month with no withholdings reserved for any purpose.
- (B) Prosecuting Attorney shall furnish to City monthly invoices on the 1st of each month for services performed.
- (C) City agrees to pay Prosecuting Attorney out of funds budgeted for said purpose and to pay invoices on Council approval of Accounts Payable. Prosecuting Attorney understands that this is the only remuneration Prosecuting Attorney will receive from City.

3. EXCEPTIONS

Prosecuting Attorney is not required to prosecute defendants where there is a Bonafide conflict of interest as set forth in applicable sections of the Code of Professional Responsibility, if the conflict will not be waived by the defendant.

4. TENURE AND TERMINATION

The initial term of this Agreement will be effective from January 1, 2025 to December 31, 2025.

Either party can cancel this Agreement at any time upon sixty (60) days advance written notice to the other party to the Agreement of their intent to terminate. No cause is necessary for termination by either party, and Prosecuting Attorney understands her services are at the pleasure of the City Council and may be terminated when provided notice is given as set forth above.

5. PROSECUTING ATTORNEY AS INDEPENDENT CONTRACTOR

The parties agree that their intent is that the Prosecuting Attorney is a "legal independent contractor" and shall not be considered in any manner as an employee, officer or agent of the City of Canby.

6. PAYMENT OF EMPLOYEES

Prosecuting Attorney shall make payment promptly, as due, to all persons supplying to the Prosecuting Attorney labor or material for the performance of the work provided for in the Agreement; shall pay all contributions or amounts due the Industrial Accident Fund from the Prosecuting Attorney or any subcontractor incurred in the performance of the Agreement; 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, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

7. WORKERS' COMPENSATION COVERAGE

Prosecuting Attorney shall comply with ORS 656.017 unless exempt under ORS 656.126.

8. MEDICAL PAYMENTS

Prosecuting Attorney shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Prosecuting Attorney, of all sums which the Prosecuting Attorney agrees to pay for such services and all monies and sums which the Prosecuting Attorney collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

9. OREGON TAX LAW COMPLIANCE

Prosecuting Attorney must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Prosecuting Attorney (to the best of Prosecuting Attorney's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this Agreement, represents and warrants that it has faithfully has complied with, and will continue to comply with during the term of this Agreement: (A) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) any tax provisions imposed by a political subdivision of this state that applied to Prosecuting Attorney, to Prosecuting Attorney's property, operations, receipts, or income, or to Prosecuting Attorney's performance of or compensation for any work performed by Prosecuting Attorney; (C) any tax provisions imposed by a political subdivision of this state that applied to Prosecuting Attorney, or to goods, services, or property, whether tangible or intangible, provided by Prosecuting Attorney; and (D) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Failure to comply with this section is a default for which the City may terminate the Agreement and seek damages and other relief available under the terms of the Agreement or under applicable law.

Exhibit A

CITY OF CANBY PROSECUTING ATTORNEY SCOPE OF WORK

Prosecuting Attorney shall provide effective and efficient legal representation for all criminal misdemeanors and lawyer-represented violation trials in the Canby Municipal Court at all stages of prosecution to include appeals at the Clackamas County Circuit Court and Municipal Court probation hearings.

The Canby Municipal Prosecutor shall:

- Adhere to City Personnel Policies
- Maintain good standing with the Oregon State Bar and stay up to date with changes in the law
- Communicate regularly with court staff, attorneys and police staff and return phone calls and emails within 48 hours
- Maintain regular office hours at a minimum of Mondays and Thursdays from 9 a.m. to 4 p.m. to provide open communication with police officers, court staff and attorneys. Prosecutor will notify staff when office hours will vary
- Review criminal cases submitted by Canby Police and consult with Canby Police as needed
- Make filing decisions with the Municipal Court and provide decline memos to the primary police officer explaining reasons for not filing charges
- Draft complaints and file with Municipal Court
- Refer potential felonies to Clackamas County District Attorney's Office
- Provide discovery to defense attorneys and respond to motions in a timely manner
- Negotiate plea deals with defense attorneys
- Work collaboratively with other court prosecutors as needed on pending cases
- Attend court sessions and represent the City as Prosecuting Attorney on cases filed in the Municipal Court, including but not limited to court and jury trials, probation violation hearings, diversion violation hearings, arraignments, pre-trial conferences and sentencing
- Determine conflicts of interest and seek waivers or find suitable alternatives
- Represent City of Canby in cases appealed to Clackamas County Circuit Court
- Provide coverage for courtroom appearances during vacation or leave of absence. If coverage is unavailable, provide Municipal Court with 60 days notice of absence.
- Maintain a list of community service options for defendants.


10. ASSIGNMENT OR TRANSFER RESTRICTED

The Prosecuting Attorney shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Prosecuting Attorney, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in writing, such consent shall not relieve the Prosecuting Attorney of any obligations under the Agreement. Any assignee or transferee shall be considered the agent of the Prosecuting Attorney and be bound to abide by all provisions of the Agreement. If City consents in writing to an assignment, sale, disposal or transfer of the Prosecuting Attorney's rights or delegation of Prosecuting Attorney's duties, the Prosecuting Attorney shall remain liable to the City for complete performance of the Prosecuting Attorney as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in writing.


The Parties hereby cause this Agreement to be executed.

City of Canby: ~~Eileen Stein~~
City Administrator

Randy Early


Date: 7-10-25

Lucy Heil
Attorney at Law


Date: 7-10-25