

AMENDMENT NO. 2  
AGREEMENT NO. 30000350  
FOR LEGAL SERVICES

Pursuant to Ordinance No. \_\_\_\_\_

This Agreement was made and entered by and between Ball Janik LLP, hereinafter called Counsel, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City.

1. This agreement is hereby extended through June 30, 2014 .
2. Additional work is necessary as described in the Scope of Work as follows: See Exhibit A.
3. Adding Exhibit C. See Exhibit C.
4. Additional compensation in the amount of \$150,000 is necessary, for a total not to exceed \$275,000.

All other terms and conditions shall remain unchanged and in full force and effect.

**COUNSEL SIGNATURE:**

This agreement amendment may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement amendment.

The parties agree the City and Counsel may conduct this transaction by electronic means, including the use of electronic signatures.

Ball Janik ( James T. McDermott)

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

**CITY OF PORTLAND SIGNATURES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chief Procurement Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of the City Attorney

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of the City Attorney

**EXHIBIT A  
CITY OF PORTLAND  
CITY ATTORNEY'S OFFICE  
SCOPE AND DURATION OF LEGAL SERVICES**

The City requires the continued services of Ball Janik LLP in advising the City on issues related to insurance coverage.

Hourly rate for James T. McDermott is \$500 /hr.

Hourly rate for Kevin S. Mapes is \$300 /hr.

Hourly rate for James Guse is \$250/hr.

Hourly rate for Paralegal's is \$170/hr.

186208

EXHIBIT C  
CITY OF PORTLAND  
CITY ATTORNEY'S OFFICE  
REQUIREMENTS FOR OUTSIDE COUNSEL

**I. INTRODUCTION**

**A. Applicability & Purpose**

These Requirements apply to all outside counsel retained by the City of Portland (City) through the City Attorney's Office. They are intended to ensure that all outside counsel provide the City high-quality legal service and account for their work in a professional and transparent manner, while remaining mindful of the need to conserve public resources.

Outside counsel will be expected to know and adhere to these Requirements and require that any colleagues or support personnel participating in the matter (e.g., timekeepers, billing staff who create invoices) do so as well.

**B. Requests for Modifications**

Outside counsel may bring concerns regarding the application of these Requirements to the staff attorney assigned as the City's principal point of contact (the "City Project Manager") on that matter. The City Attorney reserves the right to supplement or otherwise modify these Requirements if circumstances not contemplated by these Requirements arise.

**II. RELATIONSHIP BETWEEN THE CITY & OUTSIDE COUNSEL**

**A. Decision-making Authority**

The City Attorney remains responsible for making all substantive decisions in matters assigned to outside counsel. To ensure effective communication with outside counsel concerning substantive decision-making and other aspects of a matter a deputy city attorney will be named as City Project Manager for each matter sent to outside counsel.

**B. Selection of Outside Counsel**

The City Attorney will determine which counsel to engage for any particular matter, taking into account factors bearing upon the likelihood of advancing the City's interests and achieving the ultimate desired outcome. These factors may include: whether prospective counsel has previously been engaged by the City and, if so, the quality and cost-effectiveness of counsel's prior performance; the reputation of the prospective counsel within the legal community; the relevant experience of the prospective counsel before any court or other tribunal or body involved; and the prospective counsel's knowledge and understanding of the City and the particular matter at issue.

Prospective counsel must not have conflicts of interest precluding them from taking on the engagement and must accept the City Attorney's fee restrictions, including caps on maximum hourly rates for lawyers and paralegals.

**C. Commitment of Outside Counsel to Diversity**

The City Attorney will consider the extent to which the candidates share the City's goals of facilitating the success of minority-owned businesses and promoting equal employment opportunities for all persons, regardless of race, color, religion, sex, national origin, age, or disability. The City Attorney encourages women and minority-owned law firms to apply to represent the City.

**D. Protocol**

Outside counsel should communicate directly with the City Project Manager regarding an assigned matter. Counsel should consult with the City Project Manager regarding the matter assigned so that counsel and the City can jointly determine whether, for example, a particular research project is necessary, a particular deposition makes sense from an economic standpoint, or a particular document production can be completed more economically in-house.

Outside counsel should keep the City Project Manager fully and currently informed about the status of matters by means of prompt personal communications rather than letters summarizing work done over a period of time. The parties should establish a communication schedule in the scope of work.

Outside counsel and the City Project Manager will determine whether the City Project Manager will review documents before filing. Counsel should provide the City Project Manager with copies of final or as-filed documents, as well as copies of any memorandum, whether an internal research memorandum or one filed in a court, for which the City will incur a fee.

Outside counsel should consult with the City Project Manager regarding any settlement demands and overtures. Outside Counsel may not enter into any settlement negotiations or settlements without prior approval of the City Project Manager. This is due to City requirements on receiving settlement approval from the Client bureau and/or City Council.

**E. Conflicts of Interest**

Outside counsel must investigate potential conflicts of interest before beginning working on a matter and must inform the City Project Manager of any potential or actual conflicts of interest as soon as counsel becomes aware of them. Unless counsel specifically raises a conflict of interest, and the City Attorney acknowledges and waives the conflict in writing, counsel will fully reimburse the City for additional costs subsequently incurred due to such conflict, including, where appropriate, the cost of substitute counsel becoming familiar with the matter. The City will not reimburse counsel for the time or cost of a conflicts check.

**F. Media Relations**

The City does not authorize outside counsel to comment publicly on City matters or to issue any statements or press releases in connection with any matter of engagement for the City, without the express advance consent of the City Project Manager.

**III. PROJECTION OF FEES & EXPENSES****A. Setting of Rates**

At the time of the initial engagement, outside counsel must furnish the City Attorney with a schedule of hourly rates for partners, associates, and paralegals. The rates ultimately agreed upon will apply for a period of no less than one year from the date of engagement, and counsel may only change these rates upon prior written approval of the City Attorney. Proposed changes in the agreed upon rate(s) shall be provided to the City Attorney no less than 60 days before the proposed effective date.

**B. Submission of Budget**

For each matter, outside counsel are required to provide the City Project Manager with a budget. Legal fees may not exceed the budgeted amount without prior approval from the City Project Manager.

The budget must specifically include the work that outside counsel will perform, the identity and the billing rate of each attorney and paralegal assigned to the matter, and the amount of time counsel expects the work to take. Outside counsel are expected to stay within their budgets absent truly unforeseen or exceptional circumstances. If it appears that outside counsel may exceed the budget on a particular matter, counsel must notify the City Project

Manager, provide a written explanation for the prospective variance, and obtain the approval of the City Project Manager for the enlarged budget.

If a staffing change affecting the budget should occur, counsel should update the budget and notify the City Project Manager in writing of the staffing change. (Please note that the City will not pay for time spent in preparing budgets or monthly bills.)

#### **IV. STAFFING AND SUPERVISION OF MATTERS SENT TO OUTSIDE COUNSEL**

##### **A. Attorneys**

The City Attorney expects that the specific lawyer(s) with whom the engagement is established ("lead counsel") will be directly and intimately involved in that matter throughout its course, unless the City Project Manager agrees otherwise. The City Attorney also expects outside counsel to consult with the City Project Manager regarding other lawyers they are considering assigning to work on any City matters. Lead counsel may not assign additional lawyers to any City matter without prior approval from the City Project Manager. The City Attorney expects outside counsel will not:

- overstaff City matters;
- charge for learning time of newly assigned lawyers when a shift in personnel is warranted;
- hold non-substantive internal "conferences" about City matters;
- write status reports, unless requested;
- handle specific tasks through persons who are either over-qualified (e.g., routine document review by a senior lawyer) or under-qualified (e.g., extensive research of general principles of law by junior associates).

##### **B. Paralegals**

Paralegals should be used to perform appropriate work when it is economic to use them. Examples of activities that a paralegal should generally perform are:

- preparing first drafts of basic forms and documents;
- preparing and filing UCC statements;
- organizing, summarizing and indexing files and other materials that require professional judgment;
- preparing subpoenas or notices for deposition, entry of appearance, substitution of counsel, interrogatories, requests to produce, jury trial demands, and other routine litigation documents; and
- preparing records requests and subpoenas.

##### **C. Experts & Consultants**

The selection and retention of appraisers, experts, and consultants must be coordinated with and approved by the City Project Manager. Outside counsel must itemize these charges on their bills.

The City will pay the actual cost of services such as printing and acquisition of specific materials by appraisers, experts and consultants if the City Project Manager approves such expenses in advance.

## V. BILLABLE AND NON-BILLABLE ITEMS

### A. Expenses & Disbursements

The City will reimburse outside counsel for out-of-pocket expenses as applicable and as provided below. The City will not pay for normal overhead expenses unless prior approval has been obtained from the City Project Manager and the appropriate portions of the invoice specify that the charges have been "Authorized by [City Project Manager name]" and indicate the date of the authorization. Such charges include items such as: secretarial, clerical or word processing services (normal, temporary or overtime); administrative services (including file creation, file organization and maintenance; clearing conflicts; local telephone expenses; charges for business meals or refreshments (unless related to out-of-town travel); local travel expenses including mileage Under 100 miles, toll charges, parking fees, train and cab fares; normal postage.

Unless otherwise covered by a specific agreement in advance, the City will pay for separately itemized expenses and disbursements only as follows:

Toll calls. The City will pay the actual charge billed to the firm for each call, without an overhead adjustment and without a premium. The City will not pay any charges for fax copying other than actual telephone line charges.

Messenger Services. The City will reimburse outside counsel for actual charges billed to counsel for deliveries (including overnight express) that are necessary. The City Attorney does not expect all documents to be hand-delivered or sent by overnight express. Delivery modes from hand delivery to electronic transmission, should be made with due regard for need, economy and common sense.

Local and Surface Travel. If outside counsel is required to travel more than 100 miles roundtrip on an assigned matter, the City will reimburse mileage for the use of personal cars at the IRS rate or the actual cost of taxicabs, buses, or trains necessitated by the City's business that are not part of lawyers' or employees' commuting costs during regular business hours.

Out-of-Town Travel. Outside counsel must receive prior approval for all out-of-town travel reimbursement. The City Attorney encourages counsel to make travel arrangements through means that will ensure that the best and most reasonable prices for air or ground transportation are obtained. The City will only reimburse outside counsel for coach rates. Only in unusual circumstances will the City approve travel by more than one attorney.

Attorney Travel Time. Charges for attorney time during travel are only reimbursable if such time is actually used in performing substantive legal work for the City.

Attorney Time. The City will ordinarily pay for only one attorney to attend depositions, meetings, or arguments. Counsel must obtain prior approval from the City Project Manager if counsel plans to bill time for more than one attorney to attend a meeting, trial, or hearing.

### B. Vague Descriptions

The City Attorney will not approve payment for vague categories of expenses described, for instance, as "miscellaneous" or "other." Generic and general activity descriptions that lack specificity, such as the following examples, are not appropriate:

Arrangements with \_\_\_\_\_; Conference with \_\_\_\_\_; Discovery; Work on file; Research; Review/draft document; Receipt of documents; Review correspondence; Review case and issues; Telephone call; Meeting preparation.

Billings for telephone conversations should describe the parties and purpose of the call. Correspondence, pleading, and other document that is prepared or reviewed should be identified and described. The subject of legal research should be described.

**C. Prohibition Against Reimbursement for Administrative or Clerical Functions**

The City will only pay for work performed by professionals (i.e., attorneys or paralegals), and will not pay an hourly or flat rate or fee for work that is secretarial, clerical, or administrative in nature, regardless of the seniority of the person performing the task. Examples of such secretarial, clerical, or administrative work include: scheduling meetings and appointments; making travel arrangements; and maintaining calendars.

**D. Legal Research**

The City Attorney expects that counsel will use paralegals or junior associates for research matters, and avoid having partners or senior associates devote extensive time to research. Counsel should forward copies of all research products that are prepared for a City matter to the City Project Manager.

**E. Office Conferences**

Intra-office conferences that deal with substantive issues pertaining to the matter are reimbursable when Outside Counsel provides a thorough description of the purpose of the conference. Generally, no more than two staff members should bill for an intra-office conference. The City will only pay for reasonable amounts of time expended on such conferences.

**F. Prohibition Against Block Billing**

The City will not pay for "block billed entries," that is, a line item with a single time charge for multiple activities or disbursements. A time charge must accompany each fee activity, and outside counsel must itemize each disbursement entry.

**G. Format**

Outside counsel should clearly show the total of the current bill and also include a running total for the matter to date. Prior balances or payment history should be shown, if at all, on a separate page. Outside counsel must include with the statement both time sheet or diary detail for time charges and copies of invoices or internal data compilations for disbursements over \$500, especially for out-of-town travel and bulk photocopying or special vendor services.

**H. Audit**

The City has the right to examine and audit all of outside counsel's firm's billings for any work charges to the City and all of the supporting data for those billings.

**VI. ACCEPTANCE OF TERMS**

These Requirements constitute the terms and conditions of the City of Portland's retention of outside counsel. Outside counsel's acceptance of an offer of engagement constitutes an agreement to comply with the terms and conditions set forth in these Requirements. Outside counsel must discuss questions concerning the applicability of these Requirements with the City Project Manager before proceeding on a course of action not specifically authorized.