



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: November 2, 2020

AGENDA ITEM NO.	ORIGINATING DEPARTMENT:	PRESENTED BY:
Consent Agenda	Administration	Drew Nelson

ITEM:

Approval of Revisions to Legal Services Agreement

BACKGROUND:

Since 2017, the City of Salida has retained legal counsel through a Legal Services Agreement with the firm of Murray Dahl Beery & Renaud LLP. This summer, the City Council approved the reappointment of the firm as the City's official legal counsel, along with designating Nina P. Williams as the individual named "City Attorney". This revised contract codifies that change.

FISCAL NOTE:

The only substantive change to the fiscal impact of this contract is amending the hourly rate for both Nina Williams and Geoff Wilson to the same rate of \$200/hour. We do not anticipate additional costs to the current or future professional services line item for legal services in our 2020 or 2021 budgets, as these fluctuate depending on workload as well as more of Geoff's hours will be transferred to Nina at the same rate. Thus, we do not see any significant changes to the overall bottom line for this line item or to the General Fund.

STAFF RECOMMENDATION:

Staff recommends that the City Council approve the revised Legal Services Agreement with Murray Dahl Beery & Renaud LLP.

SUGGESTED MOTIONS:

A City Councilperson should make a motion to combine and approve the Consent Agenda, followed by a second and a roll call vote.

LEGAL SERVICES AGREEMENT

THIS AGREEMENT is between the City of Salida, a Colorado statutory city ("City"), and Murray Dahl Beery & Renaud LLP ("Law Firm") under which the Law Firm shall perform legal services for the City.

WHEREAS, pursuant to Sec. 2-3-10 and Sec. 2-3-60 of the City of Salida Municipal Code, the City Council of the City had previously appointed the Law Firm as its City Attorney; and

WHEREAS, by formal action at their regular meeting on July 7, 2020, the City Council approved the reappointment of the Law Firm as Salida City Attorney, and designated Nina P. Williams as the individual named "City Attorney."

NOW THEREFORE, the City and the Law Firm agree as follows:

1. Scope of Legal Services. The Law Firm will provide any and all legal services requested of it by the Mayor, City Council, City Administrator, and any boards or employees of the City authorized by the Mayor, City Council or City Administrator to request legal services of the Law Firm. Such services shall include, but are not limited to the following:

a. Attend regular and special meetings of the City Council; attend work session meetings of the City Council as requested.

b. Attend meetings and conferences with City Council, City boards and commissions, City staff and officers as directed by the Mayor, City Council or the City Administrator.

c. Prepare and/or review ordinances and resolutions.

d. Prepare and/or review contracts for services, materials and real estate involving the City.

e. Respond to all inquiries and communications of a general legal nature from the Mayor, members of the City Council, City Administrator, and City staff.

f. Represent the City in its dealings and negotiations with federal, state and local governmental entities and agencies, special improvement districts and utilities, affecting the City.

g. Represent the City in litigation matters involving the City.

h. Enter an appearance in and/or monitor litigation matters that are being actively handled by outside counsel.

i. Perform such other duties as may be prescribed by the Mayor, City Council, or City Administrator.

The Law Firm agrees to exert its best efforts on behalf of the City and to handle the matters for which representation has been requested of it faithfully and with due diligence. The Law Firm cannot and does not guarantee or agree that a result favorable to or satisfactory to the City will be achieved. No settlement or compromise will be made without the City's consent.

2. Identification of Client. It is understood that the Law Firm's client for purposes of its representation is the City of Salida, and not any of its individual members or constituents, or any other entities whose interests are being represented by those individuals.

3. Term. It is understood that the City Attorney serves at the pleasure of the Mayor and City Council, and this Agreement shall therefore be for an indefinite term.

4. Performance Review. The parties agree that the performance of the City Attorney shall be reviewed by the City Council and City Administrator annually.

5. Designated City Attorney. Subject to other direction from the City, City Attorney services will be provided principally by Nina P. Williams. The City Attorney may delegate certain research, litigation or drafting projects or any other matters to other attorneys in the Law Firm who have expertise in the area of the legal services requested, including but not limited to Geoffrey Wilson; however, any such delegated work will be performed directly under her supervision and responsibility.

6. Management. At least quarterly, the City Attorney will confer with the City Administrator to identify legal service priorities, and to plan for the management of the legal services budget.

7. Compensation and Expenses. The City will compensate Law Firm for professional legal services as indicated below. Expenses such as photo copying will be charged at the rates set forth on the attached "**Schedule of Costs.**"

<u>Attorney</u>	<u>Hourly Municipal Rate</u>
Nina P. Williams	\$ 200.00
Geoffrey Wilson	\$ 200.00
Associates	\$ 170.00
Partners/Special Counsel	\$ 200.00
Paralegals/Support staff	\$ 95.00

a. Other Expenses. In addition to the foregoing hourly rates for legal services fee, The Law Firm shall charge and the City shall pay all costs incurred by the

Law Firm in providing legal services to the City. Examples of such costs include charges for filing fees, depositions, expert witnesses, consultants, travel, long distance telephone, computer research, photocopies, scanning, color printer, messenger service, etc. The City shall, upon request of the Law Firm, advance to the Law Firm the payment of any single item of cost that exceeds Five Hundred Dollars (\$500.00). A copy of the “**Schedule of Costs**” is attached hereto.

b. *Monthly Billings.* The Law Firm will bill the City on a regular basis, normally each month, for both fees and disbursements. All bills will reflect services already performed and disbursements already made and are due upon receipt. Any amounts not paid within 60 days of the date of the bill shall be subject to a late payment charge of 1-1/2% per month (18% per year). If the City fails to pay any charges within 90 days of the date of the bill the Law Firm may elect to stop all work for the City. The City's obligation to make prompt payment of all charges does not depend upon achievement of any specific result. Payments will be applied first to the oldest amounts outstanding.

c. *Rates Generally.* The Law Firm agrees that it shall not raise nor seek to raise the hourly rates for legal services provided under this agreement for a period of four (4) years from the effective date of this agreement.

8. Billing Statement. The Law Firm will provide a computer generated billing statement each month setting forth the following information in a readable, detailed format:

- a. The date services are provided.
- b. The description of those services.
- c. The legal professional performing those services.
- d. The applicable hourly rate.
- e. The amount of time expended.
- f. A total of the cost of those services.

g. With respect to disbursements and other expenses, the billing statement will indicate the date, the item of expense and the cost of that expense in a cumulative total of all expenses that month.

9. Miscellaneous. The City may terminate this Agreement at any time. If the City discharges the Law Firm, the City shall pay all fees and costs incurred to the date of termination. Subject to the Colorado Rules of Professional Conduct and any applicable court rules, the Law Firm may, after reasonable advance written notice to the

City, terminate this Agreement. If the Law Firm terminates this Agreement, the City shall pay all fees and costs incurred to the date of termination.

10. Arbitration. Although we do not expect that any dispute between us will arise, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of legal fees or costs owed to the Law Firm or the quality of the Law Firm's services, including any claim of malpractice, such dispute shall be subject to binding arbitration. The City and Law Firm acknowledge that they are waiving their right to seek remedies in court, including the right to a jury trial. (This clause does not prevent the City and the Law Firm from trying to resolve any dispute through voluntary mediation, but there is no requirement to do so.)

Any dispute concerning fees or costs shall be submitted to the Legal Fee Arbitration Committee of the Denver Bar Association and the decision of the Committee shall be final and binding on both parties. Any dispute concerning the quality of the Law Firm's services, including malpractice claims, shall be submitted to a single arbitrator and the decision of the arbitrator shall be final and binding on both parties. A final judgment can be entered on the arbitration award by a court of competent jurisdiction. The arbitrator shall be selected from the Judicial Arbiter Group, Denver, Colorado unless the parties agree otherwise. If the parties do not agree on the selection of a single arbitrator within ten days after a demand for arbitration is made, then the arbitrator shall be selected by the Judicial Arbiter Group from among its available professionals.

All arbitrations shall be held in Denver, Colorado unless the parties mutually agree on some other location. All arbitrations shall proceed under the Commercial Arbitration Rules of the American Arbitration Association, except as modified in this Agreement, unless otherwise agreed by the parties. The arbitrator shall have the discretion to order that the costs of arbitration, fees (including expert witness and reasonable attorney fees), and other costs shall be borne by the losing party. Any filing fees or other administrative costs of arbitration shall be divided equally between the City and the Law Firm. Arbitration of all disputes, and the outcome of the arbitration, shall remain confidential between the parties.

11. Document Retention. The City acknowledges that the files the Law Firm creates and compiles for work on the City's matters, including notes, correspondence, pleadings, research, and documents which we prepare, will not be kept indefinitely. It is the Law Firm's policy to destroy all files (including all documents and materials therein), seven (7) years after we send such files to remote storage upon completion of each matter. However, if some legal restriction on destruction is imposed or some new development occurs, the retention period may be modified. This file destruction process is automatic and the City will not receive further notice prior to the destruction of these files. Accordingly, if the City wishes to maintain a record of any matter beyond our retention period, the City should consider maintaining its own files relating to the matters that we are handling.

12. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Colorado.

13. Amendment. This Agreement may be amended only by a written instrument signed by both of the parties hereto.

14. Prior Agreements. This Agreement shall supercede all prior agreements between the parties concerning the provision of legal services.

15. Signature. THE LAW FIRM AND THE CITY HAVE READ THIS DOCUMENT, UNDERSTAND IT, AND AGREE TO IT.

EXECUTED on this 2nd day of November 2, 2020, to be effective as of November 1, 2020.

MURRAY DAHL BEERY & RENAUD LLP

By: _____
Carmen Beery, Partner

Date: _____

CITY OF SALIDA, COLORADO

By: _____
P.T. Wood, Mayor

Date: _____

ATTEST:

By: _____
Erin Kelley, City Clerk

EXHIBIT A

Schedule of Costs

1. **Long Distance Telephone Charges:** There is no charge for long distance calls.
2. **Faxes:** There is no charge for faxes received or for faxes sent within the local calling area. For faxes sent outside of the local calling area, the Client is charged for the long distance telephone connection.
3. **Copying and Scanning:** Document scanning and copying charges are \$.10 per page for black and white copies, and \$.50 per page for color copies made within the Firm. Copying, collating, binding, and scanning performed outside the Firm shall be charged at actual cost. The decision to use outside scanning, copying, collating and binding services shall be made on a case-by-case basis as the circumstances require.
4. **Deliveries:** Items delivered by commercial messenger service are billed at the actual rate charged by the service.
5. **Legal Research:** The charge to the Client includes the usage amount billed directly to the Firm from its on-line legal research provider in relation to the Client's case.
6. **Mileage:** Mileage is charged at a rate consistent with the guidelines published by the IRS.
7. **Other Costs:** Other third party costs will be billed to Clients at the same rate the Firm is billed for the third party services.

MURRAY DAHL BEERY & RENAUD LLP
PRIVACY POLICY NOTICE

Attorneys, like other professionals, who advise on certain personal matters, are required by federal law to inform their Clients of their policies regarding privacy of Client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by this privacy policy. Therefore, please understand that your privacy is important to us and we will always protect your right to privacy. Maintaining your trust and confidence is a high priority to this law firm. The purpose of this notice is to comply with the law by explaining our privacy policy with respect to your personal information.

NONPUBLIC PERSONAL INFORMATION WE COLLECT:

In the course of providing our Clients with legal services, we collect personal and financial information about our Clients that is not available to the public and which is provided to us by our Clients or obtained by us with their authorization or consent.

PRIVACY POLICY:

As a Client of Murray Dahl Beery & Renaud LLP, rest assured that all nonpublic personal information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you, or as is permitted or required by law and applicable ethics rules.

CONFIDENTIALITY AND SECURITY:

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. We restrict access to nonpublic, personal information about you to those people in the firm who need to know that information to provide services to you (and their support personnel). In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards as well as federal regulations.

Please call the attorney you work with if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality service are very important to us.