



# REQUEST FOR COUNCIL ACTION

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**Title:** Request for Council Action – Approving an Agreement for Personal Services with Markowitz Herbold PC

**Preferred Agenda:** December 12, 2023

**Submitted By:** Cecily Hope Pretty, Administrative Services Director

**Reviewed By:** Robert Snyder, City Attorney

**Type of Action:** Resolution \_\_\_\_ Motion  X  Roll Call \_\_\_\_ Other \_\_\_\_

**Relevant Code/Policy:** Resolution No. 33 Declaring a Continuous Commitment to Water Quality, Resolution No. 34 to Pursue Potential Litigation

**Towards Council Goal:** Effective and efficient government, viable and sustainable essential services

**Attachments:** Draft Agreement for Personal Services

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**Purpose of this RCA:**

Approval of an Agreement for Personal Services with the law firm Markowitz Herbold PC, pending successful negotiation of terms by the City Manager or her designee and the City Attorney, to represent the City of Sweet Home with respect to the water quality challenges the City is facing from implementation of the September 1, 2021 Opinion and Order issued in *Northwest Environmental Defense Center et al. v. United States Corps of Engineers et al.*, United States District Court for the District of Oregon, Case No. 3:18-cv-00437-HZ.

**Background/Context:**

In 2021, an interim injunction was issued requiring the U.S. Army Corps of Engineers to take certain actions across multiple Willamette Valley dams that were intended to improve fish passage and water quality. One such action was the requirement to lower Green Peter Reservoir to historically low levels, including surface elevations it has not seen since construction of the dam. There have been ongoing negative impacts to water quality, wildlife, the local economy and more since the drawdown began in earnest this fall. The City has been investigating potential options for litigation that may either prevent future drawdown impacts and/or provide economic restoration for the City of Sweet Home.

**The Challenge/Problem:**

The City of Sweet Home is spending unplanned time and money to combat water quality issues and maintain safe drinking water for the community. The drawdown, which occurred already this year and is planned for subsequent years, has already had devastating effects on the environment and is negatively impacting the local economy. Litigation may be necessary to try to stop future drawdowns and mitigate future impacts to Sweet Home.

Markowitz Herbold PC has been identified as the best possible legal representation for the City of Sweet Home in this matter. Entering into an Agreement for Personal Services will allow the City to move forward with litigation options. This agreement will also allow for other municipalities to join a future lawsuit.

**Stakeholders:**

- City of Sweet Home Citizens – Citizens of Sweet Home deserve a beautiful, functional environment, access to recreational facilities, quality drinking water, and economic opportunities.
- City of Sweet Home Employers – Local businesses are negatively impacted by the drawdown and its consequences.
- City of Sweet Home Staff – Staff is spending increased time and money to mitigate the impact of the drawdown.
- City of Sweet Home City Council – The City Council desires to take action to protect the community of Sweet Home.

**Issues and Financial Impacts:**

Litigation is likely to be long and costly, and it is not yet known what the cost will be to carry out a lawsuit from start to finish. The City of Sweet Home will continuously monitor its legal expenditures and the likelihood of successful outcomes to ensure that continued litigation is sustainable and make every effort to recoup legal fees in the event of an award for damages to the City.

**Elements of a Stable Solution:**

The City of Sweet Home must seek options to preserve the environment, safety, and prosperity of Sweet Home and ensure solutions are legally and fiscally viable for the City and its taxpayers. Future litigation has been identified as a possible solution. This agreement will also allow for other municipalities to join and share legal costs, which is beneficial and more sustainable for the City and its taxpayers. Additionally, Markowitz Herbold PC is offering a discounted rate for their services in this matter.

**Options:**

1. Do Nothing – Do not approve the agreement.
2. Motion to direct the City Manager or her designee and the City Attorney to negotiate an Agreement for Personal Services with Markowitz Herbold PC for legal services concerning the Green Peter Reservoir Drawdown and its negative effects and impacts on the City of Sweet Home and any necessary litigation therefrom to protect the interests of the City of Sweet Home and to execute same as soon as practicable. Approval will allow the City Manager or her designee and the City Attorney to begin negotiations in earnest with Markowitz Herbold PC and move forward with potential legal action once the agreement is signed.

**Recommendation:**

Option 2 is the recommended option: Motion to direct the City Manager or her designee and the City Attorney to negotiate an Agreement for Personal Services with Markowitz Herbold PC for legal services concerning the Green Peter Reservoir Drawdown and its negative effects and impacts on the City of Sweet Home and any necessary litigation therefrom to protect the interests of the City of Sweet Home and to execute same as soon as practicable.