



## CITY COUNCIL STAFF REPORT

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**TO:** Honorable Mayor and City Council      **DATE:** April 26, 2021  
**FROM:** Matthew Bronson City Manager  
**PREPARED BY:** David P. Hale, City Attorney  
**SUBJECT:** Professional Services Agreement for City Attorney Services

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### **RECOMMENDATION**

Approve Amendments to the Professional Services Agreements for City Attorney and Assistant City Attorney Services.

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### **BACKGROUND**

The City Council appointed David P. Hale as the City Attorney in October 2016 and Molly Thurmond as the Assistant City Attorney in October 2018 and entered into professional services agreements with Mr. Hale and Ms. Thurmond for legal services. Prior to October 2016 Mr. Hale served as the City's Assistant City Attorney for a period of approximately three years. Mr. Hale has served as the Assistant City Attorney and City Attorney for the City of Grover Beach for over seven years with only one increase in his hourly rate and is currently charging an hourly rate of \$175.00 an hour for transactional services and \$195.00 for Litigation. The Assistant City Attorney, Molly Thurmond is also charging the same rates as the City Attorney.

Mr. Hale and Ms. Thurmond has also served as the General Counsel and Assistant General Counsel to the Five Cities Fire Authority respectively. They currently have a billable rate for the Authority of \$185.00 an hour for transactional and \$200.00 an hour for litigation. Given the City Attorney's rates have only increased one time in over seven years, it is respectfully requested the Council consider an amendment to the Professional Services Agreement for the City Attorney and Assistant City Attorney services to increase the rates for transactional to \$185.00 an hour and for litigation to \$200.00 an hour. This will also make their rates consistent with the rates being charged Five Cities Fire Authority.

### **FISCAL IMPACT**

The fiscal impact to this change should be minimal. Any potential increase in overall attorney cost will be within the existing budget for the City Attorney's Office.

### **PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

### **Attachments**

1. Third Amendment to Legal Service Agreement for City Attorney
2. First Amendment to Legal Service Agreement for Assistant City Attorney

THIRD AMENDMENT TO LEGAL SERVICE AGREEMENT  
BETWEEN  
CITY OF GROVER BEACH AND  
DAVID P. HALE  
A PROFESSIONAL CORPORATION

WHEREAS, this contract shall serve as an amendment to the Agreement for City Attorney Services, dated October 3, 2016, between the City of Grover Beach, (hereinafter called "City"), and David P. Hale, a Professional Corporation, hereinafter called "Attorney"), herein referred to as ("Amendment"); and

WHEREAS, Attorney has served in the capacity of City Attorney for City since October 3, 2016 with only one increase in Attorney's hourly rates: and

WHEREAS, Attorney currently serves in the capacity of City Attorney for City of Grover Beach at the rate of \$175.00 an hour for transactional work and a \$195.00 an hour for litigation; and

WHEREAS, Attorney is currently working for Five Cities Fire Authority at the rate of \$185.00 an hour for transactional and \$200 an hour for litigation, and the Council has requested the Attorney to return to the Council with an amendment to increase his rates consistent with the Five Cities Fire Authority contract: and

WHEREAS, Attorney has functioned under a current agreement which included a retainer that is not consistent with the legal services agreements of city attorney's representing similar cities in the Five Cities area nor Attorney's contract with Five Cities Fire Authority; and

WHEREAS, elimination of the retainer and implementing a straight hourly rate for services is administratively less burdensome and more efficient to all parties of this Agreement; and

WHEREAS, the parties have agreed to eliminate the retainer and replace it with a straight hourly billable rate for legal services; and

WHEREAS, the other provisions of the Agreement shall remain unchanged unless specifically modified by this Amendment.

IN ACCORDANCE WITH THE ABOVE, THE PARTIES AGREE AS AN AMENDMENT TO THE OCTOBER 3, 2016 AGREEMENT AS FOLLOWS:

Part 1. The above "WHEREAS" provisions are hereby incorporated with the same force, weight and effect of any other term and condition of this Amendment.

Part 2. SECTION 2, entitled "COMPENSATION" is deleted in total and replaced with the following:

A. Hourly Rate for Non-Litigation Matters

City shall pay to Attorney a billing rate of \$185.00 per hour for attorney time and \$110.00 per hour for paralegal time will be billed for services rendered under this Agreement. This billing rate is for non-litigation matters such as transactional assignments and attendance at meetings such as Council hearings and Planning Commission.

B. Litigation Matters

All litigation services performed by Attorney for the City shall be billed separately at the rate of \$200.00 per hour for all attorneys and \$110.00 per hour for all paralegals, plus costs. Litigation matters are defined for these purposes as any court action or any adjudicatory proceeding before an administrative agency, hearing officer, mediator, or arbitrator. Attorney will provide a detailed hourly bill for all such services on a monthly basis, when litigation legal services are being performed by the Attorney.

Billable time includes reviewing materials, drafting letters and pleadings, research, telephone calls, consultations, depositions, and appearances in court (including waiting for the case to be called), and any other time required to represent the City in each matter.

Costs include filing fees, process server fees, appraisal fees, investigation fees, deposition fees, express and overnight mail and other delivery charges, transcripts, travel expenses to and from court and other appearances (at the current IRS approved rate per mile), photocopies at fifteen cents (15 cents) per page when more than one hundred pages per month, and any other direct cost which will be charged on a pass-through basis. Billable time will be charged for travel time to and from Court but will not be charged for travel to City Hall for non-litigation matters.

C. Statements

Statements are rendered monthly and are due and payable within thirty (30) days of the statement date. Any amounts not paid within thirty (30) days of the statement date accrue interest at eighteen percent (18%) per annum from the statement date until paid. Attorney shall have the right to discontinue rendering services to the City for nonpayment of fees, which will be considered a breach of this Agreement by the City.

IN WITNESS WHEREOF, the City of Grover Beach has caused this Amendment to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and Attorney has signed and executed this Amendment on the 26<sup>th</sup> day of April, 2021.

CITY OF GROVER BEACH

By: \_\_\_\_\_  
Jeff Lee, Mayor

DAVID P HALE, A PROFESSIONAL  
CORPORATION

By: \_\_\_\_\_  
David P Hale

ATTEST:

By: \_\_\_\_\_  
Wendi Sims, City Clerk

FIRST AMENDMENT TO LEGAL SERVICE AGREEMENT  
BETWEEN  
CITY OF GROVER BEACH AND  
MOLLY THURMOND  
A PROFESSIONAL CORPORATION

WHEREAS, this contract shall serve as an amendment to the Agreement for Assistant City Attorney Services, dated October 1, 2018, between the City of Grover Beach, (hereinafter called "City"), and Molly Thurmond, a Professional Corporation, hereinafter called "Assistant City Attorney or ACA"), herein referred to as ("Amendment"); and

WHEREAS, ACA has served in the capacity of Assistant City Attorney for City since October 1, 2018: and

WHEREAS, ACA currently serves in the capacity of Assistant City Attorney for City of Grover Beach at the rate of \$175.00 an hour for transactional work and a \$195.00 an hour for litigation; and

WHEREAS, City Attorney and ACA are currently working for Five Cities Fire Authority at the rate of \$185.00 an hour for transactional and \$200 an hour for litigation, and the Council has requested the City Attorney to return to the Council with an amendment to increase the Office of the City Attorney rates consistent with the Five Cities Fire Authority contract: and

WHEREAS, the other provisions of the Agreement shall remain unchanged unless specifically modified by this Amendment.

IN ACCORDANCE WITH THE ABOVE, THE PARTIES AGREE AS AN AMENDMENT TO THE OCTOBER 1, 2018 AGREEMENT AS FOLLOWS:

Part 1. The above "WHEREAS" provisions are hereby incorporated with the same force, weight and effect of any other term and condition of this Amendment.

Part 2. SECTION 2, entitled "COMPENSATION" is amended as follows:

All provisions of Section 2, entitled COMPENSATION, shall remain the same except the hourly billable rate for Non-Litigation Matters under subsection "A" shall be changed to \$185.00 per hour and the hourly rate for Litigation Matters under subsection B shall be changed to \$200.00 per hour. City and ACA agree that attorney time will be billed by ACA for travel time to and from court.

IN WITNESS WHEREOF, the City of Grover Beach has caused this Amendment to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and Assistant City Attorney has signed and executed this Amendment on the 26<sup>th</sup> day of April 2021.

CITY OF GROVER BEACH

By: \_\_\_\_\_  
Jeff Lee, Mayor

MOLLY THURMOND, A PROFESSIONAL CORPORATION

By: \_\_\_\_\_  
Molly Thurmond

ATTEST:

By: \_\_\_\_\_  
Wendi Sims, City Clerk