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**CITY OF HOMER
HOMER, ALASKA**

Mayor

RESOLUTION 23-100

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA, AWARDING THE GENERAL COUNSEL LEGAL SERVICES CONTRACT FOR A THREE YEAR TERM TO THE FIRM OF JERMAIN, DUNNAGAN & OWENS, P.C. OF ANCHORAGE, ALASKA, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE THE APPROPRIATE DOCUMENTS.

WHEREAS, Jermain, Dunnagan & Owens, P.C. (JDO) have been the City of Homer's General Counsel since October 1, 2019, selected and hired by the City Council; and

WHEREAS, JDO is an Alaskan firm with the knowledge and understanding of Alaska's unique legal issues; and

WHEREAS, JDO has a number of attorneys on staff that have experience and focused expertise in complex litigation, business and commercial law, labor and employment law that the City uses frequently.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, awards a three year contract for General Counsel Legal Services to the firm of Jermain, Dunnagan & Owens, P.C. of Anchorage, Alaska and authorizes the City Manager to execute the appropriate documents.

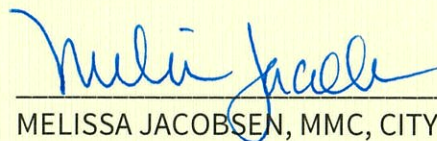
PASSED AND ADOPTED by the Homer City Council this 25th day of September, 2023.

CITY OF HOMER

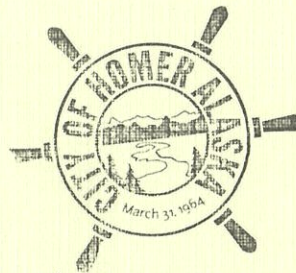


KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK



Fiscal Note: Acct. No. 100.0100.5624 monthly retainer of \$12,500, additional hours based on need and rates in contract fee schedule

GENERAL COUNSEL LEGAL SERVICES AGREEMENT

THIS Agreement made and entered into this _____ day of September, 2023, by and between the City of Homer, an Alaska municipal corporation (the City), and Jermain, Dunnagan & Owens, P.C. (the Firm).

Section 1. Engaged Employment of the Firm

The City hereby agrees to engage the Firm and the Firm hereby agrees to perform the services hereafter set forth.

Section 2. Scope of Services

- (A) Serve as the legal advisor of and be responsible to the City Council, and advise the City Manager, and City Clerk concerning matters affecting City administration, as well as perform other duties as may be prescribed by the City Council.
- (B) Prepare legal documents such as ordinances, resolutions, contracts, conveyances, etc., and legal opinions, as needed. Provide representation in court, negotiate on the City's behalf and handle other legal matters that may arise.
- (C) Be readily available for consultation by the City Council, City Manager, City Clerk, and City staff.
- (D) Draft opinion letters regarding, among other subjects, the interpretation of the Homer Municipal Code and Charter, state and federal laws, and policies.
- (E) Perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the City Council and/or City Manager.
- (F) Work effectively with the City Council, City Manager, City staff, and also with other public agencies with which the City has legal relations.
- (G) The City Attorney, Michael Gatti, will be principally responsible for performing or supervising the work to be done by the Firm. The City Attorney will not change without consent of the City Council. Unless excused by the City Council, Mayor or Manager, the City Attorney will attend the majority of the 12 monthly required City Council meetings outlined in this contract. If the City Attorney is not available, he will send his designee.
- (H) The City Attorney, Michael Gatti, or his designee if he is not available, will be able to appear with reasonable notice telephonically at other meetings as requested by the City Council.
- (I) The City Attorney, at the City's request, will provide annual training for the City

Council and/or Commissions on municipal topics regarding or affecting the City of Homer. At least one training session after the municipal election will be provided to the City Council and as needed to the Planning Commission.

Section 3. Time of Performance

The services of the Firm shall commence on October 1, 2023 and continue in effect for three years. The City shall have the option to extend this Agreement for an additional three-year term commencing on the expiration of the Initial Term. Upon renewal of the Agreement, the monthly retainer amount and hourly rates may be adjusted only upon agreement by the City.

Section 4. Compensation

- (A) Subject to the provisions of this Agreement, the City shall pay the Firm a monthly retainer of \$12,500 to provide up to 65 hours of general counsel service per month. The retainer amount includes attorney time, attendance in Homer for 12 council meetings annually, computerized legal research charges, and telephone and fax charges. Paralegal services will be billed separately at the paralegal hourly rate. In the event the Firm’s invoice for any month includes less than 55 hours of attorney time, the number of hours below 55 shall be rolled over as a credit to the next month and, thereafter, from month to month; provided that, any outstanding credit remaining at the end of a contract year will not carry over to the next contract year.
- (B) The following are the hourly rates for services provided by attorneys in excess of 65 hours per month, for paralegal services, and for specialized services (i.e., litigation, administrative proceedings):

Hourly Rates	
Name	Hourly Billing Rate
Michael Gatti, Primary Attorney	\$250
Shareholders/Of Counsel	\$250
Senior Attorneys	\$235
Associates	\$215
Paralegals	\$105

- (C) Travel time for travel for attendance at more than 12 Council meetings in a contract year, or for other purposes approved by the City Manager, may be charged at a discounted rate of one half (½) of the hourly rate of the applicable hourly rate.
- (D) Costs for copies, messenger services and third-party charges will be passed through to the City at the actual cost. There will be no charge for computerized legal research, telephone, and fax charges as such charges are included in the monthly retainer.

Section 5. Method and Time of Payment

- (A) The City will compensate the Firm in accordance with Section 4, which compensation shall constitute the full and complete compensation for the Firm’s services and performance under this Agreement. Payments will be made on receipt of monthly

billing.

(B) No payment will be disbursed until approved by the City.

Section 6. Termination of Agreement for Cause

If, through any cause, the Firm shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material (to include without limitation data and information kept on computer, disk, video, tape, etc.) prepared by the Firm arising out of or connected with this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination or upon request. The Firm shall be entitled to receive compensation in accordance with the payment provisions of Section 4 of this Agreement only for work completed to the City's satisfaction in accordance with Section 4 of this Agreement and the other terms of this Agreement.

Section 7. Termination for Convenience of City

The City may terminate this Agreement at any time by giving written notice to the Firm of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in Section 6 are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Firm shall be entitled to receive compensation in accordance with the payment provisions of Section 4 of this Agreement only for work completed to the City's satisfaction in accordance with Section 4 of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Firm, Section 6 of this Agreement shall govern the rights and liabilities of the parties.

Section 8. Causes Beyond Control

In the event the Firm is prevented by a cause or causes beyond control of the Firm from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement, which will render the Firm liable for damages or give rights to the cancellation of the Agreement for cause, provided that the Firm duly and timely notifies the City in writing of the cause or causes, which writing must be titled "Cause or Causes Beyond Control of Attorney." However, if and when such cause or causes cease to prevent performance, the Firm shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Firm and which prevent the performance of the Firm: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Firm from performing the terms of the Agreement as set forth

herein. Events which are peculiar to the Firm and would not prevent another Firm from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Firm. Based on Firm's "Cause or Causes Beyond Control of Attorney," the City will determine whether the event preventing the Firm from performing is a cause beyond the Firm's control.

Section 9. Modifications

- (A) The parties may mutually agree to modify the terms of the Agreement only by means of an agreement in writing signed by both parties. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
- (B) It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Firm to agree to modification in the scope of services will be the basis for termination of the Agreement for cause.

Section 10. Non-Assignability

- (A) The Firm shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City, thereto.
- (B) The Firm shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 11. Interest of the Firm

The Firm covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Firm further covenants that in the performance of this Agreement it shall not knowingly employ any person having any such interest and that it shall reasonably inquire of all its employees to determine that they have no such interest.

Section 12. Findings Confidential

Except as required by law, including court orders directing disclosure, any reports, information, data, etc., given to or prepared or assembled by the Firm under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Firm without the prior written approval of the City.

Section 13. Publication, Reproduction and Use of Materials

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 14. Records

- (A) The Firm's files will be retained in accordance to City's Records Retention Schedule. The Firm will provide the City Clerk with a report and obtain written authorization prior to destruction of any records.
- (B) Upon termination of this agreement, all the Firm's records will be turned over to the City Clerk as described in Section 6.

Section 15. Jurisdiction; Choice of Law

Any civil action arising from this Agreement shall be brought in the district or superior courts for the Third Judicial District of the state of Alaska at Homer. The laws of the state of Alaska shall govern the rights and obligations of the parties.

Section 16. Non-Waiver

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every provision hereof.

Section 17. Permits, Laws and Taxes

The Firm shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing its obligations under this Agreement, the Firm shall comply with all applicable statutes, ordinances, rules and regulations. The Firm shall pay all taxes pertaining to its performance under this Agreement.

Section 18. Relationship of the Parties

The Firm shall perform its obligations hereunder as an independent contractor of the City. The City may administer this Agreement and monitor the Firm's compliance with this Agreement but shall not supervise or otherwise direct the Firm except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 19. Administration of this Agreement

- (A) The City Manager or designee will be the representative of the City administering this Agreement.
- (B) The services to be furnished by the Firm shall be administered by the City Manager. In the event that the Firm is unable to serve for any reason to perform his obligations under this Agreement, the Firm shall appoint a successor in interest but such appointment will be subject to a written approval of the City.

Section 20. Integration

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement; the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Section 21. Interpretation and Enforcement

This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 22. The Firm's Insurance

- (A) The Firm will maintain during the course of the contract Firm's errors and omissions insurance in the amount of at least \$1,000,000 per claim and \$2,000,000 aggregate, with a deductible no greater than \$25,000.
- (B) The Firm will, at its own expense, secure and maintain and file a certificate of insurance with the City with acceptable insurance coverage.
 - (1) Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 per claim and \$2,000,000 aggregate Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
 - (2) Worker's Compensation Insurance in compliance with the laws of the State of Alaska, AS 23.30, et. seq., and federal jurisdiction where the work is being performed, covering all employees engaged in the performance of the work specified in this Agreement. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease-policy limit; and \$100,000 disease-each employee.
 - (3) Comprehensive Automobile Liability: Limit \$1,000,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to include all owned or rented/leased vehicles driven by employees engaged in the performance of the work specified in this Agreement.
 - (4) Unemployment Insurance by payment of employment security taxes for all employees hired by the Firm to work on this project. In the event of the Firm's failure to pay such taxes, the City will withhold an amount sufficient to pay such taxes from any payments owed to the Firm by the City. The City also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by the Firm. The City further reserves the right to withhold that portion of employment security taxes owed to any

employees pending notification of the Firm's unemployment security tax clearance from the Alaska State Department of Labor.

- (C) A lapse in insurance coverage is a material breach of this Agreement, which may result in immediate termination of the Agreement, pursuant to Section 6 for cause.
- (D) Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation.

Section 23. Understanding

The Firm acknowledges that the Firm has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of his own free will.

Section 24. Severability

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 25. Compliance with Law

The Firm shall comply with all applicable Federal, State of Alaska and City laws, regulations, and ordinances in performing its duties hereunder.

Section 26. Notices

Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

City: City Manager
City of Homer
491 E. Pioneer Avenue
Homer, Alaska 99603

The Firm: Jermain, Dunnagan & Owens, P.C.
Attention: Michael Gatti
111 West 16th Ave, Suite 203
Anchorage, Alaska 99501

CITY OF HOMER:

THE FIRM:

Robert Dumouchel, City Manager

Mark P. Melchert, Vice President