

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 12/10/12

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| AGENDA ITEM: Professional Services Agreement between City of Marysville and Summit Law Group | |
| PREPARED BY: Gloria Hirashima, Chief Administrative Officer | DIRECTOR APPROVAL: |
| DEPARTMENT: Executive | |
| ATTACHMENTS: Proposed Agreement for Special Counsel Legal Services | |
| BUDGET CODE: | AMOUNT: |

SUMMARY:

The proposed agreement establishes a professional services agreement between the City and Summit Law Group for special counsel services related to personnel and labor negotiation and related matters. Marysville has utilized the services of Summit Law since 2011. This agreement would provide for continued special counsel in 2013. Summit Law is an experienced firm specializing in public sector employment law. They provide discounted rates for public sector clients.

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| RECOMMENDED ACTION: |
| Staff recommends that City Council approve the Special Counsel Legal Services with Summit Law Group. |

AGREEMENT FOR SPECIAL COUNSEL LEGAL SERVICES

THIS AGREEMENT (hereinafter "Agreement") is entered into the date last below written between the City of Marysville, Washington, a municipal corporation (hereinafter the "City"), and Summit Law Group (hereinafter the "Summit Law Group").

WHEREAS, the City desires to use Summit Law Group for Special Counsel services on an as-needed basis, and Summit Law Group is willing to do so in accordance with terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the City and Summit Law Group as follows:

I. Legal Services.

A. Summit Law Group will provide the City with legal services related to personnel and labor negotiation and related matters as requested by the City.

B. Summit Law Group will use its best efforts to perform the City's legal matters promptly and efficiently according to the highest legal and ethical standards.

II. Fees.

A. The City shall pay Summit Law Group, as sole compensation for the services performed under this Agreement, such sums of money as are arrived at by computing the actual number of hours expended in the performance of this Agreement and multiplying such total hours by the hourly rates shown in Attachment A.

B. The City shall reimburse Summit Law Group for out-of-pocket expenses that are not normally included within the fee for professional services, including copying charges by third party vendors and messenger services.

C. Summit Law Group should submit billings by the 15th day of each month. The billing statements shall reflect services rendered in increments of one-tenth of an hour. The billing statements shall state for each date services were performed a brief summary of the services provided, the timekeepers who provided the services, the number of hours, or fractions of hours, spent and expenses and disbursements in detail.

D. Bruce Schroeder will have overall responsibility for Summit Law Group under this Agreement.

E. Summit Law Group and the assigned attorney have been retained because of their expertise. The City should not be billed for general legal or technical research necessary to educate staff or less experienced attorneys in the firm without advance City approval. The

City shall not be billed for time spent in preparing or reviewing the firm's billings to the City or in internal firm quality control procedures. Summit Law Group will keep the City fully informed of time used for conferences, telephone calls, drafting documents, research, court time, and necessary travel time.

F. The City shall make payment when it is fully satisfied with the services performed for the previous month. Payments shall be made through the City's ordinary payment process and shall be considered timely if made within thirty (30) calendar days of actual receipt of a properly completed billing. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly billed.

III. Interaction with City.

A. Summit Law Group will keep the City well informed of the legal matters it handles on the City's behalf. Summit Law Group will send the City copies of all material papers coming in or going out of its offices to or from third parties. Summit Law Group, at such times and in such form as the Chief Administrative Officer may require, shall furnish the City with periodic reports pertaining to the work and services undertaken pursuant to this Agreement. The City's files at Summit Law Group and its progress shall be open to the City for inspection at any time, and the City's files shall be the property of the City.

B. The Chief Administrative Officer should be given advance notice of any significant decisions in order to be able to participate fully in making such decisions.

IV. Independent Contractor Status.

A. Summit Law Group shall serve as an attorney for the City and shall at all times perform its duties and responsibilities and carry out all services as an independent contractor.

B. Summit Law Group, at its sole expense, shall obtain and keep in force any and all necessary licenses, permits and tax certificates. Summit Law Group shall maintain all necessary insurance to protect it from losses and claims which may arise out of or from performance of duties related to this Agreement, including Worker's Compensation and professional liability insurance.

C. Summit Law Group shall be solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed such a tax or assessment as a result of this Agreement, Summit Law Group shall pay the same before it becomes due.

V. Suspension or Termination.

The City may suspend or terminate the performance of services under this Agreement by written notice to Summit Law Group, in whole, or from time to time in part, at the City's discretion. Upon termination, the City will pay Summit Law Group for all outstanding work completed prior to termination, together with any agreed reasonable services necessary to complete any work outstanding at the time of termination which the City requests be completed prior to termination.

VI. Nondiscrimination.

A. Summit Law Group shall, in all hiring or employment made possible or resulting from this Agreement, take affirmative action to ensure that there shall be no unlawful discrimination against any employee or applicant for employment because of sex, race, age, color, creed, national origin, marital status or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

B. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

VII. Hold Harmless/Indemnification.

A. Summit Law Group agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of Summit Law Group, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of Summit Law Group under this Agreement.

B. In the event that both Summit Law Group and the City are both negligent, then Summit Law Group's liability for indemnification of the City shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees and disbursements) that can be apportioned to Summit Law Group, its officers, employees, and agents.

C. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

D. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

VIII. Insurance.

a. **Minimum Limits of Insurance.** Summit Law Group shall, before commencing work under this Agreement, file with the City certificates of insurance coverage to be kept in force continuously during this Agreement, and during all work performed pursuant to all short form agreements, in a form acceptable to the City. Summit Law Group shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Summit Law Group, its agents, representatives or employees. Said certificates shall name the City, its officers, agents, employees and elected officials, as an additional named insured with respect to all coverages except professional liability insurance and L & I. The minimum insurance requirements shall be as follows:

(1) Comprehensive General Liability. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage; \$2,000,000 general aggregate. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under Summit Law Group's Commercial General Liability insurance policy with respect to the work performed for the City.

(2) Automobile Liability. \$300,000 combined single limit per accident for bodily injury and property damage; Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

(3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington;

(4) Errors and Omissions Liability. \$1,000,000 per occurrence and as an annual aggregate.

b. **Acceptability of Insurers.** Insurance to be provided by Consultant shall be with an A.M. Bests rating of no less than A:VII, or if not rated by Bests, with minimum surpluses the equivalent of Bests' VII rating.

c. **Verification of Coverage.** In signing this Agreement, Summit Law Group is acknowledging and representing that required insurance is active and current.

d. **Primary Insurance.** Summit Law Group's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool

coverage maintained by the City shall be excess of Summit Law Group's insurance and shall not contribute with it.

e. **No Limitation.** Summit Law Group's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Summit Law Group to the coverage provided by such insurance or otherwise limit the recourse to any remedy available at law or in equity.

f. **Occurrence Basis.** Unless approved by the City, all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy.

IX. Conflict of Interest.

Summit Law Group agrees not to perform professional services for other clients where a conflict of interest or ethical violation as defined in the Rules of Professional Conduct for attorneys may exist, except as otherwise agreed to in writing by the City.

X. Compliance with Law.

Summit Law Group agrees to perform all services under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

XI. Severability.

If any portion of this Agreement is changed per mutual agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

XII. Non-Waiver.

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

XIII. Extent of Agreement/Modification.

This Agreement, together with all attachments and addenda, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties hereto.

XIV. Notice.

Notice pursuant to this Agreement shall be given in writing to Bruce Schroeder Summit Law Group, LLP, 315 Fifth Avenue South, Suite 1000, Seattle, WA 98104 at Summit Law Group and to Gloria Hirashima, CAO, City of Marysville, City Hall 1049 State Avenue, Marysville, Washington 98270, or at such other persons and/or addresses as the Summit Law Group and/or the City may designate.

XV. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

XVI. Venue.

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

XVII. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

XVIII. Time of Performance.

This Agreement shall commence on January 1, 2013 and end December 31, 2013. Extension of the services contract will be by written agreement, signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

SUMMIT LAW GROUP, LLP

CITY OF MARYSVILLE

By: _____
Bruce Schroeder

By: _____
Jon Nehring, Mayor

Date: _____

Date: _____

**SUMMIT LAW GROUP -- LABOR/EMPLOYMENT
ATTORNEYS
2013 Fee Schedule**

| NAME | PUBLIC RATE |
|---------------------|-------------|
| Peter Altman | 210.00 |
| Kristin D. Anger | 260.00 |
| Denise L. Ashbaugh | 235.00 |
| Michael C. Bolasina | 260.00 |
| John H. Chun | 265.00 |
| Elizabeth R. Kennar | 260.00 |
| Otto G. Klein | 295.00 |
| Sofia D. Mabee | 235.00 |
| Shannon E. Phillips | 260.00 |
| Bruce L. Schroeder | 295.00 |
| Linda Swanson | 115.00 |
| Rodney B. Younker | 290.00 |