

**Contract No. 051-15**  
**AGREEMENT FOR CITY ATTORNEY SERVICES**

THIS AGREEMENT, is made between the City of Port Orchard, a Washington municipal corporation (hereinafter the “City”) and Carol Morris of Morris Law, P.C. a corporation organized under the laws of the State of Washington, located and doing business at 3304 Rosedale Street, Gig Harbor, WA 98335 (hereinafter the “City Attorney”).

Section 1.     Purpose.     The purpose of this Agreement is to appoint Carol Morris as the City Attorney, and to ensure that the City receives professional services from the City Attorney in an effective, timely and cost efficient manner while ensuring that the City Attorney is appropriately and fairly compensated for services rendered.

Section 2.     Duties.

A.     The City Attorney shall be principally responsible for performing all legal work for the City, except as set forth in subsection (B) below. The following list of duties is illustrative of the services to be performed by the City Attorney, but is not necessarily inclusive of all duties:

1.     The City Attorney’s office is located at: 3304 Rosedale Street N.W., Suite 200, Gig Harbor, WA. (253) 851-5090. The City may schedule appointments with the City Attorney as needed, either in the Morris Law office or in City Hall in Port Orchard. The City may ask the City Attorney to attend meetings on issues relating to City business in other locations.

2.     The City Attorney shall review, and where directed, draft City ordinances, contracts, resolutions, interlocal agreements, correspondence and other legal documents as requested by the City;

3.     At the Mayor’s and City Council’s discretion, and consistent with Port Orchard Municipal Code (POMC) Section 2.08.020(2) and RCW 35.23.111, the City Attorney may be assigned to represent the City in lawsuits and other contested proceedings commenced by the City;

4.     At the Mayor’s and City Council’s discretion, and consistent with POMC Section 2.08.020(2) and RCW 35.23.111, the City Attorney may be assigned to represent the City in lawsuits and other contested proceedings in which the City is named as a defendant;

5.     The City Attorney shall approve all legal documents as to proper form and content;

6. The City Attorney shall advise the Mayor, Councilmembers, staff members, committee members, commission members and board members with regard to legal matters relating to their respective duties being performed for the City, or by telephone, in person and/or by written memo, on routine City business;

7. The City Attorney shall be available on an as-needed basis to discuss legal matters with citizens, which affect the City and to respond to citizen inquiries in person, in writing or by telephone, involving City business;

8. The City Attorney or their designee will attend Council meetings, work sessions, and other meetings as required;

9. The City Attorney may be asked to attend board meetings, commission meetings, committee meetings or any other type of meeting on an as-needed basis, including meetings with other governmental agencies as necessary on matters involving the City; and

10. The City Attorney shall perform such other duties as are necessary and appropriate in order to provide the City with legal representation. The City Attorney acknowledges that the Mayor may decide to assign work to another attorney during the term of this Agreement, in his discretion.

B. The City Attorney's duties shall not include the following:

1. Providing public defense services for indigent defendants;
2. Providing criminal prosecution services;
3. Providing legal services associated with union negotiations, personnel or employment matters, disciplinary proceedings.

4. Representing the City in any legal matter where the City Attorney is prohibited from doing so as a result of a conflict of interest under the Rules for Professional Conduct or other applicable law or regulation;

5. Providing legal services where the City has insurance coverage that provides for legal services to the City, the City has tendered the defense of the lawsuit to the insurance carrier, and the insurance carrier has assigned the lawsuit to an attorney other than the City Attorney. Provided, however, that if the insurance carrier has assigned the lawsuit to an attorney other than the City Attorney, the City Attorney may monitor the lawsuit, as requested by the City, on a case-by-case basis. The City acknowledges that the insurance carrier may retain the City Attorney to provide legal services.

Section 3. Compensation. The City hereby agrees to pay Carol Morris, as City Attorney, for legal services at the rate of two hundred dollars (\$200.00) per hour.

Other attorneys within Morris Law may assist with the provision of services to the City, with permission of the Mayor. The hourly rate for any associate is one hundred eighty dollars (\$180.00) per hour. The hourly rate for Legal Assistants (non-attorneys) is seventy-five dollars (\$75.00) per hour. The City Attorney agrees that the hourly rate charged for the City Attorney's services contracted for herein shall remain locked in at the negotiated rate for a period of one (1) year from the effective date of this Agreement.

The charges for legal services provided will be based on actual time or based on increments which are no greater than 6 minutes. Computerized legal research services, Westlaw, will not be charged to the City. The City Attorney may not bill for travel time. No separate charges shall be paid for the following ordinary costs of doing business: local and long distance telephone costs and charges, postage, meals, clerical staff work, supplies and word processing. The City agrees to reimburse the extraordinary expenses incurred by City Attorney, at cost with no mark-up as follows: legal messenger services, large volume photocopies prepared at the City Attorney's office shall be reimbursed at the rate of \$.15 per page, large volume photocopies prepared by outside reproduction service shall be reimbursed at cost; but only when approved in advance by the Mayor.

Section 4. Independent Contractor Status. It is expressly understood and agreed that the City Attorney, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the City. The City shall not be liable for, nor be under any obligation to pay to the City Attorney or any of her employees, sick leave, vacation pay, overtime or any other benefits applicable to employees of the City, nor to pay or deduct any social security, income tax or other tax from the payments made to the City Attorney which may arise as an incident of the City Attorney's performance of work for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the City Attorney. The parties agree that the City Attorney has the ability to control and direct the performance and details of his work, the City being interested only in the results obtained.

Section 5. Billings. The City Attorney shall use the City's routing number system and shall submit to the City Treasurer monthly bills for the assigned matter describing the legal services provided during the previous month. The City Attorney agrees to notify the City Clerk by e-mail when 45 hours have been spent on Port Orchard matters in any one month. The City Attorney shall not bill for duplicate services performed by more than one person or for services to correct Attorney errors or oversights. The City Attorney shall bill for only one participant in a conference or consultation between members of the City Attorney's firm.

The City Attorney's monthly bills shall include, at a minimum, the following information for each specific matter to which such services or costs pertain: routing number, the name of the matter; a brief description of the legal services performed; the date that the services were performed; and the amount of time spent on each date services were performed and by whom. In addition to providing copies of all documents as specified below, the City Attorney shall provide any information that will assist the City

in performing a thorough review and/or audit of the billings, as may be requested by the City. The City Attorney shall ensure that no confidential information appears on invoices, and that no additional legal review of the City Attorney's invoices shall be required in order to respond to a request for disclosure under the Public Records Act.

Unless the City objects to all or any portion of the City Attorney's invoice, the City shall pay the full amount within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the City Attorney of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

Section 6. Book and Records. The City Attorney agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

Section 7. Advice and Status Reporting. The City Attorney shall provide the Mayor and City Council with timely notice and advice of all significant developments arising during performance of her services hereunder, orally or in writing, as appropriate or as requested. The City Attorney shall provide the Mayor and the appropriate department head with copies of all e-mails, pleadings, motions, discovery, correspondence, and other documents prepared by the City Attorney, including research memoranda, or received by the City Attorney unless they have been otherwise provided to the City.

Section 8. Indemnification. The City Attorney shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the City Attorney's work when completed shall not be grounds to avoid any of these covenants of indemnification. The provisions of this section shall survive the expiration or termination of this Agreement.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the City Attorney and the City, its officers, officials, employees, agents and Volunteers, the City Attorney liability hereunder shall be only to the extent of the City Attorney negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CITY ATTORNEY

WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CITY ATTORNEY'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CITY ATTORNEY'S EMPLOYEES DIRECTLY AGAINST THE CITY ATTORNEY.

Section 9. Insurance. The City Attorney 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 City Attorney, its agents, representatives, or employees.

A. Minimum Scope of Insurance

City Attorney shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (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.
2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
3. Professional Liability insurance appropriate to the profession.

B. Minimum Amounts of Insurance. The City Attorney shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Professional Liability insurance.

1. The City Attorney's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the City Attorney's insurance and shall not contribute with it.
2. The City Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

- C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- D. Verification of Coverage. The City Attorney shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the City Attorney before execution of this Agreement.

Section 10. Equal Opportunity Employer. In all Attorney services, programs or activities, and all hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by City Attorney or by City Attorney's employees, agents, subcontractors or representatives against any person because of race, religion, color, gender, pregnancy, age (except minimum age and retirement provisions), marital status, military or veteran status, national origin, sensory, mental or physical disability, sexual orientation (including gender identity and gender expression), genetic information, or any other category protected by federal, state, or local law. This requirement shall apply, 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. City Attorney shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the American With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the City Attorney's breach, may result in ineligibility for further City agreements.

Section 11. Assignment. The City Attorney shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

Section 12. Licenses. The City Attorney warrants that she and every attorney in her firm is a member in good standing with the Washington State Bar, and that any license or licenses that are required in order to perform the legal services under this Agreement have been obtained and are valid.

Section 13. Duration of Agreement; Termination.

A. Duration. The term of this Agreement shall be for one year from the date this Agreement is executed by both parties, or until terminated by either party pursuant to the terms hereof, whichever is later. The parties may agree to extend this Agreement twice, for two years each, for a total of four years. The parties may negotiate the terms of this Agreement for any extension.

B. Termination. This Agreement may be terminated by either party upon ten (10) days' written notice with or without cause. In the event of termination, the City

Attorney shall be entitled to compensation as provided for in this Agreement, for services performed satisfactorily to the effective date of termination; provided, however, that the City may condition payment of such compensation upon the City Attorney's delivery to the City of any and all documents, photographs, computer software, video and audio tapes, and other materials provided to the City Attorney or prepared by or for the City Attorney or the City in connection with this Agreement.

Section 14. Notices. Notices required under this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

City Attorney:

Carol Morris  
Morris Law, P.C.  
3304 Rosedale Street N.W., Suite 200  
Gig Harbor, WA 98335

City of Port Orchard:

City of Port Orchard  
216 Prospect Street  
Port Orchard, WA 98366

Attn: Tim Matthes, Mayor

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

Section 15. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by the City Attorney pursuant to this Agreement shall be the property of the City at the moment of their completed preparation.

Section 16. Conflict of Interest. The City Attorney warrants and covenants that the City Attorney presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local or federal law or any rule of professional conduct. In the event that any conflict of interest should nevertheless hereinafter arise, the City Attorney shall promptly notify the City of the existence of such conflict of interest.

Section 17. Time is of the Essence. The City Attorney agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

Section 18. Confidentiality. The City Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without prior written consent of the City, any secret, confidential information, knowledge or data relating to the products, process or operation of the City and/or any of its departments and divisions. The City Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information or material developed or obtained by City Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

Section 19. Rules of Professional Conduct. All services provided by the City Attorney and Morris Law, P.C. under this Agreement will be performed in accordance with the Rules of Professional Conduct for attorneys established by the Washington Supreme Court.

Section 20. Amendments. This Agreement is not subject to modification or amendment, except by a written authorization executed by both the City Attorney and the duly authorized representatives of the City, which written authorization shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

Section 21. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

Section 22. Severability. Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Section 23. Controlling Law. The laws of the State of Washington shall govern this Agreement and all matters relating to it.

Section 24. Whole Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 25. Disputes. In the event that the parties are unable to resolve any dispute regarding the performance of the legal services or this Agreement, any litigation brought to enforce the terms of this Agreement shall be filed in Kitsap County Superior Court. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.



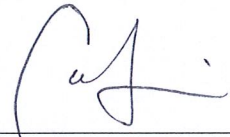
IN WITNESS WHEREOF, City Attorney and the City, by the signatures below, have executed this Agreement on the dates indicated below.

DATED this 15 day of April, 2015.


CITY OF PORT ORCHARD

CITY ATTORNEY

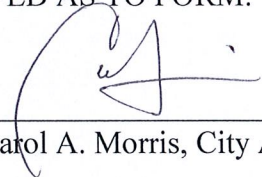
By:   
Tim Matthes, Mayor

By:   
Carol Morris, President  
Morris Law, P.C.

ATTEST:

By:   
Brandy Rinearson, City Clerk

APPROVED AS TO FORM:

By:   
Carol A. Morris, City Attorney

