



RESOLUTION NO. 7079

A RESOLUTION AWARDING A PROFESSIONAL SERVICES CONTRACT TO ERIK J.D. MOELLER AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ERIK J.D. MOELLER FOR PUBLIC DEFENDER SERVICES

WHEREAS, the City has a constitutionally mandated responsibility to provide public defender services; and

WHEREAS, the City desires to have legal services performed for eligible persons entitled to public representation by the defense attorney; and

WHEREAS, all payments made for public defender services are for the sole purpose of providing legal defense services to eligible persons; and

WHEREAS, the City of Albany advertised a request for proposals for public defender services on November 18, 2021, and received two responsive, competitive proposals; and

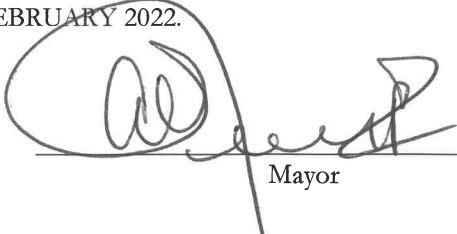
WHEREAS, the evaluation team reviewed the technical proposals and interviewed both candidates; and

WHEREAS, the evaluation team recommends that the City Council enter into a contract with Erik J.D. Moeller for five years, beginning March 2022, with an option to extend the term for two additional one-year periods.

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council hereby awards a contract to Erik J.D. Moeller to provide public defender services, beginning March 2022, for up to seven years; and

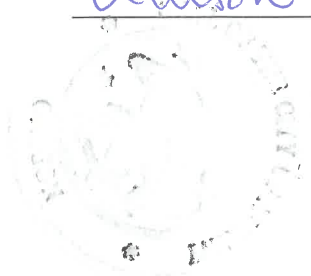
BE IT FURTHER RESOLVED that the City Manager is hereby authorized to sign a contract between the City of Albany and Erik J.D. Moeller to provide public defender services in accordance with the Professional Services Agreement, Attachment A.

DATED AND EFFECTIVE THIS 23RD DAY OF FEBRUARY 2022.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk





# PROFESSIONAL SERVICES AGREEMENT

## FOR PUBLIC DEFENDER SERVICES

### CITY OF ALBANY, OREGON

This Agreement is made and entered into by and between the City of Albany, Oregon, (hereafter referred to as "City") and Erik J.D. Moeller, (hereafter referred to as "Law Firm") and has an "Effective Date" of March 1, 2022.

#### **Recitals:**

Whereas, the City has a constitutionally mandated responsibility to provide public defender services; and

Whereas, the City desires to have legal services performed for eligible persons entitled to public representation by the Defense Attorney; and

Whereas, all payments made for public defender services is for the sole purpose to provide legal defense services to eligible clients.

#### **Section 1: Personnel.**

Erik Moeller is contracted to provide public defender services to the City of Albany and shall be designated "Defense Attorney". Employees and agents of the Law Firm are authorized to assist the Defense Attorney in carrying out the responsibilities of the position.

Law clerks and paralegals may be employed by the Law Firm to assist in Law Firm duties. Law clerks employed by the Law Firm are authorized to perform direct municipal public defender functions and to assist in general research and clerical functions and paid by the Law Firm.

#### **Section 2: Scope of Services.**

The Law Firm is responsible for City Municipal Court defense representation as authorized by the City Manager or designee. The Defense Attorney shall agree to perform the functions and duties specified below and shall perform such other duties if mutually agreed upon by both parties.

The scope of services includes, but is not limited to:

1. After appointment of client to the Defense Attorney, the Defense Attorney will provide competent legal representation, consultation, and legal advice to clients and appear in all court proceedings, including all specialty courts (e.g., mental health court, community court) all trials, all sentencings, and all hearings before the Albany Municipal Court. The Defense Attorney is not required to be at the initial arraignment of client.
2. Represent the client in all plea negotiations.
3. Prepare a defense, conduct legal research, gather facts, and interview the client and witnesses.
4. Work closely with clients, providing and discussing information, reports, defenses, and case developments.
5. Write and argue motions, pleadings, and legal arguments.
6. Obtain and organize all pretrial discovery, withdrawal of pleas, and file and argue all appropriate legal motions.
7. Maintain strict confidentiality of oral and written communications, including confidentiality

of Law Enforcement Data System (LEDS) printouts.

8. Be available to the Municipal Court Judge and Municipal Court staff via email, phone or office visits (returning phone calls and/or emails within 24 hours during the work week, not including holidays) for questions and information regarding cases.
9. Provide all equipment and supplies reasonably necessary to perform services in a professional manner.
10. Meet with clients in a timely manner and travel to custodial facilities when needed to meet with clients.

### **Section 3: Term of Contract.**

This agreement shall be for five years, commencing the first day of March 2022, and ending on the last day of February of 2027. The agreement includes an option to extend the contract for two additional, one-year terms with written notice of such intent by the City. Should the City elect to renew the contract, a written notice will be provided a minimum of thirty (30) days prior to the expiration of the current contract of its intent to do so. Contract extensions will be for the same terms and conditions as the original agreement, subject to compensation review.

### **Section 4: Substitution of Representation.**

It is anticipated that circumstances will arise from time to time wherein it is in the interest of the City and the Defense Attorney to transfer an assignment to another attorney to provide defense attorney services due to a conflict of interest in representation, or due to a schedule conflict. In these circumstances, a substitute attorney will be provided by the City and will be appointed by the Albany Municipal Court Judge to appear in lieu of the Defense Attorney. All substitute public defender services will be paid by the City of Albany.

### **Section 5: Compensation.**

Compensation for public defender services to the Law Firm shall be paid in the form of a retainer. Compensation for defender services for the first year of the contract term, beginning March 1, 2022, through February 28, 2023, will be \$95,000. Compensation for years 2 through 5 will be determined as noted in Section 9.

The City will appoint and compensate substitute attorney services if a conflict of interest is determined by the Municipal Court Judge or if the Defense Attorney submits a conflict of interest to the Albany Municipal Court Judge. The City will retain \$1,000 for expense and payments for substitute attorney services. The amount retained for substitute attorney costs will be reviewed and negotiated annually based on usage.

Payments from the retainer will be made in 12 installments beginning April 2022 and ending March 2023, for the legal services performed by the Defense Attorney as outlined in Section 2. Payments will be approximately \$7,917 a month. Charges for payments will be made to 10010040-600215, Court Appointed Attorneys, and paid in accordance with the City's usual practices for payments of accounts payable.

### **Section 6: Hours of Work.**

The hours needed for the Defense Attorney to perform public defender services to eligible clients may vary based on the caseload of the Municipal Court. The Albany Municipal Court is open Monday-Friday from 8:00 a.m. to 5:00 p.m., with the exceptions of holidays. The hours of work may change at the discretion of the Municipal Judge and needs of the Court. The Defense Attorney will work those times and hours needed to fulfill their obligations listed in Section 2.

### **Section 7: Independent Contractor.**

For the purposes of this contract, the Defense Attorney shall be an independent contractor, and shall provide all labor, equipment, material, and supervision necessary to perform the required public defender services; shall have control of the work and the manner in which it is performed; and will maintain their primary business location within the City of Albany, and other than at the Albany Municipal Court, where the Defense Attorney will provide most of their out of court services as set out under this agreement.

### **Section 8: License and Good Standing.**

During the contact period, the Defense Attorney must maintain a current license to practice law in the State of Oregon and the Law Firm must retain their primary law office in Albany, Oregon, and be in good standing with and an active member of the Oregon State Bar Association.

### **Section 9: Periodic Performance and Compensation Review.**

Performance and compensation will be reviewed and negotiated annually. The Law Firm may request an adjustment to the compensation set forth in the term of this agreement. The request must be submitted to the City Manager or designee by December 1 for consideration for the Agreement period beginning March 1. Any change to the annual retainer will be subject to a maximum increase in any one year, based on the period ending three months prior to the first day of the contract term, or three percent, whichever is lower, as posted in the U.S. Labor Statistics CPI-W, All Items, <https://www.bls.gov/cpi/latest-numbers.htm>. Should the retainer be revised, the increase will take effect in March of the next contract term.

### **Section 10: Communication.**

Regular communication and coordination shall be performed between the Defense Attorney and the Municipal Court Judge, the City Attorney, and the Municipal Court staff to discuss situations, and evaluate processes and adjustments that may be necessary to meet Municipal Court requirements, scheduling, and timelines.

### **Section 11: Insurance.**

The Defense Attorney shall maintain full professional liability (PLF) coverage as directed by the Oregon State Bar, and auto and general liability insurance throughout the duration of the Professional Services Agreement. The Law Firm shall furnish a certificate evidencing the dates, amounts and types of insurance coverages to the City finance department annually.

### **Section 12: Workers' Compensation Insurance.**

ORS 656.017 requires all employers to provide workers' compensation coverage for all their subject workers unless such employers are exempt under ORS 656.126. As a contractor of the City, the Law Firm shall provide evidence of insurance to ensure compliance with Oregon's workers' compensation insurance laws to the City finance department annually.

### **Section 13: Compliance with Oregon Tax Laws.**

The Law Firm must certify under penalty of perjury that the firm is not in violation of any Oregon tax laws, ORS chapters 118, 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

### **Section 14: Indemnification.**

The Law Firm agrees to indemnify, defend, and hold harmless the City, its agents, officers, and employees, from and against any and all liability, claims, suits, loss, damages, costs, and expenses

arising out of or resulting from the negligent or intentional acts, errors, or omissions of the Law Firm, its officers, employees, or agents.

**Section 15: Force Majeure.**

Neither the City nor the Law Firm will hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

**Section 16: Non-Discrimination.**

During the term of this Agreement, the Law Firm will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification.

**Section 17: Termination.**

Should either party elect to terminate the agreement, the party making the request shall provide the other party written notice of such intent to terminate at least two hundred and ten days (210) prior to such termination.

**Section 18: Court of Jurisdiction.**

The laws of the State of Oregon will govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation will be in the circuit courts in and for Linn County, Oregon.

**Section 19: Electronic Signature.**

Any signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record) hereto or to any other certificate, agreement or document related to this transaction, and any contract formation or record keeping through electronic means will have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law.

**Section 20: Agreement.**

This contract shall constitute the entire agreement between the parties and will supersede any previous agreements or understandings. If any provisions or portion thereof contained in the contract is held to be unconstitutional, invalid or unenforceable, the remainder of this contract or portion thereof shall be deemed severable, shall not be affected and shall remain in full force and effect.

**AGREED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022.**

LAW FIRM:

CITY OF ALBANY:

\_\_\_\_\_  
Printed Name of Firm/Attorney

\_\_\_\_\_  
Peter Troedsson, City Manager

\_\_\_\_\_  
Signature of Defense Attorney