

**STAFF REPORT**

**TO: HONORABLE MAYOR AND CITY COUNCIL**  
**FROM: MATTHEW BRONSON, CITY MANAGER**  
**SUBJECT: PROFESSIONAL SERVICES AGREEMENT FOR CITY ATTORNEY SERVICES**

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**BACKGROUND**

The City appointed Martin Koczanowicz as City Attorney in 2002 and entered into a professional services agreement with Mr. Koczanowicz for legal services. In 2013, Mr. Koczanowicz formed an association of sole practitioners with Mr. David Hale to serve the interest of the City in handling its legal needs. Mr. Hale served as the Assistant City Attorney with Mr. Koczanowicz and worked with the Council and City staff on numerous legal issues.

On August 31, 2016, Mr. Koczanowicz provided the Council with 30-day notice that he was leaving his role as City Attorney due to family commitments. On September 19, 2016, the Council provided direction for staff to develop a new professional services agreement with Mr. Hale. The Professional Services Agreement attached to this staff report (Attachment 1) reflects the same terms as the prior agreement between the City and the firm of Koczanowicz and Hale, including the hourly rate and compensation structure.

**DISCUSSION**

Mr. Hale operates under the structure of a Professional Law Corporation. He has 37 years of experience in the practice of law of which the last 27 years has been almost exclusively in the area of municipal law. He has extensive experience in working with City Councils and staff in agencies of different sizes and he is looking forward to this opportunity to apply his experience and knowledge in assisting the City of Grover Beach in its future legal needs.

**ALTERNATIVES**

The Council has the following alternatives to consider:

1. The Council can review and approve the attached Professional Services Agreement.
2. The Council can decide not to approve the attached Agreement.
3. The Council can give alternative direction to Staff.

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**APPROVED FOR FORWARDING**



**MATTHEW BRONSON  
CITY MANAGER**

**Please Review for the Possibility of a Potential Conflict of Interest:**

- |  |                                  |
|--|----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright  |
| <input type="checkbox"/> Shoals                              | <input type="checkbox"/> Nicolls |
| <input type="checkbox"/> Lee                                 | <input type="checkbox"/> Shah    |

Meeting Date: October 3, 2016

Agenda Item No. 8

**RECOMMENDED ACTION**

It is recommended that Council approve the attached Professional Services Agreement and authorize the Mayor to execute the agreement on behalf of the City.

**FISCAL IMPACT**

There is no fiscal impact related to this agreement beyond what has already been appropriated and budgeted for the City Attorney's Office.

**PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

**Attachment**

1. Professional Services Agreement.

## CITY OF GROVER BEACH AGREEMENT FOR CITY ATTORNEY SERVICES

This Agreement is effective this 3rd day of October, 2016, by and between the City of Grover Beach (hereinafter called "City"), and David P. Hale, a Professional Corporation (hereinafter called "Attorney"). It supersedes prior Agreements between the parties.

### RECITALS

1. City desires to engage Attorney as City Attorney of the City of Grover Beach, pursuant to the authority set forth in applicable state law and the City of Grover Beach Municipal Code.
2. The City and Attorney desire to set forth in this Agreement the terms, conditions, and benefits of such engagement.
3. Attorney desires to accept engagement as City Attorney as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

### SECTION 1. DUTIES AND FIRM STATUS

City hereby retains Attorney as City Attorney to perform such functions and duties and to provide legal advice and perform legal services for the City consistent with the role of a City Attorney and as specified in the California Government Code and in the Grover Beach Municipal Code and as the City Council shall from time to time assign. David P. Hale shall serve as the City Attorney and as General Counsel to the City's Successor Agency and Financing Authority. Mr. David Fike of Fike and Boranian will be associating with Mr. Hale in supplying support services. Other members of the Attorney's firm or associated firms may be called upon to provide legal services in a role of Special Counsel to the City under the supervision and direction of Attorney, as necessary, all under the terms of this Agreement.

The firm of David P. Hale, a Professional Corporation is not a partnership with Fike and Boranian or any other individual or law firm.

### SECTION 2. COMPENSATION

#### A. Fixed Monthly Fee

City shall pay to Attorney a fixed monthly fee of **Eight Thousand Five Hundred Dollars (\$8,500.00)** for all legal services performed by Attorney except those specified in Sections 2.B below. The scope of those services includes attendance at two regular City Council meetings, one monthly Planning Commission meeting, regular staff meetings, occasional Special City Council meetings and all related transactional and advisory legal services. A billing rate of \$160.00 per hour for attorney time and \$110.00 per hour for paralegal time will be billed for purposes of cost allocation under the fixed monthly fee.

B. Litigation Matters

All legal services performed by Attorney for the City in **litigation matters** are not included in the fixed monthly fee and shall be billed separately at the rate of **\$190.00 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 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. City and Attorney agree that no charge will be billed by Attorney for travel time to and from City Hall.

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¢) per page when in excess of one hundred pages per month, and any other direct cost which will be charged on a pass through basis.

C. Other Specialized Work

There may be other specialized legal services that City may require Attorney to perform, which are not covered by the terms and rates of this Agreement. These include but are not limited to, review and update of major planning documents like the City's General Plan, legal services related to major development projects wherein Attorney estimates over 10 hours of work, bond counsel work, bankruptcy proceedings, specialized tax or assessment formation work. Any such specialized services will be performed and billed based on mutual agreement between the City and Attorney, which will be memorialized in writing as an amendment to this Agreement.

D. Statements

Statements are rendered monthly and are due and payable within 30 days of the statement date. Any amounts not paid within 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.

**SECTION 3. CONFIDENTIALITY AND ABSENCE OF CONFLICTS**

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, Attorney maintains a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents Attorney from representing City. Similarly, City will be included in Attorney's list of clients to ensure it complies with the Rules of Professional Conduct.

Attorney warrants that no conflict exists with the firm's current representation of other public entities and private clients. Based on that check, Attorney has determined that it can provide legal services as City Attorney for the City of Grover Beach.

Attorney agrees to scrupulously avoid performing services for any party or entering into any contractual or other relationship with any party which might create a conflict with the rendering of services under this Agreement. Attorney shall immediately inform City of any conflict of interest or potential conflict of interest which may arise during the term of this Agreement by virtue of any past, present, or prospective act or omission of Attorney.

#### **SECTION 4. TERMINATION**

A. In the event City terminates this Agreement and discharges Attorney from its engagement hereunder, for no reason or for any reason, except as set forth in Section 5 of this Agreement, City shall pay to Attorney or the executor of his estate, an amount equal to three (3) months of fixed monthly fee referenced in Section 2.A. above, in effect at the time of termination.

B. City may discharge Attorney at any time subject to a ten (10)-day written notice and the provisions of Section 4.A. above. If at the time of withdrawal or discharge, Attorney is representing City in any proceeding, the City will sign a Substitution of Attorney form immediately upon receipt of such a form from Attorney.

C. In the event Attorney terminates this Agreement, the severance payment set forth in Section 4.A. above shall not be paid to Attorney unless Attorney's resignation is based upon the City's breach of this Agreement.

D. Notwithstanding the above, Attorney may withdraw from representation at any time as permitted under the Rules of Professional Conduct of the State Bar of California with thirty (30)-day written notice to City.

E. Notwithstanding the withdrawal or discharge of Attorney, City will remain obligated to pay at the agreed rate for all services already provided and to reimburse Attorney for all costs advanced before the withdrawal or discharge related to work performed in litigation matters under Sections 2.B. above. In the case of Attorney's fixed monthly fee, except in cases where the severance payment set forth in Section 4.A. above applies, for a partial month's service, Attorney will submit a statement for time spent on transactional or advisory services at an hourly rate which shall not to exceed the fixed monthly fee specified in Section 2.A. above.

#### **SECTION 5. TERMINATION FOR CAUSE**

In the event the City terminates this Agreement and discharges Attorney because Attorney has breached this Agreement in a manner material to the performance of Attorney's duties under this Agreement which shall include, but not be limited to, dishonesty, malfeasance, misfeasance, nonfeasance, misrepresentation, negligence, conviction of any felony or conviction of any misdemeanor involving moral turpitude or incapacity due to injury or illness (physical or mental), then the City shall not be obligated to pay Attorney the three (3) months fixed monthly rate payment set out in section 4.A. of this Agreement

#### **SECTION 6. OTHER TERMS AND CONDITIONS OF AGREEMENT**

A. The City Council, with mutual consent of Attorney, may amend or add any such other terms and conditions of engagement as it may determine from time to time, relating to the performance of Attorney.

B. City agrees that Attorney shall have a lien on any and all sums recovered or received by Attorney on City's behalf, for payment of any fees owing and/or any unreimbursed costs advanced for City.

C. City and Attorney agree that in the event of a dispute between the parties concerning this Agreement, the prevailing party in arbitration or other legal proceeding will be entitled to recovery of reasonable attorney's fees and costs from the other party.

D. City and Attorney also agree that the City Manager is the responsible person for providing daily contact and direction to Attorney on behalf of City. Attorney agrees to coordinate the services to be provided with City to the extent required by the City Council and the City Manager.

#### **SECTION 7. PERFORMANCE EVALUATION**

A. The City Council shall review and evaluate the performance of Attorney at least once annually commencing one (1) year from the effective date of this Agreement. Said review and evaluation shall be in accordance with specific criteria developed jointly by City and Attorney. Said criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with City Attorney. Further, City shall provide Attorney with a summary written statement of the findings of the City Council and provide an adequate opportunity for Attorney to discuss its evaluation with the City Council.

B. Annually, commencing on the effective date of this Agreement, the City Council and City Attorney shall define such goals and performance objectives that they jointly determine necessary for the proper operation of the City and attainment of the City Council's policy and objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives shall be reduced to writing.

C. In effecting the provisions of this Section, the City Council and Attorney mutually agree to abide by the provisions of applicable laws.

#### **SECTION 8. NOTICES**

Notices pursuant to this Agreement shall be given by deposit in the United States Postal Service, postage prepaid, as follows:

CITY:	Mr. Matthew Bronson City Manager City of Grover Beach 154 S. 8 <sup>th</sup> Street Grover Beach, CA 93433
ATTORNEY:	David P. Hale, a Professional Corporation 401 Clovis, Ave., Ste. 208 Clovis, California 93612

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

#### **SECTION 9. DOMICILE OF ATTORNEY**

City understands and acknowledges that Attorney may purchase, rent, lease, or otherwise obtain a domicile or residence outside the city limits of City. City shall not require Attorney during the term of this Agreement to move his domicile into the city limits of the City. Nor shall the Attorney's failure to move his domicile into the city limits of the City be grounds for the City to terminate this Agreement for cause or otherwise.

#### **SECTION 10. INSURANCE**

Attorney agrees to carry professional liability and errors and omissions insurance with a limit that provides coverage as required by the laws of the State of California.

#### **SECTION 11. GENERAL PROVISIONS**

A. The text herein shall constitute the entire agreement between the parties. There are no oral agreements or understandings or any other written agreements which directly or indirectly affect the terms and conditions of this Agreement.

B. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

C. No addition, modification, amendment, or deletion to this Agreement shall be valid unless it is in writing and executed by the parties to this Agreement.

D. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Attorney.

E. City and Attorney agree that the construction and interpretation of this Agreement and the rights and duties of City and Attorney hereunder shall be governed by the laws of the State of California.

F. Attorney shall act as an independent contractor in providing the services described in this Agreement. Attorney shall be solely responsible for the supervision, payment and protection of its agents, employees, experts or consultants, if any, and furnish the services in Attorney's own manner and method. In no respect shall Attorney, its agents, employees, experts or consultants, if any, be considered employees of City.

G. Attorney agrees to comply with all federal, state and local laws, rules, and regulations, now or hereafter in force, pertaining to the services performed pursuant to this Agreement.

H. Venue for any proceeding under this Agreement shall be in the County of San Luis Obispo, California.

I. Attorney agrees to comply with all applicable fair employment and equal opportunity practices and not to discriminate against any applicants or employees of Attorney because of their membership in a protected class.

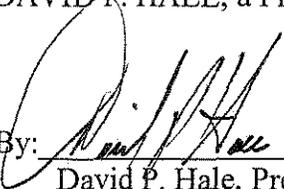
**IN WITNESS WHEREOF**, the City of Grover Beach has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and Attorney has signed and executed this Agreement on the 3rd day of October 2016.

CITY OF GROVER BEACH

By: \_\_\_\_\_  
John P. Shoar, Mayor

**DRAFT**

DAVID P. HALE, a Professional Corporation

By:  \_\_\_\_\_  
David P. Hale, President

ATTEST:

\_\_\_\_\_  
Donna L. McMahon, City Clerk