

DATE SUBMITTED 10/29/2020
 SUBMITTED BY ACM
 DATE ACTION REQUIRED 12/04/2020

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS PS

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: CITY ATTORNEY PROFESSIONAL SERVICES 1. APPROVAL OF AGREEMENT BETWEEN CITY OF IMPERIAL AND GEOFFREY P. HOLBROOK FOR CITY ATTORNEY PROFESSIONAL SERVICES	
DEPARTMENT INVOLVED: City Manager's Office	
BACKGROUND/SUMMARY: Per the direction of the City Council, the City Manager's Office has concluded negotiations with Geoffrey P. Holbrook to provide City Attorney Professional Services for the City of Imperial. The City of Imperial received three proposals in response to our RFP for City Attorney Professional Services. Following review and interviews with the candidates, the City entered into negotiations with Mr. Holbrook to provide said services identified in the proposal. Attached for your review is the contract to be executed by the City Manager pending Council action.	
FISCAL IMPACT: (Est.) \$100,000.00 as approved in the Municipal Budget for FY 2020-2021 Monthly Retainer- \$8,000.00 Hourly Rate for "excluded" services - \$140.00	ADMIN SERV INITIALS <u>PS</u>
STAFF RECOMMENDATION: It is staff's recommendation to approve the negotiated terms as provided.	DEPT. INITIALS <u>OB</u>
MANAGER'S RECOMMENDATION: Approve as provided	CITY MANAGER'S INITIALS <u>DHM</u>
MOTION: SECONDED: APPROVED () REJECTED () AYES: DISAPPROVED () DEFERRED () NAYES: ABSENT: REFERRED TO:	

AGREEMENT FOR CITY ATTORNEY SERVICES

This Agreement (“Agreement”) is effective as of the ____ day of November, 2020, by and between the law firm of Geoffrey P. Holbrook (“Attorney”) and the CITY OF IMPERIAL, a municipal corporation of the State of California (“City”).

1. APPOINTMENT.

City Council hereby appoints Attorney to render such legal services as are customarily rendered by City Attorneys as further specified herein, including attending meetings of the City Council, Planning Commission, and other bodies as directed by the City Council through its City Manager or his or her designee. The City Council and Attorney agree that the position of City Attorney shall be filled by Geoffrey P. Holbrook. Any changes to such persons in such positions shall be approved by the City Council.

Notwithstanding the foregoing, Attorney may appoint an Assistant City Attorney to serve as acting City Attorney in his absence, or a qualified acting City Attorney to serve in his absence when the Assistant City Attorney is unavailable to serve. Such acting City Attorney shall serve for no longer than 7 days without permission from the City Manager, and for no longer than 14 days without permission from the City Council.

All such persons serving in as Assistant City Attorney or Acting City Attorney shall be compensated by the Attorney as his sole cost.

2. TERM.

A. The term of this Agreement shall begin on November ____, 2020, and shall remain in effect for two (2) years. Thereafter, it shall continue in effect indefinitely from year-to-year thereafter unless either party gives written notice of its intention not to renew at least 90 days before expiration of the then current term. A request by either party to revise specific terms or provisions of the Agreement shall not serve as intention not to renew, and either party may seek revisions at any time upon 30 days written notice to the other.

B. Either party may terminate this Agreement at any time by providing 90 days written notice to the other party, except that such termination may not be terminated by City within 120 days following any municipal election at which any seat on the Council is changed. The purpose of this provision is to allow the Council adequate time to objectively evaluate Attorney’s performance.

3. DUTIES.

City employs Attorney to provide any and all work necessary for the provision of City Attorney services to City, including without limitation, the following:

A. Attendance at City Council and Planning Commission meetings, and such other bodies as directed by the City Council through its City Manager or his or her designee. Such attendance shall be by the Attorney unless excused by the City Manager or his or her designee. Additionally, such attendance may be “virtual” if approved by City Manager or his or her designee.

B. Provide legal advice, written legal opinions, and consultation on all matters affecting the City to the City Council, City Manager, commissions and other bodies of the City, and

officers and employees.

C. Be available for telephone or email consultation with City staff as needed on legal matters, and to maintain office hours and attendance at meetings at City Hall as mutually agreed to by the City Manager and Attorney except during periods when excused by the City Manager resulting from vacations, illness, training, or similar legitimate reasons to absent from the City.

D. Prepare or review necessary legal documents such as ordinances, resolutions, contracts, bid documents including RFP's, construction documents, memoranda, and similar legal documents as requested by City.

E. Represent and advise City on pending and potential litigation as requested by City, except regarding liability matters handled by CA Joint Powers Insurance Authority (JPIA) or other outside insurance providers, matters where Attorney has a conflict, or matters beyond the technical expertise of Attorney who shall, with approval of the City Council, employ such outside counsel as is necessary.

F. With respect to matters referred to outside counsel, monitor pending litigation matters, and assist in facilitating early resolution of such matters.

G. Monitor pending and current legislation and case law as appropriate.

H. Such other normal City Attorney functions as assigned by the City Council or City Manager.

4. COMPENSATION.

City and Attorney expect that virtually all time and expenses expected to be incurred in provision of these services will be included in the monthly retainer of eight thousand dollars (\$8,000.00). The monthly retainer is based upon an estimate of 50 hours per month to be spent on "included" services. The parties agree that the monthly retainer will not change if time spent on "included" services exceeds 50 hours. The parties agree to meet and confer at the request of the other on the subject of whether the monthly retainer accurately reflects time spent by Attorney on City included services. Time spent on "excluded services" as described in Attorney's proposal shall be billed at the hourly rate of \$140.00.

Attorney shall bill City on a monthly basis for services rendered in the prior month. Attorney's invoice shall describe in detail the services rendered and shall include a reference to the Legal Services Request which generated the invoice. Time spent shall be set forth in one-tenth of an hour increments. Work on excluded services shall be approved in advance by City through its City Manager or his or her designee.

5. INDEPENDENT CONTRACTOR STATUS.

Attorney shall perform all legal services required under this Agreement as an independent contractor and law firm, and shall remain at all times as to City a wholly independent contractor with only such obligations as are required under this Agreement. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Attorney, his

agents and employees, render the legal services required under this Agreement except as otherwise set forth. Attorney shall not receive any benefits beyond the compensation set forth herein.

6. INSURANCE COVERAGE.

City agrees that Attorney, including the Assistant City Attorney and any other acting City Attorney provided by Attorney, are excused from carrying errors and omissions professional liability coverage, and because Attorney has the authority of the office of City Attorney pursuant to Government Code section 36505, the City agrees to extend the protections of Government Code section 825 to Attorney and defend and hold harmless Attorney, and other attorney's working on behalf of Attorney in carrying out the terms and conditions of this Agreement, from any action resulting from provision of legal services under this Agreement. Attorney shall comply with California Rules of Professional Conduct 1.4.2 in advising City whether or not he maintains professional liability insurance

7. PROFESSIONAL DEVELOPMENT.

Attorney agrees that he, and all persons working on behalf of him in provision of legal services under this Agreement, shall remain licensed to practice law in the State of California, and Attorney will ensure that he and all attorney's acting under this Agreement shall maintain compliance with continuing education requirements and maintain competence with respect to the field of municipal law at all times while carrying out the terms of this Agreement.

8. ENTIRE AGREEMENT.

The parties agree that this Agreement contains all of the agreements of the parties and cannot be amended or modified except by written amendment or agreement. The prior written agreement by and between the City and Attorney regarding legal services is hereby terminated as of the effective date and time of this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by written amendment.

9. NOTICES

Any notices pursuant to this Agreement shall be sent by regular mail addressed as follows:

CITY:

Dennis H. Morita
City Manager
420 S Imperial Avenue
Imperial, CA 92251

ATTORNEY:

Geoffrey P. Holbrook
583 Sagebrush Street
Imperial, CA 92251

10. INTERPRETATION OF AGREEMENT AND FORUM.

This Agreement shall be construed and interpreted in accordance with the laws of California. In the event of any dispute arising from this Agreement, the forum for judicial review shall be the Superior Court, Imperial County.

11. SEVERABILITY.

If any provision or portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder shall be deemed severable and shall not be affected and shall remain in full force and effect insofar as possible.

12. CONFLICTS.

Attorney has no known present or contemplated employment which is adverse to the City. Attorney agrees that he will not represent clients in matters against the City. In such instances, Attorney shall make such potential conflict known to City and offer to withdraw from representing either client and assist in obtaining suitable outside counsel to represent City.

Dated: November_____, 2020

CITY OF IMPERIAL:

Dennis H. Morita, City Manager

ATTORNEY:

Geoffrey P. Holbrook

ATTEST:

Debra Jackson, City Clerk