

RESOLUTION NO. 22-09

Resolution Of The City Council Of The City Of Emeryville Approving A Legal Services Agreement With Jarvis Fay & Gibson, LLP, For Interim City Attorney Services

WHEREAS, following the resignation of the City Attorney early last spring, the City Council approved an agreement with Assistant City Attorney Andrea Visveshwara for the period of April 24, 2021 through October 31, 2021 which provided that she would act as Interim City Attorney during that time; and

WHEREAS, the agreement with Assistant City Attorney Visveshwara was later extended through January 31, 2022 to accommodate the ongoing City Attorney recruitment process; and

WHEREAS, the recruitment process for the City Attorney position is not yet complete, and the City needs to procure legal services from outside counsel until a new City Attorney is selected and hired; and

WHEREAS, Christie Crawl of Jarvis Fay & Gibson, LLP has advised the City on land use projects and California Environmental Quality Act issues over the past several years and has been advising the Planning Commission and Community Development Department for the past nine months; and

WHEREAS, Jarvis Fay & Gibson, LLP has also been retained frequently by the City of Emeryville as outside counsel to advise on a variety of other legal issues since 2014; and

WHEREAS, the City desires Christie Crawl to provide the City with Interim City Attorney Services for an initial period of three months, from February 1, 2022 through April 30, 2022, with the option to extend the term of the Interim City Attorney Services as needed; and


WHEREAS, the Legal Services Agreement attached to this Resolution as Exhibit A and incorporated herein sets forth the terms under which Christie Crawl and Jarvis Fay & Gibson, LLP will perform, and the City will receive, Interim City Attorney Services; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby approves the Legal Services Agreement with Jarvis Fay & Gibson, LLP attached hereto as Exhibit A.

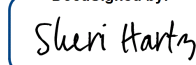
Resolution No. 22-09
Interim Legal Services Agreement
City Council Meeting | January 18, 2022
Page 2 of 2

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on Tuesday, January 18, 2022, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Welch
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

C7389B49E2C9458
MAYOR

ATTEST:

DocuSigned by:

EB7B5D8EAB6A4BE
CITY CLERK

JARVIS FAY & GIBSON, LLP

LOCAL GOVERNMENT LAW

Via Email

jbauters@emeryville.org

January 7, 2022

John J. Bauters
Mayor, City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Re: Legal Services Agreement for Interim City Attorney Services

Dear Mayor Bauters:

Thank you for selecting Jarvis, Fay & Gibson, LLP to provide legal services to the City of Emeryville ("City"). This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for our services. The effective date of this agreement shall be February 1, 2022.

1. Scope of Engagement. We will provide interim city attorney services to the City for a preliminary period of three months (February 1, 2022 through April 30, 2022; the "Initial Interim Period"), at which time the City and the firm may decide to extend this agreement, subject at all times to the termination provisions in section 5 below. The interim city attorney services include, but are not limited to: advising the City Council, boards, commissions, and City staff on legal issues; overseeing the daily operations and needs of the City Attorney's Office; managing any engaged outside counsel and engaging outside counsel as necessary in coordination with the City Manager and City Council; providing legal advice regarding contractual, regulatory, and litigation issues; and working collaboratively with other department heads to proactively identify and solve legal issues ("Interim City Attorney Services").

The scope of this engagement may be extended to other matters if confirmed in writing. A writing confirming an agreement to provide other legal services to the City shall bring such services within the scope of the terms set forth in this letter.

2. Fees and Personnel.

A. Interim City Attorney Services. For the Interim City Attorney Services, we shall bill the City \$300 per hour for time billed by our senior partners, \$280 per hour for time billed by partners and of counsel attorneys, \$240 per hour for time billed by senior associates, \$225 per hour for time billed by associates, and \$115 per hour for time billed by our paralegals/legal assistants. Christie Crowl will serve as the Interim City Attorney and will rely on support from other members of the firm as needed. For the Interim City Attorney Services, all work shall be billed on a single invoice each month under the heading "Interim City Attorney Services," and in no event shall the total amount billed to the City for the Initial Interim Period exceed \$126,000 without consent of the City Council.

555 12TH STREET, SUITE 1630, OAKLAND, CA 94607

MAIN: 510.238.1400 / WWW.JARVISFAY.COM / FAX: 510.238.1404

B. Cost Recovery Matters. We understand that there are land use matters for which the City will be reimbursed for the costs of our services by a private party (“Cost Recovery Matters”). The firm currently represents the City on certain Cost Recovery Matters and will continue to do so under the scope of its previous Legal Services Agreement dated March 27, 2019. A new Cost Recovery Matter may be brought within the scope of this agreement by written notice from the City, including email notice. For Cost Recovery Matters, we shall bill the City \$420 per hour for time billed by our senior partners, \$380 per hour for time billed by partners and of counsel attorneys, \$295 per hour for time billed by senior associates, \$250 per hour for time billed by associates, and \$150 per hour for time billed by our paralegals/legal assistants. For each Cost Recovery Matter, we shall open a separate account and provide the City with a separate invoice showing the name of the matter or project and appropriate for passing along to the party responsible for reimbursing the City.

C. Maximum Rates. The rates in this section 2 represent the maximum we will charge for our work, but we may charge lesser rates or “no charge” some time, as a matter of billing judgment. We bill for our time in 6-minute increments, with no minimum billable time. Our stated rates will be in effect until this agreement is terminated.

3. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses from outside vendors related to your representation, which we will pass on to the City. We will advance payment for routine expenses for individual items that cost less than \$1,000 but will refer items that cost more directly to the City for payment. We do not bill for in-house copy or fax costs or other overhead.

4. Billing and Payment Responsibilities. We will send monthly statements that are due within 30 days of receipt. If you have any questions about an invoice, please feel free to call Christie at (510) 318-3004 or to email her at ccrowl@jarvisfay.com.

5. Termination of Services. The City may terminate our services at any time by written notice, including upon the hiring and onboarding of a new City Attorney. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to the City’s new counsel.

We may terminate our services at any time with the City’s consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) the City fails to meet any other obligation under this agreement and continues in that failure for 15 days after we send written notice to the City; (c) the City has misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance occurs or exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, the City agrees to execute a substitution of attorneys promptly and otherwise cooperate in effecting that

termination. Termination of our services, whether by the City or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

6. Original Documents and Property. Upon the City's request, after our representation has concluded or been terminated we will return to the City any original documents and other property the City provided to us in connection with our representation. Unless the City requests any such items, or has made written arrangements with us to retain such items, we reserve the right to destroy or otherwise dispose of these items, without further notice to the City at any time after ten years following the date of the final invoice sent to the City with respect to this matter.

7. Insurance. During the term of this engagement, this law firm shall maintain general liability and property damage insurance in the amount of \$2,000,000; professional errors and omissions insurance, in an amount of \$1,000,000 per occurrence; and \$3,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to the City.

8. No Guarantee of Outcome. Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

9. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.

To accept this letter of engagement, please sign it below and return a PDF copy of this page to our office via email. If you would also like a paper copy of this letter for your files we will be happy to mail that to you. We appreciate the opportunity to serve as lawyers for the City.

Very truly yours,

JARVIS, FAY & GIBSON, LLP



Rick Jarvis

These terms are accepted and agreed to:

John J. Bauters, Mayor