RESOLUTION NO. 18-0434

A RESOLUTION OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO THE EMPLOYMENT OF THE CITY ATTORNEY, AUTHORIZING THE MAYOR TO SIGN THE EMPLOYMENT AGREEMENT WITH CAROL A. MORRIS AS CITY ATTORNEY, ALL AS PROVIDED IN CHAPTER 2.20 OF THE EDGEWOOD MUNICIPAL CODE, THE ATTACHED EMPLOYMENT AGREEMENT AND RELATED JOB DESCRIPTION

WHEREAS, RCW 35A.12.020 requires the City to make provision for legal counsel, either by appointment of a city attorney or on a full-time or part-time basis, or by any reasonable contractual arrangement; and

WHEREAS, the City has hired Carol Morris as the City Attorney on a contractual basis; and

WHEREAS, the City desires to hire Carol Morris on a full-time basis, under the terms and conditions of the Employment Agreement attached hereto as Exhibit A, in order to perform the duties of City Attorney as provided in chapter 2.20 EMC and the job description attached to the Employment Agreement as Exhibit 1; and

WHEREAS, the City Council considered the Employment Agreement during a regular City Council meeting on October 9, 2018;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to sign the City Attorney Employment Agreement with Carol A. Morris, attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. This Resolution shall take effect and be in full force upon passage and signatures hereon.

ADOPTED THIS 9TH DAY OF OCTOBER, 2018

CITY OF EDGEWOOD

Daryl Eidinger, MAYOR
ATTEST/AUTHENTICATED:

[Signature]
Rachel Pitzel, City Clerk
CITY ATTORNEY EMPLOYMENT AGREEMENT

This Agreement, made and entered into this _œ_ day of October, 2018, by and between the City of Edgewood, a Washington municipal corporation (hereinafter the “City” or “Employer”), and Carol A. Morris (hereinafter called “Morris” or “Employee”).

The City desires to employ Morris as the City Attorney and Morris has agreed to serve in this capacity. Therefore, in consideration of the terms and conditions of this Agreement, the parties agree as follows:

Section 1 – Term. This Agreement shall remain in full force and effect beginning on the date it is signed by both parties and shall extend until December 31, 2025, or until terminated by the Employer or Employee as provided in Section 8 of the Agreement.

Section 2 – Licensure. Employee warrants and agrees that Employee is licensed to practice law in the State of Washington without limitation. Employee must maintain Employee’s license to practice law in good standing throughout the term of this Agreement as a condition of employment. Should the Employee no longer be authorized to practice law in Washington, this contract will terminate immediately for good cause.

Section 3 – Duties.

A. Employer employs the Employee as City Attorney to perform the duties specified in Edgewood Municipal Code chapter 2.20 and the job description (attached hereto as Exhibit 1 and incorporated herein by this reference), and to perform other legally permissible and proper duties and functions of the position.

B. All duties assigned to the Employee by the Mayor and/or City Council shall be appropriate to and consistent with the professional role and responsibility of the Employee.

Section 4 – Compensation. Employer agrees to pay Employee an monthly salary of $10,500. The Employee’s salary will receive an annual cost-of-living adjustment on the same terms that such an adjustment is provided the City’s other management level, non-represented employees. Additional adjustments to the Employee’s compensation may be made at the discretion of the City based on a review of City policy, the City’s financial condition, the labor market for similar positions, the compensation provided to other employees and employee groups within the City, the Employee’s performance (see, Section 7 on Performance Evaluations), and such other considerations as the Mayor and City Council may deem relevant.
Section 5 – Health and Disability Benefits.

A. The Employer agrees to provide health and other insurance benefits on the same terms as those benefits are provided to other management-level, non-represented employees of the City.

B. The Employee will accrue annual leave at the same rate as provided to other management-level, non-represented employees of the City.

C. The Employee will be covered under the disability program provided by the City to other management-level, non-represented employees of the City.

D. The Employer agrees to enroll the Employee into the City’s retirement plan and to make all the appropriate contributions on the Employee’s behalf in the same manner as it provides to the management-level, non-represented employees of the City.

E. The Employee will receive any other benefits provided by and be subject to any obligations included in, personnel policies applicable to non-represented employees as may from time-to-time be adopted or amended by the City, provided that no such policy will be applicable to the extent that it conflicts with a term of this Agreement.

Section 6 – General Business Expenses.

A. When the Employee is required to use the Employee’s own vehicle in the performance of the Employee’s duties, the Employer will reimburse the Employee in the same manner as the City reimburses other employees for mileage.

B. Employer agrees to pay for licensing fees or charges that are required of lawyers to practice law in the State of Washington and professional dues, as necessary and desirable for the Employee’s continued professional participation, growth and advancement, and for the good of the Employer. These associations include the Washington State Bar, the Pierce County Bar and the Washington State Association of Municipal Attorneys (“WSAMA”).

C. Employer also agrees to budget and pay for Continuing Legal Education learning programs, together with travel and other subsistence expenses of Employee that are necessary for the Employee’s professional development and maintenance of the Employee’s required CLE obligations and for good of the Employer.

D. Employer shall provide the Employee with all equipment customer and necessary for the performance of her employment, including computer, internet service and mobile telephone, at the sole cost and expense of the City. Employee may use the equipment only as provided by the Employer’s applicable policies.

1 I have been a member of WSAMA so long that I don’t have to pay the annual dues, but I do have to pay registration for seminars.
Section 7 -- Performance Evaluation.

A. Employer should annually review the performance of the Employee in December, subject to a process, form, criteria and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period, (2) following that discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the initial evaluation meeting.

B. To the extent permitted by law, the evaluation of any complaints against the Employee shall be conducted in executive session of the legislative body with the Employee present, and shall be considered confidential to the extent permitted by law. However, upon the request of the Employee, a public hearing or a meeting open to the public shall be conducted upon such complaint, as provided in RCW 42.30.110(1)(f). Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee’s evaluation with their respective legal counsel.

C. Annually, the Employer and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the Employer’s organization in the attainment of the Employer’s policy objectives, and the Employer and Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. The annual performance reviews and evaluations shall be reasonably related to the Employee’s written job description and shall be based, in whole or in part, on goals for the Employee’s performance that are jointly developed and adopted by the Employer and Employee.

Section 8 – Termination.

A. Involuntary Termination. For the purpose of this Agreement, involuntary termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with Title 35A RCW or other applicable law, at a properly posted and duly authorized meeting of the City Council.

2. If the Employer or the Washington State Legislature acts to amend any provisions of Title 35A RCW, the Edgewood Municipal Code or the job description attached hereto as Exhibit 1, pertaining to the role, powers, duties, authority, responsibilities of the Employee’s position that substantially changes the form of
government or the duties of the Employee, then the Employee shall have the right to declare that such amendments constitute termination.

3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.

4. If the Employee resigns at the request of the Employer, whether formal or informal, then the Employee may declare a termination as of the date of the request.

5. In those situations where a breach of contract can be cured, breach of contract may be declared by either party with a thirty (30) day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 15.

B. Termination. The Employer may terminate the Employee with or without good cause at any time.

C. Definition of Good Cause. For purposes of this Agreement, the term “good cause” is defined as follows:

1. Failure to fulfill the Employee’s Duties as required in this Agreement;

2. Incompetence in the performance of the Employee’s duties as documented by evaluations, supplemental memoranda, or other written communication from the Employer; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Employer has provided the Employee a reasonable opportunity to remediate any incompetency;

3. Insubordination or failure to comply with lawful written Employer directives, unless compliance with such directive would violate the law or ethical rules applicable to the Attorney;

4. Neglect of duties;

5. Drunkenness or excessive use of alcoholic beverages;

6. Illegal use of drugs, hallucinogens, or other substances regulated by state law;

7. Conviction of a felony involving moral turpitude;
8. Disability, not otherwise protected by law, that impairs performance of the required duties of the Employee;

9. Knowingly falsifying records or documents related to the Employer’s activities;

10. Knowing misrepresentation of materials facts to the Employer or other City officials in the conduct of the Employer’s business;

11. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public funds or other funds or other property, real, personal, or mixed, owned by or entrusted to the Employer, any agency or corporation thereof, or the Employee in the Employee’s official capacity; or

12. Loss of license to practice law.

Section 9 – Termination for Good Cause – Benefits. In the event that the Employee is terminated under the provisions of Section 8 of this Agreement for good cause, the Employer is not required to pay severance, but is required to recognize and pay benefits that have vested and to which Employee is entitled under the Employer’s personnel policies, state law or federal law.

Section 10 – Involuntary Termination. The Employer must pay severance as described below to the Employee when employment is involuntarily terminated without good cause.

A. Employer shall provide a minimum severance payment equal to all amounts then due and owing to the Employee, plus six (6) month’s salary at the then current rate of pay, less customary payroll deductions. This severance shall be paid in a lump sum or in a continuation of the salary on the existing biweekly basis, at the Employee’s option.

B. The Employee shall also be compensated for all vacation leave, all paid holidays (if holidays are not incorporated in the salary paid under the previous paragraph) and any leave or other payments to which the management-level, unrepresented employees of the City would be entitled if terminated without good cause. The Employer agrees to make a contribution to the Employee’s deferred compensation account based on the value of this compensation, calculated using the then current annual salary of Employee at the date of termination, divided by two thousand and eighty (2080) hours. If the amount of the contribution under this subsection exceeds the limit under the Internal Revenue Code for a contribution to the Deferred Compensation Plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

C. For a minimum period of six months following termination, the Employer shall pay the cost to continue the following benefits:
1. Health insurance for the employee, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").

2. Any other available benefits to which the Employee is entitled under this Agreement or to which other management-level, unrepresented employees would be entitled if involuntarily terminated without good cause.

3. The termination and severance of Employee shall be in accordance with a Separation Agreement agreed to by Employee and Employer.

Section 11 – Resignation. Nothing in this Agreement shall prevent, limit or interfere with the right of the Employee to resign or to retire at any time. In the event the Employee desires to resign or retire, the Employee shall give written notice to the Employer at least thirty (30) days prior to separation. The Employer shall have no obligation to pay Attorney any further compensation after the expiration of the notice period. Upon the effective date of resignation or retirement, the Employer shall pay to the Employee all accrued vacation leave and other leave to which the Employee is entitled under this Agreement or to which other management-level, unrepresented employees would be entitled if the other management-level, unrepresented employee resigned. Failure to give the required thirty (30) day notice constitutes a waiver and forfeiture of pay for all accrued vacation leave and other leave.

Section 12 – Hours of Work.

The Employer acknowledges that at the time of execution of this Agreement, the Employee’s home is located 56 miles from Edgewood. Employee currently plans to move closer to Edgewood, but cannot predict when her move will take place (given the location and physical condition of the home). Therefore, Employee has currently committed to attendance in City Hall on Tuesdays and Fridays until she moves.

The Employee acknowledges that the proper performance of the duties of the Employee will require the Employee to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Employee agrees to devote such additional time as necessary for the full and proper performance of the Employee’s duties and that the compensation herein provided includes the compensation for the performance of all such services. However, the Employer intends that reasonable time off be permitted the Employee, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the City Attorney.

The Employee will devote full time and effort to the performance of the Employee’s duties, and shall remain in the exclusive employ of the Employer, during the term of this Agreement; provided that, with the prior consent of the Employer, the Employee may accept temporary, outside professional employment which will not in any way interfere
with the performance of, or the Employee’s availability for the performance of, the Employee’s duties hereunder. The term “outside professional employment” means professional services provided to third parties for which the Employee is compensated and which are performed on the Employee’s time off. The Employer encourages the Employee to accept invitations to speaking engagements, writing or other opportunities to communicate with the community, subject to the rules regarding confidentiality and attorney-client privilege to make use and share data and information with relevant persons and groups, and encourages the Employee to participate in pertinent seminars, groups, associations and organization, as well as informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Employee to perform the Employee’s Duties.

Unless prohibited by law or ethical requirements, the Employee may offer pro bono services in conjunction with the requirements of the Washington State Bar without violating this Agreement.

The employment provided for by this Agreement shall be the Employee’s primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with the Employee’s responsibilities under this Agreement. Any outside consulting or business opportunities shall be subject to prior approval by the Employer.

Section 13 – Indemnification.

In addition to any requirement of Federal, State or local law, and to the extent permitted by chapter 2.45 of the Edgewood Municipal Code, Employer shall indemnify, defend and hold Employee harmless against any and all claims (even if the allegations are without merit) or judgments for damages or injunctive relief arising from, related to, or connected with any tort, professional liability claim or demand or other claim, whether civil, criminal, administrative, arbitrate or investigative, arising out of any alleged act or omission by Employee occurring in the performance of Employee’s duties or resulting from the exercise of judgment or discretion by Employee in connection with the performance of her duties or responsibilities, unless the act or omission involved willful or wanton misconduct. In the event that the provision of legal representation by Employer may reasonably present a legal conflict of interest, the Employee may request independent legal representation at Employer’s expense, and Employer may not unreasonably withhold approval of such request. Legal representation provided by Employer for Employee shall extend until a final unappealable determination of the legal action. In the event that independent legal representation is provided to the Employee, any settlement of any claim against Employee may not be made without prior approval of the Employer. Employee recognizes that Employer shall have the right to compromise any claim against Employee for which Employer is providing the defense.
Section 14 -- Other Terms and Conditions of Employment. The Employer, upon agreement with the Employee, may fix other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or conflict with any provisions of law.

Section 15 -- Notices. Notice pursuant to this Agreement may be given by personal service, by email, by nationally recognized courier, or by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

A. Employer: City of Edgewood, Attn: Mayor, 2224 – 104th Avenue East, Edgewood, WA 98372.

B. Employee: Carol A. Morris, P.O. 7223 Seawitch Lane N.W., P.O. Box 948, Seabeck, WA 98380.

Notice shall be deemed given as of the date of personal service or e-mail, as of the date of delivery by courier, or as the date five days after the date of deposit in the U.S. Mail, postage prepaid.

Section 16 -- General Provisions.

A. Merger. This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement.

B. Amendments. The Employer and Employee by mutual written agreement may amend this Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

C. Assignment. This Agreement may not be assigned by either party without the written consent of the other party.

D. Severability. If this Agreement contains any unlawful provision which is not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect, and shall, upon agreement by the parties, be deemed stricken from the Agreement without affecting the binding force of the remainder.
Employer:

THE CITY OF EDGEWOOD

By ____________________________
    Mayor Daryl Eidinger

Executed this _10_ day of October, 2018.

Employee:

CAROL A. MORRIS

By ____________________________
    Carol A. Morris

Executed this _9_ day of October, 2018.
CITY ATTORNEY - Job Description

Department: General Government  Salary Range: $9,523 – $10,821/mo.
Opening Date: 07/16/2018  Closing Date: Open until Filled

This position is a full-time, non-union, FLSA exempt position.

GENERAL SCOPE OF WORK:
Under the direction of the Mayor, the City Attorney plans, directs and coordinates comprehensive legal services for the City. The City Attorney provides counsel to the Mayor, Council, staff, committees and commissions; provides legal advice to guide City policies, decisions and activities. The City Attorney also litigates on behalf of the City and supervises and directs representation of the City at various court levels, as well as drafts and interprets City ordinances, resolutions, code, policies and contracts. This position is a key member of the City’s leadership team, and occupies a significant role in supporting the critical decision-making on the part of both the City Council, and City administration. The City has outside contracts for prosecution and defense services in Municipal Court.

ESSENTIAL JOB FUNCTIONS:
This job description reflects general details necessary to describe the job’s essential functions and the job’s level of knowledge and skill typically required. The job description should not be considered an all-inclusive listing of job duties.

1. Provide ongoing legal and strategic advice to the Mayor and departments of the City through direct consultation, revision and production of legal documents, code, and procedures.
2. Attempts to resolve legal questions, which arise during the development and implementation of City projects and programs.
3. Analyze legal trends in order to present alternatives to the Mayor, City Council and various City departments concerning major issues facing the City.
4. Attend meetings of the City Council and other meetings as necessary and provide appropriate legal advice during those meetings.
5. Represent the City and its officials, officers and employees acting in their official capacities in civil actions where the City is a party in state and federal courts and before administrative agencies.
6. Represent the City in proceedings before superior court, appellate courts and before administrative agencies.
7. To the limited extent outside counsel is utilized, the City Attorney will assign and coordinate outside counsel work.
8. The City Attorney also monitors litigation being defended by legal counsel appointed by the Washington Cities Insurance Authority.
9. Supervise and provide direction and technical advice to the City’s support staff.
10. Supervise and review the preparation of ordinances, resolutions, contracts and other legal documents ensuring compliance with local, state and federal law and adequate legal protection of the City.
11. Researches and prepares legal opinions on legal issues.
12. Maintains current knowledge of issues, legislation, regulations and case law on subjects affecting the City and relating to municipal law, including but not limited to, land use, real property, and public works contracting.
13. Handles confidential information and material with the highest degree of professional responsibility.

NECESSARY KNOWLEDGE, SKILLS AND ABILITIES:
Graduation from a law school accredited by the American Bar Association and a minimum of five years’ experience in municipal law are preferred. Experience in legal office management and small cities in Washington State is highly desired. Civil litigation experience is also highly desired.

1. Comprehensive municipal law, including administrative, contract, insurance, land use torts, municipal finance, public records, utility and labor relations law.
2. Theory, structure and practice of municipal law, particularly as it applies to the Mayor-Council form of government.
3. Supervisory principles and office management.
4. Resolving conflicts and gaining cooperation among conflicting groups.
5. Imparting the importance of strategy in the application of law.
6. Research methods and succinct writing techniques.
7. City organization, operations, policies and objectives.
8. Correct English usage, grammar, spelling, punctuation and vocabulary, as well as public speaking techniques.
9. Interpersonal skills including tact, patience and courtesy.
10. Apply innovative and logical reasoning abilities to legal problems.
11. Grasp complex factual data, draw appropriate conclusions and formulate sound legal decisions.
12. Communicate complex legal ideas verbally and in writing to a variety of audiences in a clear, comprehensive and professional manner.
13. Read, interpret, explain and apply legal and technical language.
14. Draft and interpret City ordinances and resolutions.
15. Negotiate real property acquisitions and dispositions.
16. Litigate in state and federal courts and before administrative agencies.
17. Articulate and persuade in verbal and written argument.
18. Plan, organize and evaluate the work of others.
19. Work cooperatively with the City Council, Asst. City Administrator and Department Directors as a member of the Senior Staff Department Heads.
20. Participate and collaborate as a member of the Management Team.
21. Demonstrate punctual, regular and reliable attendance.
22. Develop and maintain productive relationships with elected officials, business leaders, advisory boards, the news media and the general public.
23. Understand the City’s political environment and sensitivities.
24. Listen effectively to verbal communication.

REQUIRED LICENSING AND CERTIFICATION:
1. License to practice law in the State of Washington
2. Member in good standing of the Washington State Bar Association at time of appointment
3. Valid Washington State driver’s license
PHYSICAL DEMANDS AND WORKING CONDITIONS:
Continuous repetitive arm/hand movement is essential to performance. The incumbent in this position must be able to discern voice conversation, have the physical ability to perform essential job functions, must have hand-eye coordination sufficient to operate computers, type on a keyboard, and operate other office equipment. The individual may be required to do repetitive arm/hand movements (i.e. keyboarding). In addition, the incumbent must have the ability to produce legible handwritten documents. The incumbent may be required to lift up to 30 pounds, if necessary.

ACKNOWLEDGEMENTS:

EQUAL OPPORTUNITY EMPLOYER - AMERICANS WITH DISABILITIES ACT
The City of Edgewood is an Equal Opportunity Employer. Women and minorities are encouraged to apply. Requirements outlined in this job description may be subject to modification to reasonably accommodate individuals with disabilities who are otherwise qualified for employment in this position. However, some requirements may exclude individuals who pose a direct threat or significant risk to the health and safety of themselves or other employees. This job description does not constitute an employment agreement between the Employer and Employee and is subject to change as the needs of the Employer and requirements of the job change.

If you meet the minimum qualifications and are interested in applying for this position, please send a cover letter, resume, and signed EOCC statement to:

City of Edgewood
Human Resources
2224 104th Ave E
Edgewood, WA 98372-1513

Submittals may also be e-mailed to humanresources@cityofedgewood.org.

Incomplete submittals will be disqualified. Only those applicants selected to move forward in the process may be contacted. Submittals will be retained in accordance with Records Retention practices. If you have questions regarding the application process, please contact human resources at 253-952-3299 or via e-mail at humanresources@cityofedgewood.org.