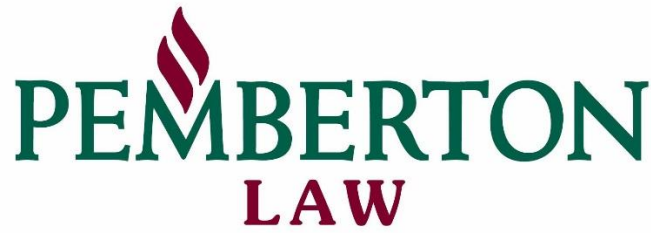


Response to Request for Proposals City Attorney Services

June 30, 2021



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June 30, 2021

City of Vergas
ATTN: Julie Lammers, Clerk/Treasurer
111 Main Street
P.O. Box 32
Vergas, MN 56587

Via Email: jlammers@cityofvergas.com

IN RE: Response to Request for Proposals
 City Attorney Services

Thank you for the opportunity to submit this proposal to the City of Vergas for legal services. Our law firm hopes to be of assistance to the City of Vergas. Pemberton Law has been a part of the outstate Minnesota legal community for over 130 years. Our law firm has decades of experience representing public entities (cities, counties, school districts, townships, joint powers entities, and service cooperatives) across Minnesota in all areas of civil law, including municipal law, employment law, grievance and arbitration work, litigation, negotiations, and general labor law advice.

Please accept this letter, and the pages that follow, as our response to the City's Request for Proposals for Legal Services. We hope to be in contact with you shortly to discuss this proposal in more detail or address any questions you may have.

On behalf of Pemberton Law, we wish to thank the City of Vergas for the opportunity to submit this proposal for consideration. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi A. Hastings".

Kristi A. Hastings
k.hastings@pemplaw.com

A handwritten signature in black ink, appearing to read "Abbie J. Thurmes".

Abbie J. Thurmes
a.thurmes@pemplaw.com

A handwritten signature in black ink, appearing to read "Elise M. Heifort".

Elise M. Heifort
e.heifort@pemplaw.com

A handwritten signature in black ink, appearing to read "Joshua M. Heggem".

Joshua M. Heggem
j.heggem@pemplaw.com

A handwritten signature in black ink, appearing to read "Ryan D. Fullerton".

Ryan D. Fullerton
r.fullerton@pemplaw.com

RESPONSE TO REQUEST FOR PROPOSALS

SECTION A FIRM BACKGROUND

1. Brief History

Pemberton Law assists many cities, counties, school districts, townships, and service cooperatives in Minnesota. We are also a full-service law firm with specialists in a variety of different legal practice areas, including municipal law, employment law, corporate law, estate planning, family law, real estate law, and litigation. The diversity of the specialties of our attorneys provides us with a broad base of expertise and resources to ensure that our clients are always serviced by an attorney experienced the appropriate area of law.

We are consistently rated as a premier law firm in the State of Minnesota. Several of our partners, including Kristi A. Hastings, are rated as Super Lawyers in their particular specialties. Several more of our attorneys, including Joshua M. Heggem, have been named "Rising Stars" by Minnesota Law & Politics numerous times over the year. We are regular speakers and presenters at legal seminars, and pride ourselves on remaining on the forefront of the myriad of unique laws that govern cities and public entities in general.

a. Areas of Expertise and General Services

Our law firm has the benefit of being one of the largest outstate firms in Minnesota, yet we live and work in rural communities which gives us a unique perspective. More importantly, we can access knowledge from all 22 of our attorneys and provide great benefit through our collective wealth of knowledge and breadth of experience. It is rare for our law firm to be faced with a question or dilemma that someone here has not dealt with before. Combining that with the resources of our support staff, who also specialize within our various practice areas, many of whom have worked for Pemberton Law for several decades, we believe we can provide some of the most efficient and cost-effective services available.

b. General Qualifications of the Firm to Perform Municipal Legal Services

While we anticipate sharing the total work for the city amongst all listed on the prior page, other attorneys would be available from time to time as needed. Our law firm utilizes a team-based approach, and any of our attorneys may become involved in a project that may require a certain level of expertise in a particular area of law. The partners and associates at our Fergus Falls office practice primarily in the areas of municipal and public law, real estate, employment law, corporate law, and litigation. Attorneys at each of our four main offices have assisted public entities with real estate, commercial, and financial transactions for the past several decades.

We have assembled a team of attorneys to assist the city and are able to assist with the scope of services outlined in the Request for Proposals. Kristi A. Hastings and Joshua M. Heggem, both senior partners at our law firm, are MSBA Certified Labor and Employment Law Specialists, with extensive experience representing municipalities in governance and labor areas. Abbie J. Thurmes practices primarily in public, municipal, employment law. In addition, Ryan D. Fullerton practices

primarily in the areas of real estate and litigation, and Elise M. Heifort is a recent addition to our law firm and practices in the areas of public, municipal, and employment law.

c. Knowledge of General Matters Affecting Municipalities

Traditionally, our law firm has defended cities and other public entities through the League of Minnesota Cities Insurance Trust, the Minnesota Counties Intergovernmental Trust, Minnesota School Board Association, Minnesota School Board Association Insurance Trust, and Riverport Insurance. We have experience with this type of defense work in addition to handling litigation on behalf of public entities where no insurance coverage is available. We also have a wide variety of litigation experience in Minnesota and North Dakota state courts, federal courts, and many different types of administrative processes. Regarding specific municipal litigation our firm has handled over the past five years, various attorneys have handled litigation, or threatened litigation, over that time period for the cities of Lake Park, Ada, and Fergus Falls, and have also worked proactively on other matters for those and other cities to avoid litigation in a number of instances.

Several of our attorneys have also handled zoning and land use litigation cases in both Minnesota district and appellate courts in the past. Our real estate attorneys are intimately familiar with platting and land development issues, and we have several attorneys with experience in condemnation law, including initiating condemnation proceedings, negotiating condemnation land transfers, and condemnation commissioner hearings and litigation. We routinely work with the unique issues related to law enforcement with both our municipal and county clients. Josh Heggem has prior experience, as referenced above, dealing with both municipal electric utilities and cable franchise agreements, as well as other utility-related issues such as connection, repair, assessment, collections, shutoff, and tax certification issues. Finally, we have several commercial/business attorneys who have worked on municipal lending issues. We are not recognized bond counsel and all of our city clients retain separate bond counsel.

For further information on specific attorney knowledge or examples of legal matters handled for municipalities by our various attorneys, see section B; Attorney Qualifications.

2. Office Location(s)

Pemberton Law is comprised of four main offices—located in Fergus Falls, Detroit Lakes, Wadena, and Alexandria, Minnesota. We maintain smaller offices in Henning, Ottertail, and Parkers Prairie, Minnesota. Our firm consists of 22 attorneys, 35 support staff, and varying numbers of interns, law clerks, and summer associates.

3. Malpractice Statement

Our firm and our attorneys have not received any ethics complaints that have not been summarily dismissed as frivolous during the past five years. In the previous five years, we have dealt with, with the assistance of our malpractice carrier, two assertions of legal malpractice, neither of which were brought by lawsuit.

SECTION B ATTORNEY QUALIFICATIONS

Kristi A. Hastings:

Kristi completed her undergraduate studies and graduated from the University of North Dakota, where she also received her Juris Doctorate and was admitted to the Minnesota Bar in 2001. She began representing public entities during the initial days of her employment with the Pemberton Law Firm as a law clerk, before becoming an associate and later a partner. Kristi has practiced almost exclusively in the areas of school law, municipal law, employment litigation, human resources support, and defending public entities in litigation for all of her 19 years at the firm.

Active in the community, Kristi is on several local boards, including past president of the Fergus Falls American Association of University Women, past board of directors of Claire Ann Shover Nursery School, and current member of Lake Region Healthcare Advisory Board. Professionally, Kristi serves as the past president and member of the board of directors of The Fergus Falls 544 Education Foundation, current board of directors of the Minnesota Council of School Attorneys. She also served as president of the Otter Tail County Bar Association and the Seventh District Bar Association.

Kristi is an MSBA Certified Labor and Employment Law Specialist who works with public entities across the State of Minnesota. She has been designated as a Super Lawyer by *Minnesota Lawyer*. She negotiates collective bargaining agreements on behalf of county, city, and school district employers, as well as handling the all the issues that face public employers on a daily basis.

Joshua M. Heggem:

Josh grew up in Aitkin, Minnesota, and graduated from Aitkin High School. He completed his undergraduate studies and graduated from Gustavus Adolphus College. He received his Juris Doctorate from the University of Minnesota Law School and was admitted to the Minnesota Bar in 2007. He is also licensed to practice in North Dakota. Josh began representing public entities during the initial days of his employment with Pemberton Law, 13 years ago, and, prior to his admission to the bar, by conducting internal employment investigations and conducting legal research. Josh has been with the firm for his entire career, and his practice focuses on the areas of employment and labor law, municipal law, school law, and litigation.

Josh's practice areas include representing both public and private entities, handling complex human resource and employment issues for employers, such as conducting workplace investigations involving sensitive, criminal, and financial issues, assisting with negotiating collective bargaining agreements, and employer legal compliance work.

Josh has a wide variety of experience with Minnesota municipal and public sector law. He has assisted cities and other public entities with evaluating and assessing various liability risks associated with many different policy decisions; reviewed and negotiated various types of contracts for city services; negotiated cable franchise and municipal electric utility

service agreements; drafted ordinances, resolutions, and all documents necessary for real estate transactions; and has interpreted state statute and city charter provisions and the effect those provisions have on proposed council action.

He has assisted public entities with responding to discrimination claims, labor negotiations, employee grievances and arbitrations, Veteran's Preference Hearings, unemployment claims, eminent domain hearings, and other types of administrative hearings. Josh has a great deal of knowledge regarding PELRA, open meeting law, data practices, and many other statutory requirements and procedures unique to public entities.

Specifically, with regard to employment and labor law, Josh also has experience with human resources, counseling, and risk reduction, including workplace investigations, discipline, hiring, firing, reductions in force, layoffs, performance improvement plans, last chance agreements, leave compliance, employee contract claims, regulatory compliance for ADA, FMLA, wage and hour, workers' and unemployment compensation, as well as preparation and drafting of employment manuals, policies, employee handbooks, employment contracts, and collective bargaining agreements.

Abbie J. Thurmes

Abbie would be the primary contact for all city attorney services as described in this proposal, along with Elise Heifort. Our entire firm, however, will be available as a resource. If attorney presence is requested at City Council meetings, Abbie and/or Elise would be who would attend meetings at the City's request.

Abbie has several years of experience working in municipal and public sector law, as well as the areas of school and employment law. Abbie has two years' experience as a public defender prior to joining Pemberton. Abbie's current practice includes representing both public and private entities, conducting workplace investigations, as well as addressing issues that arise from employers from across the state. Abbie has assisted public entities with responding to ordinance violations, unemployment claims, grievances, dealing with open meeting law, data practices, and many other issues.

Elise M. Heifort:

Elise received her undergraduate degree from the University of Minnesota, Duluth, and later obtained her Juris Doctor degree from the University of St. Thomas School of Law. Prior to joining Pemberton, Elise worked for the League of Minnesota Cities Insurance Trust where she enjoyed assisting municipalities in various litigation matters.

Elise currently practices in the areas of employment, municipal, and school law, and represents both public and private entities. She has experience handling employment matters, conducting workplace investigations, responding to data requests, and assisting municipalities with a variety of legal issues.

Ryan D. Fullerton:

Ryan is licensed to practice in Minnesota, North Dakota, and the federal courts of those states. He has appeared before the 8th Circuit Court of Appeals, as well as Minnesota and North Dakota federal and state courts and the Minnesota Public Utilities Commission. Ryan practices primarily in the areas of real estate, litigation, and commercial matters.

Ryan joined the firm in 2016 and obtained his undergraduate degree from Winona State University. Ryan attended the University of Minnesota Law School, where he was placed on the Dean's List on numerous occasions and was recognized for achieving the highest grade in one of his property law classes. Upon graduating from law school, Ryan was recognized by the Minnesota Justice Foundation for having volunteered at legal assistance organizations for more than fifty hours during law school.

Ryan has represented clients in complex commercial and business litigation, disputes involving real estate, and employment litigation. Ryan has been primarily responsible for several property disputes which have resulted in bench trials, where Ryan was able to obtain favorable verdicts for his clients. Ryan also regularly assists clients involved in commercial and real estate transactions, and uses his experience in the litigation areas to advise clients on how best to mitigate risk and anticipate potential issues. Ryan has also defended cities and counties in lawsuits related to property tax appeals and alleged constitutional violations.

Ryan has assisted other attorneys at our firm in the development and interpretation of ordinances relating to nuisance abatement, economic development, and liquor licensing. Ryan has also conducted workplace investigations aimed at mitigating risk in business and real estate transactions context.

2. Availability and Response Time

It is not unusual when advising public entities to have short turn-around times for review of documents or to respond to situations. We believe that our team-based approach is well-suited for this because it means several of our attorneys are up to speed on each client's matters and the laws involved in order to meet the necessary deadlines in a cost-effective manner.

We pride ourselves on being accessible, and this contract will be given our utmost attention. When we are not in the office, we will provide our cell phone numbers so we may be reached. If a face-to-face meeting would help resolve a situation, we will make ourselves available for this. We make returning telephone calls and giving clients a timeline of when they can expect work to be done a priority. We do not believe there is a standard time frame for responding to a specific inquiry, as it depends on the type of question being asked and whether research or additional fact gathering is necessary. We keep our clients up to date on the happenings in their cases and matters, and we would do the same for the City of Vergas.

While our proposal includes travel time where in-person work is necessary, we routinely travel distances of several hundred miles, or greater, to serve our current clients. In addition, in the electronic age we live in, a great deal of work can be done without making a trip. If a scheduling conflict does arise, we have other attorneys available and capable of filling in if necessary.

All of our attorneys who work for public sector clients are quite used to attending evening council meetings as needed and as scheduled in advance, and we would work with the City to determine the necessary level and frequency of attorney presence at your meetings. For most of our public clients, we do not report to any regularly scheduled council or board meetings. All our attorneys who work for public sector clients are understanding of the desire to have an attorney presence at evening council meetings as needed and as scheduled in advance.

SECTION C FIRM QUALIFICATIONS

1. Client References

Britt See-Benes, City Administrator
Sherry Erickson, Finance/HR/Safety Director, City of Virginia
327 First Street South
Virginia, MN 55792
Phone: (218) 749-3568
Email: britts@virginiamn.us
ericksons@virginiamn.us

Peyton Mastera, City Administrator
City of Dilworth, Minnesota
2 First Avenue Southeast
P.O. Box 187
Dilworth, MN 56529-0187
Phone: 218-287-2313
Email: peyton.mastera@ci.dilworth.mn.us

Ashley Larson, City Administrator
City of Ada, Minnesota
15 - 4th Avenue East
Ada, MN 56510
Phone: 218-784-5520
Email: alarson@adamn.gov

2. Our firm has been serving public entities for the vast majority of its 130 years of existence. Here is a representative list of these past and present clients:

- City of Ada
- City of Breckenridge
- City of Farmington
- City of Hewitt
- City of Verndale
- City of Henning
- City of Dilworth
- City of Deer Creek
- City of McIntosh
- City of Menahga
- City of Motley
- City of Red Lake Falls
- City of Parkers Prairie
- City of Virginia
- City of Starbuck
- City of Ottertail
- City of Bluffton
- City of Fergus Falls
- City of Shakopee
- City of Wheaton
- City of Sauk Centre

Our firm has also represented other cities on various hourly projects related to employment law issues, litigation, real estate, and financial transactions, including the cities of Barnesville, Pelican Rapids, and Battle Lake.

Finally, our firm has worked with a number of Townships over the past 12 years (and many years prior to that) in the areas surrounding our various offices, including by way of example: Cormorant Township, Ulen Township, Elmo Township, Sverdrup Township, Elizabeth Township, Bartlett Township, Henning Township, Fergus Falls Township, and Clitherall Township.

In addition, our firm represents a number of other public entities. Some of these have been clients for over fifty years, and many of them have been clients for several decades. Here is a representative list of these past and present clients:

- Clay County
- Todd County
- Otter Tail County
- Norman County
- Hubbard County
- Polk County
- Swift County
- Meeker County
- Pennington County
- Mahnomen County
- Fergus Falls School District
- Fergus Falls Area Special Education Cooperative
- Battle Lake Public Schools
- Brainerd Public Schools
- Breckenridge Public Schools
- Eagle Valley Public Schools
- Fertile-Beltrami Public Schools
- Frazee-Vergas Public Schools
- Lake Park-Audubon Schools
- Lake of the Woods School District
- Menahga Public Schools
- Minnewaska Public Schools
- Morris Area School District
- Northland Community Schools
- Park Rapids Area Schools
- Staples-Motley Public Schools
- Verndale Public Schools
- West Central Area Schools
- Lakes Country Service Cooperative
- Sourcewell (formerly National Joint Powers Alliance®)
- Southwest West Central Service Cooperative
- Des Moines Valley Health and Human Services

Currently, we serve most of our public clients on an as-needed basis. Most counties meet on Tuesdays or Thursdays during regular business hours. Most schools meet in the evenings; however, we are only sporadically asked to appear at those meetings. As a result, we do not believe scheduling conflicts will be an issue with your meetings. In the event that a scheduling conflict did arise, we have other attorneys available and capable of filling in if necessary and are also willing to participate in meetings over the phone, or via videoconferencing.

3. Our firm is highly trained and qualified in conducting efficient and high-quality legal research. Our legal research is conducted through our firm-wide subscription to WestLaw as well as subscriptions to specific printed publications not widely available online such as

summaries of BMS arbitration awards. Our firm also receives exclusive printed publication materials from frequently attending conferences and seminars on legal issues in the public sector.

SECTION D FEES

1. Hourly Rate for Primary Attorney

Abbie Thurmes:	\$180.00 per hour
Elise Heifort:	\$170.00 per hour
Kristi A. Hastings:	\$215.00 per hour
Joshua M. Heggem:	\$215.00 per hour
Ryan D. Fullerton:	\$195.00 per hour

General office costs (e.g. copying, faxing, etc.):

- | | |
|--------------------------|---|
| • Fax expense | \$0.50 cents per page |
| • Photocopies | \$0.15 cents per page |
| • Color copies | \$1.00 per page |
| • Meals | Actual expenses incurred |
| • Postage/overnight mail | Actual expenses incurred |
| • Mileage | \$0.56 cents per mile (federal mileage rate)
(hourly rates are also charged for travel time) |

2. Increments of Time Billed

All law firm personnel bill in increments of a minimum of 1/10th of an hour (six minutes), which is the minimum increment billed for each service provided, including phone calls, emails, and any other time spent working for the City. We bill monthly during the first week of each month and send detailed, itemized billing statements outlining all work performed.

3. Rate for City Council Meeting Attendance

City Council Meeting attendance would be billed hourly.

SECTION E

CONFLICT OF INTEREST

A. Conflict of Interest

With a firm our size and the size of our client base, there is also a possibility that conflicts may arise between the City of Vergas and some of our other clients. Although it is a rare occurrence, there may be times where we need to withdraw from representing one client or another under certain circumstances, but we can assure the City that if there is a need to resolve a conflict and/or find separate counsel, we will have an in-depth discussion with the City Council regarding the conflict, our proposed solution, and if necessary, our recommendation for separate counsel to assist to the extent it is necessary.

