

AGREEMENT

This agreement (“Agreement”) is entered into this 3rd day of December, 2018 by and between the **City of Dalton, Georgia**, a municipal corporation (the “City”) and **Susan Beck** (“Beck”).

WHEREAS, the City desires to retain a prosecuting attorney for its Municipal Court; and

WHEREAS, Beck desires to assume the position of prosecuting attorney of the City of Dalton Municipal Court in accordance with the terms and conditions below.

THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment. Pursuant to the terms and conditions of this Agreement, the City appoints Beck as the prosecuting attorney for the City of Dalton Municipal Court.

2. Term. Beck’s tenure as prosecuting attorney shall commence on the 17th day of December, 2018, and shall continue until the 17th day of December, 2019 at which time this Agreement shall expire, unless sooner terminated as herein provided (the “Term”). Notwithstanding the expiration of this Agreement, it shall automatically renew from year to year (the “Renewal Term”) under the same terms and conditions as are stated herein unless either party gives to the other party written notice of termination at least thirty (30) days prior to the expiration of the then current term. Notice of termination may be delivered in person; by certified mail, return receipt requested; or by statutory overnight delivery. The date of receipt or attempted delivery shall be the delivery date of such notice.

3. Termination. This Agreement may be terminated prior to the expiration of the then current term for any of the following reasons:

(a) *Termination without cause*. Notwithstanding the provisions of Section 2 of this Agreement, the City shall have the right to terminate this Agreement without cause at any time prior to the expiration of the then current term upon thirty (30) days’ written notice.

(b) *Termination for Cause*. Notwithstanding the provisions of Section 2 of this Agreement, in the event of any of the following, the City shall have the right to terminate this Agreement immediately and without notice:

- i. If Beck for any reason ceases to be an active member in good standing with the State Bar of Georgia;
- ii. If Beck materially breaches this Agreement, or fails to adequately render professional services as required herein;
- iii. Fraud, dishonesty or other acts of misconduct by Beck in the rendering of professional services as required herein;

- iv. In the event Beck fails or refuses to faithfully or diligently perform the provisions of this Agreement, as determined by the City; or
- v. The death of Beck.

The termination of this Agreement shall release the City from any further payments of compensation to Beck effective upon the date of termination, and shall release Beck from any further obligation to provide professional services hereunder as of the date of termination.

4. Compensation. As compensation for services rendered as prosecuting attorney, the City shall pay Beck compensation as follows:

(a) Three Thousand Five Hundred Dollars (\$3,500.00) per month for the first two months of the Term of this Agreement; and

(b) Three Thousand Seven Hundred Fifty Dollars (\$3,750.00) per month thereafter, provided that the City, in its sole discretion, is satisfied with Beck's performance of the services rendered under this Agreement. In the event the City is not satisfied with Beck's performance of the services rendered herein, in addition to any other remedy available hereunder or at law, the City may elect to terminate this Agreement or continue the Agreement upon the same terms and conditions except the compensation for the services rendered herein shall continue to be Three Thousand Five Hundred Dollars (\$3,500.00) per month.

Payment shall be made on or before the 10th of each month for services rendered the previous month. Beck shall be responsible for and shall pay (a) all taxes associated with her compensation and (b) all expenses incident to her providing of the services contemplated herein.

5. Duties. As prosecuting attorney for the City of Dalton Municipal Court (the "Municipal Court"), Beck's duties and authority shall be as set forth in O.C.G.A. §15-18-96.

6. Oaths. Beck shall take the applicable oaths prescribed by Chapter 3 of Title 45 of the O.C.G.A. and the oath prescribed in O.C.G.A. §15-18-93.

7. Independent Contractor. The relationship of Beck to the City shall be that of an independent contractor. Neither Beck nor her employees shall have any right to participate in any City employee benefit program. The City shall not control, direct, or supervise Beck or her employees in the performance of services rendered pursuant to this Agreement.

8. Membership. Beck warrants that she is an active member in good standing with the State Bar of Georgia and is admitted to practice before the appellate courts of the State of Georgia. Beck further warrants that she shall maintain such professional status during the term of this Agreement.

9. Absence from Duties. The City shall allow Beck two (2) non-accruing, absences from any meetings of the Municipal Court per annum for which the City will pay the costs for contracting with an individual to perform the services rendered herein in Beck's absence (the "Substitute

Solicitor”). The City reserves the right, but shall not be obligated, to select and negotiate the terms of any agreement with the Substitute Solicitor and to notify the Substitute Solicitor of the City’s need for his or her services. If Beck misses more than two meetings of the Municipal Court in any year, Beck shall be responsible for paying the compensation due the Substitute Solicitor for performing the services in Beck’s absence for all such additional absences. Upon Beck’s failure to pay the costs of the Substitute Solicitor when due, the City may elect, but shall not be required, to pay the Substitute Solicitor’s compensation for performing the professional services in Beck’s absence. In such a case, the City may deduct the costs of compensating the Substitute Solicitor for such additional absences from the compensation due Beck in the month following the month in which the City pays said costs to the Substitute Solicitor. Beck shall provide the City thirty (30) days’ notice of her intent to miss any meeting of the Municipal Court in order for the City to have adequate time to notify and obtain the services of the Substitute Solicitor.

10. Prohibition on Certain Type of Legal Work. Beck acknowledges and agrees that it is a conflict of interest for her to engage in or consult with any person regarding any criminal defense work in the Conasauga Judicial Circuit during the Term and any Renewal Term of this Agreement. Consequently, Beck agrees that during the Term and any Renewal Term of this Agreement, she will refrain from engaging in providing legal representation and consultations regarding criminal defense work in the Conasauga Judicial Circuit.

11. Miscellaneous.

- (a) This Agreement constitutes the entire agreement among the parties hereto with respect to the transactions contemplated herein and supersedes all prior agreements, understandings and negotiations, both written and oral, among the parties with respect thereto.
- (b) Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in the Agreement.
- (c) No provision of this Agreement shall be deemed waived, nor shall there be an estoppel against the enforcement of any such provision, except by a writing signed by the party charged with the waiver or estoppel. No waiver shall be deemed continuing unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or as to any act other than that specifically waived.
- (d) Headings in this Agreement are for convenience only and shall not control the meaning of this Agreement. Whenever applicable, masculine and neutral pronouns shall equally apply to the feminine genders; the singular shall include the plural and the plural shall include the singular. The parties have reviewed and understand this Agreement, and each has had a full opportunity to negotiate the Agreement’s terms and to consult with counsel of their own choosing. Therefore, the parties expressly waive all applicable common law and statutory rules of construction that any provision of this Agreement should be construed against the drafter, and agree that this Agreement and all amendments thereto shall be construed as a whole, according to the fair meaning of the language used.

- (e) This Agreement may not be altered or amended except in a writing signed by the parties hereto.
- (f) This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.
- (g) Nothing in this Agreement, express or implied, is intended to confer on any person or entity not a party to this Agreement any right or remedy by reason of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date first above written.

City of Dalton, Georgia

By: _____
Mayor

_____(Seal)
Susan Beck

Attest:

City Clerk