

**AGREEMENT
AS TO THE PROVISION OF
CITY ATTORNEY LEGAL SERVICES FOR THE
CITY OF DALTON, GEORGIA**

THIS AGREEMENT (“Agreement”) represents the understanding between **the City of Dalton** (the “City”), a municipal corporation, and **Terry L. Miller**, City Attorney for the City (the “City Attorney”), and **Mitchell & Mitchell, PC** (the “Firm”) regarding the services to be provided by the City Attorney and compensation for time and expenses related thereto effective on the date signed by the last signing party, and until further modified by mutual agreement between the parties.

WHEREAS, the City desires to appoint **Terry L. Miller** of **Mitchell & Mitchell, PC** as the City Attorney for the purpose of providing legal guidance to the City as set forth herein;

WHEREAS, as set forth below, the City further intends to use the legal services of **Mitchell & Mitchell, PC**, including its partners, associates, and paralegal staff, to support the City Attorney’s performance of his position and official duties;

WHEREAS, **Mitchell & Mitchell, PC** designates **Terry L. Miller** as the primary provider to the City and to perform the position of City Attorney.

A. Acceptance of Appointment.

By signing this Agreement, the undersigned Terry L. Miller hereby accepts the appointment as City Attorney and lead lawyer on all matters related to his representation, though other lawyers may assist him as necessary. The City Attorney shall provide quality services in an efficient and economical manner. In addition, the Firm accepts appointment to serve and support the City Attorney through its partners, associates, and paralegal and other administrative staff in the performance of his duties as set forth and in accordance with the terms herein. The City Attorney shall take the applicable oaths prescribed by Chapter 3 of Title 45 of the Official Code of Georgia.

B. General Non-Litigation Legal Services.

The City Attorney and the Firm shall provide general legal and other services to the City including, but not limited to, the following:

1. Legislative work associated with City Council meetings, including preparation or review of ordinances and resolutions, and written policies and procedures, together with research work, as necessary, associated with the preparation of those documents. This activity shall include providing assessments of legal likelihoods in support of City risk analyses.

2. Prepare oral and written opinions on legal matters as required by the City Council and/or the City Administrator.
3. Negotiate and prepare agreements, leases, contracts, or similar documents.
4. When requested by the City Council or the City Administrator, perform investigations that may require interviewing witnesses, taking testimony, review of reports, and legal research.
5. Provide legal counseling, guidance and opinions to the City Administrator and Department Directors regarding the operations of the City.
6. Participate in meetings and/or telephone conferences with the City Administrator and/or City staff as requested by the City Administrator, as required.
7. Provide staff assistance, legal research and counseling related to the acquisition or sale of real property, preparation of leases, deeds and easements; utility franchise agreements; referendum questions, contracts, surety/performance/payment bonds, insurance policies, bills of sale, liens, waivers, subordinations, and other legal instruments; liability situations; grant guidelines; arbitration; and other matters as necessary requiring legal advice.
8. Prepare and/or review ordinances, resolutions, documents and papers that pertain to City matters at the request of City Council or the City Administrator.
9. Maintain legal files and provide to the City Administrator copies of all correspondence, and all pleadings and orders in all litigation the City Attorney is handling for the City. On a monthly basis, the City Attorney will provide a summary written report on the status of all litigation that the City Attorney is directly handling or is overseeing on behalf of the City. Furthermore, the City Attorney shall notify the Mayor, Council and City Administrator within 48 hours of any ante litem notice, any notice of claims, and/or any legal actions which have been initiated against the City.
10. Keep the Mayor, City Council and the City Administrator informed of legislation or judicial decisions that have the potential to impact the City.
11. Oversee, in a cost-effective manner, litigation in which the City is represented by the City's insurance carriers, statutory risk management pools, and/or any other outside legal counsel appointed by the City.
12. Perform other professional duties as may be required including, but not limited to, conducting legal research as required for the performance of duties in representing the City.

13. Participate in special projects as authorized by the Mayor, City Council, or City Administrator including, but not limited to, the negotiation for sale of purchase of real estate, including fee ownership and easements and acquisition of interest in real estate through the exercise of eminent domain by the City.
14. Provide advice to the City Administrator and/or any other individual designated as an open records officer regarding exemptions applicable to public records sought via the Georgia Open Records Act.
15. Provide assistance and preserve City records in accordance with the City's record retention schedule.
16. File all petitions to abate a public nuisance on behalf of the City.
17. Serve as legal counsel to the City Council, Pension Board, Public Safety Commission, and any other board, commission, and/or authority as prescribed by state or local law.
18. Attend all regular meetings of the City Council, all special meetings, work sessions and executive sessions, and any other City meetings as requested by the Mayor, City Council, or the City Administrator.
19. Attend all regular meetings, all special meetings, work sessions, and executive sessions of the Pension Board, Public Safety Commission, and any other board, commission, and/or authority as prescribed by state or local law.
20. Handle petitions, or other business, as requested in the City of Dalton Municipal Court.
21. Assist with all other legal matters requested by the City.

C. Relationship Among City Attorney and Other Attorneys.

The City Attorney is the lead attorney for the City in the provision of the general services described above. As such, the City Attorney shall work cooperatively with any other attorney(s) retained by the City, who shall take direction from and be under the City Attorney's supervision. Moreover, the Firm, including its partners, associates, and paralegal staff, will serve under the supervision of the City Attorney.

The City Attorney will be the initial contact for legal advice and representation for legal work needed by the City, Mayor, Council and staff. The City Attorney, in consultation with the City Administrator, will determine the most efficient and effective use of in-house attorneys and any outside counsel.

D. Retaining Other Legal Professionals.

It may be necessary or desirable in certain cases to retain the legal services of others who have expertise in the particular matter under review. Fees incurred by such professionals will be paid directly to the professional providing such services. If the City Attorney recommends the services of any such professional to be used in this manner, such recommendation shall be submitted to the City Administrator for review and approval prior to utilization of the professional.

E. Fees and Expenses.

1. **General Non-Litigation Legal Services.** Time expended by the City Attorney on providing general non-litigation legal services, including any attorneys that may assist the City Attorney, is billed on the basis of an hourly rate for attorneys' and paralegals' time, plus reimbursable expenses. The City Attorney's hourly rate is \$150 per hour. Other attorneys in the firm may have different rates; however, such rates shall not exceed the hourly rate of \$150 per hour. At the time of this Agreement, the Firm is authorized to bill the City for the services of attorney William J. Kimsey at a rate of \$150 per hour and attorney W. Cody Newsome at a rate of \$100 per hour. The City Attorney and/or the Firm must obtain approval from the City Administrator prior to billing any time for paralegals or other support personnel.

These rates may be modified over time by agreement with the City, usually at the first of the year when the City Attorney typically reviews his rate structure. In addition, the City Attorney shall bill for reimbursable expenses. The City Attorney and the Firm will comply with all applicable federal, state, and local ethics and gifts and gratuities laws, rules, and regulations with regard to reimbursable expenses. The cumulative total of fees for general non-litigation services for the City Attorney and the Firm shall not exceed the amount of \$100,000 annually, without the prior written approval of the City Administrator.

2. **Litigation Legal Services.** Time expended by the City Attorney on providing services for litigation matters, including any attorneys that may assist the City Attorney, is billed on the basis of an hourly rate for attorneys' and paralegals' time, plus reimbursable expenses. "Litigation matters" means all actions filed in Federal District Court, Superior Court, or State Court against the City. Separate billing will begin on litigation matters only after the date of filing of an action against the City. These litigation matters differ from those actions in which the City may be defended solely by its insurer. As long as the City, its elected officials, officers and personnel are named as parties to the litigation, the City Attorney is to be included as an attorney of record and will appear either personally or through a designee before the applicable court for any hearing or trial to protect the interest of the City and its officials. The City Attorney's hourly rate for litigation services is \$150 per hour. Other attorneys in the firm may have different rates; however, such rates shall not exceed the hourly rate of \$150 per hour. At the time of this Agreement, the Firm is authorized to bill the City for the services of attorney William J. Kimsey at a rate of \$150 per hour and attorney W. Cody Newsome at a rate of \$100 per hour. The City

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F. Fees and Expenses.

The City Attorney and/or the Firm shall forward all statements for services and expenses on a monthly basis via mail to the City of Dalton, P.O. Box 1205, Dalton, GA 30722, together with all backup required by the City's Finance Director. Payment shall be made within twenty (20) days of receipt of a compliant statement. The City will have the right to request additional notes and documentation as to individual charges. The City Attorney and/or the Firm shall respond in a timely manner to any questions about charges invoiced by the City Attorney. Monthly statements shall be mailed no later than the 10th of each month for the prior months' billing and must include a detailed breakdown of the service provided and total billable hours, to the nearest tenth of an hour for each charge.

G. Activities of the City Attorney.

The City Attorney and/or the Firm shall keep the Mayor, Council and the City Administrator informed about the progress of his activities on the City's behalf and also, upon the City's request, of his estimates concerning additional time and cost which may be required in any case or matter. These reports and updates will be as complete as the City Administrator required.

H. Conduct of the City Attorney.

The City acknowledges that the City Attorney and other attorneys from the Firm are engaged in the private practice of law for compensation in addition to their legal work for the City. The City Attorney and any other attorneys under his supervision will comply with the state bar standards governing the professional conduct of lawyers and will not represent a client in private practice if doing so would constitute a concurrent conflict of interest or would impair in any way the attorney's ability to represent the City and the City's interests.

I. Resolution of Disagreement as to Terms.

In the event there is disagreement between the City Administrator and the City Attorney as to whether certain services are covered under this Agreement, the City Administrator shall notify the City Attorney immediately for discussion and resolution. If the matter is not resolved by the City Administrator and the City Attorney, the matter shall be forwarded to City Council for a final determination.

J. Independent Contractor.

The City Attorney and the Firm shall be independent contractors of the City. Neither the City Attorney nor the Firm have any right to participate in any City-provided employee benefit program. The City Attorney and the Firm shall maintain active status as a City of Dalton Vendor, including professional liability insurance with errors and omissions coverage.

K. Membership.

The City Attorney and the Firm warrant that all attorneys performing duties under this Agreement are active members in good standing with the State Bar of Georgia and are admitted to practice before the appellate courts of the State of Georgia. The City Attorney and the Firm further warrant that any attorneys performing duties under this Agreement shall maintain such professional status during the term of this Agreement. If a writ of quo warranto is brought to determine the qualifications of the City Attorney to serve as the City Attorney and is granted, the City Attorney and/or the Firm will be responsible for all legal and defense fees associated with said action.

L. Term and Termination

The term of this Agreement shall commence on the date signed by the last signing party and will continue for one month after the date of said signing. Notwithstanding the expiration of the term of this Agreement, this Agreement shall automatically renew from month to month under the same terms and conditions as stated herein.

Either party may terminate this Agreement at any time by giving thirty (30) days' notice in writing to the other party. Notice of termination shall be delivered either 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.

If this Agreement is terminated by the City other than for default by the City Attorney or an attorney supervised by the City Attorney or for any of the reasons set forth below, the City Attorney shall be paid for services performed and expenses incurred up to the effective date of termination. The City will also have the right to terminate this agreement immediately and without notice in writing if any of the following occur:

1. If the City Attorney ceases, for any reason, to be an active member of the State Bar of Georgia in good standing;
2. If the City Attorney and/or the Firm breaches this agreement;

3. If the City Attorney and/or the Firm fails to adequately render professional services as set forth herein;
4. If the City Attorney and/or the Firm engages or commits fraud, dishonesty or other acts of misconduct by Terry L. Miller and/or the Firm in the rendering of professional services as required herein;
5. If the City Attorney ceases to be affiliated with the Firm for any reason;
6. If the City Attorney fails or refuses to faithfully or diligently perform the provisions of this Agreement, as determined by the City; or
7. The City Attorney retires from the practice of law.

M. Entire Agreement; Modification; Severability; Warranties.

1. The City Attorney, the Firm, and the City understands, acknowledges, and agrees that this Agreement contains the entire understanding of the City Attorney, the Firm, and the City with regard to the subject-matter hereof, that it supersedes any and all prior written or oral agreements or understandings between the City Attorney, the Firm, and the City regarding such subject matter, and that there are no other agreements, understandings, representations, or warranties regarding such subject-matter not set forth or otherwise referenced or incorporated herein.
2. The City Attorney, the Firm, and the City agree to execute any other agreement, consent, authorization, release, waiver, or other document or form determined to be necessary to enforce or give effect to the intent of this Agreement or any provision hereof.
3. The City Attorney, the Firm, and the City acknowledge, understand, and agree that this Agreement may not be modified or canceled in any manner, nor may any provision of it or any legal or equitable remedy with respect to it be waived, except in writing signed by all Parties.
4. The City Attorney, the Firm, and the City acknowledge, understand, and agree (i) that the terms, conditions, restrictions, limitations, and obligations set forth in the various paragraphs, sections, and provisions of this Agreement are intended to be, and shall be considered and construed as, separate and independent; (ii) that to the extent any such term, condition, restriction, limitation, obligation, paragraph, section, or provision (or any part or portion thereof) is determined to be invalid, void, or unenforceable by any court, arbitrator, or other authority having jurisdiction in the matter, it shall be considered deleted herefrom; and (iii) that any such determination shall not render invalid, void, or unenforceable any other term, condition, restriction, limitation, obligation, paragraph, section, or provision of this Agreement.

5. The City Attorney and the Firm acknowledge, understand, and agree that the City has the sole right to enter into and end the attorney-client relationship between the parties and that neither the City Attorney nor the Firm has any right to seek specific performance to continue serving as the City Attorney or as legal counsel to the City.

N. Construction and Execution

1. No provision of this Agreement is intended or shall be interpreted or applied so as to preclude either the City Attorney, the Firm, or the City from complying with any federal, state, or local law, rule, or regulation.
2. The City Attorney, the Firm, and the City acknowledge and agree that it is their mutual intent that this Agreement be interpreted, construed, and enforced according to the laws of the State of Georgia and that it be interpreted and construed as if drafted by the City Attorney, the Firm, or the City such that no rule of strict construction shall apply.
3. The City Attorney, the Firm, and the City acknowledge, understand, and agree that headings contained in this Agreement are inserted for convenience and ease of reference only, that they shall not be deemed to be a part of this Agreement for any purpose, and that they shall not in any way define or affect the meaning, construction, or scope of any of the terms or conditions hereof.
4. The City Attorney, the Firm, and the City agree that this Agreement may be executed in separate counterparts and that each counterpart shall be deemed an original with the same effect as if the City Attorney, the Firm, or the City had signed the original document.
5. 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.
6. 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.

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

City of Dalton, Georgia

Mitchell & Mitchell, PC Law Firm

By: _____
Mayor

_____ (Seal)
William J. Kimsey
Member and Secretary

Date: _____

Date: _____

Attest:

City Clerk

_____ (Seal)
Terry L. Miller