

## AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of March 2026, between the CITY OF DICKINSON, a North Dakota municipal corporation (hereinafter, the “City”), and MACKOFF KELLOGG KIRBY & KLOSTER, P.C., a North Dakota professional corporation (hereinafter “Mackoff Kellogg”).

1. Municipal Prosecutor.

The City hereby retains Mackoff Kellogg as its municipal prosecutor. The municipal prosecutor shall serve under the direction of the City Attorney and report all work product and the on-going status of matters to the City Attorney. The municipal prosecutor shall represent the City in assigned municipal court matters, whether criminal prosecution or enforcement of civil offenses, including those municipal court matters transferred to district court as provided by law. The City shall be considered a client of Mackoff Kellogg.

The municipal prosecutor may, on occasion, provide reports or make presentations regarding municipal court matters to the Board of City Commissioners, City staff, or other City boards or commissions. Timeliness of response and accessibility to the municipal prosecutor is an important aspect of the service. The Municipal Prosecutor shall be generally available to attend meetings in person on short notice and to be reached promptly by telephone or email during regular business hours. On occasion, municipal court matters may occur with little or no lead-time, and the Municipal Prosecutor may be required to attend court hearings or other meetings on an unscheduled, urgent basis.

2. Designation of Attorneys.

Mackoff Kellogg shall designate Christina M. Wenko as its principal attorney representing the City as the Municipal Prosecutor. Stephen A. Fetch, or such other attorney acceptable to the City, shall be the Assistant Municipal Prosecutor. Mackoff Kellogg shall ensure that any other lawyers designated to represent the City shall be appropriately qualified, including having adequate training, experience, and supervision to perform municipal court work. The City shall have the right to consent or withhold its consent regarding any lawyer so designated to represent the City.

3. Limitations – Conflicts of Interest.

Mackoff Kellogg agrees that it will not take any position that is adverse to the City or to the City’s interests, and will avoid any conflicts of interest with the City; provided, however, that Mackoff Kellogg shall not represent the City with respect to:

- Matters that would violate or run a substantial risk of violating the North Dakota Rules of Professional Conduct, specifically including, but not limited to, matters on which Mackoff Kellogg has a conflict of interest.
- Matters on which Mackoff Kellogg and the City mutually agree that Mackoff

Kellogg does not have or cannot reasonably obtain the necessary expertise to accomplish the legal work.

In the event that Mackoff Kellogg is unable to provide municipal prosecutor services to the City, Mackoff Kellogg shall timely notify the City, consult with the City with respect to obtaining alternative counsel, and offer non-duplicative services to the extent requested or required by the City or such alternative counsel. Consistent with the North Dakota Rules of Professional Conduct, Mackoff Kellogg shall not represent parties adverse to the City or to the interests of the City.

4. Term and Termination.

The term of this Agreement shall be for a period of four (4) years, commencing as of March 1, 2026 and terminating on December 31, 2030. In the event the primary attorney named in this contract should cease to serve in such role, either party may terminate this agreement with thirty (30) days' notice.

5. Compensation.

The City will pay to Mackoff Kellogg a monthly flat fee as follows:

March 1, 2026 through December 31, 2026 – A flat fee of \$17,000.00

January 1, 2027 through December 31, 2028 – A flat fee of \$18,000.00

January 1, 2029 through December 31, 2030 – A flat fee of \$19,000.00

The monthly flat fee amount shall cover all municipal court legal services to be provided by Mackoff Kellogg, less appeals, as addressed below.

6. Services Provided.

Such municipal court legal services to be provided by Mackoff Kellogg shall include the following:

- Review all files, citations, and police reports forwarded to Mackoff Kellogg by the City, and determine whether municipal court charges shall be brought, the offense to be charged, and appropriate punishment.
- Represent the City at all show cause hearings, initial appearances, bond hearings, arraignments, pre-trial hearings venued in municipal court, as well as administrative traffic hearings and criminal trials, both bench and jury, as required from time to time.
- Work with the municipal court in scheduling trial dates and hearings.
- Attend annual training within the State of North Dakota for those lawyers designated to represent the City on municipal court matters.

- Employ sufficient administrative staff to maintain the prosecutor's municipal court schedule, communicate with the Court, city staff, and defendants, as necessary, including bearing all overhead costs of such administrative staff.
- Prepare necessary legal documents, including all court filings and discovery production, and perform sufficient legal research to support legal decision making.
- Coordinate with city law enforcement staff and code enforcement staff; and prepare for trial testimony by city officials.
- Prepare for and represent the City in bench trials and jury trials of municipal court matters that have been transferred to district court, as provided by law.
- Shall meet at least quarterly with Department officials regarding Municipal Code enforcements matters and concerns

In the event of appeals of municipal court matters to the North Dakota Supreme Court, the City shall compensate Mackoff Kellogg at the rate of \$300.00 per hour for the legal services required for the appeal.

Mackoff Kellogg shall present an invoice for legal services to the City monthly. The monthly flat fee shall be due from the City to Mackoff Kellogg in the month following Mackoff Kellogg's provision of services under this Agreement.

7. Independent Contractor.

Mackoff Kellogg is an independent contractor for all purposes and is not an employee of the City. Mackoff Kellogg is free to contract for similar services to be performed for other persons or entities while this Agreement is in effect.

8. Liability.

Each party shall be liable for its own acts and omissions with respect to all claims of any nature, including all costs, expenses and attorney's fees, which may in any manner result from or arise out of this Agreement, and shall not hold or seek to hold the other party liable for such acts or omissions. Mackoff Kellogg shall maintain professional liability and malpractice insurance in the amount of no less than \$2 million per occurrence.

9. Governing Law.

This Agreement shall be governed by North Dakota law and any question arising hereunder shall be construed or determined according to such law.

10. Counterparts.

This Agreement may be executed by the parties in any number of counterparts.

CITY OF DICKINSON

By: \_\_\_\_\_  
Scott Decker, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Dustin Dassinger  
Dickinson City Administrator

MACKOFF KELLOGG LAW FIRM

By: \_\_\_\_\_  
Christina M. Wenko, President