

CONTRACT FOR LEGAL CRIMINAL PROESECUTION

THIS CONTRACT is made and entered into as of the _____ day of _____, 2021 by and between the **City of Grand Rapids**, a Minnesota municipal corporation, hereinafter referred to as “City”, and **John P. Dimich, Attorney at Law**, hereinafter referred to as “Attorney”.

RECITALS

- A. City requires professional criminal prosecution legal services.
- B. Attorney can provide those services.

AGREEMENT

In consideration of the mutual covenants and terms below, it is agreed by and between City and Attorney as follows:

1. Scope of Services

It shall be the general intent of the Scope of Services to have Attorney perform all services as defined in *Exhibit “A1” (Schedule of Retainer Services)*.

2. Rate of Compensation

Compensation to Attorney in full for work listed in *Exhibit “A1”* as follows.

Exhibit “A1”: Schedule of Retainer Services

All parties agree that John P. Dimich will represent the City of Grand Rapids in all criminal litigation for a flat fee of \$4,583.33 per month (\$55,000 annually) encompassing all duties contained under *Exhibit “A1”*. This rate will remain the same during the entire duration of this Agreement.

3. Condition of Payment

All services provided by Attorney pursuant to this Contract shall be performed to the satisfaction of City, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations, as well as the Minnesota Rules of Professional Conduct. Payment shall be withheld for work found by City to be unsatisfactory, or performed in violation of federal, state, and local laws, ordinances, rules or regulations.

4. Time of Performance

All work will be performed in a timely manner and in accordance with time schedules agreed upon between Attorney and the City.

5. Ownership of Documents

The originals of all documents generated by Attorney shall be held according to the Minnesota Rules of Professional Conduct. Rule #1.15

6. Termination of the Contract

Either party may cancel this Contract (or any part thereof) at any time by giving written notice to the other party at least 30 days prior to the effective date of the termination. Attorney shall be paid for the work performed prior to the effective date of termination provided, however, that Attorney's cancellation of this contract shall be governed by the MN Rules of Professional Conduct, Rule 1.16, based upon the payment terms of this Contract. Such payment shall not exceed the maximum amount provided for by the terms of this Contract. Notice to City shall be mailed or delivered to City Council, Grand Rapids City Hall, 420 N. Pokegama Avenue, Grand Rapids, MN 55744. Notice to Attorney shall be delivered to John P. Dimich, Attorney at Law, 350 NW First Ave, Suite B, Grand Rapids, MN 55744.

7. Length of Contract

This contract will begin on January 1, 2022 and will terminate on December 31, 2024 unless early termination is exercised under Section 6 of this contract.

8. Independent Contractor

It is agreed that nothing contained in this Contract is intended or should be construed as creating the relationship of co-partner, joint venturer, or an association with City and Attorney. Attorney is an independent contractor and neither Attorney, nor his employees, agents, subcontractors or representatives shall be considered employees, agents, or representatives of City. The Attorney shall be deemed legal representative of City for all purposes contemplated by this Contract and by the Minnesota Rules of Professional Conduct. Except as otherwise provided herein, Attorney shall maintain, in all respects, present control over the means and personnel by which this Contract is performed. From any amounts due Attorney, there shall be no deductions for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Attorney.

9. Choice of Law

The laws of the State of Minnesota shall govern all questions as to the execution, nature, obligation, instruction, validity, and performance of this Contract.

10. Additional Services

In the event that a substantial change is made in the scope, complexity or character of the work contemplated under this Contract, or if it becomes necessary for Attorney to make substantial revisions to documentation completed or in progress and which has been approved by City, such work will be deemed "extra work". For "extra work", Attorney will be compensated as mutually agreed upon by the parties to this Contract.

Time extensions may be granted by City to Attorney for completion of specific services if City feels that the "extra work" warrants the extension.

11. Accuracy of Work

Attorney shall be responsible for the accuracy of the work and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of Attorney without additional compensation.

All items of work to be performed by Attorney shall be done in accordance with the requirements and recommendations of, and subject to the approval of, the City.

12. Subletting, Assignment, or Transfer

No portion of the work under the contract shall be sublet, sold, transferred, assigned or otherwise disposed of except with the prior written consent of the City. The Attorney specified above is assigned the authority to perform services addressed in this contract.

The City may need from time to time specialized legal services which Attorney cannot perform and which the City will need to procure through Attorney practicing in limited areas of specialized practice. In order that Attorney be fully informed in advising the City, its Council, boards and Commissions, the City will consult with the Attorney when it utilizes specialized services of other counsel, except for labor and employment legal services which are separately contracted. In the event that City retains other counsel for a specialized matter, Attorney will continue to act as liaison with the outside counsel insuring that duplicate work is not being done by outside counsel and Attorney, and to insure that legal work done by outside counsel is limited to that which is beyond Attorney's expertise to minimize the cost of outside counsel. At such times as City utilizes services of other counsel, arrangements shall be made for such other counsel to provide copies to a specified member of Attorney of all communications and documents provided to City.

Additionally, it may be necessary for the Attorney's, or their firm, to decline to represent the City regarding a matter that would result in a conflict of interest. If in the Attorney's view there is a conflict of interest the Attorney will refer the matter to another qualified Attorney. If the matter is one of criminal prosecution, the Attorney' will not need Council authorization.

13. Indemnity

Attorney shall save and protect, hold harmless, indemnify and defend City, its council members, officers, agents, employees and volunteer workers against any and all liability, causes of action, claims, loss, damages or cost and expense arising from any professional errors and omissions and/or negligent acts and omissions of Attorney in the performance of this Contract.

Attorney shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by Attorney under this Contract. Attorney shall, without additional compensation, correct or revise any errors or deficiencies in Attorney' reports and services.

14. Settlement of Claims

In any case where Attorney deem that extra compensation is due for services, materials or damages not expressly required by the Contract or not ordered in writing by City as extra work, Attorney shall notify City in writing before they begin any such work on which they base the claim. If such notification is not

previously given or the claim is not separately and strictly accounted for, Attorney hereby waive and release forever any claim or costs for such extra compensation. However, such notice or accounting shall not in any way be construed as proving the validity of any claim by Attorney.

City shall decide all claims, questions, and disputes of whatever nature which are referred to it relative to the prosecution and fulfillment of this Contract; and its decision upon all claims, questions, and disputes shall be final and conclusive upon the parties thereto administratively. Nothing in this Contract shall be construed as making final the decision of City on a question of law.

15. Insurance.

Attorney shall not commence work under this Contract until they have obtained at their own cost and expenses all insurance required herein. All insurance coverage is subject to approval of City and shall be maintained by Attorney at all times this Contract is in effect. Attorney further agree that to protect themselves as well as City under the indemnity Contract set forth above, they shall at all times during the term of the Contract have and keep in force:

Workers' Compensation:

Attorney shall obtain and maintain for the duration of this Contract, statutory workers' compensation insurance and employer's liability insurance as required under the laws of the State of Minnesota.

1. State: Minnesota — Statutory

2. Employer's Liability

Insurance certificates evidencing that the above insurance is in force with companies acceptable shall be submitted for examination and approval prior to the execution of the Contract, after which they shall be filed with City. The insurance certificates shall specifically provide that a certificate shall not be modified, canceled, or non - renewed except upon thirty (30) days prior written notice. Neither City's failure to require or insist upon certificates or other evidence of insurance showing a variance from the specified coverage changes Attorney' responsibility to comply with the insurance specifications. City may withhold payment for failure of Attorney to furnish certificates of insurance as required above.

16. Arbitration

Any differences, claims, or matters in dispute arising between or among the parties out of or in connection with this Agreement shall be submitted to arbitration by a single Arbitrator mutually selected by the parties. If a single Arbitrator cannot be agreed upon, each party shall select an Arbitrator. The Arbitrators selected by the parties shall select a third Arbitrator whose cost will be shared equally by the parties to this contract. The determination of the Arbitrators shall be final and absolute. The Arbitrators shall be governed by the subject matter of this Agreement and the pertinent provisions of the laws of the State of Minnesota relating to arbitration. The decision of the Arbitrators may be entered as a judgment in any court of the State of Minnesota or elsewhere. Except as otherwise determined by the Arbitrators for the convenience of the Arbitrators, all arbitration proceedings shall be held in Itasca County, Minnesota.

17. Successors and Assigns

City and Attorney, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Contract. Neither City nor Attorney shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other.

18. Equal Employment and Nondiscrimination and Affirmative Action

In connection with the work under this Contract, Attorney agreed to comply with the applicable provisions of state and federal equal employment opportunity and nondiscrimination statutes and regulations.

19. Sevarability

In the event any provision of this Contract shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or non-enforceability would cause the Contract to fail its purpose. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

20. Entire Contract

It is understood and agreed that the entire Contract of the parties is contained herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous contracts presently in effect between City and Attorney relating to the subject matter hereof.

21. Relationship with Others

Attorney shall cooperate fully with City, other municipalities, local government officials, public utility companies, and others as may be directed by City. This shall include attendance at meetings, discussions, and hearings as may be requested by City, furnishing data as may be requested from time to time by City to effect such cooperation and compliance with all directives issued by City.

22. Covenant Against Contingent Fees

Attorney warrant that they have not employed or retained any company or person other than a bona fide employee working solely for Attorney to solicit or secure this Contract and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for Attorney any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

23. Laws

Attorney shall keep themselves fully informed of all existing and current regulations of the city, county, state and federal laws which in any way limit or control the actions or operations of those engaged upon the work or affecting the materials supplied to or by them. Attorney shall at all times observe and comply with all ordinances, laws, and regulations and shall protect and indemnify City as provided in Article 12 of this Contract.

24. Authorized Agent of City

City shall appoint an authorized agent for the purpose of administration of this Contract. Attorney is notified that the authorized agent of City is as follows:

City Administrator
420 North Pokegama Avenue
Grand Rapids, Minnesota 55744

25. Working Relationship

In order to maintain a positive working relationship over the term of this contract the Attorney and the City agree to conduct periodic reviews (once a year in December after the signing of this Contract) of the Attorney's work under this contract. The method and forum for the reviews will be developed by the Attorney and the City Administrator and approved by the Council.

26. Modification of Contract

Any alterations, variations, modifications, or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, signed by the Mayor and City Administrator/Clerk and by Attorney and attached to the original of this Contract.

27. Conflict of Interest

John Dimich, Attorney at Law, is not aware of any current conflict of interest in representation of the City of Grand Rapids. Should any actual conflict arise, John Dimich shall immediately advise all parties and reach a mutually satisfactory solution.

City and Attorney have executed this agreement by the authorized signatures below.

DATE: _____

CITY OF GRAND RAPIDS

BY: _____

Dale Christy, Its Mayor

ATTEST: _____

Thomas Pagel, Its City Administrator

DATE: _____

JOHN P. DIMICH, ATTORNEY AT LAW

BY: _____
John P. Dimich

EXHIBIT "A1"
SCHEDULE OF RETAINER SERVICES

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|----------------------------|
| CRIMINAL LEGAL SVCS |
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| Retainer |
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| 1. Prosecution of gross misdemeanors, misdemeanors and petty misdemeanor cases including traffic violations, DWI cases, theft and City code violations |
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| 2. Drafting of complaints, preparing reports, working with the Police Chief and other appropriate personnel on all law enforcement issues. |
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| 3. Training of police personnel on law related matters including report writing, legislative changes, and general police/prosecution relationship issues. |
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