

**City of Sedgwick
City Council Meeting
September 18, 2024**

TO: Mayor and City Council

SUBJECT: City Attorney Services Contract

INITIATED BY: Administration

AGENDA: New Business

Recommendation: Approve the contract for City Attorney and City Prosecution Services.

Background: The City issued a Request for Proposal for City Attorney Services on May 13, 2024, with a submission deadline of July 12, 2024. The staff screening and selection committee met on August 7th and August 14th to conduct interviews. Two firms were selected to move forward with the interview process. The staff screening and selection committee unanimously selected McDonald Tinker to move forward with the negotiation process.

Financial Consideration: If approved, the contract will start with the 2025 budget on January 1, 2025. The contract price is calculated at an hourly rate dependent upon assignment of workload. Keeping in mind that the fee will fluctuate monthly based upon utilization of the contracted services and the assignment of workload; the estimated monthly cost of the contract is \$3,000 for City Attorney Services and \$1,200 for Prosecution Services.

Today's retainer fee is \$2,250 per month for City Attorney Services and \$750 per month for Prosecution Services.

Recommendations/Actions: It is recommended that the governing body approve the contract for City Attorney and City Prosecution Services with McDonald Tinker as presented.

Attachment: Contract

**AGREEMENT FOR SERVICES OF
CITY ATTORNEY AND CITY PROSECUTOR**

THIS AGREEMENT is entered into effect the _____ day of _____, 20____, by and between the CITY OF SEDGWICK, KANSAS, a municipal corporation, hereinafter referred to as "CITY" and MCDONALD TINKER PA, whose principal office is located at 300 W. Douglas Ave., Ste. 500, Wichita, Kansas 67202.

WHEREAS, the City, acting by and through the City Council, desires to retain the services of MCDONALD TINKER PA as and for the City Attorney and City Prosecutor for the City, and MCDONALD TINKER PA desires to be so retained, all pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, MCDONALD TINKER PA does hereby agree to serve as the City Attorney and City Prosecutor for the City, and the City agrees to retain and compensate MCDONALD TINKER PA for the provision of such services, all on the following terms and conditions:

1. The services of the City Attorney and City Prosecutor shall be performed by MCDONALD TINKER PA, and by no other entity without prior consent of the CITY; provided, however, that nothing herein shall prevent or restrict the ability of MCDONALD TINKER PA to delegate supporting tasks to staff members of the law office, provided that all such delegated tasks are under the direction and supervision of a partner of the firm. The assigned attorney(s) shall take the oath of office as prescribed by Kansas law and shall be directly and personally responsible for the performance of the duties of such office, as specified in the ordinances of the City and applicable Kansas statutes, including such legally permissible and proper duties and functions of such office as the CITY shall from time-to-time assign. However, the services to be provided under this Agreement shall not, without prior approval of both parties, include such legal services as have been customarily obtained by the CITY from attorneys who specialize in matters pertaining to municipal financing and municipal bond issues.

It is foreseeable that a legal issues requiring a practice area specialist may be necessary from time to time. MCDONALD TINKER PA will advise the CITY of those needs as they arise at which time, the CITY will retain the services of outside legal counsel related to those specific issues which require specialized knowledge and experience. MCDONALD TINKER PA has no ability to control the work performance of outside counsel in such instances.

2. MCONDALD TINKER PA shall be responsible for devoting sufficient time and effort to the performance of the duties and functions of the City Attorney and City Prosecutor. It is within the contemplation of the parties that such services shall include the attendance by MCDONALD TINKER PA at each regular and special meetings of the City Council. It is further agreed that MCDONALD TINKER PA will attend Municipal Court sessions unless excused from doing so by the Judge of the Sedgwick Municipal Court. MCDONALD TINKER PA will attend the City of Sedgwick Planning Commission and Board of Zoning Appeals meetings when requested.

3. In the event that a conflict of interest arises in the ability of MCDONALD TINKER PA to represent the interest of the City in a particular matter, MCDONALD TINKER PA shall promptly notify the City Administrator. In the event that such conflict of interest cannot be resolved, then MCDONALD TINKER PA shall be entitled to withdraw from the representation of any party in the matter, and the CITY shall be entitled to retain special counsel as the CITY deems necessary or advisable to handle the representation of the CITY's interests in the matter. During the term of this Agreement, MCDONALD TINKER PA shall not undertake the representation of any person or party as to a matter involving the CITY, without the express advance approval of the City Administrator and the consent of the other party thereto.
4. As City Attorney and City Prosecutor, MCDONALD TINKER PA shall be subject to a 48-hour timeline for all matters as they relate to the CITY. This provision is subject to all communication from the Mayor, City Administrator, City Clerk, Police Chief, and Police Clerk. All other communication from city representative(s) or employee(s) shall not be held to this standard.
5. MCDONALD TINKER PA shall provide, in the performance of their duties as City Attorney and City Prosecutor the following at their expense, to wit:
 - a. Secretarial and legal assistant support staff;
 - b. Professional liability insurance coverage on all staff assigned as City Attorney and City Prosecutor, with such limits as the parties shall agree;
 - c. Professional licensure on all staff assigned to the CITY as licensed and practicing attorney(s) in good standing under the laws of the State of Kansas.
6. The CITY shall provide to MCDONALD TINKER PA, and for the use of MCDONALD TINKER PA as City Attorney and City Prosecutor, the following at the City's expense, to wit:
 - a. City letterhead template;
 - b. Such specialized research and resource materials as the parties shall from time to time agree;
7. The CITY agrees to pay MCDONALD TINKER PA for services as City Attorney and City Prosecutor at the hourly rate of pay listed herein:
 - a. \$180 per hour – Partners
 - b. \$165 per hour – Associate Attorneys
 - c. \$125 per hour – Paralegal
8. The CITY agrees to pay MCDONAL TINKER PA for reimbursable expenses as identified herein at the rate listed below:
 - a. Mileage for City meetings - \$0.67 per mile
**Mileage will be paid for one way to all CITY meetings*
 - b. Postage – actual cost incurred

All other expenses will be discussed and submitted to the City Administrator for approval prior to the cost being incurred. Failure to obtain written approval from the CITY will result in MCDONALD TINKER PA being responsible for the costs incurred.

9. The services included within this Agreement shall not include any services relating to bond issues or other financing mechanisms which are for direct benefit of outside third parties, such as industrial revenue bonds.
10. MCDONALD TINKER PA shall save and hold the CITY harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of MCDONALD TINKER PA, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.
11. The following property in the possession and custody of MCDONALD TINKER PA shall be and remain the property of the City, to wit:
 - a. All correspondence, files, and records (other than those otherwise specifically referenced herein) pertaining to matters handled by MCDONALD TINKER PA on behalf of the CITY as City Attorney and City Prosecutor, subject to the right of MCDONALD TINKER PA to make and retain copies thereof, at their expense, as and for their internal records.
 - b. All specialized research and resource materials paid for and provided by the CITY pursuant to paragraph 6(b) hereof.

All records maintained by MCDONALD TINKER PA on electronic media owned by MCDONALD TINKER PA shall be and remain the property of MCDONALD TINKER PA; provided, however, that the CITY shall be entitled to have copies thereof transferred onto computer discs or other electronic media provided by the CITY. Nothing herein shall permit MCDONALD TINKER PA to make any use of such records in contravention of their legal and ethical responsibility to the CITY as a client of MCDONALD TINKER PA.

12. This agreement shall be in effect starting January 1, 2025, through December 31, 2025, with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by either party, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice.
13. **Modification of Agreement.** Any modification of this agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREFORE, the parties have executed this Agreement in two original copies the day and year first above written.

ATTESTED BY: _____

Shelia Agee, City Clerk

MCDONALD TINKER PA: _____

CITY OF SEDGWICK, KANSAS: _____

Kyle Nordick, City Administrator