



## STAFF REPORT

DATE: January 3, 2017

**CONSENT**

ITEM #: 6

**AGENDA ITEM:** Appoint City Attorney (civil and prosecution)

**SUBMITTED BY:** Kristina Handt, City Administrator

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**BACKGROUND:**

Per City Code 31.01, at the first regular council meeting in January of each year the Council shall appoint a city attorney. In 2016, the city decided to separate civil and prosecution services.

**ISSUE BEFORE COUNCIL:**

Who should the Council appoint as City Attorney for civil matters and for prosecution services?

**PROPOSAL:**

Kennedy and Graven are currently serving as City Attorney in civil matters. Eckberg Lammers is currently serving as City Attorney for prosecution services.

**RECOMMENDATION:**

If removed from the consent agenda:

*“Move to appoint Eckberg Lammers as City Attorney for prosecution services and Kennedy and Graven as City Attorney for civil matters.”*

**ATTACHMENTS:**

Eckberg Lammers Contract

Kennedy and Graven Contract

## CONTRACT FOR CRIMINAL PROSECUTION LEGAL SERVICES

This CONTRACT FOR CRIMINAL PROSECUTION LEGAL SERVICES (the "Agreement") is entered into by and between The City of Lake Elmo (hereinafter "City"), 3800 Laverne Ave North, Lake Elmo, MN, 55042 and the law firm of Eckberg Lammers, P.C. (hereinafter "Law Firm"), 1809 Northwestern Avenue, Stillwater, MN, 55082, for the purpose of utilizing the Law Firm to provide legal services to the City.

### RECITALS

1. The City wishes to retain the Law Firm to provide criminal prosecution legal services on behalf of the City.

2. The Law Firm agrees to provide criminal prosecution legal services to the City on a monthly flat fee retainer paid by the City to the Law Firm.

3. The annual retainer rates identified in the proposal submitted by the Law Firm are as follows:

Year One (January 6, 2016 – December 31, 2016)	\$42,000.00
Year Two (January 1, 2017 – December 31, 2017)	\$43,260.00
Year Three (January 1, 2018 – December 31, 2018)	\$44,550.00
Year Four (January 1, 2019 – December 31, 2020)	\$45,800.00
Year Three (January 1, 2020 – December 31, 2021)	\$48,000.00

Appellate criminal work, if any, will be billed at \$185.00 per hour in the first two years of the contract. Years three and four will be billed at \$200.00 per hour, and year five of the term of this Agreement will be billed at \$205.00 per hour.

Expenses to be billed:

The City will reimburse the Law Firm for the actual, necessary and reasonable costs and expenses incurred by the Law Firm in the performance of the legal services contained in this Agreement. These costs and expenses include but are not limited to:

- Courier or Delivery Charges
- Process Server Fees
- Postage
- Court Reporter Transcription Fees

**NOW, THEREFORE, IN CONSIDERATION OF** the mutual promises contained herein and other good and sufficient consideration, the parties hereto agree to the following:

## TERMS

- 1. Scope and Nature of Prosecution Services:** The parties hereto agree to the following description of the nature of the legal services to be provided by the Law Firm to the City:
- a) Meetings and/or telephone conversations with and advising the Mayor, Council Members, City Administrator, Sheriff, and other authorized staff on general criminal legal matters.
  - b) Research and submission of legal opinions on municipal or other criminal legal matters requested by the City Administrator or other authorized staff; availability to answer staff questions by telephone.
  - c) Legal consultation and general support for the Mayor, Council Members, City Administrator, Sheriff's Department and other authorized staff on general criminal legal matters.
  - d) Provide high level of customer service by responding in a prompt manner.
  - e) Prosecute all petty misdemeanor, misdemeanor and statutorily delegated gross misdemeanor offenses committed within the corporate limits of the City. This service includes all such cases initiated by any law enforcement agency and citizen complaints including, but not limited to, traffic violations, DWI cases, theft and City Code violations.
  - f) Provide advice, consultation and training where required to all departments of the City in the interpretation and enforcement of statutes, ordinances and investigations of violations in connection with the prosecution of criminal cases.
  - g) Prepare criminal complaints where facts warrant.
  - h) Evaluate all cases where a plea of not guilty is entered and prosecute where warranted.
  - i) Prepare appropriate pre-trial notices as required.
  - j) Seek such additional investigation as required.
  - k) Negotiate and enter plea negotiations when deemed advisable.
  - l) Represent the City at all pre-trial motions.
  - m) Perform all legal research and prepare briefs when required.

- n) Try all jury and court cases.
- o) Examine, evaluate and provide representation for all appeals to the Appellate Courts.
- p) Draft ordinances, ordinance amendments, resolutions, and correspondence as requested.
- q) Review ordinances as requested.
- r) Render written opinions on law when requested, including interpretation of statutes, ordinances, rules and regulations.
- s) Ensure proper notification and preparation of all law enforcement officers, witnesses and staff for trial.
- t) Investigate and evaluate all claims by the City against others and recommend appropriate courses of action, including, but not limited to: code enforcement issues and administrative citations.
- u) Attempt collection of all proper claims including litigation where necessary and authorized by the City.
- v) Assist in resolving claims not resulting in litigation.
- w) Preparation of complaints, notices, orders, settlement agreements and other pleadings related to vehicle forfeitures, and attendance at all necessary court appearances regarding the same.

**2. Conflict of Interest and Attorney/Client Privilege Issues:**

- a) **Conflict of Interest:** The Law Firm will notify the City if the Law Firm represents or has ever represented an opposing party in a legal matter, whether within or outside of any of the scope of services mentioned by the retainer above.
- b) **Attorney/Client Privilege:** The Law Firm is authorized to utilize e-mail without encryption to transmit and receive confidential client information. While digital cordless and cellular telephones within a digital service area would be best to be used to transmit and receive confidential client information and may be used by the Law Firm to transmit and receive confidential client information. The City specifically acknowledges that it understands the confidentiality risks associated with inadvertent interception.


3. **Prosecution Services Billing Format, Cycle, Payment Expectations and Interests.**

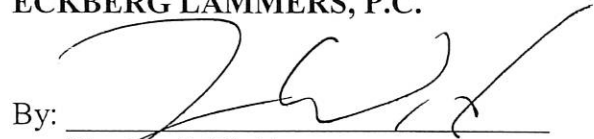
- a) **Billing Format:** The Law Firm will submit monthly statements for criminal prosecution legal services rendered for the prior month, including expenses incurred. Said billing statement will not provide detailed billing statements for prosecution services performed throughout the month.
- b) **Appellate Services:** Within such monthly statements, the Law Firm will submit a detailed billing statement for appellate criminal services and any other hourly legal services stated above.
- c) **Payment Expectations:** The City will pay the bill of the Law Firm routinely according to its internal payment procedures by forwarding a check to the Law Firm paying for both legal services and expenses shown on the Law Firm's monthly statement.
- d) **City Approval:** The City Council authorizes the Law Firm to commence performing the services contemplated under this Agreement on January 6, 2016.

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THE CITY OF LAKE ELMO

ECKBERG LAMMERS, P.C.

By:   
Mayor

By:   
Thomas J. Weidner

By:   
City Administrator

Dated: January 5, 2016

Dated: 1-27, 2016

## AGREEMENT FOR LEGAL SERVICES

This Agreement, entered into between the CITY OF LAKE ELMO, a Minnesota municipal corporation (the "City") and the law firm of KENNEDY & GRAVEN, CHARTERED (the "City Attorney") as of this 6<sup>th</sup> day of January, 2016, provides as follows:

### SECTION 1. Background: Findings.

1.01. *Authority.* The appointment and removal of the City Attorney is made by the City Council.

1.02. *Council Determination.* At a duly called regular meeting of the City Council held on January 5, 2016, the City Council determined that the firm of Kennedy & Graven, Chartered be engaged as City Attorney, with Sarah J. Sonsalla and Andrew M. Biggerstaff of that firm serving as primary legal counsel for the City and approved this Agreement for Legal Services and authorized the Mayor and City Administrator to sign.

### SECTION 2. Terms and Conditions.

2.01. *Consideration.* In consideration of the mutual promises and conditions contained in this Agreement, the City and the City Attorney agree to the terms and conditions set forth herein.

2.02. *City Attorney Appointment.* The City appoints the firm of Kennedy & Graven, Chartered as City Attorney, with Sarah J. Sonsalla and Andrew M. Biggerstaff acting as primary legal counsel for the City.

2.03. *Usual and Customary Legal Services.* The City Attorney agrees to perform all usual and customary civil legal services for the City in accordance with the terms of this Agreement.

2.04. *Compensation for Legal Services.* For civil legal services, the City agrees to compensate the City Attorney at the following hourly rates for services indicated below:

- a. General municipal work: attorneys \$155/hour, paralegals \$115/hour and law clerks \$80/hour. General municipal work includes, but is not limited to, attendance at City Council meetings and other City meetings as requested, drafting and reviewing ordinances, resolutions and correspondence, reviewing City Council agenda packets, preparing legal opinions and providing general advice, reviewing and drafting municipal contracts, representing the City in legal matters, such as code enforcement, real estate and environmental, providing the City with legal briefings, updates and training sessions.
- b. Commenced litigation, administrative and condemnation proceedings: attorneys \$185/hour, paralegals \$115/hour and law clerks \$80/hour.

- c. Development, redevelopment and tax increment matters: attorneys \$215/hour, paralegals \$115/hour and law clerks \$80/hour.
- d. Bond counsel services (if requested) will be billed at rates customarily charged by the firm.

2.05. *Compensation for Expenses.* The City will compensate the City Attorney for the following actual and necessary expenses incurred by the City Attorney on behalf of the City:

The City Attorney will bill its out-of-pocket costs for such things as postage, mileage, photocopying, filing fees, recording fees, and similar items.

Photocopying:	\$ .10 per page
Mileage:	IRS-approved reimbursement rate
Westlaw fees:	\$3.00 per minute
Other charges such as:	Actual cost charged
Messenger service	
Express mail	
Filing fees	

The City Attorney's monthly billing statements will provide detail for all fees and costs.

2.06. *Billing Statements.* Billings by the City Attorney to the City for services will be on a monthly basis, except as may otherwise be agreed upon by the parties. The billing statement shall be of sufficient detail to adequately inform the City concerning the tasks performed, the attorney or staff performing them, the time spent on each task and the nature and extent of costs and disbursements. The statement shall also contain a summary that shows the total time spent for each category and the total fees, charges and disbursements for each category.

2.07. *Term of Agreement.* The term of this Agreement shall be for one year. The hourly rates specified in this Agreement will remain in effect for the term of this Agreement.

2.08. *Bond Counsel Services.* Bond counsel services are not part of this Agreement, but may be made such by mutual agreement of the parties. In the event such services are desired by the City, fees for these services will be those usual and customarily charged by the firm of Kennedy & Graven, Chartered.

2.09. *Primary Legal Counsel.* It is the intention of the parties and it is hereby agreed by the City Attorney, that the term "primary legal counsel" as used herein means and refers to Sarah J. Sonsalla and Andrew M. Biggerstaff who will, except in the case of extraordinary circumstances involving disability, unavoidable conflict or other good and substantial reasons, perform, supervise and be responsible to the City for the legal services to be provided.

2.10. *Entire Agreement.* This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the City and the City Attorney, and supersedes any other written or oral agreements between the City and the City Attorney. This Agreement can only be modified in writing signed by the City and the City



Attorney.

2.11. *Termination.* This Agreement may be terminated by the City at any time or by the City Attorney upon 60 days' written notice.

2.12. *Conflict of Interest.* The City Attorney shall use best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety in representation of the City. In the event of a conflict, the City Attorney, with the consent of the City, shall arrange for suitable alternative legal representation. It is the intent of the City Attorney to refrain from handling legal matters for any other person or entity that may pose a conflict of interest.

2.13. *Agreement Not Assignable.* Except as provided in Paragraph 2.12 of this Agreement relating to conflicts of interest, the rights and obligations created by this Agreement may not be assigned by either party.

2.14. *Agreement Not Exclusive.* The City retains the right to hire other legal representation for specific legal matters.

2.15. *Independent Contractor Status.* All services provided by the City Attorney pursuant to this Agreement shall be provided by the City Attorney as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.

2.16. *Work Products.* All records, information, materials and other work products prepared and developed in connection with the provision of services pursuant to this Agreement shall become the property of the City.

2.17. *Insurance.* The City Attorney shall maintain professional liability (malpractice) insurance in the minimum amount of \$1,500,000.


2.18. *Data Practices Act Compliance.* Data provided to the City Attorney under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.


2.19. *Choices of Law and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

2.20. *Agreement Extensions.* Subject to the rights of termination described in Section 2.11, the provisions of this Agreement shall be deemed to be automatically extended from year-to-year or extended with such modifications or adjustments as the City and City Attorney may from time-to-time mutually agree.


IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed by their proper officers and representatives as of the day and year first above written.

CITY OF LAKE ELMO

By:   
Mike Pearson  
Its: Mayor

By:   
Clark Schroeder  
Its: Interim City Administrator

KENNEDY & GRAVEN, CHARTERED

By:   
Sarah J. Sonsalla  
City Attorney