

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services (“Agreement”), dated September 22, 2020, is between the City of East Lansing (“City”), whose address is 410 Abbot Road, East Lansing, Michigan 48823, and Foster, Swift, Collins & Smith, P.C. (“Law Firm”), whose address is 313 S. Washington Square, Lansing, Michigan 48933. The parties mutually agree as follows.

I. Authority

The City enters into this Agreement with the Law Firm under Section 7.1 of the City Charter, which provides that the City Council may retain a City Attorney by written contract to perform the duties and responsibilities described in Section 7.6 of the Charter.

II. Appointment of City Attorney

The Law Firm is appointed to serve as the City Attorney for the City at the pleasure of the City Council as set forth in this Agreement.

III. Fees and Expenses; Scope of Services Provided

- A. Legal Services. The Law Firm will provide the legal services described in Section 7.6 of the City Charter, as well as any other legal services requested by the City.

- B. Attorney Fee Hourly Rates. The Law Firm will provide legal services to the City at an hourly rate of **\$225.00** for partners and senior attorneys and **\$200.00** for associates, except as follows: (1) criminal/prosecution legal services will be provided at an hourly rate of **\$175.00**, regardless of the seniority of the attorney performing the work; (2) the hourly rate for bond counsel services will be negotiated between the City and the Law Firm before any bond work commences; and (3) the hourly rate for Michigan Tax Tribunal work is **\$250.00** for partners, **\$225.00** for senior attorneys, and **\$200.00** for associates.

- C. Annual Cap on Attorney Fees; Services Excluded from Cap. Subject to the exclusions listed below, the Law Firm will not bill the City for more than \$500,000 in attorney fees during each annual period of October 1 through September 30, without the express written approval of the City. Consistent with Section 7.6(h) of the City Charter, the following legal services are **not** included within or counted toward this annual \$500,000 cap and will be billed on a separate invoice to the City:

- a. Bond counsel services;
 - b. General civil litigation and Michigan Tax Tribunal litigation; and
 - c. Labor services, including union negotiations, arbitrations, and mediations.
- D. Travel Time, Mileage and Electronic Research. The Law Firm will not charge the City for travel time or mileage, nor will the Law Firm charge the City any cost (other than attorney fees) for utilizing electronic research services such as Westlaw, Lexis and similar online legal search services.
- E. Out-of-Pocket Expenses. In addition to attorney fees, the City will also be billed for the Law Firm's expenses, which are expenditures by the Law Firm on the City's behalf. Examples of expenses include copy charges, court filing fees, courier and postage fees, and expert witness fees. Expenses are not counted toward the annual \$500,000 attorney fee cap.
- F. Billing. Attorney fees and expenses will be billed monthly. If an invoice is not timely paid within 30 days of the date of the invoice, a late charge may be added to any portion not paid. However, prior to adding any late charge, the Law Firm must provide notice to the City and only if the invoice remains unpaid after 14 days of the date of the notice will the late charge will be added. The late charge will be computed at the rate of .58% per month (7% annual) starting thirty (30) days after the date of the invoice. Time is billed in tenths of an hour.
- G. Coordination. The City Council, acting at a meeting, may direct the Law Firm's legal work and tasks. Outside of City Council meetings, the City Manager or his or her designee(s) will direct the Law Firm's legal work and tasks. The Law Firm will keep the City Council and City Manager reasonably informed about the status of the City's legal matters and will provide written status reports at the request of the City Council or City Manager.

IV. Term

- A. Initial Term. This Agreement is in effect from October 1, 2020, through September 30, 2021, and may be renewed upon mutual agreement of the City and the Law Firm.
- B. Nonrenewal. If the Law Firm's representation continues beyond September 30 of the initial term or any subsequent renewal term and the Agreement is not renewed, then the

City will be charged the hourly rates set forth in this Agreement for work performed after September 30, and such charges will not be subject to the annual attorney fee cap.

V. Termination of Representation

- A. Termination by City. Notwithstanding Section IV of this Agreement, the City may terminate the Law Firm's representation at any time, with or without cause, by providing written notice to the Law Firm.
- B. Termination by Law Firm. Notwithstanding Section IV of this Agreement, except as otherwise required by the Michigan Rules of Professional Conduct, the Law Firm may terminate its representation of the City, with or without cause, by providing at least six (60) days prior written notice to the City.
- C. Continued Representation. If the Agreement is terminated or not renewed, the Law Firm will continue representation of the City in pending matters to the extent required by the Michigan Rules of Professional Conduct or as required by any court in which a matter is pending.
- D. Return of Materials. Upon termination, the Law Firm will return any original materials in the Law Firm's files that belong to the City and any of the Law Firm's work product related to City matters if the City requests such original material and work product within one (1) year after the representation terminates. If no such request is received within that time period, the Law Firm will dispose of its work product and any original materials in its discretion.

VI. Conflicts of Interest

If the Law Firm determines that it has a conflict of interest under the Michigan Rules of Professional Conduct with respect to any legal issue or dispute involving the City, the Law Firm will take appropriate steps to remedy the conflict, which may include withdrawing from representing the City in connection with that legal issue or dispute. The Law Firm will promptly notify the City of any conflict of interest and the Law Firm's proposed remedy.

VII. Alternative Dispute Resolution

If any dispute arises out of this Agreement, the City and the Law Firm will submit to non-binding mediation before filing any claim, suit, or other legal or equitable action. The City and the Law Firm will select a mediator from the Ingham County Circuit Court's approved list of

mediators to mediate any disputes and the cost of mediation shall be equally divided between the City and the Law Firm.

VIII. Security

The City requires satisfactory completion of a criminal background investigation for all persons having access to City facilities under this Agreement. The Law Firm will be required to provide to the City a list of all employees who are proposed to be working under this Agreement, within 10 days. This list shall include the full name and date of birth of each employee, any aliases of each employee including maiden names, and shall differentiate between employees proposed to have access to secure areas of City Hall and those who will work in other areas of City facilities. Secure areas of City Hall are those areas utilized for the administration of criminal justice and include: Dispatch, Jail, any portion of the Police Department, Probation Department, and Courts. The City will investigate employees proposed to work under this Agreement using the Michigan Internet Criminal History Access Tool (IChAT), the Michigan Sexual Offenders Registry and the Michigan Corrections website. In addition, employees of the Law Firm proposed to work under this Agreement who will have access to secure areas of City Hall will also be subject to investigation thru the Law Enforcement Information Network (LEIN). Any employee of the Law Firm, who has any felony convictions, misdemeanor convictions that involve crimes against persons, or drug offenses will not be allowed to work in any City facility. The City reserves the right to limit areas of access for individual employees of the Law Firm, to prohibit certain employees of the Law Firm work in City facilities under this Agreement, or to otherwise limit or eliminate any employees of the Law Firm access to any City facility or portion of City facility, based on the information collected, as the City deems to be in its best interest.

IX. Nondiscrimination

The Law Firm is an equal opportunity employer. Race, color, religion, national origin, age, sex, height, weight, marital status, sexual orientation, genetic information, disability unrelated to the employee's ability to perform the essential functions of his or her job with or without a reasonable accommodation, and any other characteristic protected by applicable law will not be utilized as factors in connection with decisions involving recruitment, hiring, compensation, or other terms, conditions, or privileges of employment. The Law Firm agrees that it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment including benefit plan or system, or a matter directly or indirectly related to employment because of religion, race, color, national origin, age, sex, height, weight, marital status, sexual orientation, gender identity or expression, or student status, because of the use by an individual of adaptive devices or aids, or because of an arrest record when a conviction did not result, except as allowed under Section 22-33(b)(6) of Chapter 22 or by the rules applicable to attorneys at the Law Firm and licensure by the State Bar of

Michigan. The Law Firm agrees that it shall not discriminate on the basis of marital status, sexual orientation, or gender identity or expression by failing to provide employment benefits to its employees that it otherwise provides for the spouse of a married employee. These requirements shall be considered material terms of this Agreement, and breach of any of these requirements will be regarded as a material breach of this Agreement.

X. Nature of Relationship

This Agreement does not create an employment relationship between the City and the Law Firm or between the City and any individual attorney of the Law Firm. The City is not required to withhold or report any federal, state, or local income or employment taxes on the Law Firm's or its attorneys' behalf, nor is the City required to provide any insurance coverage for the Law Firm or its attorneys. This Agreement also does not create any partnership or joint venture between the City and the Law Firm. The parties agree that the Law Firm is an independent contractor as that term is commonly used and the Law Firm's employees are not and shall not be considered subcontractors or employees of the City and has no authority to bind the City in any manner. The Law Firm shall be solely responsible for the withholding and reporting of all federal, state, and local income and employment taxes. The Law Firm acknowledges that it is not insured in any manner through the City for any bodily injury, personal injury, or property loss whatsoever.


XI. Liability Insurance

The Law Firm maintains, and will maintain through the term of this Agreement, a policy of comprehensive general liability insurance, including professional errors and omissions, with limits of liability of not less than \$25,000,000 and workers disability compensation insurance in compliance with Michigan's statutory requirements.

XII. Other Provisions

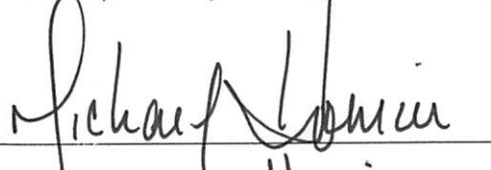
- A. No Assignment. This Agreement may not be assigned by either party. If the City elects to hire special counsel, whether because the Law Firm has a conflict of interest or for another reason, then the City will enter into a separate agreement with special counsel.
- B. Counterparts. This Agreement may be executed in one or more counterparts, all of which together are deemed to be one complete document.
- C. Severability. If any portion of this Agreement is deemed unenforceable, the remaining provisions of this Agreement are nevertheless binding.
- D. Amendment. This Agreement contains the entire understanding and agreement between the parties with respect to the subject of this Agreement and cannot be amended or modified except by a written agreement signed by all parties.
- E. Limitation of Liability. Neither party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

CITY OF EAST LANSING



By: Aaron Stephens
Its: Mayor

FOSTER, SWIFT, COLLINS & SMITH, P.C.



By: MICHAEL HOMIER
Its: AUTHORIZED SHAREHOLDER