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AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT made this 31st day of May, 2016, between the **CITY OF EAST LANSING CITY CLERK'S OFFICE** THE CITY OF EAST LANSING, whose address is 410 Abbot Road, East Lansing, Michigan 48823 (the "Council"), and THOMAS M. YEADON (the "City Attorney") of McGINTY, HITCH, HOUSEFIELD, PERSON, YEADON & ANDERSON, P.C., (the "Law Firm"), whose address is 601 Abbot Road, East Lansing, Michigan 48823 (hereinafter "the City Attorney" and also collectively as the "Law Firm")

RECITALS

WHEREAS, the City of East Lansing is a home rule city organized by Charter, which provides at §7.1 for the office of City Attorney who may be retained by the City Council by written contract to perform the duties and responsibilities described at §7.6 of the Charter; and

WHEREAS, the City Council makes this agreement for the purpose of retaining the City Attorney and further to provide for legal services to the City.

THE PARTIES THEREFORE AGREE:

- 1.0 APPOINTMENT OF CITY ATTORNEY.**
- 1.1 The City Council reappoints Thomas M. Yeadon as its City Attorney, pursuant to §7.1 of its Charter.
- 1.2 The City Attorney may appoint Assistant City Attorneys as necessary to perform his duties and responsibilities. Members of the Law Firm may appear as Assistant City Attorneys as designated by the City Attorney.
- 1.3 The City Attorney accepts the appointment, committing to perform his legal duties to the best of his abilities and in accordance with the highest standards of the legal profession, both as to standards of law practice and the ethics and rules of professional conduct.
- 2.0 COMPENSATION FOR SERVICES.**
- 2.1 Compensation shall be by fees for hourly services and reimbursed costs/expenses as set forth in Schedule 1 to this Agreement, payable to the Law Firm. No additional compensation shall be due to the City Attorney and Assistant City Attorneys by virtue of their appointment made pursuant to this Agreement.
- 2.2 All billings to be calculated in tenths of an hour, rounding up. The parties agree that the fees and expenses for alternative representation of the City in the event of special retained counsel shall not be deducted from the retainer or the fees of the Law Firm. The parties agree that in the event of a conflict of interest which requires the

withdrawal of the representation of the City Attorney or an Assistant City Attorney on any matter affecting the City, the City Council may appoint a Special Assistant City Attorney who shall represent the City and report directly to the City Council on the matter. For conflicts involving the prosecution of routine district court misdemeanor or civil infraction offenses, the City Council may approve specific persons or firms to handle such matters and the City Attorney may refer such cases directly to the identified person or firm with notification of the referral to City Council.

2.3 The fees to be paid to the Law Firm for the term of this agreement are set forth in Schedule 1.

3.0 TERM AND TERMINATION.

3.1 The term of this Agreement is two (2) years, beginning July 1, 2016 and ending June 30, 2018. Renewals may occur only on mutually agreeable terms.

3.2 Either party reserves the right to terminate this Agreement on 90 days written notice or in the event of a material breach of the terms and conditions hereof by the other. In the event of a material breach by the City, the contract may be terminated 14 days after the City Manager is served with a notice of the breach if the City has failed to cure the breach. In the event of a material breach by the City Attorney, the contract may be terminated 14 days after service of a notice of the breach on the City Attorney if the City Attorney has failed to cure the breach.

3.3 Notwithstanding the above provisions, the City Attorney shall serve at the pleasure of the Council, the City Charter concerning the appointment of the City Attorney shall prevail, and nothing herein is intended to abrogate those provisions.

4.0 DESCRIPTION OF SERVICES; COMPENSATION.

4.1 SERVICES TO BE INCLUDED IN THE GENERAL AND DISTRICT COURT RETAINER.

4.1.1 Attendance at all regular and special City Council meetings as required by the Council.

4.1.2 Attendance, as needed and directed by the City Manager or the Council, at meetings of the City's Boards and Commissions.

4.1.3 The rendering of legal advice and opinions, preparation and drafting services in connection with the City Charter or Charter revisions/amendments, preparation and drafting of legal documents, drafting or review and approval of all contracts, handling

of tort and other liability claims, handling of all collections including personal property tax collections, advice to City Assessor and Board of Review on assessment issues and exemptions, drafting of ordinances and resolutions, and consultation on City matters with the City Council, City Manager, department heads, and City boards and commissions.

4.1.4 Appearance in court for the prosecution of ordinance violations, including civil infractions and enforcement of civil ordinances as described under “District Court Retainer” in Schedule 1.

4.1.5 Advice on labor relations and personnel matters as requested by the City Manager.

4.1.6 Work associated with bond issues if authorized by City Council, except for the duties traditionally required of Bond Counsel.

4.1.7 Drafting and review of easements, rights-of-way, real estate transactions, and condemnation proceedings prior to litigation.

4.1.8 Provide advice to staff and City boards and commissions with regard to issuance, suspension, and revocation of rental housing licenses, liquor licenses, and other occupational licenses. Representation of City interests before boards, commissions, and state agencies on issues and appeals regarding suspension, revocation, or a non-renewal of housing, liquor, building, historic district, or other occupational licenses.

4.1.9 Services of the type described in §4.1.1 through §4.1.8 above rendered in connection with Authorities or other entities associated with the City regardless of the funding source. Such bodies include, but are not limited to, the Downtown Development Authority, Downtown Management Board, Economic Development Corporation, Brownfield Redevelopment Authority, and Local Development Finance Authority.

4.2 **ADDITIONAL SERVICES COVERED BY THIS AGREEMENT**

4.2.1 Representation of the City in all cases before all courts and before all legally constituted tribunals or administrative agencies on behalf of and representing the City or one of its authorities, agencies, or employees. The fees for these services and further explanation of the services are stated in Schedule 1 to this agreement.

4.3 **SERVICES NOT COVERED BY THIS AGREEMENT**

4.3.1 The retainer does not cover specialized legal services by others including special labor counsel and bond counsel.

4.3.2 The retainer does not cover services by other lawyers retained by Council because of conflicts described in Section 2.2.

5.0 **GENERAL CONDITIONS**

5.1 **COORDINATION.** Except in the case of a conflict of interest, the City Attorney shall coordinate the services of the Assistant City Attorneys and, if authorized by City Council, Special Assistant City Attorneys on City matters. All requests for legal services by department heads, staff, and City boards and commissions shall be approved pursuant to guidelines approved by City Council.

5.2 **QUARTERLY PERFORMANCE REVIEW.** The City Attorney will meet quarterly with the City Council in Closed Session to consider the personnel evaluation of the City Attorney (the City Attorney requests a closed hearing for this purpose) and to discuss an attorney-client privileged communication on the activities initiated at the request of the City Council or at the request of the City Manager or staff in accord with City Council Guidelines, as well as to review litigation policies and practices with respect to code enforcement and police prosecutions, and to review and discuss litigation strategy and the progress of pending litigation..

5.3 **COSTS/EXPENSES.** Costs/expenses set forth in Schedule 1 shall be separately charged.

5.4 **BILLINGS AND COMPENSATION.** Payment of compensation shall generally be made on a monthly basis. Billings for monthly increments of the retainer, litigation services, and other funded services shall be rendered promptly and monthly in form and substance as set forth in the Schedule 1. Billings for litigation services charged on an hourly basis will be itemized by date, time, subject matter, and attorney performing services. Billings for expenses shall also be rendered monthly. The Attorneys shall maintain records of time and services, which shall be available for inspection by the City Manager and/or the Council at reasonable times.

5.5 **INDEPENDENT CONTRACTORS.** The City Attorney and any Assistant City Attorneys appointed by the City Attorney are not employees of the City. They are determined to be independent legal counsel and independent contractors.

5.6 **MALPRACTICE INSURANCE.** The City Attorney shall carry legal malpractice insurance in the amount of \$1,000,000 through the policy or policies issued to the Law Firm covering the term of this Agreement naming the City as an additional certificate holder, which certificate shall provide that the City shall receive at least 30 days prior written notice of cancellation or nonrenewal of such insurance. A copy of the Certificate of Insurance shall be filed with the City Clerk.

5.7 **SUPPLIES.** Generally, the City Attorney shall have its own supplies and office equipment. On occasion, City supplies will be required for City services, and with the approval of the City Manager, and by his authority, the City will furnish same at its expense. By way of example, City stationery, if required, will normally be supplied by the City.

5.8 **CONFLICTS OF INTEREST.** The City Attorney and any Assistant City Attorneys agree to exercise their best efforts to avoid representation of any person, party, or entity in any cause contrary to the interest of the City. The City Attorney and the Assistant City Attorneys shall absolutely desist from representing any private person or entity on any matter in which the City is or may become an opposing party.

The parties understand that the City Attorney currently represents a number of clients including businesses, private parties, and municipalities. Where a potential conflict of interest because of such representation may occur, the parties shall proceed as follows:

5.8.1 For conflicts involving the prosecution of routine district court misdemeanor or civil infraction offenses, the City Attorney may identify the conflict and refer such cases directly to the City Council approved persons or firms to handle such matters with notification of the referral to City Council.

5.8.2 In cases other than routine district court prosecutions, in the event of a potential conflict of interest, the City Attorney shall identify the conflict and inform both parties in writing identifying the potential cause of conflict. The City Council shall determine whether the conflict is material and, if it determines that it is not, will instruct the City Attorney to continue representation of the City. Provided, however, the City Attorney and the Law Firm may determine that the conflict cannot be overcome and advise the City Council accordingly, taking steps to assist in obtaining alternative representation of the City and of the other party.

5.8.3 In the event the City Council determines that the conflict is material, the City Council shall so inform the City Attorney and the City Attorney shall assist the City Council and the other party in obtaining alternative representation for that matter.

5.8.4 In the event the City Council authorizes the City Attorney to continue representation of the City in the matter, the City Attorney shall do so in such a manner as to avoid disclosure of confidential communications to any member of the law firm representing the other party and the City Attorney shall not represent the other party in connection with that matter.

5.8.5 The City Attorney especially commits not to represent any party against the City in

any matter of litigation.

- 5.8.6 Notwithstanding the above, the City Attorney and Assistant City Attorneys shall act in accordance with the letter and spirit of the Michigan Rules of Professional Conduct as adopted by the Michigan Supreme Court as they apply to any matter involving a conflict of interest or potential conflict of interest.
- 6.0 **COUNTERPARTS.** This Agreement may be executed in multiple counterparts. Any copy of this Agreement may be relied upon as the original. Amendments to this Agreement must be in writing on documents of equal dignity with this Agreement.
- 7.0 **CONTINUITY/BENEFIT.** In the event the Law Firm experiences the addition of personnel or there are changes in membership of the Law Firm, except as otherwise provided in this Agreement, this Agreement shall continue in effect unless such change adversely affects the representation of the City. The City Attorney and Assistant City Attorneys shall be members of the Law Firm.

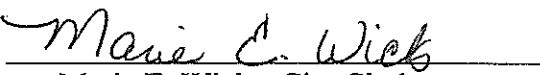
IN WITNESS WHEREOF, the parties execute this Agreement on May 31, 2016.

CITY OF EAST LANSING

By

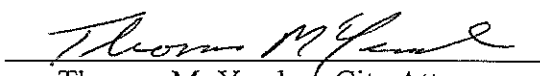

Mark S. Meadows, Mayor

By


Marie E. Wicks, City Clerk

**McGINTY, HITCH, HOUSEFIELD,
PERSON, YEADON & ANDERSON, P.C.**

By


Thomas M. Yeadon, City Attorney

**PROPOSED AGREEMENT FOR LEGAL SERVICES
CITY ATTORNEY FEE SCHEDULE
COMMENCING JULY 1, 2016 THROUGH JUNE 30, 2017**

SCHEDULE 1

| | | | |
|--|--------------------------|--------------------------------------|------------------|
| GENERAL RETAINER | 1,140 hours | \$122.00/hr | \$139,080 |
| DISTRICT COURT RETAINER AND TRIALS ¹ | 3,000 hours 350 hours | \$ 70.00 \$110.50/hr ² | \$248,675 |
| DISTRICT COURT TRIALS HOUSING ³ | 250 hours | \$110.50/hr | \$ 27,625 |
| GENERAL LITIGATION ⁴ | 675 hours | \$138.00/hr | \$ 93,150 |
| COSTS/EXPENSES ⁵ | | | <u>\$ 12,000</u> |
| | TOTAL | | \$520,530 |

¹District Court Retainer includes issuing search warrants, drafting complaints and warrants, subpoenas, trial preparation, appearance at arraignments, pleas, pretrial conferences, formal hearings on all civil infractions, and all bench trials except housing/over-occupancy violations.

²The vast majority of this work will be performed by clerks and associates at the lower rate of \$70.00 per hour. The higher rate will be charged only by the managing partner or by the associates when conducting trials.

³District Court Housing Trials - Includes authorization of citations, appearances at all trials, hearings, and/or civil infraction formal hearings on all housing violations, including over-occupancy, overcrowding, and illegal use of space, and housing related Building and Zoning Code violations.

⁴General litigation is defined as all hours generated in proceedings before state circuit and appellate courts, all federal courts, and all state administrative tribunals.

⁵Costs that are advanced by the firm on a routine basis for City matters will be billed to the City as part of the itemized monthly statements. These costs may include such items as recording fees, filing fees, motion fees, witness fees, transcript expenses, copies and long distance charges, mileage, and similar expenses. These costs do not routinely include fees for outside labor counsel, expert witness fees, transcript costs in excess of \$300, or appraisals. Invoices for these items will be forwarded to the Finance Department for payment. All professional expenses such as dues, memberships, subscriptions, seminars (unless billable as legal research or a specific pending legal issue) and professional liability insurance will be borne by the firm.

**AGREEMENT FOR LEGAL SERVICES
CITY ATTORNEY FEE SCHEDULE CHART
FISCAL YEARS 2011-12, 2012-13, 2013-14, 2014-15, 2015-16**

SCHEDULE 2

RATES CHARGED

| | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 2015/2016 |
|----------------------------------|----------------------|----------------------|----------------------|----------------------|-----------------------|
| GENERAL RETAINER | \$118.00 | \$118.00 | \$118.00 | \$119.00 | \$120.00 |
| DISTRICT COURT RETAINER | \$ 67.50 \$106.50 | \$ 67.50 \$106.50 | \$ 67.50 \$106.50 | \$ 68.00 \$107.00 | \$ 68.50 \$108.00 |
| DISTRICT COURT TRIALS | \$106.50 | \$106.50 | \$106.50 | \$107.50 | \$108.50 |
| DISTRICT COURT TRIALS HOUSING | \$106.00 | \$106.00 | \$106.00 | \$107.00 | \$108.00 |
| GENERAL LITIGATION | \$132.00 | \$132.00 | \$132.00 | \$133.50 | \$135.00 |
| Total retainer amount | \$502,000 | \$502,000 | \$502,000 | \$506,547 | \$510,400 |
| Total amount billed | \$536,240 | \$446,803 | \$472,969 | \$453,682 | \$340,950 (10 months) |