

RESOLUTION 2021-004

PASSED: JANUARY 11, 2021

APPROVING A FIRST AMENDMENT TO THE RETAINER AGREEMENT FOR LEGAL SERVICES FOR THE CITY OF DEKALB TO REDUCE THE AMOUNT OF THE MONTHLY RETAINER FOR BASIC SERVICES DURING THE 2021 FISCAL YEAR.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government which may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, on April 22, 2019, the City Council adopted Resolution 2019-073, which authorized an agreement for legal services between the City and the law firm Rosenthal, Murphey, Coblenz, and Donahue (the "Agreement"); and

WHEREAS, on March 9, 2020, the Agreement was duly assigned to the law firm Donahue & Rose, PC; and

WHEREAS, due to reduced City revenues related to COVID-19, the City Attorney desires to amend the Agreement to reduce the amount of the monthly retainer for basic services from \$16,000.00 per month to \$15,000.00 per month during the 2021 Fiscal Year; and

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of DeKalb, Illinois, as follows:

SECTION 1: The recitals to this Resolution are true, correct, material, adopted and incorporated into this Resolution as if fully set forth herein.

SECTION 2: The City's Corporate Authorities approve the First Amendment to Retainer Agreement for City Attorney Services in the same or substantially similar form as Exhibit A attached hereto and incorporated herein (the "First Amendment"), and further direct the City Manager to execute the First Amendment, the Clerk or the Executive Assistant to attest this Resolution, and the City Manager to take all acts which may be necessary to effectuate the First Amendment.



SECTION 3: This resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 11th day of January 2021 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Finucane (Remote), Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: None.

ATTEST:



RUTH A. SCOTT, Executive Assistant

JERRY SMITH, Mayor

EXHIBIT A
(FIRST AMENDMENT TO CITY ATTORNEY RETAINER AGREEMENT)

**FIRST AMENDMENT TO RETAINER AGREEMENT
FOR CITY ATTORNEY SERVICES**

This First Amendment to the Retainer Agreement for City Attorney Services (the "First Amendment"), by and between the City of DeKalb (the "City"), an Illinois home rule municipal corporation, and Donahue & Rose, P.C., an Illinois professional corporation, who are collectively referred to as the "Parties", state as follows:

RECITALS

WHEREAS, the City and the law firm Rosenthal, Murphey, Coblenz & Donahue, Ltd. entered into a Retainer Agreement for City Attorney Services bearing an effective date of June 1, 2019 (the "Agreement"); and

WHEREAS, on March 9, 2020, the Agreement was duly assigned to the law firm Donahue & Rose, PC; and

WHEREAS, the Parties desire to amend the Agreement to reduce the amount of the monthly retainer for basic services from \$16,000.00 per month to \$15,000.00 per month during the period of time starting on January 1, 2021 and ending on December 31, 2021;

NOW, THEREFORE, in consideration of the promises made herein, the Parties agree as follows:

SECTION 1: Recitals. The above recitals to this First Amendment are true, correct, material, adopted and incorporated herein as Section 1 to this First Amendment.

SECTION 2: First Amendment to the Agreement. The Agreement shall be amended as follows:

* * *

3. City agrees to compensate Donahue & Rose, PC for the legal services provided under this Agreement as follows:

- A. For Basic Services, a monthly retainer in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) per month. The monthly retainer for Basic Services shall not be changed during the period of time from the effective date of this Agreement through December 31, 2021; thereafter, the retainer may be modified by mutual agreement. Notwithstanding anything to the contrary contained in this paragraph, the total annual amount of the retainer for Basic Services shall not exceed One Hundred Thousand Dollars and Zero Cents (\$100,000.00) during the 2019 calendar year, One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00) during the 2020 calendar year, and One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00) during the 2021 calendar year;

* * *

12. Any notice given under this Agreement shall be in writing and transmitted via email or the United States mail, registered or certified, postage pre-paid, addressed to the proper party as follows:

A. If to the City:

Bill Nicklas, City Manager
City of DeKalb
164 E. Lincoln Hwy.
DeKalb, IL 60115
bill.nicklas@cityofdekalb.com

B. If to Donahue & Rose, PC:

John F. Donahue
Donahue & Rose, PC
9501 W. Devon Ave., Ste. 702
Rosemont, IL 60018
jdonahue@drlawpc.com

Either party may change its mailing address by giving written notice to the other party as provided above.

* * *

SECTION 3: Miscellaneous.

A. **Effect of First Amendment.** Except as otherwise provided herein by this First Amendment, all of terms of the Agreement shall remain in full force and effect. In the event of

any conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall govern.

B. Amendment. This First Amendment may be amended only by the: (1) mutual agreement of the Parties evidenced by a written amendment; (2) adoption of an ordinance, resolution, or motion of the City's Corporate Authorities approving such written amendment, as provided by law; and (3) execution of such written amendment by the Parties.

C. Entire Agreement. This First Amendment sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This First Amendment shall be deemed to be full integration of the entire First Amendment of the Parties.

D. Severability. If any provision, covenant, agreement or portion of this First Amendment, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this First Amendment, and, to that end, all provisions, covenants, agreements or portions of this First Amendment are declared to be severable.

E. Illinois Law. This First Amendment shall be construed its accordance with the laws of the State of Illinois.

F. Interpretations. This First Amendment has been jointly negotiated by the Parties and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this First Amendment.

G. Headings. The section headings in this First Amendment are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this First Amendment.

H. **Counterparts.** This First Amendment may be executed in one or more counterparts, all of which together shall be construed to constitute one in the same.

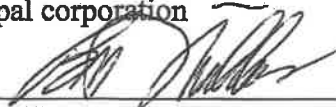
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers and attested as of the day and year first set forth above.

DONAHUE & ROSE, PC

By: 
John Donahue, Partner

Date: _____

**CITY OF DEKALB, an Illinois home rule
municipal corporation**

By: 
Bill Nicklas, City Manager

Date: 1-12-2021