

AUTHORIZING A SECOND AMENDMENT TO A RETAINER AGREEMENT FOR CITY ATTORNEY SERVICES.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government and 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, the City Attorney provides legal services to the City under a written retainer agreement pursuant to Section 3.17 of the City's Municipal Code; and

WHEREAS, the City's corporate authorities find that it is in the City's best interests for the promotion of the public health, morals and welfare to approve a second amendment to the retainer agreement for City Attorney services in the same or substantially similar form as Exhibit A attached hereto and incorporated herein (the "Second Amended City Attorney Agreement"); and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

SECTION 1: The City's corporate authorities approve and ratify the Second Amended City Attorney Agreement in the same or substantially similar form as Exhibit A attached hereto and incorporated herein.

SECTION 2: This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provision of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

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 8th day of November 2021 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None.




COHEN BARNES, Mayor

ATTEST:



Ruth A. Scott, Executive Assistant

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

This Second Amendment to the Retainer Agreement for City Attorney Services (the "Second 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, P.C.; and

WHEREAS, on January 11, 2021, the Parties amended the Agreement to reduce the amount of the monthly retainer for basic services for the FY 2021 (the "First Amendment");

WHEREAS, the Parties desire to further amend the Agreement to provide that the amount of the monthly retainer for basic services for the FY2022 shall be \$15,000 and to increase the hourly billing rate for additional services from \$185 to \$190;

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

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

SECTION 2: Second 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.
- B. For Additional Services, at the hourly billing rate of One Hundred Ninety Dollars and Zero Cents (\$190.00) for attorneys as invoiced to the City on a monthly basis. The City shall not be charged for the travel time associated with providing the Additional Services.

* * *

SECTION 3: Miscellaneous.

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

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

D. Severability. If any provision, covenant, agreement or portion of this Second 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 Second Amendment, and, to that end, all provisions, covenants, agreements or portions of this Second Amendment are declared to be severable.

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

F. Interpretations. This Second 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 Second Amendment.

G. Headings. The section headings in this Second 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 Second Amendment.

H. Counterparts. This Second 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 Second Amendment to be executed by their duly authorized officers as of the day and year set forth below.

DONAHUE & ROSE, PC

By: 

John Donahue, Partner

Date: 11/8/2021

CITY OF DEKALB, an Illinois home rule
municipal corporation.

By: 

Bill Nicklas, City Manager

Date: 11/9/2021