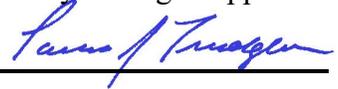



REQUEST FOR COUNCIL ACTION

Date: October 11, 2021
Item No.: 9.e

Department Approval

City Manager Approval



Item Description: Approve Contract for Civil and Criminal Prosecution Legal Services

1 **BACKGROUND**

2 Since 2010, Erickson, Bell, Beckman, & Quinn (EBBQ) has provided the City civil and criminal
3 prosecution legal services. The initial contract was three years pursuant to the City policy on
4 professional services. In 2012, the City solicited proposals for legal services through a
5 competitive process. As a result of that process, the City Council agreed to continue EBBQ's
6 service to the City through 2015. On April 20, 2015, the City Council extended EBBQ's
7 contract for an additional three years, expiring on December 31, 2018.

8 At its September 27 meeting, the City Council directed the City Manager to conduct a Request
9 for Qualifications (RFQ) process in 2022 for City civil and criminal prosecution legal services.
10 The City Council also directed the City Manager bring forward a one-year contract through 2022
11 with EBBQ to provide civil and criminal prosecution legal services to the City.

12 Attachment A and B are the professional services agreement for civil and criminal prosecution
13 services from EBBQ. The level of services are identical to the existing agreements.

14 **POLICY OBJECTIVE**

15 The City requires legal advice and services as part of its essential functions. Entering into a
16 contract for legal services will allow for the City to receive proper legal advice in its operations
17 and provide for prosecution of violations of law.

18 **BUDGET IMPLICATIONS**

19 The draft agreements provide for a flat fee retainer for both civil and prosecutorial services. The
20 new agreements will not increase the monthly retainer fee. The 2022 monthly retainer fees will
21 be same as the 2021 (Civil - \$17,512/month; Criminal Prosecution - \$14,239/month) .

22 **STAFF RECOMMENDATION**

23 Staff recommends entering into the agreements for legal services.

24 **REQUESTED COUNCIL ACTION**

25 Motion to approve entering into legal services contract with Erickson, Bell, Beckman, & Quinn
26 for civil and criminal prosecution services for the year of 2022.

Prepared by: Patrick Trudgeon, City Manager (651) 792-7021

Attachments: A: Draft Professional Services Agreements for Civil Legal Services
B: Draft Professional Services Agreements for Criminal Prosecution Legal Services.

Standard Agreement for Professional Services Municipal Civil Attorney

This Agreement (“Agreement”) is made as of the _____ day of _____, 2021, between the City of Roseville, a Minnesota municipal corporation (hereinafter “City”), and Erickson, Bell, Beckman & Quinn, P.A., a Minnesota professional association (hereinafter “Consultant”).

Preliminary Statement

The City has adopted a policy regarding the selection and retention of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the performance of professional services by the Consultant.

The City and Consultant agree as follows:

1. **Scope of Work Proposal.** The Consultant agrees to provide the professional services described in Exhibit “A” attached hereto (“Work”) in consideration for the compensation set forth in Provision 3 below. The Work to be performed shall include Retainer Work, Litigation Work and Land Use Work as described in Exhibit A. The terms of this Agreement shall take precedence over and supersede any provisions and/or conditions in any proposal submitted by the Consultant.
2. **Term.** The term of this Agreement shall be from January 1, 2022 through December 31, 2022, the date of signature by the parties notwithstanding.
3. **Compensation for Services.** The City agrees to pay the Consultant the compensation described in Exhibit A attached hereto for the Work. Third party independent contractors and/or subcontractors may be retained by the Consultant when required by the complex or specialized nature of the Work when authorized in writing by the City. The Consultant shall be responsible for and shall pay all costs and expenses payable to such third party contractors unless otherwise agreed to by the parties in writing.
4. **City Representative and Special Requirements.** The City Manager, or the City Manager’s designee, shall act as the City’s representative with respect to the Work to be performed under this Agreement. Such representative shall have authority to transmit

instructions, receive information and interpret and define the City's policies and decisions with respect to the Work to be performed under this Agreement. The City may change the City's representative at any time by notifying the Consultant of such change in writing.

5. ***Method of Payment.*** The Consultant shall submit to the City, on a monthly basis commencing on February 1, 2022, an itemized written invoice for Retainer Work performed under this Agreement during the previous month and separate itemized written invoices for Litigation and Land Use Work performed under this Agreement during the previous month. Invoices submitted shall be paid in the same manner as other claims made to the City. Invoices shall be subject to the following requirements:
- A. For Work reimbursed on an hourly basis, the Consultant shall indicate for each employee, his or her name, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. For all other Work, the Consultant shall provide a description of the Work performed and the period to which the invoice applies. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation of such expenses as is reasonably required by the City. In addition to the foregoing, all invoices shall contain, if requested by the City, the City's project number, a progress summary showing the original (or amended) amount of the Agreement, the current billing, past payments, the unexpended balance due under the Agreement, and such other information as the City may from time to time reasonably require.
 - B. To receive any payment pursuant to this Agreement, the invoice must include the following statement dated and signed by the Consultant: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."

The payment of invoices shall be subject to the following provisions:

- A. The City shall have the right to suspend the Work to be performed by the Consultant under this Agreement when it deems necessary to protect the City, residents of the City or others who are affected by the Work. If any Work to be performed by the Consultant is suspended in whole or in part by the City, the Consultant shall be paid for any services performed prior to the delivery upon the Consultant of the written notice from the City of such suspension.
 - B. The Consultant shall be reimbursed for services performed by any third party independent contractors and/or subcontractors only if the City has authorized the retention of and has agreed to pay such persons or entities pursuant to Provision 3 above.
6. ***Project Manager and Staffing.*** The Consultant has designated Mark F. Gaughan, Erich J.S. Hartmann and Caroline Bell Beckman ("Project Contacts") to perform and/or

supervise the Work, and as the persons for the City to contact and communicate with regarding the performance of the Work. The Project Contacts shall be assisted by other employees of the Consultant as necessary to facilitate the completion of the Work in accordance with the terms and conditions of this Agreement. The Consultant may not remove or replace the Project Contacts without the prior approval of the City, unless the Consultant replaces such person with another capable person.

7. **Standard of Care.** All Work performed by the Consultant under this Agreement shall be in accordance with the normal standard of care in Ramsey County, Minnesota, for professional services of like kind to the Work being performed under this Agreement.
8. **Audit Disclosure.** Any reports, information, data and other written documents given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available by the Consultant to any individual or organization without the City's prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Agreement. The Consultant shall at all times abide by Minn. Stat. § 13.01 et seq. and the Minnesota Government Data Practices Act, to the extent the Act is applicable to data, documents, and other information in the possession of the Consultant.
9. **Termination.** This Agreement may be terminated at any time by either party, with or without cause, by delivering to the other at the address of the other party set forth in Provision 25 below, a written notice at least ten (10) days prior to the date of such termination. The date of termination shall be stated in the notice. Upon termination the Consultant shall be paid for services rendered (and reimbursable expenses incurred if required to be paid by the City under this Agreement) by the Consultant through and until the date of termination so long as the Consultant is not in default under this Agreement. If the City terminates this Agreement because the Consultant is in default of its obligations under this Agreement, no further payment shall be payable or due to the Consultant following the delivery of the termination notice, and the City may, in addition to any other rights or remedies it may have at law or in equity, retain another consultant to undertake or complete the Work to be performed hereunder.
10. **Subcontractor.** The Consultant shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. If subcontracts are approved and entered into, the Consultant shall promptly pay any subcontractor involved in the performance of this Agreement as required by, and the Consultant shall otherwise comply with, the State Prompt Payment Act.
11. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.

12. ***Non-Discrimination.*** During the performance of this Agreement, the Consultant shall not discriminate against any person, contractor, vendor, employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this Provision 12 in all of its subcontracts for Work done under this Agreement, and will require all of its subcontractors performing such Work to incorporate such requirements in all subcontracts for the performance of the Work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act.
13. ***Assignment.*** Neither party shall assign this Agreement, nor any rights and/or obligations hereunder, without the prior written consent of the other party.
14. ***Compliance with Laws and Regulations.*** The Consultant shall abide with all federal, state and local laws, statutes, ordinances, rules and regulations in the performance of the Work. The Consultant and City, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation by the Consultant of statutes, ordinances, rules and regulations pertaining to the Work to be performed shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
15. ***Waiver.*** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement or either party's ability to enforce a subsequent breach.
16. ***Indemnification.*** The Consultant agrees to defend, indemnify and hold the City, and its mayor, councilmembers, officers, agents, employees and representatives harmless from and against all liability, claims, damages, costs, judgments, losses and expenses, including but not limited to reasonable attorney's fees, resulting from any negligent or wrongful act or omission of the Consultant, its officers, agents, employees, contractors and/or subcontractors, pertaining to the performance or failure to perform the Work.
17. ***Insurance.*** Consultant shall procure and maintain the following minimum insurance coverages and limits of liability during the pendency of this Agreement:
 - A. Worker's Compensation: Statutory Limits
 - B. Professional Liability Insurance. The Consultant agrees to provide to the City a certificate evidencing that it has in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for legal liability

arising out of the performance of professional services for the City, in the insured's capacity as the Consultant, if such legal liability is caused by an error, omission, or negligent act of the insured or any person or organization for whom the insured is legally liable. Said policy shall provide an aggregate limit of at least \$2,000,000. Said policy shall not name the City as an insured. A copy of the Consultant's insurance declaration page, riders, and/or endorsement, as applicable, which evidences the compliance with this Provision 17, must be filed with City prior to the start of the Consultant's Work. Such documents evidencing Insurance shall be in a form acceptable to the City and shall provide satisfactory evidence that the Consultant has complied with all insurance requirements. Renewal certificates shall be provided to the City prior to the expiration date of any of the required policies. The City will not be obligated, however, to review such declaration page, riders, endorsement or certificates or other evidence of insurance, or to advise the Consultant of any deficiencies in such documents and receipt thereof shall not relieve the Consultant from, nor be deemed a waiver of, the City's right to enforce the terms of the Consultant's obligations hereunder. The City reserves the right to examine any policy provided for under this paragraph.

18. ***Ownership of Documents.*** All plans, diagrams, analysis, reports and information generated in connection with the performance of this Agreement ("Information") shall remain the property of the Consultant. The City may use the Information for any reasons it deems appropriate without being liable to the Consultant for such use. The Consultant shall not use or disclose the Information for purposes other than performing the Work contemplated by this Agreement without the prior consent of the City.
19. ***Dispute Resolution/Mediation.*** Each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. The cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Roseville unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a Mediated Settlement Agreement, which Agreement shall be enforceable as a settlement in any court having jurisdiction thereof.
20. ***Annual Review.*** Annually, the City shall have the right to conduct a review of the performance of the Work performed by the Consultant under this Agreement. The Consultant agrees to cooperate in such review and to provide such information as the City may reasonably request. Following each performance review the parties shall, if requested by the City, meet and discuss the performance of the Consultant relative to the remaining Work to be performed by the Consultant under this Agreement.

21. **Conflicts.** No salaried officer or employee of the City and no member of the City Council of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision shall render this Agreement void.
22. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.
23. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.
24. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
25. **Notices.** Any notice to be given by either party upon the other under this Agreement shall be properly given: a) if delivered personally to the City Manager if such notice is to be given to the City, or if delivered personally to Mark F. Gaughan or Caroline Bell Beckman if such notice is to be given to the Consultant, b) if mailed to the other party by United States registered or certified mail, return receipt requested, postage prepaid, addressed in the manner set forth below, or c) if given to a nationally, recognized, reputable overnight courier for overnight delivery to the other party addressed as follows:

If to City: City of Roseville
 Roseville City Hall
 2660 Civic Center Drive
 Roseville, MN 55113
 Attn: City Manager

If to Consultant: Erickson, Bell, Beckman & Quinn, P.A.
 1700 West Highway 36, Suite 110
 Roseville, MN 55113
 Attn: Mark F. Gaughan

Notices shall be deemed effective on the date of receipt if given personally, on the date of deposit in the U.S. mails if mailed, or on the date of delivery to an overnight courier if so delivered; provided, however, if notice is given by deposit in the U.S. mails or delivery to an overnight courier, the time for response to any notice by the other party shall commence to run one business day after the date of mailing or delivery to the courier. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

26. **Entire Agreement.** Unless stated otherwise in this Provision 26, the entire agreement of the parties is contained in this Agreement. This Agreement supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof as

well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

IN WITNESS WHEREOF, the undersigned parties have entered into this Agreement as of the date set forth above.

CITY OF ROSEVILLE

Date: _____

Patrick J. Trudgeon, City Manager

Date: _____

Daniel J. Roe, Mayor

ERICKSON, BELL, BECKMAN & QUINN, P. A.

Date: _____

Mark F. Gaughan, Shareholder

Date: _____

Caroline Bell Beckman, Shareholder

EXHIBIT A

WORK

Civil Attorney Scope of Services and Compensation

Scope of Services

1. Attend all City Council meetings (generally three per month) and other City Board, Commission or Committee meetings as requested by the City Council or City Manager.
2. Draft and review ordinances, resolutions, and correspondence, as requested.
3. Review selected Council and Planning Commission agenda items and minutes.
4. Advise Mayor, Council Members, City Manager, Department Heads and other staff on City legal matters.
5. Prepare and/or review municipal contracts, such as contracts for public improvements, joint powers of agreements, construction, and purchase of equipment.
6. Represent City in matters related to the enforcement of City building and zoning codes.
7. Research and submit legal opinions on municipal or other legal matters, as requested by City Council or City Manager.
8. Meet with the City Council, City Manager, Department Heads and City Staff, as needed, to review Council agenda items, and the status of all legal matters before the City.
9. Hold office hours at City Hall one morning or afternoon each week.
10. Provide legal briefings as requested to City Council and Staff regarding new or proposed legislation or new court cases affecting municipal operations and activities.
11. Upon request, provide written update on new State or Federal legislation or judicial decisions impacting the City and suggested action or changes in operations or procedures to assure compliance.
12. Provide advice on open meeting law, data practice, records retention and privacy issues.
13. Provide advice on and represent the City in employment, workers' compensation and labor relations issues, including negotiations, administrative hearings and mediation, but excluding arbitration and litigation.

14. Interpret, advise and provide training with respect to municipal employment matters including but not limited to PERA, labor agreements, personnel policy, FLSA, Veterans' Preference, and unemployment compensation.
15. At the City's discretion (as well as the discretion of any insurance company providing coverage), represent the City in matters related to, but not limited to, human rights claims; condemnation; and permits and administrative actions; excluding litigation.
16. In coordination with other attorneys representing the City on a case-by-case or project-by-project basis, review financing arrangements, special assessments, bonds and insurance requirements required by or for City contracts or activities, and interpret and advise the City regarding State land use statutes and regulations and City Code provisions.
17. Provide advice on and represent the City in the acquisition of real property for public purposes (public improvements, easements, parks, etc.), excluding condemnation proceedings.
18. Prepare and review the following: Conditional Use Permits and Documentation; Vacation of Rights-of-Way; and other land use approval documents, excluding Land Use Work.
19. Issue formal and informal advisory Ethics opinions, and assist the Roseville Ethics Commission, City Council and City Staff in matters related to the City Ethics Code, including providing training.

Compensation for the foregoing work ("Retainer Work") shall be as follows:

Retainer:	Per Month
Months 1-12	\$17,512.00

In addition, thereto the City shall pay the Consultant's out-of-pocket expenses, such as filing fees, transcript fees, photocopying (at \$.25 per page for black and white copies and \$1.00 per page for color copies), messenger fees, etc. for documents and materials required to be served and/or filed by the court. Such expenses are posted to the monthly retainer fee statement on a cost item basis.

The above retainer amounts do not include the Consultant's representation of the City during the course of litigation or arbitration ("Litigation Work") or work that is subject to attorney's fees reimbursement from a land use developer or owner pursuant to City ordinance ("Land Use Work"). Litigation Work shall be billed directly to the City in the amount of \$195.00 per attorney's hour. Paralegal and/or law clerk fees will be billed at \$105.00 per hour. Land Use Work will be billed by the Consultant directly to the City in the amount of \$195.00 per attorney's hour. Paralegal and/or law clerk hours will be billed at \$105.00 per hour. The City shall be responsible for securing reimbursement from the appropriate land use developer. Payment by the City to the Consultant pursuant to such ordinance will not decrease or otherwise impact the amounts due under the above-referenced base retainer for Retainer Work.

Further, the above retainer amounts do not include large real property purchase/sale projects that

are expected to require an inordinate amount of additional attorney time and work product, such as significant due diligence and/or environmental review. Subject to prior City Manager approval, such work shall be billed directly to the City in the amount of \$195.00 per attorney's hour and \$105.00 per paralegal and/or law clerk hour.

Standard Agreement for Professional Services Municipal Criminal Prosecution

This Agreement (“Agreement”) is made as of the _____ day of _____, 2021, between the City of Roseville, a Minnesota municipal corporation (hereinafter “City”), and Erickson, Bell, Beckman & Quinn, P.A., a Minnesota professional association (hereinafter “Consultant”).

Preliminary Statement

The City has adopted a policy regarding the selection and retention of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the performance of professional services by the Consultant.

The City and Consultant agree as follows:

1. **Scope of Work Proposal.** The Consultant agrees to provide the professional services described in Exhibit “A” attached hereto (“Work”) in consideration for the compensation set forth in Provision 3 below. The terms of this Agreement shall take precedence over and supersede any provisions and/or conditions in any proposal submitted by the Consultant.
2. **Term.** The term of this Agreement shall be from January 1, 2022, through December 31, 2022, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** The City agrees to pay the Consultant the compensation described in Exhibit A attached hereto for the Work.
 - a. Any changes in the scope of the work which may result in an increase to the compensation due the Consultant shall require prior written approval by an authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.
 - b. Special consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by the City.
 - c. If Consultant is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental

- actions, actions of a third party, or actions or inactions of the City, the time for performance shall be extended by a period of time lost by reason of the delay. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.
4. **City Information.** The City agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
- a. Access to the Area. Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, the City shall obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the Work.
 - b. Consideration of the Consultant's Work. The City shall give a thorough consideration to all memorandums, opinions, reports, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of the City within a reasonable time so as not to delay the work of the Consultant.
 - c. Standards. The City shall furnish the Consultant with a copy of any standard or criteria that may be required in the performance of the Work.
 - d. Owner's Representative. The City Manager shall act as the City's representative with respect to the work performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
5. **Method of Payment.** The Consultant shall submit to the City, on a monthly basis an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the City for:
- a. Progress Payment. For Work reimbursed on an hourly basis, the Consultant shall indicate for each such employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation as reasonable required by the City. Each invoice shall contain the City's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract.
 - b. Suspended Work. If any work performed by the Consultant is suspended in whole or in part by the City, the Consultant shall be paid for any services performed prior to the receipt of written notice from the City of such suspension, all as shown on Exhibit A.

- c. Payments for Special Consultants. The Consultant shall be reimbursed for the work of special consultants, as described in Section 3B, and for other items when authorized in writing by the City.
 - d. Claims. To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
6. ***Project Manager and Staffing.*** The Consultant has designated Caroline Bell Beckman, Kari L. Quinn, Mark F. Gaughan, James C. Erickson, Jr. and Richard Podvin to perform the Work. They shall be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace these designated staff from the Project without the approval of the City, unless the Consultant replaces such person with another capable person.
 7. ***Performance Evaluation.*** The parties agree that a performance evaluation shall be conducted annually.
 8. ***Standard of Care.*** All work performed pursuant to this Agreement shall be in accordance with the standard of care in Ramsey County, Minnesota for professional services of the like kind.
 9. ***Audit Disclosure.*** Any reports, information, data and other written documents given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available by the Consultant to any individual or organization without the City's prior written approval unless otherwise required under Minnesota law. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Contract. The Consultant shall at all times abide by Minn. Stat. § 13.01 et seq. and the Minnesota Government Data Practices Act, to the extent the Act is applicable to data, documents, and other information in the possession of the Consultant.
 10. ***Termination.*** This Agreement may be terminated at any time by either party by thirty (30) days written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the City terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payments shall be made to the Consultant, and the City may retain another consultant to undertake or complete the work identified in Paragraph 1.
 11. ***Subcontractor.*** The Consultant may enter into subcontracts for services provided under this Agreement. The Consultant shall promptly pay any subcontractor involved in the performance of this Agreement as required by the State Prompt Payment Act.

12. ***Independent Consultant.*** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
13. ***Non-Discrimination.*** During the performance of this Agreement, the Consultant shall not discriminate against any or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
14. ***Assignment.*** Neither party shall assign this Agreement, nor any rights and/or obligations hereunder, without the prior written consent of the other party.
15. ***Services Not Provided For.*** No claim for services furnished by this Consultant not specifically provided for herein shall be honored by the City.
16. ***Severability.*** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
17. ***Entire Agreement.*** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to this subject matter hereof as well as any previous agreements presently in effect between the parties relating to this subject matter hereof. Any alterations, amendments, deletions, or waiver of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
18. ***Compliance with Laws and Regulations.*** In providing services hereunder, the Consultant shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided. The Consultant and City, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
19. ***Waiver.*** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

20. **Indemnification.** Consultant agrees to defend, indemnify and hold the City, its officers, and employees harmless from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from a negligent act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, or subcontractors in the performance of the services provided by this Agreement and against all losses by reason of the failure of said Consultant to fully perform, in any respect, all obligations under this Agreement
21. **Insurance.** Consultant shall procure and maintain the following minimum insurance coverages and limits of liability during the pendency of this Agreement:
- A. Worker's Compensation: Statutory Limits
 - B. Professional Liability Insurance. The Consultant agrees to provide to the City a certificate evidencing they have in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for legal liability arising out of the performance of professional services for the City, in the insured's capacity as the Consultant, if such legal liability is caused by an error, omission, or negligent act of the insured or any person or organization for whom the insured is legally liable. Said policy shall provide an aggregate limit of at least \$2,000,000. Said policy shall not name the City as an insured. A copy of the Consultant's insurance declaration page, riders, and/or endorsement, as applicable, which evidences the compliance with this Provision, must be filed with City prior to the start of the Consultant's Work. Such documents evidencing Insurance shall be in a form acceptable to the City and shall provide satisfactory evidence that the Consultant has complied with all insurance requirements. Renewal certificates shall be provided to the City prior to the expiration date of any of the required policies. The City will not be obligated, however, to review such declaration page, riders, endorsement or certificates or other evidence of insurance, or to advise the Consultant of any deficiencies in such documents and receipt thereof shall not relieve the Consultant from, nor be deemed a waiver of, the City's right to enforce the terms of the Consultant's obligations hereunder. The City reserves the right to examine any policy provided for under this paragraph.
 - C. Effect of Consultant's Failure to Provide Insurance. If Consultant fails to provide the specified insurance then Consultant will defend, indemnify and hold harmless the City, the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Consultant agrees that this indemnity shall be constructed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The standard indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity in this subparagraph 21C, the City may require Consultant to:

- a. Furnish and pay for a Surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- b. Furnish written acceptance of tender of defense and indemnify from Consultant's insurance company.

Consultant will take the action required by the city within fifteen (15) days of receiving notice from the City.

22. ***Ownership of Documents.*** All plans, diagrams, analysis, reports and information generated in connection with the performance of this Agreement except for personal notes and writings of Consultant's attorneys staff, agents and subcontractors ("Information") shall become the property of the City, but the Consultant may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Consultant may also use the Information for its purposes. Use of the information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of the Consultant, but any use of the Information by the City or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability therefrom.
23. ***Dispute Resolution/Mediation.*** Each dispute, claim or controversy arising from or related to this Service Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. The cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Roseville unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a Mediated Settlement Agreement, which Agreement shall be enforceable as a settlement in any court having jurisdiction thereof.
24. ***Governing Law.*** This Agreement shall be controlled by the laws of the State of Minnesota.
25. ***Conflicts.*** No salaried officer or employee of the City and no member of the City Council of the City shall have a financial interest, direct or indirect, in this Agreement. The violation of this provision shall render this Agreement void.

26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

IN WITNESS WHEREOF, the undersigned parties have entered into this Agreement as of the date set forth above.

CITY OF ROSEVILLE

Date: _____

City Manager

Date: _____

Mayor

ERICKSON, BELL, BECKMAN & QUINN, P. A.

Date: _____

Mark F. Gaughan, Shareholder

Date: _____

Caroline Bell Beckman, Shareholder

Exhibit A
Prosecuting Attorney
Scope of Services and Compensation

Scope of Services

1. Represent and prosecute all criminal law matters within the City's jurisdiction, included but not limited to scheduling, coordinating officer appearances, reviewing all criminal cases presented for purposes of prosecution, determine technical compliance with criminal code and other state statutes, writing complaints, making recommendations to the Court for alternatives to prosecution where appropriate.
2. Act as a resource to the Police Department in the development of criminal cases and provide training sessions for Police staff as needed.
3. Timely preparation and pursuit of disposition of criminal cases in advance of actual Court cases to avoid unnecessary officer court time.
4. Handle forfeiture cases on behalf of Police Department.
5. Draft and review ordinances, resolutions and correspondence, as requested.
6. Advise Mayor, Council Members, Department Heads and other staff on City legal matters.
7. Represent City in matters related to the enforcement of City building and zoning codes.
8. Provide legal briefings as requested to City Council and Staff regarding new or proposed legislation or new court cases affecting municipal operations and activities.
9. Upon request, provide written update on new State or Federal legislation or judicial decisions impacting the City and suggested action or changes in operations or procedures to assure compliance.
10. Prosecute petty misdemeanors, misdemeanors, and gross misdemeanors. Prepare and appear at arraignments, pretrial hearings, probation revocation hearings, omnibus hearings, Rasmussen hearings, Florence hearings, motion hearings and sentencings. This includes all appearances at the Maplewood Branch of the Ramsey County District Court, the Law Enforcement Center (LEC), and the Ramsey County Courthouse in St. Paul.
11. Prepare files for court, including assembling witness lists, preparing subpoenas, copying statutes or ordinances for trials, etc. Request certified documents such as driver's records, motor vehicle records, prior convictions, orders for protection, bank records, police reports, transcripts from prior hearings, plea petitions from prior hearings, ordinances and other information required for court.
12. Comply with discovery requests from defendants, including gathering records with regard to intoxilyzers, police training, criminal records of witnesses, taped Miranda warnings, copy of 911 calls, copy of any video taped evidence, etc.
13. Prepare letters and notices associated with various court trials and hearings. These include letters to victims, notices of hearings and changes of dates of hearings. Notification of officers of upcoming trials.
14. Maintain correspondence and telephone conferences with various agencies including law enforcement agencies, courts, Minnesota correctional facilities, victims/witnesses, defendants/defense attorneys, social workers, child protections, psychiatrists, probation officers, BCA, etc.
15. Prepare and respond to motions of defense counsel including, but not limited to, motions to dismiss, motions to vacate plea, motions in limine, and Doggett motions.

16. Meet with victims of domestic abuse and discuss cases with them. Work with Tubman Family Alliance office and advocates.
17. Training and legal update of officers. Provide written materials including providing booklets and other handouts.
18. Preparation of reports of prosecution activities and staff.
19. Twenty-four hour availability, including weekends, for probable cause to detain determination and all other questions or assistance.

Compensation for the foregoing shall be as follows:

Retainer:	Per Month
Months 1-12	\$14,239.00

Non-Retainer:	Per Hour
Months 1-12	\$175.00

Paralegal/Law Clerk:	
Months 1-12	\$105.00

Other Fees Charged:

Attorney Fees for Vehicle Forfeiture and Appellate Work shall be billed in addition to the Compensation set forth above at the Non-Retainer Per Hour rates set forth above.

In addition to the foregoing, the City shall pay to the Consultant the Consultant's out-of-pocket expenses, such as messenger fees, copies, and Westlaw costs.