

City of Vergas

Contract for Legal Services

City Attorney

This Agreement is made effective _____, 2021 by and between the City of Vergas, Minnesota, a municipal corporation (hereinafter "City"), whose business address is 111 Main Street, P.O. Box 32, Vergas, MN 56587-0032, and Ramstad, Skoyles & Winters, P.A., a Minnesota professional association with a registered address of 114 Holmes Street West, Detroit Lakes, MN 56501 (hereinafter "RSW"). RSW employs persons who are attorneys licensed in the State of Minnesota. City and Attorney may hereafter be referred to collectively as the "Parties."

Preliminary Statement

The purpose of this Agreement is to set forth the terms and conditions for the provision of designated general City legal services for the City by licensed attorneys employed by RSW. The City does not have a legal department or any on staff attorneys to fulfill the duties outlined in this Agreement. The services contemplated by this Agreement are those of a public official, an agent of the City designated to fulfill the role of the City Attorney as described in this Agreement and by statute. This Agreement includes civil litigation services and criminal prosecution services for designated petty misdemeanor and ordinance violations arising from incidents within the City of Vergas. It does not include criminal prosecution services for State law misdemeanors and gross misdemeanors arising from incidents within the City of Vergas, because the City separately contracts with the Otter Tail County Attorney for those services. In consideration of the following terms, conditions and mutual promises, the **City and Attorney agree as follows:**

1. *Designation of Attorney.* The City hereby appoints Thomas P. Winters as the "City Attorney" and Karen Skoyles as "City Prosecutor," hereinafter collectively referred to as "Attorneys." These appointments are for an indefinite period and may be terminated by the City Council of the City at any time and for any reason or for no reason, with or without cause, and upon such termination of appointment this Agreement is terminated under the provisions of Section Numbered 11 of this Agreement. This Agreement sets forth the terms of that appointment. Nothing in this Agreement shall constitute an exclusive right on the part of RSW or any specific Attorney to perform legal services for the City. The City may at any time and for any reason retain, contract with or employ other legal services consultants and other attorneys for the performance of specific project related legal services including but not limited to civil litigation pursuant to separate agreements for legal services.

2. *Services of Attorney.* Attorneys working for RSW shall perform the following work as general and basic City legal services. Thomas P. Winters shall serve as City Attorney, the City's designated professional representative in performing legal services upon the request of and as directed by the City Clerk/Treasurer, including but not limited to the following:

- a. Providing legal consultation and advice to the City, City Utilities, City Departments and the Vergas Economic Development Authority.
- b. Furnishing customary general municipal legal services including contract drafting and drafting legal documents and ordinances.

- c. Subdivision, zoning and planning reviews related to legal issues.
- d. Special legal services and studies as directed by the City Clerk/Treasurer.
- e. Research for and preparation of legal correspondence
- f. Attendance at meetings of the City Council and its committees as directed by the City Clerk/Treasurer or City Council.
- g. Attendance at meetings of the Vergas Economic Development Authority as directed by the City Clerk/Treasurer or City Council.
- h. Attendance at and participation in meetings and conferences involving legal questions and issues.
- I. Performing regulatory functions for the City in close coordination with other City officials.
- j. Civil litigation matters where Attorney is the attorney of record.
- k. Real estate sale, acquisition or development matters for the City or for the Economic Development Authority. Examples include actions to amend or vacate Plats developed by the City or Economic Development Authority, title examinations, facilitating sales of City or Economic Development Authority property with purchase agreements and related documentation and disclosures, and working on loan documentation when the Development Authority or the City are the lender or participating lender in financing for development purposes.
- l. Some miscellaneous project based matters. Examples could include administrative proceedings with State or Federal agencies. This would also include work with the City on annexations.
- m. Work with affiliated entities or management companies. From time to time Attorney will review or work on special agreements or special projects with or for entities that are affiliated with the City.
- n. Cooperating with other special consultants or attorney specialists such as bond counsel, labor relations counsel or legislative counsel to advance the interests of the City in projects related to those specialized services.

Within the scope of the services described in this agreement, the City Attorney is the agent of the City and has the authority to bind the City and act on the City's behalf.

If authorized in writing by the City in a supplemental agreement or authorization, the Attorney shall furnish, or obtain from other special consultants, additional services not included as part of these general and basic services and for additional fees as described in Section 5 of this Agreement. Additional services are project based, where the Attorney involved in accomplishing a specific task for the City that will have a definite start and a definite conclusion.

Karen Skoyles shall serve as City Prosecutor, the City's designated professional representative in performing legal prosecution services, including but not limited to the following

- o. Criminal prosecution services for designated petty misdemeanors and misdemeanor ordinance violations arising from incidents within the City of Vergas in hearings and trials held at Otter Tail County District Court.
- p. Advice and consultation for law enforcement officers at all hours relating to prosecution matters.

- q. Representing the City in vehicle forfeitures occurring in the City of Vergas.
3. *Effective date.* This Agreement will be effective on the date specified above.
4. *Modification of this Agreement.* This Agreement may be modified only by the written mutual consent of both Parties
5. *Compensation for Services.* City agrees to pay the Attorney for general and basic City legal services described in section numbered two (2) of this agreement as follows:

For City Attorney services fees will be invoiced at an hourly rate of \$225.00 per hour, with adjustments in the rate approved in advance by the authorized representative of the City or by the City Council. Hourly rates are charged in increments of 0.6 of an hour (6 minutes). The minimum increment billed for each service is 0.6 of an hour for phone calls, e-mails, correspondence and personal conferences.

For City Prosecutor services fees will be charged as a monthly fixed sum fee of \$250.00, subject to adjustment each six (6) months based on volume with adjustments in the fixed fee approved in advance by the Attorney and the authorized representative of the City or by the City Council.

Attendance of the City Attorney at evening regular or special Council meetings at the request of the City will be invoiced at a flat fee of \$100.00 per meeting.

In addition to the monthly fixed sum fee, the flat rate meeting fee and the hourly fee compensation, the City will reimburse RSW on a monthly basis for mileage at the current IRS reimbursement rate per mile, excessive copy charges at \$0.25 per copy and for other expenses and fees associated with access for the City Prosecutor to the State of Minnesota Bureau of Criminal Apprehension Department of Public Safety database and any fees or expenses associated with access for the City Prosecutor to the Minnesota Government Access to Court records.

6. *Business Relationship.* The City understands and acknowledges that the City Attorney and City Prosecutor are employees of a law firm currently identified as Ramstad, Skoyles & Winters, P.A., a Minnesota professional association with a registered address of 114 Holmes Street West, Detroit Lakes, MN 56501. The City consents to this business relationship and agrees that for so long as Thomas P. Winters is designated as the City Attorney and Karen Skoyles is designated as the City Prosecutor and these attorneys are employed by RSW, the City will permit other representatives of RSW to provide the Services of the City Attorney as assistant City Attorneys under the supervision and responsibility of Thomas P. Winters and City Prosecutor as assistant City Prosecutors under the supervision and responsibility of Karen Skoyles, and it will compensate RSW for the Services of these attorneys as described herein and accept and pay invoices for the services of these attorneys from RSW.
7. *Method of Payment.* RSW will submit to the City, on a monthly basis, an itemized invoice for hourly attorney fees and for the monthly fixed fee and any claim for expense reimbursement. Invoices submitted will be paid in the same manner as other claims made to the City. For work compensated on an hourly basis, RSW will indicate the number of hours worked, the Attorney doing the work, the

rate of pay, a computation of amounts due, and the total amount due. For work compensated by a monthly fixed fee RSW will indicate the number of open City of Sebeka prosecution files as of the date of the invoice and the number of City of Sebeka prosecution files closed since the previous invoice.

For reimbursable expenses RSW will provide an itemized listing and such documentation as reasonably required by the City.

To receive any payment, 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."

8. *Standard of Care.* The Attorneys will exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by members of the profession under similar circumstances in Minnesota.

9. *Audit Disclosure.* Any reports, information, data, etc. given to, or prepared or assembled by RSW under this Agreement which the City requests to be kept confidential, will not be made available to any individual or organization without the City's prior written approval. The books, records, documents and accounting procedures and practices of RSW are subject to examination by the City, its designated Auditor and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Contract. The Attorneys and RSW will at all times abide by Minn. Stat. 13.01 et seq., the Minnesota Government Data Practices Act, to the extent the Act is applicable to data and documents in the possession of the Attorneys and RSW, as limited by the Attorney Client privilege.

10. *Minnesota Government Data Practices Act.* RSW and the Attorneys must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Attorney pursuant to this Agreement. RSW is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if RSW were a government entity. In addition, RSW will comply with data and evidence disclosure requirements of Minnesota law with regard to the criminal prosecution services provided by RSW as well as the standards for data protection provided by the Minnesota Rules of Professional Conduct applicable to Attorneys.

11. *Termination.* This Agreement may be terminated by either party for any reason or no reason, with or without cause by one (1) day written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Attorneys, RSW will be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the Attorneys have failed to perform in accordance with this Agreement, RSW will not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Agreement by the Attorneys. The City may, in such event, withhold payments due to RSW for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein will not limit the City, in case of any default by RSW, from asserting any other right or remedy allowed by law, equity, or by statute.

Should termination be initiated by RSW, the Attorneys will complete all outstanding assignments based upon the terms and conditions of this Agreement, if so requested by the City in writing. In such

a case, RSW will be compensated for completion of those assignments according to the terms of this Agreement.

Termination of this Agreement shall not relieve the parties from the mutual duties and obligations of this Agreement stated in Sections Numbered 9, 10, 12, 14, 18, 20.C, 21, 22 and 23, which shall continue to be effective and enforceable as if this Agreement remained in effect for a period not less than six (6) years following the termination of this Agreement.

12. *Subcontractor.* The Attorney will not enter into subcontracts for services provided under this Agreement.

13. *Independent Contractor.* At all times and for all purposes herein, RSW and its Attorneys are independent contractors and not employees of the City. No statement herein will be construed so as to find the Attorneys to be employees of the City. Any and all assistants and associates of the Attorneys or other persons engaged in the performance of any work or services required of the Attorneys under this Contract will be considered employees of RSW only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, will be the sole obligation and responsibility of RSW.

14. *Non-Discrimination.* During the performance of this Agreement, RSW will not discriminate against any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. RSW will post in places available to the Attorneys' assistants, employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. RSW 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.

15. *Assignment.* Neither party will assign this Agreement, nor any interest arising herein, without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

16. *Services Not Provided For.* No claim for services furnished by RSW not specifically provided for herein shall be honored by the City.

17. *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.

18. *Compliance with Laws and Regulations.* In providing services hereunder, the Attorneys shall abide by statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided. The Attorneys 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 all remedies contemplated by 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. *Insurance.*

A. *General Liability.* Prior to starting the Work, RSW shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations RSW or by anyone employed by RSW or by anyone for whose acts RSW may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Section, or required by law.

B. RSW shall procure and maintain the following minimum insurance coverages and limits of liability:

Worker's Compensation:

Statutory Limits

Employer's Liability:

\$500,000 each accident

\$500,000 disease policy limit

\$500,000 disease each employee

Comprehensive General Liability

\$1,000,000 property damage and bodily injury per occurrence

\$2,000,000 general aggregate

\$5,000 medical expense

Comprehensive Automobile Liability

\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles).

C. *Professional Liability Insurance.* RSW shall procure and maintain professional liability (errors and omissions) insurance from an insurance company in good standing and authorized to do business in Minnesota, during the term of this Agreement and for such additional periods of time as may be required elsewhere in this Agreement. This policy must be maintained for six (6) years following the termination of this Agreement, insuring payment of damages for legal liability arising out of the performance of professional services for the City in the insured's capacity as City Attorney, if such legal liability is caused or alleged to have been caused by the acts or omissions of the Attorneys and the Attorney's associates, employer, assistants, agents, employees, or subcontractors in the performance of the services provided by this Agreement. Said policy shall provide a minimum aggregate limit of \$2,000,000.

D. RSW shall maintain in effect all insurance coverages required under this Section at RSW's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing. All policies, except the Professional Liability Insurance policy, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable). A copy of the

Attorney's Certificate of Insurance which evidences the compliance with this Section 20 must be filed with City upon request.. Such documents evidencing Insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Attorney has complied with all insurance requirements.

E. Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the RSW. Any policy deductibles or retention shall be the responsibility of RSW. The City does not represent that the insurance requirements are sufficient to protect the Attorney's interest or provide adequate coverage.

21. *Ownership of Documents.*

A. **Intellectual Property Rights.** City and RSW each independently own a separate and concurrent right, title and interest in all completed ordinances, resolutions, research, memorandums, contracts, agreements, findings of fact and other documents or materials drafted for or on behalf of the City by the Attorneys. RSW shall deliver or return copies of all such documents to the City upon request, and upon termination or cancellation of this Agreement. Neither the City nor the Attorneys are required to have or obtain any license from the other in order to make full and independent use of the documents..

B. **Representation.** RSW represents that the documents created and paid for under this Agreement do not and will not infringe upon any intellectual property rights of any person or entity. RSW will indemnify, defend and hold harmless the City, at RSW's expense, from any action or claim brought against the City to the extent that it is based on a claim that all or a part of the documents created and paid for under this Agreement infringe upon the intellectual property rights of others. This remedy of the City is in addition to and not exclusive of other remedies provided by law or equity

22. *Disputes.* In an effort to resolve any conflicts that arise during or following the completion of the services described in this Agreement, the dispute will first be submitted to non-binding mediation unless the parties mutually agree otherwise. The cost of mediation will be shared equally by the parties. If either party does not agree with the outcome of the mediation, the parties can then otherwise exercise their rights under this Agreement and under law. Unless otherwise specifically agreed or provided herein, the prevailing party in any action regarding this Agreement shall be entitled to their costs, disbursements and reasonable attorney fees as provided by law.

23. *Governing Law.* This Agreement shall be controlled by the laws of the State of Minnesota. Jurisdiction and Venue for any disputes shall be in the District Courts of the State of Minnesota in Otter Tail County, Minnesota.

24. *Conflicts.* RSW and the Attorneys shall not knowingly represent any other client or undertake to provide any legal service that would constitute a conflict of interest with the services to be provided by RSW to the City under this Agreement. If a conflict of interest should develop, Attorneys shall be responsible to take and shall take all steps necessary to eliminate that conflict of interest consistent with the Minnesota Rules of Professional Conduct applicable to Attorneys.

25. *Successors and Assigns.* This Agreement is binding upon the successors and assigns of the Parties.

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

IN WITNESS WHEREOF, RSW and City have caused this Contract to be executed in their behalf respectively by their proper officers as follows:

CITY OF VERGAS

Date:

Mayor

Dated:

City Clerk/Treasurer

RAMSTAD, SKOYLES & WINTERS, P.A.

Dated:

By: Karen Skoyles
Its: President