

**THE CITY OF GAHANNA AND RAYMOND J. MULARSKI
2014 PROSECUTOR AGREEMENT**

This Agreement (the "Agreement") is made and entered into on _____, 2014, by and between the City of Gahanna, Ohio ("City"), an Ohio Municipal Corporation, with offices at 200 S. Hamilton Road, Gahanna, Ohio 43230 and Raymond J. Mularski ("Mularski"), with a mailing address of 107 West Johnstown Road, Gahanna, Ohio 43230 for the services as detailed herein. City and Mularski are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS: The City Attorney, Shane W. Ewald, hereby appoints Raymond J. Mularski for prosecution of certain cases before the Franklin County Municipal Court Criminal Divisions and Gahanna Mayor's Court; for representation of the Bureau of Motor Vehicles of certain cases in Franklin County Municipal Court Civil Division and Gahanna Mayor's Court; and for the appeals of certain cases which may arise before the County Court of Appeals.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the Parties agree as follows:

SECTION I – TERM

This Agreement shall be for a period of one year (1) year, beginning on the 1st day of January, 2014.

SECTION II – SCOPE OF MULARSKI'S OBLIGATIONS

- a. Mularski agrees to prosecute all cases coming before the Franklin County Municipal Court Criminal Division and Mayor's Court, arising out of alleged violations of traffic and criminal statutes of the State of Ohio and ordinances of the City of Gahanna, Ohio; provided, however, if Mularski has a conflict of interest, he reserves the right to decline to represent the City of Gahanna or choose an alternate prosecutor under this Agreement in any specific case filed in or coming before a Municipal Court, Mayor's Court, or Court of Appeals upon giving written notice to the City Attorney for the City of Gahanna, Ohio, seven (7) days before a scheduled hearing in that specific case. An alternate prosecutor selected by Mularski in a case where he has a conflict of interest shall have prior approval of the City Attorney.
- b. Mularski agrees that he will consult with and advise the officers of the Gahanna Police Department and all other appropriate officials of the City, concerning the prosecution or enforcement of the criminal and traffic statutes of the State of Ohio and ordinances of the City of Gahanna, and that he will prosecute cases within guidelines established by the Gahanna City Attorney. However, this shall not be construed to limit the reasonable prosecutorial discretion of Mularski.

- c. Mularski will represent the Bureau of Motor Vehicles in all cases coming before the Franklin County Municipal Court Civil Division, arising out of the appeal procedures of Ohio Revised Code 4511.191 and 4507.40 and in those cases which the legal representative of the City of Gahanna, Ohio, would have a duty to represent the Bureau of Motor Vehicles.
- d. Mularski will represent the City of Gahanna, Ohio, in all cases coming before the County Court of Appeals arising out of alleged violations of traffic and criminal statutes of the State of Ohio and ordinances of the City of Gahanna, which occur within the limits of the City of Gahanna, Ohio; provided, however, if Mularski has a conflict of interest, he reserves the right to decline to represent the City of Gahanna under this Agreement in any specific case filed in or coming before the County Court of Appeals upon giving written notice to the City Attorney of the City of Gahanna, Ohio, seven (7) days before a scheduled hearing in that specific case.
- e. Mularski agrees that his home phone number or the number of an alternate attorney shall be made available to the Gahanna Police Department for the purpose of authorizing privately filed misdemeanor charges.
- f. The responsibility of Mularski under this Agreement shall be limited to those functions set forth above and to be performed by him, unless he is assigned additional prosecutorial duties by the City Attorney.
- g. Mularski shall be allowed to engage an assistant prosecutor to assist in fulfilling the above set forth obligations. The names of said assistant prosecutor shall be kept on file at the City Attorney's office.

SECTION III – SCOPE OF CITY'S OBLIGATIONS

The City of Gahanna, Ohio, agrees to pay Mularski the sum of Sixty-five Dollars (\$65.00) per hour for all prosecution required by this Agreement.

SECTION IV – TERMINATION

- a. Either party may terminate this Agreement for any reason in whole or in part by the giving of sixty (60) days written notice to the other party.
- b. It is further agreed that the City Attorney may terminate this Agreement immediately should Mularski engage in any of the following:
 - 1. Dishonesty of a material nature that relates to the performance of legal services under this Agreement;

2. Criminal conduct that relates to the performance of services under this Agreement or that undermines his ability to perform services under this Agreement; and/or,
3. Fails to satisfactorily perform duties as outlined in the Agreement.

The City of Gahanna shall have no other financial or other obligations under the Agreement thereafter.

SECTION V – INDEMNIFICATION

The City of Gahanna assumes no liability, express or implied, for any claim, demand, action, liability, loss or expense, including attorneys' fees that may arise from Mularski or a third party as a result of this Agreement

SECTION VI – CONFIDENTIALITY

By virtue of this Agreement, a Party may have access to information that is confidential to the other Party ("Confidential Information"). A Party's Confidential Information shall not include information that:

- a) is or becomes a part of the public domain through no act or omission of the other Party;
- b) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
- c) is lawfully disclosed to the other Party by a third party without restriction on disclosure; or
- d) is independently developed by the other Party. The Parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. Neither Party shall be prohibited by this Section from making disclosures to the extent required by law; prior written notice via electronic mail for such disclosure shall be given to the other party prior to such disclosure.

SECTION VII – ASSIGNMENT/TRANSFER

Unless otherwise specified herein, Mularski may not assign and/or transfer all or part of this Agreement without obtaining the prior written consent of the other Party. The third party accepting the assignment of this Agreement agrees to abide by the terms of this Agreement.

SECTION VIII – NOTICE

Any notices permitted or required by this Agreement shall be in writing and shall be given or made by hand delivery, certified mail, return receipt requested or by overnight express with written receipt, addressed to the respective Parties as follows:

If to Raymond J. Mularski:
Raymond J. Mularski, Attorney at Law
107 West Johnstown Road
Gahanna, Ohio 43230

If to City of Gahanna:
City Attorney, City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230

SECTION IX – FORCE MAJEURE

Notwithstanding any other provisions in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the defaulting Party, including but not limited to, causes such as riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, or nuclear disasters.

SECTION X – CAPTIONS

The subject headings of the various sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

SECTION XI – COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

SECTION XII – THIRD PARTY BENEFICIARIES

Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the Parties hereto, and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

SECTION XIII – ENTIRE AGREEMENT

This Agreement, together with the Exhibits referenced herein, constitutes the entire Agreement and understanding of the Parties and supersedes all prior discussions and agreements relating to the subject matter hereof. This Agreement may be amended or modified only in writing signed by the Parties.

SECTION XIV – NO WAIVER OF CONTRACTUAL RIGHT

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or

consented. Any consent by either Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

SECTION XV – GOVERNING LAW

This Agreement is subject to applicable federal laws, federal or state tariffs, if any, and will be governed by the laws of the State of Ohio. Any inconsistency between this Agreement and those regulations, this Agreement shall be deemed amended as necessary to conform to such regulations.

SECTION XVI – VENUE

The Parties hereto hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the United States District Court for the Southern District of Ohio and waive any contention that any such court is an improper venue for enforcement of this Agreement.

SECTION XVII – SEVERABILITY

If any term or provision of this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such term or provision only will be void to the extent of such invalidity, and the remainder of this Agreement shall remain in full force and effect; provided, however, that if such term or provision constitutes the essence of this Agreement then this Agreement shall be deemed terminated without such termination constituting a breach hereof.

SECTION XVIII – BINDING EFFECT

This Agreement will be binding upon and inure to the benefit of each party and their respective successors and assignees.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

APPROVED:

City of Gahanna

Shane W. Ewald, City Attorney

Rebecca W. Stinchcomb, Mayor

Date: _____

Date: _____

The undersigned RAYMOND J. MULARSKI hereby accepts the appointment by the City Attorney, this ____ day of _____, 2014.

Raymond J. Mularski, Attorney at Law