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**LEVANDER,  
GILLEN &  
MILLER, P.A.**

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ATTORNEYS AT LAW

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## MEMO

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**TO: Sunfish Lake Mayor and Councilmembers**  
**FROM: Timothy J. Kuntz, City Attorney**  
**DATE: December 1, 2021**  
**RE: Prosecution Legal Services Agreement for the City of Sunfish Lake;  
December 7, 2021 Council Meeting; Agenda Item 8(d)**

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**Section 1. Background.** The law firm of LeVander, Gillen & Miller, P.A. currently acts as criminal prosecutor for the City of Sunfish Lake. The law firm is withdrawing as criminal prosecutor. The law firm is reprioritizing and reallocating its attorneys to reaffirm and expand its commitment to provide civil legal services (rather than criminal legal services) to the growing list of cities that the law firm represents.

The law firm is similarly withdrawing from providing criminal legal services to the city of West St. Paul. The law firm will continue to provide civil legal services to West St. Paul. The practice in the past has been that the prosecutor for West St. Paul and Sunfish Lake would be the same in order to avail both cities to the efficiency of having one Police Department and one prosecutor. To that end, West St. Paul has selected the law firm of Kelly & Lemmons, P.A. to provide criminal legal services to West St. Paul effective December 3, 2021.

It is suggested that Sunfish Lake select the law firm of Kelly & Lemmons, P.A. to serve as the law firm to provide criminal prosecution legal services to the City of Sunfish Lake effective December 7, 2021.

**Section 2. Agreement.** It is suggested that the City and Kelly & Lemmons enter into the attached Prosecution Legal Services Agreement effective December 7, 2021. The hourly rate is the same as is being charged West St. Paul. The contract is for five years, but may be terminated anytime by the City upon 60 days written notice. The term of the contract is the same as the term in the West St. Paul contract.

The salient terms of the Agreement are:

- Rebecca Duren will be the principal responsible attorney for all matters, assisted by Kevin Beck and Joseph Kelly. Any of the shareholders, associates, legal assistants or staff will also be available.
- Kelly & Lemmons will keep complete files and records for all matters handled for the City. An updated index of such files will be provided to the City upon request. Previous files that are no longer active may be archived, stored electronically, returned to the City or destroyed if permitted by the City's Data Retention Schedule.
- Kelly & Lemmons will bill the City in increments of one-tenth (.1) of an hour at the hourly rate of \$120 for attorneys and \$90 for law clerks and paralegals. This amount includes does not include expenses, including but not limited to process server fees, transcript fees, court filing fees, postage, copies and printing costs, online legal research, and mileage.
- The Agreement will commence on December 7, 2021 and will terminate on December 31, 2026. The Agreement may be renewed upon mutual agreement of the parties. The City may terminate this Agreement upon sixty (60) days written notice to Kelly & Lemmons.
- Kelly & Lemmons will maintain legal malpractice insurance.

**Section 3. Council Action.** We expect a seamless transition between the two law firms. A representative of Kelly & Lemmons will be present at the December 7<sup>th</sup> meeting. The Council is asked to consider the attached Resolution Approving a Prosecution Legal Services Agreement between the City and Kelly & Lemmons, P.A.

Attachment

**CITY OF SUNFISH LAKE  
DAKOTA COUNTY, MINNESOTA**

**RESOLUTION NO. 21 - \_\_\_\_\_**

**RESOLUTION APPROVING A PROSECUTION LEGAL SERVICES AGREEMENT  
FOR THE CITY OF SUNFISH LAKE**

**WHEREAS**, the City of Sunfish Lake ("City") is a statutory city operating under Optional Plan A form of government pursuant to Chapter 412 of Minnesota Statutes. Under Minnesota law, the City Council has the authority to enter into service contracts on behalf of the City.

**WHEREAS**, the City finds that Kelly & Lemmons, P.A. has the requisite qualifications, skills, background, and experience to perform criminal prosecution legal services for the City.

**WHEREAS**, by this Agreement, the City retains Kelly & Lemmons, P.A. to perform criminal prosecution services on behalf of the City of Sunfish Lake pursuant to the terms and conditions of the attached Prosecution Legal Services Agreement between the City and Kelly & Lemmons, P.A.

**NOW, THEREFORE, BE IT RESOLVED**, as follows:

- 1.) The Council hereby approves the attached Prosecution Legal Services Agreement for the City of Sunfish Lake between the City and Kelly & Lemmons, P.A.
- 2.) The Council authorizes the Mayor and Clerk to execute the Prosecution Legal Services Agreement on behalf of the City.

Passed this 7<sup>th</sup> day of December, 2021.

\_\_\_\_\_  
Dan O'Leary, Mayor

ATTEST:

\_\_\_\_\_  
Catherine Iago, City Clerk

**CITY OF SUNFISH LAKE  
PROSECUTION LEGAL SERVICES AGREEMENT**

This Prosecution Legal Services Agreement (“Agreement”) made this 7<sup>th</sup> day of December, 2021, by and between the City of Sunfish Lake (“City”), a Minnesota municipal corporation, and Kelly & Lemmons, P.A. (“Kelly & Lemmons”), a Minnesota professional association.

**RECITALS**

- A. The City has selected Kelly & Lemmons to serve as the law firm to provide legal representation for those matters involving the enforcement of laws of the State of Minnesota or the ordinances of the City through the use of the criminal justice system “Criminal Prosecution”).
- B. The City and Kelly & Lemmons desire to memorialize their understanding in this Agreement regarding the scope of work and fee arrangements for the legal representation.

**I. SERVICES PROVIDED**

Kelly & Lemmons shall provide Criminal Prosecution on behalf of the City during the term of this Agreement. Rebecca Duren will be the principal responsible attorney for all matters, assisted by Kevin Beck and Joseph Kelly. Any of the shareholders, associates, legal assistants or staff will also be available.

**II. FILES AND RECORDS**

Kelly & Lemmons will keep complete files and records for all matters handled for the City. An updated index of such files will be provided to the City upon request. Previous files that are no longer active may be archived, stored electronically, returned to the City or destroyed if permitted by the City’s Data Retention Schedule.

**III. FEES, CHARGES AND BILLING**

- A. Kelly & Lemmons will bill the City in increments of one-tenth (.1) of an hour at the hourly rate of \$120 for attorneys and \$90 for law clerks and paralegals per month during the term of the contract, as described below. This amount includes does not include expenses, including but not limited to process server fees, transcript fees, court filing fees, postage, copies and printing costs, online legal research, and mileage.

#### **IV. TERM**

This Agreement shall commence on December 7, 2021 and shall terminate on December 31, 2026. This Agreement may be renewed thereafter upon mutual agreement of the parties. The City may terminate this Agreement upon sixty (60) days written notice to Kelly & Lemmons.

#### **V. MISCELLANEOUS**

- A. Attorney will maintain legal malpractice insurance.
- B. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- C. This Agreement shall not be assignable and cannot be modified or amended without the approval in writing of the Sunfish Lake City Council.

#### **CITY OF SUNFISH LAKE**

By: \_\_\_\_\_

By: \_\_\_\_\_

#### **KELLY & LEMMONS, P.A.**

By: \_\_\_\_\_  
Rebecca L. Duren, Shareholder

By: \_\_\_\_\_  
Kevin M. Beck, Shareholder