

***BEMIDJI CITY COUNCIL***  
***Special Work Session Agenda***  
**Monday, August 13, 2018**

**City Hall  
Conference Room  
5:30 P.M.**



1. CALL TO ORDER / ROLL CALL
2. DISCUSS PROSECUTION SERVICES AGREEMENT
3. ADJOURNMENT

**NOTE:** Please switch all cellphones and pagers to a non-audible function during Council and Committee meetings.

## PROSECUTION SERVICES AGREEMENT

**THIS AGREEMENT** by and between the City of Bemidji, a municipal corporation and political subdivision of the State of Minnesota (hereinafter City), Beltrami County, a political subdivision of the State of Minnesota (hereinafter County), and the Beltrami County Attorney, an agency of the County of Beltrami, (hereinafter County Attorney), all hereinafter collectively referred to as the "Parties".

### RECITALS

**WHEREAS**, Minnesota law provides that city attorneys are responsible for prosecution of city ordinances, petty misdemeanors, misdemeanors, and certain gross misdemeanor criminal offenses occurring within the jurisdictional limits of a city; and

**WHEREAS**, Minn. Stat. § 388.09, Subd. 2, provides that a home rule charter city may enter into an agreement with the County Board and the County Attorney to provide prosecution services for criminal cases; and

**WHEREAS**, the Parties previously entered into a prosecution services agreement to provide prosecution services of criminal offenses occurring within the city limits of Bemidji, which offenses usually are prosecuted by, and within the jurisdiction of, the City Attorney's office (hereinafter "Agreement"); and

**WHEREAS**, the Parties believe that renewal of said Agreement and the continuity of an ongoing provision of such prosecution services to Bemidji is in the best interests of all of the citizens of Beltrami County and will contribute to the efficient and effective administration of justice in Beltrami County.

**NOW, THEREFORE**, in consideration of the mutual conditions set forth herein, the Parties hereby agree as follows:

**1. AGREEMENT.** The County Attorney shall provide criminal prosecution services to the City of Bemidji for those criminal offenses previously prosecuted by the City Attorney's Office including, but not limited to, criminal ordinance violations, petty misdemeanors, misdemeanors, and applicable gross misdemeanor violations occurring within the city limits of Bemidji. The responsibilities under this Agreement shall include responsibility for review and charging, all hearings, trials and appeals, negotiation and disposition of cases and all staff services related to the above. This Agreement shall also cover such services for all cases relating to forfeitures of property under Chapters 169 and 609 of Minnesota Statutes.

**2. SCOPE OF DUTIES.** The County Attorney shall perform for City all duties, obligations, and responsibilities of the office of city prosecutor as those duties, obligations, and responsibilities are and may be established and affected by the City's home rule charter and ordinances and the statutes of the State of Minnesota. The County Attorney shall supervise, direct, and perform all legal services relating to criminal prosecutions as may be from time to time required by the City. The County shall provide all legal, paralegal and non-legal support personnel, all office space and resources, all educational and seminar expenses necessary to complete the duties required hereunder.

**3. TERM OF AGREEMENT.** The term of this Agreement shall be for the term of one (1) year, beginning on January 1, 2018, and continue through December 31, 2018, with the right of termination by both the City and the County as hereinafter set forth. The parties may exercise the option to renew this Agreement for additional one (1) year terms, subject to renewed negotiation of the compensation for the renewal term(s). To renew this Agreement, each party shall send written notice to the other on or before September

30 of the current year of the Agreement. Furthermore, subject to Paragraph 4 hereinafter, the parties shall initiate discussions regarding compensation for any renewal term(s) on or before May 1 of the current year of the Agreement. Absent such notice and/or discussion, this Agreement shall automatically renew for a term of one (1) year without further action of the parties. Unless compensation has been renegotiated as provided herein, and subject to any said renegotiated compensation term, during each renewal term all the terms, conditions and covenants set forth or otherwise incorporated by reference in this Agreement shall continue and remain in force.

**4. COMPENSATION.** All Parties hereto understand that in order to fulfill the duties hereunder, it was necessary for the County to hire an additional Assistant County Attorney and an additional Administrative Assistant. It is the intent of the Parties that compensation hereunder be sufficient to cover the actual salary costs to the County relative to hiring this additional staff. Accordingly, for all services rendered by the County hereunder, the City shall pay the sum of One Hundred Seventy-nine Thousand Six Hundred Eighty-four and no/100 Dollars (\$179,684.00) to cover services provided during 2018. During each year of any renewal of this Agreement, unless otherwise renegotiated as provided in Paragraph 3 above, the compensation shall be increased effective January 1 by an amount equal to the percentage increase in the cost of living (COLA), plus benefit related increases in Flex Dollars extended to County Employees for that same period.

**5. REIMBURSABLE EXPENSES.** The City shall be responsible to reimburse the County for payment of the following expenses: witness fees (including travel costs); expert witness fees (including travel costs); costs of obtaining certified copies of documents filed with court or state offices of the State of Minnesota or any other state;

and attorney travel costs (including lodging, per diem and mileage) outside the County of Beltrami. Such expenses shall be documented with particularity by the County, including documenting the city where the criminal charges arose. In addition to these expenses, the City shall reimburse the County for continuing legal education expenses, professional association fees and dues, and professional licensure expenses, to the extent incurred by the County.

**6. BILLING.** Reimbursable expenses shall be invoiced monthly by the County, providing such information as needed by the City to process and pay the reimbursable amount. Payment for the base services provided by this Agreement shall be invoiced by the County and paid by the City on a quarterly basis.

**7. RELATIONSHIP BETWEEN THE PARTIES.** Any staff hired under this Agreement shall be County employees and shall be subject only to the direct supervision and control of the County. The County agrees to allow the City to participate in any hiring process contemplated by this Agreement, provided, however, that the County shall have the final decision as to hiring any staff hereunder. The County agrees to provide and devote such personnel, resources, time, attention, and energies to all matters handled under the terms of this Agreement as are necessary to fulfill the duties and responsibilities required hereunder. The County is retained by the City only for the purposes and to the extent set forth in this Agreement. The relationship of the County to the City shall, during the term of this Agreement, be that of an independent contractor. Neither the County, nor its personnel, shall be considered to be employed by the City.

**8. PROFESSIONAL JUDGMENT.** Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by the County

Attorney in accordance with his independent professional judgment. The County Attorney shall require county personnel to perform the services rendered under this Agreement in accordance with accepted principles of legal practice in the State of Minnesota. The County's personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the laws and regulations governing the practice of law in the State of Minnesota.

**9. MODIFICATION.** This Agreement contains the entire understanding of the parties. It may not be changed orally, but may only be modified upon the mutual consent of all Parties hereto, provided that all such modifications are reduced to writing and sign by the parties hereto.

**10. NOTICE.** Any notice required under the terms of this Agreement shall be given to the Parties by either personal delivery to the party and office indicated below (or that person's successor), or by depositing the same in the U.S. mail, postage prepaid, addressed as follows:

**TO THE COUNTY:  
Beltrami County Attorney  
600 Minnesota Avenue, Suite 400  
Bemidji, MN 56601**

**TO BEMIDJI:  
City Manager  
317 4<sup>th</sup> Street NW  
Bemidji, MN 56601**

Notice provided hereunder shall be effective as of the date it is deposited in the United States first class mail.

**11. TERMINATION.** Notwithstanding anything contained herein to the contrary, any of the parties to this Agreement may terminate this Agreement with or without cause upon 120 days written notice to the other parties.

**12. PROHIBITION AGAINST ASSIGNMENT.** Except as otherwise expressly provided in this Agreement, the County and the City mutually agree that this Agreement and the rights, duties, obligations, interests, and benefits created hereunder shall not be assigned, transferred, or subcontracted in any way to any other party or entity without the prior written consent of all parties.

**13. ADDITIONAL PROVISIONS.** The County hereby agrees to waive all claims it may have, if any, under Minn. Stat. 487.33, Subd. 5, for any share of fine monies collected which may be attributed to the County's providing prosecution services to the City under the terms of this Agreement, with the County Attorney being considered the prosecution attorney for the City for all purposes relating to collection of fines and other revenue. The County and the City further agree that the County shall be entitled to its share of any money and/or property forfeited in cases prosecuted by the County under the terms of this Agreement as may be provided for in Minn. Stat. § 169A.63, Subd. 10, and/or Minn. Stat. § 609.5315.

**IN WITNESS WHEREOF,** the parties have executed this Agreement to be effective as provided herein.

Dated: 12-20, 2017.

**CITY OF BEMIDJI**

By   
Mayor

By   
City Manager

Dated: 11/7/, 2017.

**COUNTY OF BELTRAMI**

By   
Chair, Board of Commissioners

By   
County Administrator

Dated: 12-5-17, 2017.

**BELTRAMI COUNTY ATTORNEY'S OFFICE**

By   
Beltrami County Attorney