

RESOLUTION NO. R-2023-54

**A RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENT NO. 386 FOR
PROSECUTION SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED \$192,000**

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, Marquardt & Belmonte, P.C. has submitted a cost proposal to the City for the provision of Prosecution Services for a term of two (2) years and a total amount not to exceed \$192,000 with the option to extend the agreement for two (2) additional one (1) year term(s) provided there are no changes in the terms, conditions, specifications, and pricing structure; and

WHEREAS, it was determined that Marquardt & Belmonte, P.C., meets the City's requirements for Prosecution Services; and

WHEREAS, the corporate authorities of the City find it reasonable and appropriate to enter into an agreement with Marquardt & Belmonte, P.C. for the provision of Prosecution Services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois, that:

The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to City of Wheaton Agreement No. 386 with Marquardt & Belmonte, P.C. for the Prosecution Services; and a copy of that certain City of Wheaton Agreement No. 386 is on file with the City Clerk's office and is incorporated herein as if fully set forth as Exhibit A.

ADOPTED this 17th day of July 2023.


Philip J. Sauer

Mayor

ATTEST:


Andrea Rosedale

City Clerk

Roll Call Vote:

Ayes: Councilman Brown
Mayor Pro Tem Barbier
Councilman Clousing
Councilwoman Robbins
Councilman Weller

Nays: None
Absent: Mayor Suess
Councilwoman Bray-Parker
Motion Carried Unanimously

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF WHEATON
AND MARQUARDT & BELMONTE, P.C. FOR PROSECUTION SERVICES**

THIS AGREEMENT is made and entered into this 18 day of JULY, 2023 by and between the **CITY OF WHEATON**, an Illinois municipal corporation ("City"), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and **Marquardt & Belmonte, P.C.**, ("Prosecutor"), located at 311 S. County Farm Rd., Ste. I, Wheaton, Illinois, 60187. City and Prosecutor are at times collectively referred to hereinafter as the "Parties."

WHEREAS, the City and Prosecutor entered into a three-year Agreement for DUI Prosecution Services on November 5, 2019, which was extended through October 30, 2023, for an annual amount of \$48,000; and

WHEREAS, the City previously retained the law firm of Walsh, Knippen & Cetina ("WKC") to act as the City Attorney; and

WHEREAS, WKC retained Marquardt & Belmonte to provide prosecution services for traffic and ordinance violation tickets in the 18th Judicial Circuit, DuPage County, and for the administrative adjudication hearings in the City of Wheaton;

WHEREAS, James Knippen of WKC, who was the main City Attorney, has retired and as such, WKC is no longer the City Attorney; therefore, the City needs to enter into a direct agreement with Marquardt & Belmonte for prosecution services for ordinance violation/traffic tickets and potentially for the administrative adjudication hearings; and

WHEREAS, the City and Prosecutor believe it is in the best interests of the City to combine all of its prosecution services into one agreement; and

WHEREAS, the original agreement and first amendment with Prosecutor for DUI Prosecution Services will become null and void and have no further effect upon execution of this Agreement.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, agreements, and conditions set forth in the Agreement, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES.

1.1 Recitals. The recitals set forth above are incorporated herein as substantive terms and conditions of this Agreement and represent the intent of the Parties.

1.2 Retention and Services. The City retains Prosecutor to perform Prosecution Services (DUI, OV/traffic tickets, and potentially administrative adjudication hearings). For and in consideration of the Agreement Amount indicated in **Section 3.1** herein, Prosecutor promises and agrees that it shall, at its own cost and expense, provide all labor, materials, and equipment required

to perform the Prosecution Services (“Services”) in accordance with the Statement of Work requirements stated in **Exhibit A**. Prosecutor further covenants and agrees that for the term of this Agreement it shall provide the number of licensed attorneys necessary to perform the Services. All Services shall be subject to and performed in accordance with this Agreement and its attached and incorporated exhibits, unless specifically stated otherwise in writing.

1.3 Time of Performance. Prosecutor shall perform the Services within the Term of this Agreement as set forth in **Section 7.1** of this Agreement, in accordance with the work hour requirements in the Statement of Work (**Exhibit A**) and in accordance with any other schedule which may be separately agreed upon in writing by the Parties. Upon request of City, Prosecutor shall provide a more detailed description of anticipated performance to meet the Services requirements.

1.4 Additional Services. Prosecutor shall provide only the Services specified in this Agreement, and the attached **Exhibit A**. Prosecutor acknowledges and agrees that the City shall not be liable for any costs incurred by Prosecutor in connection with any services provided by Prosecutor that are outside the scope of this Agreement (“Additional Services”), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City. Upon recognizing the need to perform Additional Services, Prosecutor shall notify the City Attorney in writing, with reasonable promptness, and explain the facts and circumstances giving rise to the need for Additional Services. The City Attorney will then timely review the request with the City Police Chief and City Manager and thereafter notify Prosecutor in writing whether the Additional Services are authorized. Terms, frequency, and prices for the Additional Services shall be confirmed in writing by the City and Prosecutor and this Agreement shall be amended accordingly.

1.5 Independent Contractor Status. Prosecutor shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed to create the relationship of principal and agent, employer and employee, partners, or joint-venturers (i) between the City and Prosecutor; or (ii) between the City and any agent, employee, officer, representative and/or subcontractor of Prosecutor. The employees of Prosecutor are not entitled to any benefits the City provides for its employees. Prosecutor shall be solely and entirely responsible for its acts and the for the acts of its agents, employees, officers, representatives and/or subcontractors. The City shall not exercise control and direction over the manner of the Services of Prosecutor, and is interested primarily in the results to be achieved; however, Prosecutor shall be responsible to meet the City’s Prosecution policies as generally delineated by the Chief of Police. Subject to the Contract Documents, the implementation of Services pursuant to this Agreement will lie solely with the discretion of Prosecutor.

1.6 Files and Records. All files and records created in the course of the performance of the Services are the physical property of the City, but any forms, motions, briefs, or other professional work product of an original nature created by Prosecutor shall belong to Prosecutor, which shall have the rights of exclusive use in all other matters under both federal and state law. The City shall be entitled to the return of any and all original papers upon conclusion of the Services or termination of this Agreement, when all outstanding fees and expenses are paid. City shall be entitled to copies or access to any and all files and records created and maintained by Prosecutor in the performance of the Services, at any time upon reasonable notice. Prosecutor may retain copies of any portions of the files and records it creates in the performance of the Services, in paper or electronic form. The files

and records created, once no longer needed for active use in any matter, shall be archived by Prosecutor in accordance with state law, unless other arrangements are agreed upon by the Parties.

SECTION 2. PERSONNEL.

2.1 Primary DUI Prosecutor. The Primary DUI Prosecutor identified in the attached **Exhibit B** shall be primarily responsible for carrying out the Services on behalf of Prosecutor. The Primary DUI Prosecutor shall not be changed without the City's prior written approval.

2.2 Primary OV/traffic Prosecutor. The Primary OV/traffic Prosecutor identified in the attached **Exhibit B** shall be primarily responsible for carrying out the Services on behalf of Prosecutor. The Primary OV/traffic Prosecutor shall not be changed without the City's prior written approval.

2.3 Availability of Personnel. Prosecutor shall provide all personnel necessary to complete the Services. Prosecutor shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, the Primary DUI Prosecutor or the Primary OV/traffic prosecutor.

2.4 Removal of Personnel. If Prosecutor personnel fail to perform the Services in a manner satisfactory to the City and consistent with commonly accepted professional prosecutorial practices, Prosecutor shall immediately upon notice from the City remove and replace such personnel. Prosecutor shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

2.5 No Additional Obligation. The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with Prosecutor.

2.6 Assignment. Neither this Agreement, nor any part, rights or interests hereof, shall be assigned by the City or by Prosecutor to any other person, firm or corporation. Prosecutor shall be responsible for coordinating with the City Attorney and/or the DuPage County State's Attorney's Office regarding cases assigned and any conflicts which may arise during the performance of this Agreement. Notwithstanding the foregoing, in an emergency situation resulting from illness, substantial injury, family death or catastrophe, Prosecutor may temporarily assign the prosecution of the City's cases to another attorney who is licensed in Illinois and is experienced with prosecuting cases.

2.7 Contract Transition. Any cases that are open at the conclusion of this Agreement or upon termination of this Agreement shall be transferred to the City or to any new prosecutor service employed by the City to provide the Services and Prosecutor shall cooperate fully in transferring all open case files to the City or the new prosecutor. Case Activity Reports, as required in **Section 3.2** of this Agreement, and all Case files shall be kept current to support any such contract transition. Prior to authorization of the final payment to Prosecutor, all open case files and other documents required or requested to be transferred to the City or to the new prosecutor shall have been transferred to the City or if requested by the City, to the new prosecutor.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

3.1 Agreement Amount. The total amount billed by the Prosecutor for the Services performed under this Agreement shall not exceed a total amount of **\$192,000**, broken down as follows:

- DUI Prosecution: **\$96,000 (12 x \$4,000 monthly = \$48,000 yearly x 2);**
- OV/traffic Prosecution: **\$72,000 (12 x \$3,000 monthly = \$36,000 yearly x 2);**
- Administrative Adjudication hearings: shall be actual hours worked at **\$150/hour, but not to exceed \$1,000 month x 24 (\$24,000).**

All of the above amounts include reimbursable expenses.

3.2 Invoices and Payments. Prosecutor shall submit monthly invoices which shall include a Case Activity Report, in excel, reflecting: (i) Police report number; (ii) name of offender; (iii) court date; (iv) status; (v) negotiated pleas; (vi) blind pleas; (vii) trial results; (viii) fines/cost; (ix) summary suspension results; (x) other related information; and (x) total number of hours worked per month for all three categories above. All invoices shall also reflect the City Contract Number, the name of the Contract, and the Name of the prosecutor. All shall be mailed to the City of Wheaton, 303 W. Wesley St., Wheaton, IL 60187. The City shall pay Prosecutor in accordance with the Illinois Local Government Prompt Payment Act. The City shall make all payments on the basis of approved invoices and supporting documents. The City shall use its best efforts to make payments within thirty (30) days after review and approval of the invoice. Each payment requires the City Council's approval of the expenditure which occurs at publicly scheduled meetings. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months from the date that Services were completed, will not be paid. Under no circumstances will a third party be reimbursed for Services performed under this Agreement.

3.3 Unappropriated Funds. The obligation of the City for payment to Prosecutor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

3.4 Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties, and fees arising from the use of, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by DUI Prosecutor.

3.5 Interest Waiver. Prosecutor hereby waives any and all claims or rights to interest on money claimed to be due pursuant to this Agreement, and all such rights to interest to which it may otherwise be entitled pursuant to law, including, but not limited to, pursuant to the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) as amended or the Illinois Interest Act (815 ILCS 205/1, *et seq.*) as amended.

3.6 Account Records. Prosecutor shall maintain records showing actual time devoted and costs incurred in connection with the Services performed under this Agreement and shall permit the authorized representative of the City to inspect, audit and make copies of all data and records of Prosecutor for the Services done under this Agreement. All such records shall be clearly identifiable. The records shall be made available to the City during normal business hours during the Agreement period, and for three years after the termination of the Agreement.

SECTION 4. REPRESENTATIONS OF PROSECUTOR.

4.1 Standard of Care. Prosecutor acknowledges and agrees that (i) it shall perform and complete the Services in a manner consistent with the level of care, skill, and diligence exercised by other attorneys performing Services of a scope, purpose, or magnitude comparable with the nature of the Services to be provided under this Agreement at the time the Services are performed; (ii) the selection and supervision of personnel, and the performance of Services under this Agreement shall be provided pursuant to the standard of performance for prosecutors described herein; (iii) all employees shall have sufficient skill and experience to perform any part of the Services assigned to them; and (iv) Prosecutor shall be responsible for the professional and technical accuracy of all Services performed and/or documents furnished to the City, whether by Prosecutor or others on its behalf. The City's approval, acceptance, use of, or payment for, all or any part of Prosecutor's Services hereunder shall in no way alter Prosecutor's obligations or the City's rights under this Agreement at law or in equity.

4.2 Professional License. Prosecutor represents that it is registered as an active attorney with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois ("ARDC") and is in "good standing" with the ARDC and that all attorneys performing Services under this Agreement are active attorneys properly licensed by the ARDC and are in good standing. If at any time during the term of this Agreement Prosecutor or any of its attorney agents, employees, representatives, or subcontractors incurs a change in ARDC attorney registration status or incurs a change in disposition through a reprimand, censure, probation, suspension, or disbarment by the ARDC, Prosecutor shall promptly notify the City Attorney. Any such change shall be grounds for termination of this Agreement by City.

4.3 Solvency. Prosecutor represents that it is financially solvent and has the necessary financial resources to perform the Services with the standard of care required under this Agreement.

SECTION 5. INDEMNIFICATION; INSURANCE; LIABILITY

5.1 Indemnification and Hold Harmless. Prosecutor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, agents, and elected officials ("City Indemnitees"), in whole or in part from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

- a) Prosecutor's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of this Agreement pertaining to Prosecutor's Services; or
- b) The negligence or willful misconduct of Prosecutor, its employees, agents, representatives, and subcontractors.

In the event any claim for indemnification hereunder arises from the negligence or willful misconduct of both Prosecutor and the City, the Parties agree that any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses shall be apportioned between the Parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

The obligation on the part of Prosecutor to indemnify, defend, and hold harmless the City shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall be construed as prohibiting the City or City Indemnitees from defending, through the selection and use of their own agents, attorneys and experts, any, claims, actions or suits brought against them arising out of the performance of this Agreement.

5.2 Insurance. Prosecutor shall maintain professional liability, malpractice, or errors and omissions insurance applicable to the Services rendered to the City under this Agreement. Contemporaneous with Prosecutor's execution of this Agreement, Prosecutor shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the Special Provisions for: Insurance Coverage for Professional Service Providers-Prosecutors, which is attached hereto and incorporated as if fully set forth, as **Exhibit C** to this Agreement, and all of its provisions shall be considered material terms of this Agreement.

5.3 No Personal Liability. No elected or appointed official, director, officer, agent or employee of the City shall be personally liable, in law or in contract, to Prosecutor as the result of the execution, approval or attempted execution of this Agreement.

5.4 Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any and all privileges, immunities, or defenses provided to or enjoyed by the City under common law or pursuant to statute, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-101 et. seq.

5.5 Third Party Beneficiaries. It is recognized that the Services provided by Prosecutor are for the benefit of the City and no other party. There are no third-party beneficiaries of this Agreement.

5.6 Limitation of Liability. CITY SHALL NOT BE LIABLE TO DUE PROSECUTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

SECTION 6. CONFIDENTIAL INFORMATION.

6.1 Attorney-Client Privileged Information. All documents, data, records, reports, and other information relating to the Services, unless in the public domain or unless disclosure is required by law, shall be considered attorney-client privileged and kept confidential by Prosecutor.

6.2 Confidential Information. The term "Confidential Information" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of Prosecutor from a source other than the City prior to the time of disclosure of said information to Prosecutor under this Agreement ("Time of Disclosure"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the DUI Prosecutor or the City; or (iv) to have been supplied to Prosecutor after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

6.3 No Disclosure of Confidential Information by the DUI Prosecutor. Prosecutor acknowledges that it shall, in performing the Services for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. Prosecutor shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the City. Prosecutor shall use reasonable measures at least as strict as those Prosecutor uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and sub-contractors of Prosecutor to execute a non-disclosure agreement before obtaining access to Confidential Information.

6.4 Breach of Confidentiality. In the event of breach of the attorney-client privileged information provisions and/or of the confidentiality provisions of **Section 6** of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the injunction, including but not limited to, compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

SECTION 7. TERM; TERMINATION; and DEFAULT.

7.1 Term. This Agreement shall become effective August 1, 2023 and shall continue in full force and effect until the earlier of the following occurs: (i) the termination of this Agreement; or (ii) final completion of the Services specified in the Agreement by **July 31, 2025**, or to a new date mutually agreed upon by the parties in writing. A determination of completion shall not constitute a

waiver of any rights or claims which the City may have or thereafter acquire with respect to any term or provision of this Agreement.

The City, at its option, may extend this Agreement (the "Option") for two (2) additional one (1) year term(s) if Prosecutor agrees to honor the prices, and all terms, conditions and specifications of this Agreement. If the City exercises this Option, the extended Agreement shall be considered to include this Option provision.

7.2 Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to Prosecutor. In the event this Agreement is so terminated, the City shall pay Prosecutor for the Services performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly or indirectly, to Prosecutor's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Primary DUI Prosecutor. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Prosecutor shall provide the City with its Primary DUI Prosecutor's e-mail address upon its execution of this Agreement. On receiving such notice, Prosecutor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement. As soon as practicable after receiving the termination notice, Prosecutor shall submit an invoice to the City showing in detail the Services performed under this Agreement up to the termination date. Prosecutor's receipt of payment for Services rendered upon City's termination of this Agreement, is Prosecutor's sole and exclusive remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement.

If this Agreement is terminated as provided herein, City may require Prosecutor to provide all finished or unfinished documents and data and other information of any kind prepared by Prosecutor in connection with the performance of the Services under this Agreement. Prosecutor shall be required to provide such documents, data, and other information within fifteen (15) days of the request.

7.3 Default. If it should appear at any time that Prosecutor has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("Event of Default"), then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Prosecutor.** The City may require Prosecutor, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all action necessary to bring the Prosecutor and the Services into compliance with this Agreement.

2. Termination of Agreement by City. The City may terminate this Agreement as to any or all Services yet to be performed, effective at a time specified by the City, and shall pay Prosecutor for the Services performed or reimbursable expenses actually incurred as of the effective date of termination.

3. Withholding of Payment by City. The City may withhold from any payment, whether or not previously approved, or may recover from Prosecutor, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by Prosecutor or as a result of actions taken by the City in response to any Event of Default by Prosecutor.

SECTION 8. COMPLIANCE WITH LAWS AND GRANTS.

8.1 Generally: Permits/Codes/Business Laws/Safety Standards/Grants. Prosecutor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and will comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation all applicable building and fire codes, now in force or which may hereafter be in force, any statutes regarding qualification to do business, and all local, state and federal safety standards. Prosecutor shall comply with all conditions of any federal, state, or local grant received by City or Prosecutor with respect to this Agreement or the Services. Prosecutor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or regarding Prosecutor's, or its sub-Legal Services Providers', performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

8.2 Freedom of Information Act. Prosecutor shall, within four (4) business days of the City's request, provide any documents in Prosecutor's possession related to this Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act ("FOIA"). This provision is a material covenant of this Agreement. Prosecutor agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should DUI Prosecutor request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Prosecutor agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Prosecutor agrees to defend, indemnify, and hold harmless the City, and agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by Prosecutor's request to utilize a lawful exemption to the City.

8.3 No Delinquent Taxes. Prosecutor represents and certifies that Prosecutor is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Prosecutor is

contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

8.4 No Collusion. Prosecutor represents and certifies that Prosecutor is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 et seq. Prosecutor represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Prosecutor has, in procuring this Agreement, colluded with any other person, firm, or corporation, then Prosecutor shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

8.5 Sexual Harassment Policy. Prosecutor shall certify that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 755 ILCS 5/2-105(A)(4).

8.6 Patriot Act (USA Freedom Act) Compliance. Prosecutor represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly for or on behalf of a Specially Designated National and Blocked Person. Prosecutor further represents and warrants to the City that Prosecutor and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. Prosecutor hereby agrees to defend, indemnify and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, prosecutors, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

8.7 Anti-Discrimination Laws. Prosecutor shall comply with all federal and state laws prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service, and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in **Exhibit D**.

8.8 Americans with Disabilities Act. Prosecutor shall utilize standards and/or methods that do not discriminate against the disabled in compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

8.9 Execution of Certifications. Prosecutor shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as **Exhibit D.**

SECTION 9. GENERAL PROVISIONS.

9.1 Integration. The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement.

9.2 Amendment. No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

9.3 News Releases. Prosecutor shall not issue any news releases or other public statements regarding the Services without prior approval from the City Manager.

9.4 Recovery of Costs. In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

9.5 Waiver. Any failure of either the City or Prosecutor to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

9.6 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement, a provisions as similar in terms to such invalid, void, or unenforceable provision as may be possible and valid, legal, and enforceable.

9.7 Time. Time is of the essence as to those provisions in which time is an element of performance.

9.8 Governing Laws/Jurisdiction. This Agreement shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

9.9 Force Majeure. No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as the result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

9.10 Headings. The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

9.11 Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

9.12 Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9.13 Notice. Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidence by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered to as follows:

If to the Prosecutor:

Marquardt & Belmonte, P.C.
Attn: Scott Marquardt
311 S. County Farm Rd., Suite I
Wheaton, IL 60187
E-Mail: SRM@LawMB.com
Fax: 630-871-5502

If to the City:

City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60187-727
E-Mail: cityclerk@wheaton.il.us
Fax #: 630-260-2017

9.14 Contract Numbering. The faces of all invoices and documents shall contain the following contract number 386 for reference purposes.

9.15 Electronic Signature. The parties may execute this Agreement in writing or by facsimile transmission or by e-mail delivery of a ".pdf" format data file, and any such signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

9.16 Authority to Enter Agreement. Prosecutor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party. If Prosecutor is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Prosecutor is a co-partnership the true name of the firm shall be set forth below, together with the signatures of all partners; and if Prosecutor is an individual, Prosecutor shall sign his or her name below. If signature is by an agent other than an officer of a corporation or a member of a partnership, a power-of-attorney must be attached hereto.

9.17 Supersedes prior agreements. This Agreement supersedes any prior agreements between the Parties for prosecution services; and on the effective date of this Agreement, any such agreements shall become null and void and have no further effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement this day of 18th July, 2023.

CITY OF WHEATON, an Illinois municipal corp.

By: Philip J. Sauer Date: 7/18/2023

ATTEST:

By: Andrea Rosedale
City Clerk

Marguardt & Belmonte, P.C.

By: Emily Marguardt Date: 7/20/23
Signature

Its: President

ATTEST:

By: Carrie A. Sauer
Title: Exe. Assistant