

AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF ANN ARBOR
AND HALLAHAN & ASSOCIATES, PC FOR LEGAL SERVICES
Case Number MTT 21-000829

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron, P.O. Box 8647, Ann Arbor, Michigan 48107 (“City”), and Hallahan & Associates, PC with offices at 1750 Telegraph Rd, Suite 202, Bloomfield Hills, MI 48303 (“Firm”), a Michigan professional corporation, enter into this Amended and Restated Agreement for the provision of legal services.

Whereas, the Parties entered into an agreement for legal services on November 2, 2022 for the Firm’s representation of the City relative to the claims and defenses in the Michigan Tax Tribunal, Case Number MTT 21-000829 (“MTT Case”) regarding the petition filed by Mall at Briarwood LLC for taxes levied against the property known as Briarwood Mall in Ann Arbor for the tax year 2021 (“Agreement”).

Whereas, the Agreement capped fees at \$50,000, all of which has been expended in efforts to date to settle the MTT Case.

Whereas, the MTT Case will now proceed to trial and additional expenditures are required to secure representation through the trial and an appeal of the verdict, if filed.

Whereas, the Parties now wish to enter into this Amended and Restated Agreement (“Amendment”) to include additional services for representation of the City through both trial and any appeal from a verdict thereof, to allow for the expenditure of additional fees, and to update the terms and conditions of the Agreement.

Therefore, the Parties agree as follows:

1. Services

A. The Firm agrees to provide the City with professional legal services described in Exhibit A.

B. The Firm agrees to perform diligently the services in accordance with the conditions contained in this Agreement and the quality of services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service.

C. The Firm shall perform and carry out the services described in Exhibit A under the direction of the City Attorney and at the level of professional quality performed by experts in this field. All services under the contract will be performed solely at the direction and request of the City Attorney.

D. The Firm shall perform its services in compliance with all applicable laws, ordinances and regulations.

2. Personnel and Administration

A. The Firm warrants that all attorneys assigned to the performance of the Service are members in good standing of the State Bar of Michigan and are legal experts in the field.

B. Each employee or consultant employed by the Firm in the performance of this Agreement shall devote such time, attention, skill, knowledge and professional ability as is necessary to perform most effectively and efficiently the services in accordance with the level of professional quality performed by experts regularly performing these legal services in the State of Michigan; provided, however, it is recognized that the Firm may engage in legal service for other clients to the extent that the rendering of such services does not conflict with the services to be performed under this Agreement.

3. In-House Assistance

It is City policy to use in-house resources to the full extent possible. The City Attorney, or authorized designee, will be available to assist with respect to matters such as document review and indexing interviews or presentations. It is expected that any attorney on City property will notify the City Attorney in advance of his/her visit.

4. Compensation of the Firm

A. The Firm shall be paid as specified in Exhibit B. Payment shall be made following receipt of monthly invoices submitted by the Firm. The invoices shall include a detailed report of the Firm's activities for the month stating the task performed, the attorney or staff performing the task, the amount of time spent on the task, and the resulting charge.

B. The Firm will be compensated for services performed in addition to the services described in Exhibit A only when those additional services have received prior written approval of the City Attorney. The Firm is being retained because of its experience. All work will be done at the direction of the City Attorney.

C. The Firm shall keep complete records of time spent and expenditures made in performing the services so that the City may verify invoices submitted by the Firm. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

5. Insurance

A. During the term of this Agreement, the Firm agrees to procure and maintain in effect a policy or policies of professional liability insurance protecting the Firm and its employees in an amount of no less than \$1,000,000.

B. During the term of this Agreement the Firm agrees to procure and maintain in effect workers' compensation insurance in the form and amount required by Michigan law.

C. Certificates showing the Firm has the required insurance shall be filed with the City

before any services are performed. Certificates shall provide for not less than 30 days prior written notice to the City of cancellation, non-renewal, reduction in the amount of insurance, or material change of terms of the policy to the extent possible. For workers' compensation insurance, the notice shall be ten (10) days prior with notice.

6. Indemnification

A. The Firm agrees to save harmless the City against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable fees and expenses for consultants, expert witnesses and other consultants at the prevailing market rate for such services) which may be imposed upon, incurred by or asserted against the City by reason of any of the following:

1. Any negligent or tortuous act, error, or omission attributable in whole or in part to the Firm or any of its employees, consultants, or agents, during the course of providing services.
2. Any failure by the Firm or any employees to perform their obligations expressed under this Agreement.

B. The Firm agrees that it is the responsibility of the Firm and not the responsibility of the City to safeguard the property and material that are used in performing this Agreement. Further the Firm agrees to hold the City harmless for costs and expenses resulting from any loss of such property and material used pursuant to the Firm's performance under this Agreement.

C. The relationship of the Firm to the City is and shall continue to be that of an independent contractor and no relationship other than that of an independent contractor shall be implied between the parties, or either party's agent, or employee. The Firm agrees to hold the City harmless from any such claims, and any costs or expenses related thereto.

D. The Firm shall not hold the City liable for any personal injury incurred by its employee(s), agents or consultants while providing services under this Agreement and the Firm agrees to hold the City harmless from any such claims.

7. Nondiscrimination

The Firm agrees to comply and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Firm further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

8. Living Wage

If the Firm is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Firm agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. In the event that the Firm becomes a "covered employer," the Firm agrees to pay those employees

providing services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code; to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment and providing services under this Agreement in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

9. Termination of Agreement

A. The City has the right to terminate the services at any time, with liability to pay fees and expenses incurred to the date the Firm receives notice of termination. The Firm has the right to terminate services at any time, subject to its ethical obligations under the Michigan Rules of Professional Conduct and shall be paid for services and expenses rendered to the date of the Firm’s resignation. The City of Firm shall provide notice of such termination by first-class mail to the other party at the address stated herein.

B. This Agreement may be terminated by either party in the case of a breach of this Agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of termination is provided to it by first class mail at the address stated herein.

10. Obligations of the City

A. The City agrees to give the Firm access to City records as required to perform the necessary services under this Agreement.

B. The City shall notify the Firm of any defects in the services of which the City Attorney has actual notice.

C. The City shall pay the Fees and Costs described in Exhibit B.

D. The City warrants that this Agreement has been duly executed by its authorized representative, and in accordance with the City Charter and Code.

11. Assignment

This Agreement may not be assigned or subcontracted by the Firm, in whole or in part, without the written consent of the City Attorney. If the Firm subcontracts or assigns any portion of the services, the Firm shall require the subcontractor or assignee to enter into a subcontract or other agreement which incorporates all the same terms as this Agreement.

12. Conflict of Interest

A. The Firm covenants that the Firm presently has no interest and shall not during the pendency of the services, assume a representation nor acquire any interest, direct or indirect, which does or would conflict in any manner or degree with the performance of the services under this

Agreement except as identified in Exhibit A. The Firm further covenants during the pendency of the services, no person having any such interest or conflicting representation shall be employed by the Firm.

B. The Firm further covenants that no officer or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.

13. Confidentiality

A. The services to be performed by Firm shall be at the direction of City Attorney, or authorized designee, and the Firm shall report to the City Attorney, or authorized designee, regarding the services performed.

B. In order that the Firm may effectively fulfill its obligations to the City under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information pertaining to the City's past, present, and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Firm and all Firm employees shall regard all information gained from the City during the term of this Agreement or provided by the City Attorney or City prior to agreement, and as a result of the services to be performed hereunder as information which is proprietary to the City and not to be disclosed to any organization or individual without the prior written consent of the City, or as required by law. If the Firm receives a subpoena or other legal process seeking disclosure for the Firm of information gained from the City during the term of this Agreement and as a result of the services, the Firm shall immediately notify the City of same, and the City, at its sole expense, shall undertake such opposition to the legal process as the City shall deem appropriate, or in the alternative, the City shall provide the Firm with its written approval to disclose the information sought by the process.

C. The Firm shall take appropriate action to insure that all employees comply with this policy of nondisclosure.

D. The Firm also shall take appropriate action to ensure that all employees protect from improper disclosure all information obtained or produced, all communications made or received, and all work under this Agreement which are covered by the attorney-client privilege or attorney work product doctrine.

E. The Firm shall retain its files relative to the services for a reasonable period of time after completion of the services, and shall then have the right to destroy its files.

14. Amendments

A. The City may consider it in its best interests to change, modify, or extend a term or condition of this Agreement, or the City may request the Firm to perform additional services. Any such change, extension or modification, which is mutually agreed upon by the City and the Firm, shall be incorporated by written amendments to this Agreement. Such amendments shall not invalidate this Agreement nor relieve or release the Firm or the City from any of their obligations under this

Agreement.

B. No amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed by duly authorized representatives of both parties and is executed in accordance with the City's Charter and Code.

C. The parties acknowledge that the amount payable for the services under this Agreement is an estimate which may be increased or decreased by the parties pursuant to this Article.

15. Notices

All notices and communications under this Agreement shall be given in writing, signed by the Firm, mailed by first-class mail and addressed as follows:

If to the Firm:

If to the City:

Hallahan & Associates, PC 1750 Telegraph Rd, Ste 202 Bloomfield hills, MI 48302	City Attorney's Office City of Ann Arbor 301 E. Huron P.O. Box 8647 Ann Arbor, MI 48107-8647
<i>Attn: Laura M Hallahan Attorney</i>	<i>Attn: Atleen Kaur City Attorney</i>

16. General Provisions

A. No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any breach of this Agreement. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

B. If any provision of this Agreement or its application to any person or circumstances shall be judicially determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

C. This instrument, including Exhibits A and B attached hereto and made a part hereof, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither party has made any representation except those expressly set forth herein, and no rights or remedies are or shall be acquired by either party by implication unless expressly set forth herein.

D. Unless the context otherwise expressly requires, the words “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Agreement as a whole and not to any particular article, section or other subdivision.

E. The headings of the articles in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

F. The rights and remedies set forth herein are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Agreement, and all actions arising hereunder, shall be governed by the laws of the State of Michigan. The Firm submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. The Firm agrees that service of process at the address and in the manner specified in this Agreement will be sufficient to put the Firm on notice. The Firm also agrees that no action will be commenced against the City because of any matter arising of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be had in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

G. It is understood that during the term of this Agreement the City may contract with other firms providing the same or similar service, provided, however, that the Firm’s obligations to the City contained in this Agreement will not be affected in any manner.

H. The Firm covenants that it is not and will not become in arrears to the City upon any obligations to the City, including real property, personal property, and income taxes.

I. As used herein, the singular shall include the plural, the plural shall include the singular.

J. Press releases or interviews with the press in connection with the Firm’s representation of the City must be authorized by the City Attorney in writing prior to any action on the Firm’s part. The Firm shall not use the name “City of Ann Arbor” or any of its departments in connection with publicity releases, articles, advertising or listings without prior written consent of the City Attorney. The City may be listed as a client with prior approval of the City Attorney.

K. For purposes of the hold harmless provisions contained herein, the term “City” shall be deemed to include the City of Ann Arbor and all other associated, affiliated or subsidiary entities, now existing or hereafter created and their agents and employees.

Signatures appear on the following page.

HALLAHAN & ASSOCIATES, PC

By: _____


Laura M. Hallahan
Partner

CITY OF ANN ARBOR, a Michigan
municipal corporation

By _____

Christopher Taylor, Mayor

By _____

Jacqueline Beaudry, City Clerk

By: _____

Milton Dohoney Jr.
City Administrator

By: _____

Atleen Kaur, City Attorney

EXHIBIT A

Scope of Services

The Firm shall provide City with professional legal services and representation in Michigan Tax Tribunal, Case Number MTT 21-000829, and any subsequent appeals filed by Petitioner with the Michigan Court of Appeals, regarding the petition filed by Mall at Briarwood LLC for taxes levied against the property known as Briarwood Mall in Ann Arbor for tax year 2021.

All aspects of the Firm's representation and legal services shall be coordinated with John Reiser from the Office of the City Attorney ("Managing Attorney"). The Firm has the responsibility to keep the Managing Attorney reasonably informed of the requests from staff, progress and developments related to legal services performed by the Firm. The Firm will promptly comply with reasonable requests from the Managing Attorney for information related to the legal services performed by the Firm.

EXHIBIT B
Schedule of Fees and Costs

General

The Firm shall be paid a total amount not to exceed \$140,000 for those services performed pursuant to this Amendment, inclusive of all fees and reimbursable expenses, in accordance with the terms and conditions herein and with Exhibit A in particular. The amount of \$140,000 includes \$50,000 in fees already incurred and paid pursuant to the original Agreement. The Fee Schedule below states the rates and reimbursable expenses the Firm may charge the City for the services.

Fee Schedule

\$200 per hour for attorneys Laura Hallahan, Seth O’Laughlin, and Kelsey Melcher (each a “Principal Counsel”), and \$ 100 for support staff.

Reimbursable Expenses

Normal and customary expenses necessary to perform the services are eligible for reimbursement which includes charges for out-of-subscription searches and materials approved in advance. Charges for monthly subscription computerized legal research are not a normal and customary expense and are not eligible for reimbursement.

1. Time spent preparing, discussing, or correcting a billing statement.
2. The City will not pay for opening routine correspondence which does not require a response or impact the merits of the case.
3. The City expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.
4. Any attorney work product for which the City is billed shall be provided to the City, either electronically or as a paper copy at the time it is completed.
5. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the City of Ann Arbor, or the amount of the award must be specifically credited on the next billing statement.
6. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.
7. Expenses over and above the limits set forth herein shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

Billing Statement Requirements

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.
2. Style of case or Matter description.
3. A remittance page with the monthly statement.
4. Dates of service and a detailed description of service. Vague descriptions, such as “review,” “update,” “attention to file,” “research,” and “trial preparation” without more specifics are not acceptable.
5. Name, classification (e.g., “partner,” “principal,” “associate,” “legal assistant”), billing rate for the person doing the task, and specific time for service to a tenth of an hour.
6. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

Consultations

1. The City will not pay for inefficient conferences among outside attorneys or support staff. The City expects the matter to be leanly staffed.
2. The City will not pay for time involved educating an attorney on a particular matter when it has previously been handled by another attorney in the Firm.

Court Proceedings Attendance

1. Attendance of more than one attorney at depositions or court proceedings, including trials, is not reimbursable without prior approval by the Managing Attorney. Generally, one attorney is expected to handle matters.
2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, or trials for training purposes is not reimbursable.

Experts, Investigators, Other Third-Party Services

The Firm must evaluate the need to engage experts, investigators, visual aid companies, etc. on a case-by-case basis, and must obtain approval of the Managing Attorney before retaining any such services.

Travel

The City **will not** pay:

1. For time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in an amendment to this agreement.
2. For air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the Managing Attorney for information on City vendor discounts.
3. For alcoholic beverages.
4. For charges from in room hotel bars.

The City **will pay** for automobile mileage not to exceed the amount permitted as a business expense under the Internal Revenue Code.