

**ORDINANCE 05-19**

By: Steve Keyes

**An Ordinance to approve an agreement between the City of Bexley and Raymond J. Mularski for Mr. Mularski to act as City prosecutor for all criminal and traffic cases coming before the Criminal Division of the Franklin County Municipal Court and any appeals therefrom.**

**WHEREAS** the City of Bexley regularly needs representation in criminal cases in Franklin County Municipal Court arising out of the enforcement of City ordinances and State law; and

**WHEREAS** Raymond J. Mularski currently is serving as the Bexley City Prosecutor in criminal cases coming before the Franklin County Municipal Court; and

**WHEREAS** the parties are desirous of continuing this relationship.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:**

**Section 1.** That the Mayor is hereby authorized to enter into a new contract with Raymond J. Mularski to serve as Bexley City Prosecutor in the Franklin County Municipal Court. A copy of the contract is attached hereto as Exhibit A; and

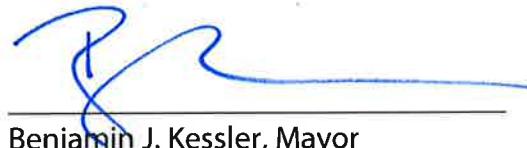
**Section 2.** That this ordinance shall go into effect upon the Mayor signing this ordinance.

Passed March 26, 2019



Lori Ann Feibel, President of Council

Attest: William Harvey  
William Harvey, Clerk of Council



Benjamin J. Kessler

First Reading: 2-19-19  
Second Reading: 3-12-19  
Third Reading: 3-26-19  
Passed 3-26-19

# *"Exhibit A"*

## **PROSECUTORIAL SERVICE CONTRACT**

THIS AGREEMENT made pursuant to City Ordinance of Bexley on this 1<sup>st</sup> day of April, 2019, at the City of Bexley, between THE CITY OF BEXLEY, Ohio, by and through its Mayor, hereinafter referred to as "Client," and RAYMOND J. MULARSKI, an attorney at law, 107 West Johnstown Road, Gahanna, Ohio 43230 (614) 471-8194, hereinafter referred to as "Attorney."

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

### **1. PURPOSE OF REPRESENTATION**

Pursuant to Section 733.48 of the Ohio Revised Code, Client hereby retains and employs Attorney to act as City Prosecutor for all criminal and traffic cases coming before the Criminal Division of the Franklin County Municipal Court, and any appellate courts thereafter, arising out of alleged violations of the Traffic and Criminal Statutes of the State of Ohio and/or ordinances of The City of Bexley.

### **2. ATTORNEYS FEES**

In consideration of the services rendered and to be rendered by Attorney, the Client hereby agrees to pay Attorney at the rate of Three Thousand Five Hundred Dollars and No Cents (\$3,500.00) per month for the prosecuting of cases in Municipal Court. If any of the cases in Municipal Court concluded with a Jury Trial, and/or appeal, then Attorney shall be paid at the rate of Sixty-Five and no/100 Dollars (\$65.00) per hour for the work actually expended for the Jury Trial or the Appeal.

### **3. ASSOCIATION AND OTHER ATTORNEYS**

Attorney may, in his sole discretion, recommend the employment or association of additional attorneys where necessary to fully represent the Client's interests. Prior approval of the Client

will be necessary for any such association. Any fees, costs or expenses incurred as a result of such association shall be in addition to those set forth above and shall be considered for all purposes, additional expenses. Any charges, fees, and costs in excess of those stated in this contract shall receive prior approval from the Mayor or Administrator.

**4. EXPENSES**

Court costs and all reasonable expenses incurred by Attorney in the handling of the legal matters for which Attorney has been engaged shall be billed to the Client. Such expenses include, without limitation, any and all monies required to be advanced on behalf of the Client, telefax and telephone costs, and postage and copying costs, except as provided in this section.

The Client will not be responsible for any expenses or time incurred for travel to and from Franklin County Municipal Court or any appellate courts.

**5. COOPERATION OF THE CLIENT**

A duly designated representative of the Client shall appear when requested with reasonable notice at any and all required conferences, depositions and court appearances and shall comply with all reasonable requests of Attorney as required in connection with the preparation and prosecution of any cases or causes of action of the Client.

**6. SERVICE OF ATTORNEYS**

Attorney's services shall consist of, in addition to prosecutorial duties, office consultations and any and all other matters requiring the expenditure of time by Attorney for the Client, including the drafting of documents and research which, in the sole discretion of Attorney, are necessary for the proper representation of the Client. Further, the Attorney shall advise the Client, upon request of the Administrator or Mayor, as to the progress or resolution of

any pending or completed prosecution conducted during the period of this contract.

Attorney understands and agrees that he must be available every day of the year, twenty-four (24) hours a day and further agrees that his telephone number after hours will be made available to the Bexley Police Department. Discussion of City business or the facts and circumstances of any case will only occur between the Client and the Attorney — no information will be released to other persons without the Client's specific authority.

Questions that require a legal opinion of the Attorney will be directed in written form and all such questions shall be authorized by either the Chief of Police or his designee, or the Mayor.

**7. OUTCOME OF REPRESENTATION**

Attorney and Client understand and agree that no guarantee or representation as to the outcome of any matter of representation can be given. Case determinations are accomplished by application of the law to certain facts. The parties realize that such determinations are often subjective and vary with the perspective of the court or jury. The decision as to which alternative or litigation parameters to follow will be the Client's.

**8. PARTIES BOUND**

The agreement shall be binding and inure to the benefit of the parties hereto.

**9. PRIOR AGREEMENT SUSPENDED**

This agreement constitutes the full and only agreement of the parties hereto and supersedes any prior understanding, either written or oral, between the parties respecting the within subject matter. Any agreements intended to supersede this written contract shall be in writing.

**10. PAYMENT ON ACCOUNT**

Client understands that all accounts are due when billed. Further, Client understands that no accounts will be carried more than sixty (60) days unless an agreeable payment schedule is

established and that if such payment schedule is not established, no further work will be incurred until such account is current in all respects.

11. **BILLING OF ACCOUNT**

Attorney will bill Client monthly in a clear and concise manner, itemizing each particular service performed and time expended, in a format acceptable to the City Finance Director.

12. **INSURANCE**

Attorney will secure and maintain professional and general liability insurance in an amount satisfactory to Client and consistent with Client's other professional contracts and provide evidence of such coverage upon request of the Administrator or Mayor. Attorney will provide a copy of a current certificate of compliance with Ohio Workers Compensation Laws.

13. **DURATION OF RELATIONSHIP**

This agreement is terminable at will by either party providing the other with thirty (30) day's written notice.

14. **TERMS OF AGREEMENT**

This agreement shall take effect and be in force from April 1, 2019 through March 31, 2020. As Auditor of the City of Bexley, I do hereby certify that funds in the amount of \$3,500.00 per month have been lawfully appropriated or authorized or directed for the contract between the City of Bexley and Raymond J. Mularski for the contract attached and is in the treasury or in the process of collection to the credit of the appropriate fund free from any obligation or certification now outstanding.

Approved as to form by:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bill Harvey, Auditor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ben Kessler, City Mayor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Marc Fishel, City Attorney

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Raymond J. Mularski, Prosecutor