

AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of January, 2013, between Town of Windsor, a municipal subdivision of the State of New York situate in the Town of Windsor, County of Broome, State of New York, with it offices at Town of Windsor, Windsor Town Hall, 124 Main Street, Windsor, NY 13865 party of the first part (hereinafter referred to as "Town"), and Coughlin & Gerhart, L.L.P., a New York limited liability partnership engaged in the practice of law with its offices at Coughlin & Gerhart, L.L.P., Box 2039, Binghamton, NY 13902-2039, party of the second part (hereinafter referred to as "Law Firm"),

WITNESSETH:

WHEREAS, the Town desires to retain the Law Firm to furnish and perform legal services for the Town, and

WHEREAS, the Law Firm has offered to provide legal services to the Town, and

WHEREAS, the Law Firm has agreed to assign Cheryl I. Sacco (hereinafter referred to as "Attorney", a partner in the Law Firm) as the lead attorney to furnish and perform the legal services which are the subject of this agreement.

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants hereinafter expressed, it is hereby agreed by and between the parties hereto as follows:

1. Subject to, and in accordance with, the terms, conditions and provisions of this agreement: the Town hereby retains the Law Firm to furnish and perform legal services for the Town; the Law Firm hereby agrees to furnish and perform legal services for the Town; and the Law Firm hereby agrees to assign the Attorney as the lead attorney to furnish and perform the legal services which are the subject of this agreement.

2. For the fixed payment referred to in paragraph 3 of this agreement, the Law Firm shall furnish and perform the following legal services for the Town:

- A. Attend all regular and special meetings of the Town Board (hereinafter "Town Board") of the Town of Windsor (hereinafter "Town").
- B. Attend, as requested, workshop meetings of the Windsor Town Board.
- C. Prepare and /or review notices, local laws, ordinances, and resolutions.
- D. Furnish legal advice to Town officers, Town Board members, and Town boards.
- E. Consult, as may be required, with Town officers and Town employees regarding legal matters involving the Town
- F. Furnish legal interpretations and opinions concerning the Town local laws, ordinances and resolutions; and contracts or agreements to which the Town is a party.
- G. Prosecution of alleged violations of Town ordinances and local laws; including dog and code matters.

3. For the legal services described in paragraph 3 hereof, the Law Firm shall be paid the **sum of \$2,472 per month** plus disbursements (photocopying, mileage reimbursement, long distance telephone charges, etc.), payable after the fact, and pro-rated beginning the date **January 1, 2013 for the 2013** fiscal year.

4. The Law Firm shall be compensated at the hourly rate of **\$165.00** for the performance by the Law Firm of the following legal services which do not occur on a regular basis but for which the Town Board expressly authorizes and requests the Attorney's assistance:

- A. Furnishing legal services in connection with litigation commenced by the Town.
- B. Furnishing legal services in connection with litigation commenced against the Town where there is no insurance coverage providing the cost of defense to the Town.
- C. Representing the Town in connection with employee discipline matters, grievances, impasse proceedings, mediation sessions, arbitration proceedings, and/ or hearings or proceedings before the New York State Public Employment Relations Board or a Court.
- D. Creation, establishment, and/ or extension of any Town water districts, Town sewer districts and/ or other Town special districts now existing or hereafter created in the Town of Windsor.
- E. Drafting bond resolutions, note resolutions and other resolutions relating to the borrowing of funds by the Town; drafting of the related bonds, notes and other obligations; preparation of related legal opinions; and drafting of other documents relating to the borrowing of funds by the Town.
- F. Representing the Town in eminent domain proceedings in which the Town seeks to acquire real estate needed by the Town for Town purposes.
- G. Participate in contract negotiations with any employee groups (such as Teamsters), including acting as chief negotiator (if requested by Town Board); furnish legal advice to, and consultation with, the Town Board with regard thereto; and draft of contract proposals and the final contract, mediation, fact finding or improper practices and arbitration.
- H. Review all substance abuse claims and sexual harassment claims; and assist with disability claims or disputes.
- I. Any and all other matter agreed to by the parties.

5. No payments described in paragraphs 3 and 4 hereof shall be due and owing until the Law Firm has submitted to the Town Board a detailed signed voucher, and such voucher has been audited and approved for payment by the Town Board. It is understood that any such payments shall be made directly to the Law Firm and shall not be paid to the Attorney. It is further understood that any forms 1099 issued by the Town with respect to such payments shall show the Law Firm as the recipient of the payments.

6. It is understood that the Attorney will be furnishing and providing the legal services described herein on a part-time basis, and the Attorney will have a private practice. However, the Attorney shall give reasonable priority to Town legal matters so that the Town's legal needs are properly and promptly attended to.

7. It is understood that the Attorney has the following qualifications:

- Has completed 4 years of High School
- Has completed 4 years of College
- Has completed 3 years of law school
- Has a knowledge of municipal law
- Has a certificate issued by the Appellate Division of the Supreme Court of the State of New York to practice law.

8. It is understood that the Law Firm is responsible for the Attorney's own workers' compensation and liability insurance; and the Attorney is not eligible for Social Security, Medicare, disability benefits, health insurance benefits, sick leave benefits, vacation benefits, retirement benefits, unemployment insurance benefits or any other benefits through the Town.

9. This agreement shall be for a term beginning **January 1, 2013 and ending December 31, 2013.**

10. In accordance with the provisions of section 109 of the General Municipal Law, the Law Firm is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

11. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

12. The Law Firm is an independent contractor and shall not be deemed to be an officer or employee of the Town for any purpose. It is understood that the Attorney is an independent contractor and shall not be deemed to be an officer or employee of the Town for any purpose. The Law Firm, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistently with such status. The Law Firm, the partners and employees of the Law Firm and the Attorney will not hold themselves out as, nor claim to be, an officer or employee of the Town by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

13. No waiver of any breach of any condition of this Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect

any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

14. This Agreement constitutes the complete agreement and understanding of the parties hereto with respect to the subject matter hereof.

15. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of New York.

16. The Supervisor of the Town has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town of Windsor at a meeting thereon held on the

9th day of January, 2013. Carolyn Price, Supervisor of the Town of Windsor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town.

17. This instrument shall be executed in quadruplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of the Town of Windsor.

IN WITNESS WHEREOF, the Town of Windsor has caused its corporate seal to be affixed hereto and these presents to be signed by Carolyn Price, its Supervisor, duly authorized to do so, and to be attested to by Barbara Miller, its Town Clerk; and Coughlin & Gerhart, L.L.P. (the "Law Firm") has caused these presents to be signed by Mark S. Gorgos, its Managing Partner.

TOWN OF WINDSOR

By: _____
Carolyn Price, Supervisor

TOWN SEAL OF THE TOWN OF WINDSOR

Attest:
Barbara Miller, Town Clerk of the Town of Windsor

COUGHLIN & GERHART, L.L.P.

By: _____
Mark S. Gorgos, Managing Partner