



FROM: Linda Michow, City Attorney

DATE: March 2, 2016

ITEM: Motion to Approve an Agreement for Legal Services with Michow Cox & McAskin LLP

I. REQUEST OR ISSUE:

The attached legal services agreement with Michow Cox & McAskin LLP ("Agreement") is presented for City Council consideration and approval on the March 2, 2016 agenda.

II. BACKGROUND:

It has been my honor and pleasure to serve as the City Attorney for the City of Leadville since 1999. In fact, the City of Leadville is my longest-standing municipal client, and I am very proud of my association with the City. Effective on March 1, 2016, my law firm, Widner Michow & Cox LLP (WMC,) will be realigning into two law firms. Tim Cox, Marcus McAskin and Kathie Guckenberger will be joining me at a firm to be known as Michow Cox & McAskin, LLP. Robert Widner, Maureen Juran and Jill Hassman will be practicing at a firm to be known as Widner Juran LLP.

All of the attorneys at WMC believe that this realignment will allow us to continue to provide each of our clients with high quality, nimble and cost-effective representation and we expect the move to be a seamless transition.

Under the Colorado Professional Rules of Ethics, WMC is required to provide each of our clients with a notice of firm change, along with the opportunity to select which firm/attorney will continue to represent the City. The proposed legal services agreement with Michow Cox & McAskin LLP is attached for Council's consideration.

I am happy to answer any questions or to provide additional information. On a personal note, I am excited about the new firm and fully expect this change to provide enhanced service to the City of Leadville.

III. RECOMMENDATION:

The approval of the attached Legal Services Agreement with Michow Cox & McAskin LLP is a discretionary decision of City Council.

2. SCOPE OF LEGAL SERVICES

- A. The Firm shall provide to and coordinate for the City all usual and customary legal services authorized to and provided by a City Attorney for comparable cities that engage a law firm on a contract basis for general legal services. The legal services shall include, but not be limited to:
- i. Representing the City Council, the City staff and the various Boards and Commissions of the City, as may be created by City Council;
 - ii. Providing legal advice and services associated with land use, subdivision and other planning applications;
 - iii. Preparing or reviewing all ordinances, contracts, bonds and other written instruments as requested by the City;
 - iv. Representing the City in judicial and appropriate administrative proceedings;
 - v. Advising the City on current municipal laws affecting the City and changes or developments therein; and
 - vi. Providing advice and topical seminars to the City Council and City staff on a periodic basis.
- B. The Firm shall provide for support by any para-professional personnel in its representation of the City as deemed necessary and cost effective by the City Attorney.
- C. The City reserves the right to engage special legal counsel on any matter deemed appropriate by the City, following consultation with the Firm, to advise the City or to assist the Firm.
- D. The City Attorney and the Firm shall comply with the requirements of the Colorado Rules of Professional Responsibility in addressing any conflicts of interest in representing the City. The Parties understand that the City is not obligated to waive any conflict in order to permit the City Attorney to represent the City.

3. COMPENSATION

- A. The City shall compensate the Firm for the services of the City Attorney at a rate of \$190.00 per hour. For legal services provided in connection with a land use application (e.g., annexation, zoning, subdivision, special or conditional use permits, variances, right-of-way vacations and similar land use applications) for which the City is in fact reimbursed by a developer/applicant, the rate of compensation for services performed by any Partner of the Firm shall be \$250.00 per hour and \$200.00 per hour for any Associate. Separate billing invoices shall be established by the Firm for individual land use applications and for such other special matters as deemed necessary by the City in consultation with the Firm. Attorney billing rates may be increased no more than 3% in any calendar year to account for cost of living increases.
- B. The City shall compensate the Firm for the legal services of other attorneys or paralegals of the Firm at their standard billing rates, a copy of which is attached to

this Agreement as **Exhibit A**. All Attorney rates may be increased no more than once annually and by no more three percent in any calendar year.

- C. The City shall compensate the Firm for out-of-pocket fees and costs incurred on the City's behalf, including but not limited to filing fees, service of process, expert witness fees (only as pre-authorized by the City), court reporter fees, transcript fees, recording fees, title company's fees for reports of title, and publication fees. Such fees will be billed to the City at the Firm's cost without mark-up.
- D. The City shall compensate the Firm for mileage expenses for personal use of private vehicles used by the City Attorney, other Firm attorneys and paralegals for travel within the Denver metropolitan area incurred in the direct and exclusive performance of services for the City. Mileage shall be charged at the Firm's standard mileage rate (not to exceed U.S. Internal Revenue Service published business travel mileage allowance).
- E. The Firm shall provide to the City a detailed invoice for all legal services on a monthly basis. Such billings shall separate work and fees, including allocations associated with specific projects for which the City accounts separately. The City shall pay all undisputed billings from the Firm within thirty (30) days of receipt of invoice. If the Client fails to pay any charges within thirty (30) days of the date of the bill, the Firm may elect to stop all work for the Client. The Client's obligation to make prompt payment of all fees and charges does not depend upon achievement of any specific result.

4. AVAILABILITY

- A. The City Attorney shall routinely be available to provide legal services for the City. Upon reasonable notice provided, the City Attorney will attend City Council regular meetings, special meetings, study sessions, Council retreats, and other City business meetings as requested by the Mayor, Administrative Services Manager or City Council.
- B. The City Attorney shall be available to render the services required hereunder on an "on call" basis, and when necessary shall cause any Assistant City Attorneys to be available by appointment for consultation with City representatives.
- C. The Firm shall assign one or more Assistant City Attorneys to be available to render the services required of the City Attorney hereunder on an "on call" basis whenever the City Attorney is unavailable.
- D. The Firm will employ or retain on contract at its discretion and own cost, at its office and during regular business hours, such administrative personnel as are necessary to support the City Attorney.

5. CITY DESIGNATED REPRESENTATIVE

In the interest of budget management, the City Council hereby designates the Mayor and the Administrative Services Manager to serve as the primary contacts to the City Attorney.

6. INDEPENDENT CONTRACTOR

In performing the services herein specified, the Firm is acting as an independent contractor. Its attorneys adhere to the Colorado Rules of Professional Responsibility as approved and adopted by the Colorado Supreme Court, as they may be changed or revised from time to time.

7. NON-DISCRIMINATION

During the performance of this Agreement, the Firm shall:

- A. Not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, age, military service, veteran status, marital status, national origin, or disability.
- B. Comply with all state and federal laws, regulations and executive orders regarding non-discrimination applicable to the City and its programs.

8. ASSIGNMENT

This Agreement for services is personal to the parties hereto and shall not be assigned by either party.

9. TERM AND TERMINATION

- A. This Agreement shall be effective as of March 1, 2016 and may be terminated by either Party, upon written notice, without cause or reason upon thirty (30) days prior written notice to the non-terminating Party. During such period following notice and prior to termination, the Parties shall coordinate the transfer of legal services and Client files from the Firm to the City.
- B. The Parties understand and agree that the compensation to be provided by the City pursuant to this Agreement is subject to annual appropriation by the City. Although the Parties recognize that the City may effectively terminate this Agreement through a refusal to appropriate funds for a given fiscal year, the City agrees that its exercise of such authority will be undertaken in good faith and in accordance with the provisions of Paragraph 9(A) above which would require the funding of services for the period of notice prior to termination.
- C. Nothing in this Section shall preclude or prevent the Parties from modifying any notice requirement or term of notice or negotiating other terms for a mutually acceptable termination.

10. CONFLICTS

Unless otherwise agreed by the City, the Firm shall not accept work on behalf of any client that will create a conflict or the potential for a conflict with the City.

11. MISCELLANEOUS PROVISIONS

- A. Arbitration. Although the Parties do not expect that any dispute will arise between the Parties, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of legal fees or costs owed to the Firm or the quality of the Firm's services, including any claim of malpractice, such dispute shall be subject to binding arbitration. The City and the Firm acknowledge that they are waiving their right to seek remedies in court, including the right to a jury trial. This clause does not prevent the City and the Firm from trying to resolve any dispute through voluntary mediation, but there is no requirement to do so.


Any dispute concerning fees or costs or concerning the quality of the Firm's services, including malpractice claims, shall be submitted to a single arbitrator and the decision of the arbitrator shall be final and binding on both parties. A final judgment can be entered on the arbitration award by a court of competent jurisdiction. The arbitrator shall be selected from the Judicial Arbitrator Group, Denver, Colorado, unless the parties agree otherwise. If the parties do not agree on the selection of a single arbitrator within ten (10) days after a demand for arbitration is made, then the arbitrator shall be selected by the Judicial Arbitrator Group from among its available professionals.

All arbitrations shall be held in Denver, Colorado, unless the parties mutually agree on some other location. All arbitrations shall proceed under the Commercial Arbitration Rules of the American Arbitration Association, except as modified in this Agreement, unless otherwise agreed by the parties. The arbitrator shall have the discretion to order that the costs of arbitration, fees (including expert witness and reasonable attorneys' fees), and other costs shall be borne by the losing party. Any filing fees or other administrative costs of arbitration shall be divided equally between the City and the Firm. Arbitration of all disputes, and the outcome of the arbitration, to the extent legally permissible, shall remain confidential between the parties.

- B. Privacy Policy. The Firm's "Privacy Policy Notice" is attached to this Agreement as **Exhibit B**. The Firm will conduct its representation of the City in accordance with this policy.
- C. Document Ownership. Files maintained by the Firm as the result of the performance of services for the City shall be the property of the City. Upon termination of this Agreement, the Firm shall deliver such files to the City.
- D. Prohibition Against Employing Illegal Aliens. The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Firm shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (b) fails to certify to the Firm that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Firm shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. § 8-17.5-102 (5).

IN WITNESS WHEREOF, the parties hereto have set their hands this 16th day of March, 2016.

ATTEST:

By: 
Pamela Andrews, City Clerk

CITY OF LEADVILLE

By: 
Greg Labbe, Mayor

MICHOW COX & MCASKIN, LLP

By: 
Linda C. Michow, Partner

EXHIBIT A

ATTORNEY RATES PER HOUR FOR MUNICIPAL LEGAL SERVICES

Tim Cox	\$190.00
Marcus McAskin	\$190.00
Kathie Guckenberger	\$180.00
Other Associates	\$180.00
Paralegal/Research Professional	\$ 70.00

EXHIBIT B

MICHOW COX & MCASKIN LLP

PRIVACY POLICY NOTICE

Attorneys, like other professionals, who advise on certain personal matters, are required by federal law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by federal law. Maintaining your trust and confidence is a high priority to our law firm. The purpose of this notice is to comply with the federal law by explaining our privacy policy with respect to your personal information.

NONPUBLIC PERSONAL INFORMATION WE COLLECT:

In the course of providing services to our clients, we collect personal and financial information about our clients that is not available to the public and which is provided to us by our clients or obtained by us with their authorization or consent.

PRIVACY POLICY:

As a current or former client of Michow Cox & McAskin LLP, please be assured that all nonpublic personal information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you, or as is permitted or required by law and applicable ethics rules.

CONFIDENTIALITY AND SECURITY:

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. We restrict access to nonpublic, personal information about you to those people in the firm who need to know that information to provide services to you (and their support personnel). In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards as well as federal regulations.

Please call the attorney you work with if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality service are very important to us.

Michow Cox & McAskin LLP

AGREEMENT FOR LEGAL SERVICES OF CITY ATTORNEY

THIS AGREEMENT is made effective as of the 1st day of March, 2016, between **MICHOW COX & MCASKIN, LLP**, a Colorado limited liability partnership with its principal place of business at 6530 S. Yosemite Street, Suite 200, Greenwood Village, Colorado 80111 (the "Firm"), and the **CITY OF LEADVILLE, COLORADO**, a municipal corporation of the State of Colorado, with offices at 800 Harrison Avenue, Leadville, Colorado 80461 (the "City").

WITNESSETH:

WHEREAS, the City wishes to retain the Firm for the purpose of providing legal representation for the City, and the Firm wishes to provide such representation subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows between the City and the Firm:

1. APPOINTMENT OF GENERAL LEGAL COUNSEL

- A. The Firm is engaged and appointed as general legal counsel to represent and advise the City with respect to legal matters referred by the City to the Firm in accordance with this Agreement.
- B. Linda Michow is designated and appointed as the City Attorney for the City of Leadville. The Firm may change the designation of the attorney to serve as the City Attorney only with the express consent of the Mayor. The Firm may represent to third parties and identify in Firm advertising and other Firm-sponsored materials that the Firm serves or represents the City as the City Attorney unless the City specifically directs the Firm not to make such representation on a particular matter or to a particular party.
- C. The City Attorney and the Firm will work cooperatively and in concert with other City-appointed attorneys who may be appointed by City Council to represent the City on specialized matters such as but not limited to specialized litigation or water matters.
- D. The Firm may utilize other qualified attorneys of the Firm to assist the City Attorney and provide legal services to the City as deemed appropriate by the City Attorney, and such additional attorneys may be deemed "Assistant City Attorneys" for such purposes. The City shall retain the right to reasonably reject the assignment of any Firm-selected Assistant City Attorney.
- E. The City authorizes the Firm's attorneys to execute documents connected with the representation of the City, including pleadings, applications, protests, contracts, commercial papers, settlement agreements and releases, verifications, dismissals, orders, and all other documents, and to represent the City in matters associated with providing legal services to the City.