

**CITY OF LEADVILLE, COLORADO  
RESOLUTION NO. 19  
SERIES OF 2023**

**A RESOLUTION APPOINTING THE CITY ATTORNEY  
FOR THE CITY OF LEADVILLE AND  
APPROVING A PROFESSIONAL SERVICES AGREEMENT**

**WHEREAS**, the City of Leadville is a statutory municipality organized under the laws of Colorado; and

**WHEREAS**, C.R.S. § 31-4-107(2)(a) authorizes the City Council to appoint a city attorney; and

**WHEREAS**, due to the resignation of Linda Michow and the firm of Michow Cox & McAskin LLP as city attorney in April, 2023, the City issued a request for proposals from firms and individuals to serve as the city attorney; and

**WHEREAS**, the City, having reviewed the proposals and conducted interviews, desires to appoint the firm of Hoffmann, Parker, Wilson and Carberry, P.C. and designates Hilary Graham, Austin Flanagan and Elizabeth LeBuhn to serve as Leadville's city attorney, and to approve the professional services agreement ("Agreement") in substantially the form attached to this Resolution in connection with this appointment.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Leadville, Colorado, as follows:

**Section 1.** The City Council hereby: (a) appoints the firm of Hoffmann, Parker, Wilson and Carberry, P.C. and designates Hilary Graham, Austin Flanagan and Elizabeth LeBuhn as the City Attorney for the City of Leadville; (b) approves the Agreement in substantially the form attached as **Exhibit 1**; (c) authorizes the City Administrator, in consultation with the Mayor, to make any changes as may be needed to the Agreement to correct any non-material errors or language that do not increase the obligations of the City or to comply with Council's motion of approval; and (d) authorizes the City Administrator to execute the Agreement on behalf of the City.

**Section 2.** This Resolution shall be effective upon its adoption.

**ADOPTED** this 19<sup>th</sup> day of September, 2023 by a vote of 6 in favor, 0 against, 0 abstaining, and 1 absent.

CITY OF LEADVILLE, COLORADO:

  
\_\_\_\_\_  
Greg Labbe, Mayor

ATTEST:

  
\_\_\_\_\_  
Deputy City Clerk



**EXHIBIT 1**

**AGREEMENT FOR PROFESSIONAL SERVICES – CITY ATTORNEY**

*(see attached agreement)*

**City of Leadville, Colorado**  
**AGREEMENT FOR PROFESSIONAL SERVICES**

**Project/Services Name: City Attorney**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into by and between the City of Leadville, a municipal corporation of the State of Colorado, with offices at 800 Harrison Avenue, Leadville, Colorado 80461 (the "City"), and Hoffmann Parker Wilson & Carberry, P.C., a Colorado corporation with offices at 511 Sixteenth Street, Suite 610, Denver, Colorado 80202 ("Contractor") (each individually a "Party" and collectively the "Parties").

**RECITALS**

WHEREAS, the City requires certain professional services as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration set forth below, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

A. **Services.** Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached to this Agreement and incorporated by this reference (the "Services" or "Scope of Services"). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. **Changes to Services.** A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided in this Agreement or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

C. **Duty to Inform.** The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. **Time of Performance.** The Contractor shall perform all Services in accordance with this

Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Administrator, or a person expressly authorized in writing to direct the Contractor's services.

## **II. TERM AND TERMINATION**

A. **Term.** This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until terminated as provided in this Agreement ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. **City Unilateral Termination.** This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such documents, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. **Termination for Non-Performance.** Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. **Suspension of Services.** The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. **Delivery of Notices.** Any notice permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XI.D of this Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail.

### **III. REPRESENTATIVES AND SUPERVISION**

A. **City Representative.** The City representative responsible for oversight of this Agreement and the Contractor's performance of Services shall be the City Administrator or his or her designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. **Contractor Representative.** The Contractor representative under this Agreement shall be Hilary M. Graham ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. **City Supervision.** The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City's need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

### **IV. COMPENSATION**

A. **Not-to-Exceed Amount.** Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in Exhibit A, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

- If this box is checked, the Contractor shall invoice the City for Services performed and the City shall pay Contractor based on the rates or compensation methodology described in Exhibit B. This amount shall include all fees, costs, and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs, and expenses. Contractor may request final payment upon completion and the City's acceptance of all work or Services as set forth in Exhibit A.



- If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment on  [insert date here] .

B. **Receipts.** The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City's interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

C. **Reimbursable Expenses.**

1. If this Agreement is for lump-sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is not for lump-sum compensation, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor's invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax-deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. **Other Expenses.** Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

D. **No Waiver.** The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. **PROFESSIONAL RESPONSIBILITY**

A. **General.** Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described in this Agreement and has all requisite corporate authority and professional licenses in good standing required by law.

B. **Standard of Performance.** The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

C. **Subcontractors.** The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in Exhibit A;

however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform the Services shall perform such Services in accordance with all terms and conditions of this Agreement.

## **VI. INDEPENDENT CONTRACTOR**

A. **General.** Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

B. **Liability for Employment-Related Rights and Compensation.** The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. **Insurance Coverage and Employment Benefits.** The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

D. **Employee Benefits Claims.** To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against

the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

## VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance");  
OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
- Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
  - Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year



following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. **Additional Requirements.** Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. **Insurance Certificates.** Contractor shall provide to the City a certificate of insurance as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify this the Project/Services Name as set forth on the first page of this Agreement.

D. **Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

## **VIII. INDEMNIFICATION**

Contractor agrees to indemnify, defend, and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage to the extent caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence, or other fault of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. REMEDIES**

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform

the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities, or inactions by the Contractor. The remedial actions include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

#### **X. RECORDS AND OWNERSHIP**

A. **Retention and Open Records Act Compliance.** All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

B. **City's Right of Inspection.** The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. **Ownership.** Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Leadville upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology, and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request

under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. **Return of Records to City.** At the City's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

**XI. MISCELLANEOUS**

A. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Lake County, Colorado.

B. **No Waiver.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. **Integration.** This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. **Notice.** Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first-class United States Mail, to the party at the address set forth below.

**If to the City:**

**If to Contractor:**

|   |  |
|---|--|
| City of Leadville<br>Attn: City Administrator<br>800 Harrison Avenue<br>Leadville, Colorado 80461 | Hoffmann Parker Wilson & Carberry, P.C.<br>Attn: Hilary M. Graham<br>511 Sixteenth Street, Suite 610<br>Denver, Colorado 80202 |
|---|--|

E. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions shall remain in full force and effect.

F. **Modification.** This Agreement may only be modified upon written agreement signed by the Parties.

G. **Assignment.** Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. **Affirmative Action.** The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees

are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. **Governmental Immunity.** The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (“CGIA”), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

J. **Rights and Remedies.** The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City’s legal or equitable remedies, or the period in which such remedies may be asserted.

K. **Annual Appropriation.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. **Release of Information.** The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. **Attorneys’ Fees.** If the Contractor breaches this Agreement, then it shall pay the City’s reasonable costs and attorney’s fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. **Survival.** The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XI (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) (Annual Appropriation), (N) (Release of Information) (O) (Attorneys’ Fees), and (Q) Agreement Controls shall survive the expiration or termination of this Agreement. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.



Q. **Agreement Controls.** In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

R. **Force Majeure.** Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. **Protection of Personal Identifying Information.** In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party services providers.

T. **Authority.** The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Leadville and the Contractor and bind their respective entities.

U. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

***SIGNATURE PAGES FOLLOW***

**THIS AGREEMENT is executed and made effective as provided above.**

**CITY OF LEADVILLE, COLORADO**

By:

A handwritten signature in black ink that reads "Laurie K. Simonson". The signature is written in a cursive style with a large, sweeping flourish at the end.

**Printed Name: Laurie Simonson**

**Title: City Administrator**

**Date of execution: September 26, 2023**

**ATTEST:**

A handwritten signature in black ink that reads "D. Armando Salas". The signature is written in a cursive style with a horizontal line underneath it.

**Deputy City Clerk**



## **EXHIBIT A**

### **SCOPE OF SERVICES**

Provide general legal services ("General Legal Services") to the City, including but not limited to:

1. Reviewing and preparing staff reports, ordinances, resolutions, agreements, deeds, leases, easements, and other routine City documents;
2. Reviewing and advising City staff on land use and historic preservation applications;
3. Advising on liquor, marijuana and short-term rental licensing matters;
4. Attending regular and special meetings and study sessions of the City Council and other board and commission meetings and staff meetings as requested and scheduled, electronically or in-person;
5. Enforcing and providing legal advice regarding enforcement of City ordinances, zoning, and building standards through administrative or judicial proceedings;
6. Legal work pertaining to property acquisition (excluding eminent domain) and disposal, right-of-way vacations and other issues, easements, construction, and maintenance of public improvements and other real property matters;
7. Monitoring and advising the City of new legislation and court decisions affecting municipalities;
8. Providing legal advice on personnel matters in all aspects of employment law;
9. Providing legal advice, training, and support to City Council, City administrative personnel, City departments, boards, and commissions; and
10. Coordinating outside legal counsel services on behalf of the City.



**EXHIBIT B**  
**COMPENSATION**

**\$235 per hour for attorney time; \$125 per hour for paralegal time. No charge for legal assistant time.**

**Travel time is billed at half the applicable rate.**

**Additionally, Contractor will bill City for actual costs incurred, such as filing fees, copies, postage, and computerized legal research.**