

RESOLUTION NO. 12  
SERIES OF 2019

INTRODUCED BY: KATY BROWN  
SECONDED BY: AL BLUM

A RESOLUTION  
OF THE CITY COUNCIL  
OF THE CITY OF CHERRY HILLS VILLAGE  
APPROVING AN AGREEMENT WITH MICHOW COX & MCASKIN LLP  
FOR CITY ATTORNEY LEGAL SERVICES

**WHEREAS**, Section 6.1 of the Cherry Hills Village Home Rule Charter requires the City Council to appoint a City Attorney to serve at the pleasure of City Council at such compensation as the Council may establish by resolution; and

**WHEREAS**, the City of Cherry Hills Village entered into an Agreement for Legal Services of City Attorney with Michow Cox & McAskin LLP ("MCM") effective February 16, 2016 in conjunction with its appointment of Linda Michow to serve as its City Attorney; and

**WHEREAS**, on January 15, 2019, the City Council appointed Kathie Guckenberger, also of MCM, as the City Attorney; and

**WHEREAS**, MCM has proposed an updated Agreement for City Attorney Legal Services ("Agreement") to reflect this recent appointment; and

**WHEREAS**, the City Council desires to approve the Agreement with MCM subject to the terms and conditions therein; and

**WHEREAS**, the City Council desires to authorize the Mayor to execute the Agreement on behalf of the City.

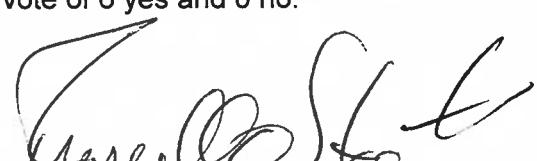
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:**

**Section 1.** The City Council hereby (a) approves the Agreement with MCM, in the form attached hereto as **Attachment A**; and (b) authorizes the Mayor to execute the same on behalf of the City.

**Section 2.** This Resolution shall take effect upon its approval by the City Council.

Introduced, passed and adopted at the  
regular meeting of City Council this 5<sup>th</sup> day  
of March, 2019, by a vote of 6 yes and 0 no.

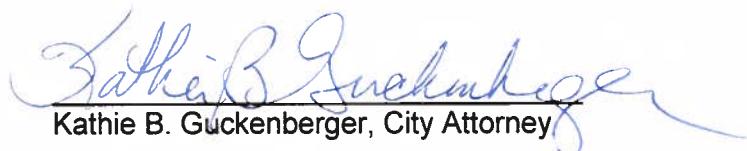
(SEAL)

  
Russell O. Stewart

ATTEST:

  
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

  
Kathie B. Guckenberger, City Attorney

**ATTACHMENT A**  
**AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES**



## **AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES**

THIS AGREEMENT is made effective as of the 1st day of March, 2019, 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 CHERRY HILLS VILLAGE, COLORADO**, a home rule municipal corporation of the State of Colorado, with offices at 2450 East Quincy Avenue, Cherry Hills Village, Colorado 80113 (the "City") (each individually a "Party" and collectively the "Parties").

### **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. Kathie Guckenberger is hereby designated and appointed as the City Attorney for the City of Cherry Hills Village. The Firm may change the designation of the attorney to serve as the City Attorney only with the express consent of the City. 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 for Cherry Hills Village 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 litigation and 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.

## 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 the City Attorney's Office 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, those set forth in Section 6.4 of the Cherry Hills Village Home Rule Charter and:

- 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 federal, state, and local 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 Firm shall maintain working relationships with attorneys specializing in fields of interest to municipalities, including but not limited to condemnation, litigation, and water law. The Firm may recommend hiring special legal counsel with special knowledge and expertise to represent the City or assist the Firm when it deems reasonable and in the best interest of the City and in cases of conflict of interest by the Firm. The Firm may also recommend hiring special legal counsel to advise the City or provide second opinions on matters of extraordinary importance to the City, including matters involving complex litigation or a substantial financial or other impact on the City or its residents, considering the City's budget as whole, or considering City functions or programs as a whole, when such matters of extraordinary importance also involve legal uncertainties or complexities.

E. The Firm shall contract with Ausmus Law Firm, P.C. ("Ausmus") for the provision of municipal prosecution services at a flat rate of \$600.00 per court session, and shall invoice the City at such rate without mark-up. The Ausmus attorneys shall be under the general coordination of the City Attorney but the Firm shall not warrant the quality of work of Ausmus.

F. Any attorneys who are not employed by the Firm, but who are employed by or retained by the City to perform legal representation or to assist such employed or retained representatives, shall be under the general coordination of the City Attorney although such non-Firm attorneys shall contract directly with the City and the Firm shall not warrant the quality of work of such non-Firm attorneys or firms. Such coordination and supervision by

the Firm shall not be undertaken when special legal counsel is appointed due to a conflict of interest on behalf of the Firm.

G. Although the Firm actively seeks to avoid potential for conflicts, the City understands and recognizes that unanticipated conflicts may arise that could impair the ability of the City Attorney and the Firm to represent the City on specific legal matters. In such event, the City Attorney shall comply with the requirements of the Colorado Rules of Professional Responsibility in addressing such conflict with 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 \$200.00 per hour. Attorney travel time shall be charged, except for travel time between the Firm's office and the Village Center. 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 \$265.00 per hour, \$225.00 per hour for any Of Counsel of the Firm, 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.

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**.

C. The City shall not be required to compensate the Firm for:

- i. Electronic and hardcopy library and research materials and research librarian services except database access charges (e.g., Lexis/Nexis or Westlaw) for legal research billed at Firm cost without administrative mark-up;
- ii. Employee benefits;
- iii. Employee insurance, including malpractice insurance;
- iv. Training and continuing legal education;
- v. Bar and professional licensing expenses and registrations;
- vi. Local professional memberships;
- vii. Firm-owned electronic, computer and computer/network related communications equipment, hardware, software and information technology support services, systems training of Firm personnel, including personal computers, laptops, computer printers, or mobile telephones;
- viii. Routine copying customarily performed in the day-to-day performance of legal services except those projects requiring outside copying and specialized printing services may be charged at cost. Large project copying (typically more than 300 pages/project) may be charged to the City in accordance with the Firm's standard policies;
- ix. Facsimile expenses;
- x. Newspapers and professional periodicals;

- xi. Postage for regular mail delivery by United States Postal Service except for mass mailings (with prior City Manager approval) and special, expedited, or overnight delivery services, which may be charged at cost;
- xii. Office supplies used by the City Attorney (to include items customarily associated with standard office operations and management such as paper, pens, notebooks, paper files, file folders, tape, paperclips, labels, etc.); and
- xiii. Archival storage and retrieval of outdated client files performed in accordance with the Firm's standard client file storage policies; provided, however, that the Firm may relinquish possession of outdated files to the City for storage.

D. 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.

E. 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).

F. 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 City 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 City. The City'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 attend regular City Council meetings and be available to provide legal services for the City Council. Upon reasonable notice provided, the City Attorney will attend City Council special meetings, study sessions, Council retreats, and other City business meetings as requested by the Mayor, City 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 City Manager to serve as the primary contacts to the City Attorney outside of the regular City Council meetings.

## **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.

The following disclosure is provided in accordance with Colorado law:

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

## **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 provided above 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 City files from the Firm to the City's selected City Attorney.

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. This requirement shall specifically preclude the Firm from undertaking work on behalf of Arapahoe County, any special district whose jurisdiction or area of service lies within all or any portion of the City, any special district or municipality that shares a common boundary with the City or which may potentially provide services within the City, and any landowners, businesses, and developers residing or working within the City.

## 11. MISCELLANEOUS PROVISIONS

### A. Disputes.

i. Mandatory Arbitration for Claims under \$25,000. 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 if the damages, liability or claim(s) asserted total less than Twenty Five Thousand Dollars (\$25,000.00) in the aggregate. In such event, 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 Arbiter 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 Arbiter 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.

- ii. Arbitration as set forth in subsection A (i) above shall not be required for any dispute between the Parties in which the aggregate dollar amount of alleged damages, liability or claim(s) total Twenty-Five Thousand Dollars (\$25,000.00) or more. Such disputes may be resolved in a competent court having jurisdiction; venue for any action hereunder shall be in the District Court, County of Arapahoe, State of Colorado.

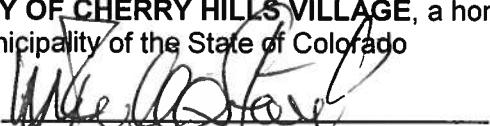
B. Privacy Policy. The Firm's "Privacy Policy Notice" is attached to this Agreement as **Exhibit B**. The Firm will conduct its representation of the City in accordance with this policy.

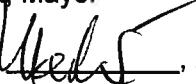
C. Document Ownership. Files maintained by the Firm as the result of the performance of services for the City shall be the property of the City. Upon termination of this Agreement, the Firm shall deliver such files to the City.

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).

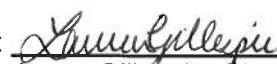
IN WITNESS WHEREOF, the parties to this Agreement have executed as of the date(s) set forth below.

**CITY OF CHERRY HILLS VILLAGE**, a home rule municipality of the State of Colorado

By:   
Russell O. Stewart, Mayor

Date of execution: , 2019.

ATTEST:

By:   
Laura Gillespie, City Clerk

MICHOW COX & MCASKIN LLP

By: Linda Michow  
Linda Michow, Partner

STATE OF COLORADO )  
 )  
COUNTY OF ARAPAHOE ) ss.  
)

The foregoing Agreement for City Attorney Legal Services was subscribed, sworn to and acknowledged before me this 25 day of February, 2019, by Linda Michow, as a partner of Michow Cox & McAskin LLP, a Colorado limited liability partnership.

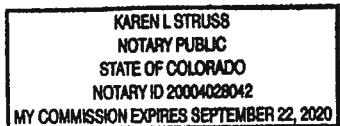
My commission expires: 9-22-2020

[S E A L]

Karen L. Strauss

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**Notary Public**



**EXHIBIT A**  
**ATTORNEY RATES PER HOUR FOR MUNICIPAL LEGAL SERVICES**

Partners of the Firm	\$225.00
Of Counsel to the Firm	\$190.00
Associates of the Firm	\$180.00
Paralegal/Research Professional	\$ 70.00

**EXHIBIT B**  
**FIRM PRIVACY POLICY NOTICE**

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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