

## **LEGAL SERVICES AGREEMENT**

THIS AGREEMENT is between the City of Littleton, a Colorado home rule city ("City"), and Kissinger & Fellman, P.C. ("Law Firm") under which the Law Firm shall perform legal services for the City. The City and the Law Firm agree as follows:

1. Scope of Legal Services. The Law Firm will provide all legal services, as listed below, and only as requested of it by the Mayor, the City Council, the City Manager, and any boards or employees of the City authorized by the Mayor, City Council or City Manager to request legal services of the Law Firm. Nothing in this Agreement is intended to preclude the City from utilizing the services of other attorneys and/or law firms. The services to be provided by the Law Firm pursuant to this Agreement shall include, but are not limited to, the following:

- a. Attend regular meetings of the City Council; attend work session and special meetings of the City Council as requested.
- b. Attend meetings and conferences with City Council, City boards and commissions, City staff and officers as directed by the Mayor, City Council or the City Manager.
- c. Prepare and/or review ordinances, resolutions and City Charter amendments.
- d. Prepare and/or review contracts for services, materials and real estate involving the City.
- e. Respond to all inquiries and communications of a general legal nature from the Mayor, members of the City Council, the City Manager, and the City staff.
- f. Represent the City in its dealings and negotiations with federal, state and local governmental entities and agencies, special improvement districts and utilities, and with private parties affecting the City.
- g. Represent the City in litigation matters involving the City.
- h. Enter an appearance in and/or monitor litigation matters that are being actively handled by outside counsel.
- i. Supervise the City's contract prosecutor.
- j. Provide oversight and supervision over in-house employees in the Department of City Attorney.
- k. Office hours will be provided on a part-time basis. It is anticipated that office hours will generally be Monday afternoons, Tuesday mornings or afternoons (depending upon evening meeting schedule) and Thursday afternoons.

1. Perform such other duties as may be prescribed by the City Charter, the City Council, or the City Manager.

The Law Firm agrees to exert its best efforts on behalf of the City and to handle the matters for which representation has been requested of it faithfully and with due diligence. The Law Firm cannot and does not guarantee or agree that a result favorable to or satisfactory to the City will be achieved. No settlement or compromise will be made without the City's consent.

2. Identification of Client. It is understood that the Law Firm's client for purposes of its representation is the City of Littleton, and not any of its individual members or constituents, or any other entities whose interests are being represented by those individuals.

3. Term. This Agreement has no defined term and may be terminated as described in Section 6 below. It is understood that this appointment as acting City Attorney is intended for the time period until the City completes its process to hire a permanent City Attorney, and is not expected to extend beyond twelve (12) months following the effective date of this Agreement.

4. Designated Acting City Attorney. Although this Agreement is with the Law Firm, the City hereby designates Kenneth S. Fellman as the appointed Acting City Attorney pursuant to Article IX of the Littleton Home Rule Charter. This appointment shall not be construed to mean that the Acting City Attorney is an employee of the City, it being the parties' intent that the Acting City Attorney be and remain an employee solely of the Law Firm.

a. The Acting City Attorney may delegate certain research or drafting projects or other matters to other attorneys in the Law Firm who have expertise in the area of the legal services requested; however, any such delegated work will be performed directly under the Acting City Attorney's supervision and responsibility.

b. To the extent requested by the City Council, the Acting City Attorney shall supervise any of the City's in-house legal counsel employees and legal support staff. Such supervision authority is delegated to the Acting City Attorney by the City Manager pursuant to Section 52.A of the City Charter. The Acting City Attorney shall communicate with the City Manager and City Council as deemed necessary regarding any employment issues related to the City's legal staff.

c. The parties intend that the Law Firm and all of its employees shall at all times act in the capacity of an independent contractor with respect to the terms and conditions of this Agreement. Neither the Law Firm nor any employee or representative of the Law Firm is considered an employee of the City, for any purpose, and are not entitled to any of the benefits that the City provides for its employees. It is understood that the Law Firm is free to contract for similar services to be performed for others while under contract with City so long it is able to fully satisfy all obligations under this Agreement. NEITHER THE LAW FIRM NOR ANY OR ITS EMPLOYEES IS ENTITLED TO WORKER'S COMPENSATION BENEFITS OR UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE LAW FIRM OR A THIRD PARTY PROVIDES SUCH COVERAGE, AND THE LAW FIRM ACKNOWLEDGES THAT CITY DOES NOT PAY FOR OR

OTHERWISE PROVIDE SUCH COVERAGE. MALPRACTICE INSURANCE OR ERRORS AND OMISSIONS INSURANCE IS TO BE PAID BY THE LAW FIRM. THE LAW FIRM ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THIS CONTRACTUAL RELATIONSHIP, IF ANY BE DUE.

5. Management. As requested by the City, the Law Firm will confer with the City Manager, on behalf of the City Council to identify legal service priorities and to plan for the management of the legal services budget.

6. Miscellaneous. The Acting City Attorney serves at the pleasure of the Council and therefore, the City may terminate this Agreement and discharge the Law Firm without notice, at any time, and for any reason. If the City discharges the Law Firm, the City shall pay all fees and costs incurred to the effective date of termination. Subject to the Colorado Rules of Professional Conduct and any applicable court rules, the Law Firm may, after reasonable advance written notice to the City, terminate this Agreement. If the Law Firm terminates this Agreement, the City shall pay all fees and costs incurred to the effective date of termination. In the event of termination for any reason, the Law Firm shall cooperate with the City to effectuate a transition of legal services, and the parties shall mutually agree upon the terms of the compensation to the Law Firm for such post-termination work.

7. Document Retention. Promptly upon termination of this Agreement, the Law Firm shall provide to the City all files pertaining to work performed pursuant to this Agreement, and all City documents being held or retained by the Law Firm. The City agrees that the Law Firm has the right to make copies of all documents generated or received by the Law Firm from any source during the course of the legal representation of the City. During the course of the representation, the Law Firm may generate certain documents related to the matter that will be retained by the Law Firm (as opposed to being sent to the City) or destroyed. These documents include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and account records, and internal lawyers' work product (such as drafts, notes, internal memoranda, legal research, and factual research, including investigative reports prepared by or for the internal use of lawyers on the case). For various reasons, including the minimization of unnecessary storage expenses, the Law Firm reserves the right to destroy or otherwise dispose of any documents or other materials that belong to the Law Firm within a reasonable time after the final bill for the matter is sent to the City.

8. Conflicts of Interest. The Law Firm shall endeavor to avoid all conflicts of interest as provided in the Colorado Rules of Professional Conduct and the City's Code of Ethics contained in Chapter 12 of the Littleton City Code. In the event of a conflict of interest that cannot be avoided or is not waived by the parties involved, neither the Law Firm nor any employee of the Law Firm will represent either party involved in the conflict and will work with City to secure appropriate special counsel.

9. Illegal Aliens.

a. The Law Firm certifies that it shall comply with the provisions of CRS § 8-17.5-101, et seq. The Law Firm shall not knowingly engage an illegal alien to perform work under this Agreement, or enter into a contract or sub-contract with a subcontractor that fails to certify to the firms that the subcontractor shall not knowingly engage an illegal alien to perform work under this Agreement. The Law Firm represents, warrants, and agrees that (i) it has verified that it does not engage any illegal aliens, through participation in the federal Basic Pilot Employment Verification Program; (ii) it will use the basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed; (iii) if the Law Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Law Firm will (a) notify the subcontractor and the City within 3 days that it has such actual knowledge and (b) terminate the subcontract if, within 3 days of receiving the notice referenced in (a) above the subcontractor does not stop employing or contracting with the illegal alien (unless during that 3 day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with the illegal alien); and (iv) otherwise will comply with the requirements of CRS § 8-17.5-102(2)(b). The Law Firm shall comply with all reasonable requests made in the course of an investigation under CRS § 8-17.5-102. Failure to comply with any requirement of this provision or CRS § 8.17.5-101, et seq., shall be cause for termination for breach of this Agreement, which shall obligate the Law Firm to pay City's actual and consequential damages.

b. The designated Acting City Attorney, a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he (I) is a citizen or otherwise lawfully present in the United states pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101, et seq., and (ii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this Agreement.

10. Governing Law. This Agreement shall be construed in accordance with, and governed by the laws of the State of Colorado.

11. Amendment. This Agreement may be amended only by a written instrument signed by both of the parties hereto.

12. Prior Agreements. This Agreement shall supersede all prior agreements between the parties concerning the provision of legal services.

13. Signature. THE LAW FIRM AND THE CITY HAVE READ THIS DOCUMENT, UNDERSTAND IT, AND AGREE TO IT.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 2016, to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF LITTLETON

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Bruce O. Beckman, Mayor

ATTEST:

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Wendy Heffner, City Clerk

KISSINGER & FELLMAN, P.C.

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Kenneth S. Fellman, Vice President

## APPENDIX A

1. Compensation and Expenses. The Law Firm will charge the City for its services according to the following provisions:

a. *Fee For Services of Acting City Attorney.* The hourly fee for all legal services provided by Kenneth S. Fellman shall be \$250.

b. *Fee for Associates of the Law Firm.* The hourly fee for all legal services provided by Associate attorneys of the Law Firm shall range from \$160 to \$225, depending upon the person performing the work.

- i. Brandon M. Dittman, Associate Attorney (\$160)
- ii. Jordan C. Lubeck, Associate Attorney (\$185)
- iii. Bobby G. "Bo" Riley, Associate Attorney (\$225)

c. *Fee for Partners and Special Counsel of the Law Firm.* The hourly fee for all legal services provided by any Partner or Special Counsel attorney of the Law Firm shall range from \$235 to \$250, depending upon the person performing the work.

- i. Paul D. Godec, Special Counsel (\$235)
- ii. Jonathan M. Abramson, Partner (\$250)

d. *Fee for Paralegals and/or Law Clerks of the Law Firm.* The hourly fee for all services provided by any Paralegal or Law Clerk of the Law Firm shall be \$85.

e. *Flat Fee for Certain Services.* The City Manager and Law Firm may, when they deem it in the best interests of the City, agree on a flat fee for any discrete legal services project and/or regularly recurring projects.

f. *Other Expenses.* Direct costs or expenses relating to City work (i.e., photocopies, postage, long distance telephone calls, mileage (billed at applicable Internal Revenue Service rate per mile), parking, computer filing fees, computer research fees, deposition or case transcripts, etc.) will be billed in addition to our hourly charges for professional services rendered. In the unlikely event that an individual cost item will exceed \$1000 (such as out of town travel for a City legal matter), the Law Firm will obtain prior approval of the anticipated expense. All other costs shall be considered overhead and not be billed to the City.

g. *Monthly Billings.* The Law Firm will bill the City on a regular basis, normally each month, for both fees and disbursements. The monthly billing period runs from the 21st of each month to the 20th of the next month. Bills will generally be received by the City prior to the 5th day of the following month. Payment is due within thirty (30) days. Interest shall accrue at the rate of 1.5% per month on all amounts overdue and unpaid. All bills will reflect services already performed and disbursements already made and are due upon receipt. The City's obligation to make prompt payment of all charges does not

depend upon achievement of any specific result. If the City fails to pay any charges within 90 days of receipt, a late fee may be applied by the Law Firm, not to exceed 8% of the unpaid charges. Payments will be applied first to the oldest amounts outstanding.

h. *Rates generally.* The Law Firm agrees that it shall not raise nor seek to raise the hourly rates for legal services provided under this Agreement.

2. Billing Statement. The Law Firm will provide a computer generated billing statement each month setting forth the following information in a readable, detailed format:

- a. The date services are provided.
- b. The description of those services, including the department and its representative who requested the services.
- c. The legal professional performing those services.
- d. The applicable hourly rate.
- e. The amount of time expended.
- f. A total of the cost of those services.
- g. With respect to disbursements and other expenses, the billing statement will indicate the date, the item of expense and the cost of that expense in a cumulative total of all expenses that month.