

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 55-R-2020**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO, APPROVING
AN AMENDED AND RESTATED ENGAGEMENT LETTER WITH THE
LAW FIRM OF MICHOW COX & MCASKIN LLP TO PROVIDE LEGAL
SERVICES TO THE TOWN OF MEAD**

WHEREAS, pursuant to Section 31-15-101, C.R.S., the Board of Trustees of the Town of Mead has the authority to enter into contracts; and

WHEREAS, Sec. 2-3-70 of the *Mead Municipal Code* requires the Board of Trustees to appoint a Town Attorney; and

WHEREAS, by and through Resolution No. 54-R-2020 dated April 27, 2020, the Board of Trustees appointed Marcus A. McAskin as the Town Attorney; and

WHEREAS, Mr. McAskin practices at the law firm of Michow Cox & McAskin LLP (“MCM”); and

WHEREAS, the Town desires to continue to retain MCM to provide legal representation for the Town; and

WHEREAS, a copy of MCM’s amended and restated engagement letter (the “Engagement Letter”) is attached and incorporated into this Resolution as **Exhibit A**; and

WHEREAS, the Board of Trustees desire to approve the Engagement Letter and further desires to authorize the Mayor to execute the Engagement Letter on behalf of the Town.

NOW THEREFORE, BE IT RESOLVED by the Town of Mead, Weld County, Colorado, that:

Section 1. The Board of Trustees hereby: (a) approves the Engagement Letter with MCM, in the form attached hereto as **Exhibit A**; and (b) authorizes the Mayor to execute the same on behalf of the Town.


Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 27TH DAY OF APRIL, 2020.

ATTEST:

TOWN OF MEAD

By 
Mary E. Strutt, MMC, Town Clerk

By 
Colleen G. Whitlow, Mayor



EXHIBIT A
AMENDED AND RESTATED ENGAGEMENT LETTER
MICHOW COX & MCASKIN LLP

**AMENDED AND RESTATED AGREEMENT FOR LEGAL SERVICES
TOWN OF MEAD, COLORADO**

THIS AMENDED AND RESTATED AGREEMENT FOR LEGAL SERVICES ("Agreement") is entered into by and 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 **TOWN OF MEAD**, a statutory town of the State of Colorado, with offices at 441 Third Street, Mead, CO 80542 (the "Town") (together, the "Parties"). This Agreement shall be effective as of the date of mutual execution by the Parties ("Effective Date").

WITNESSETH:

WHEREAS, the Town and the Firm are parties to that certain Agreement for Legal Services approved by the Town Board of Trustees ("Town Board") of the Town by Resolution No. 41-R-2018 dated May 14, 2018 ("Prior Agreement"); and

WHEREAS, Marcus McAskin was appointed as the Town Attorney by Resolution No. 40-R-2018 dated April 30, 2018 and reappointed as Town Attorney by Resolution No. 54-R-2020 dated April 27, 2020; and

WHEREAS, the Town desires to continue to retain the Firm to provide legal representation for the Town, and the Firm desires 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 Town and the Firm:

1. APPOINTMENT OF GENERAL LEGAL COUNSEL

- A. The Firm is engaged and appointed as general legal counsel to continue to represent and advise the Town with respect to legal matters referred by the Town to the Firm in accordance with this Agreement. The Parties specifically intend that this Agreement shall replace and supersede the Prior Agreement in its entirety as of the Effective Date.
- B. Marcus McAskin is hereby designated and appointed as the Town Attorney for the Town of Mead and Kathie Guckenberger is designated and appointed as the Deputy Town Attorney for the Town. The Firm may change the designation of the attorney to serve as the Town Attorney only with the express written consent of the Town. The Firm may represent to third parties and identify in Firm advertising and other Firm sponsored materials that the Firm serves or represents the Town as the Town Attorney unless the Town specifically directs the Firm not to make such representation on a particular matter or to a particular party.
- C. The Town Attorney and the Firm will work cooperatively and in concert with other Town-appointed attorneys who may be appointed by the Town Board to represent the Town 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 Town Attorney and provide legal services to the Town as deemed appropriate by the Town Attorney, and such additional attorneys may be deemed “Assistant Town Attorneys” for such purposes. The Town shall retain the right to reasonably reject the assignment of any Firm-selected Assistant Town Attorney.
- E. The Town authorizes the Firm's attorneys to execute documents connected with the representation of the Town, including pleadings, applications, protests, contracts, commercial papers, settlement agreements and releases, verifications, dismissals, orders, and all other documents, and to represent the Town in matters associated with providing legal services to the Town.

2. SCOPE OF LEGAL SERVICES

- A. The Firm shall provide to and coordinate for the Town all usual and customary legal services authorized to and provided by a Town Attorney or Town Attorney's Office for comparable towns/cities that engage a law firm on a contract basis for general legal services (“General Legal Services”). The General Legal Services shall include, but not be limited to:
 - i. Representing the Town Board, the Town staff and the various Boards and Commissions of the Town, as may be created by Town Board;
 - 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 Town;
 - iv. Representing the Town in judicial and appropriate administrative proceedings;
 - v. Advising the Town on current municipal laws affecting the Town and changes or developments therein; and
 - vi. Providing advice and topical seminars to the Town Board and Town staff on a periodic basis.
- B. The Firm shall provide services outside the scope of General Legal Services only upon pre-authorization from the Town Manager or Mayor. Legal services excluded from General Legal Services include:
 - i. Planning/land development legal review for which the Town will receive reimbursement from developers or applicants;
 - ii. Litigation; and
 - iii. Specialized legal services such as eminent domain.
- C. The Firm shall provide for support by any para-professional personnel in its representation of the Town as deemed necessary and cost effective by the Town Attorney.
- D. The Town reserves the right to engage special legal counsel on any matter

deemed appropriate by the Town, following consultation with the Firm, to advise the Town or to assist the Firm.

- E. 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 Town or assist the Firm when it deems reasonable and in the best interest of the Town and in cases of conflict of interest by the Firm. The Firm may also recommend hiring special legal counsel to advise the Town or provide second opinions on matters of extraordinary importance to the Town, including matters involving complex litigation or a substantial financial or other impact on the Town or its residents, considering the Town's budget as a whole, or considering Town functions or programs as a whole, when such matters of extraordinary importance also involve legal uncertainties or complexities.
- F. Any attorneys who are not employed by the Firm, but who are employed by or retained by the Town to perform legal representation or to assist such employed or retained representatives, shall be under the general coordination of the Town Attorney although such non-Firm attorneys shall contract directly with the Town 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 Town understands and recognizes that unanticipated conflicts may arise that could impair the ability of the Town Attorney and the Firm to represent the Town on specific legal matters. In such event, the Town Attorney shall comply with the requirements of the Colorado Rules of Professional Responsibility in addressing such conflict with the Town. The Parties understand that the Town is not obligated to waive any conflict in order to permit the Town Attorney to represent the Town.

3. COMPENSATION

- A. Commencing on May 1, 2020, the Town shall compensate the Firm at a base rate of Fourteen Thousand Five Hundred Dollars (\$14,500.00) per calendar month for General Legal Services ("Base Amount"), prorated for any partial months of service. Such monthly compensation represents an approximate total hourly commitment of between seventy (70) to eighty-five (85) hours each calendar month for the Town Attorney and other Firm attorneys. For services performed outside the scope of General Legal Services, the Town shall pay the Firm for such legal services at the Firm's then standard hourly billing rates, subject to pre-authorization as set forth in Section 2(B) above. Legal services pertaining to specific planning and land development applications for which the Town passes through its consultant and legal review fees to an applicant/developer for payment, are charged at different billing rates as identified in the Firm's 2020 billing rates, attached as **Exhibit A**, and are not included in the Base Amount.
- B. In addition to the Base Amount, the Town shall compensate the Firm for out-of-pocket fees and costs incurred on the Town's behalf, including but not limited to database access charges for electronic legal research, court filing fees, service of

process, expert witness fees (only as pre-authorized by the Town), 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 Town at the Firm's cost without mark-up.

- C. In addition to the Base Amount, the Town shall compensate the Firm for mileage expenses for personal use of private vehicles used by the Town Attorney, other Firm attorneys and paralegals for travel incurred in the direct and exclusive performance of services for the Town. Mileage shall be charged at the Firm's standard mileage rate (not to exceed U.S. Internal Revenue Service published business travel mileage allowance).
- D. The Firm shall submit monthly invoices to the Town for General Legal Services in the Base Amount and for any additional legal services performed outside the scope of General Legal Services, plus any fees and costs incurred as specified in Section 3(A), 3(B) and 3(C) above.
- E. The Town shall pay all undisputed invoices submitted by the Firm within thirty (30) days of receipt of invoice.
- F. The Firm shall maintain the Base Amount and other billing rates set forth in this Agreement without increase until December 31, 2020. Commencing January 1, 2021, the Firm may increase the Base Amount and its hourly billing rates by no more than five percent (5%) annually and will inform the Town of any proposed rate changes at least thirty (30) days in advance of implementing any rate increase.
- G. The Town 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 markup;
 - 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, mobile phone and smartphones;
 - 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 Town in accordance with the Firm's standard policies;
 - ix. Newspapers and professional periodicals;

- x. Postage for regular mail delivery by United States Postal Service except for mass mailings (with prior Town Manager approval) and special, expedited, or overnight delivery services, which may be charged at cost;
- xi. Office supplies used by the Town 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
- xii. 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 return outdated files to the Town for storage.

4. AVAILABILITY

- A. The Town Attorney shall routinely attend regular Town Board meetings and be available to provide legal services for the Town Board. Upon reasonable notice provided, the Town Attorney will attend Town Board special meetings, study sessions, Board retreats, and other Town business meetings as requested by the Mayor, Town Manager or Town Board.
- B. The Town Attorney shall be available to render the services required hereunder on an "on call" basis, and when necessary shall cause any Assistant Town Attorneys to be available by appointment for consultation with Town representatives.
- C. The Firm shall assign one or more Assistant Town Attorneys to be available to render the services required of the Town Attorney hereunder on an "on call" basis whenever the Town 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 Town Attorney.

5. TOWN DESIGNATED REPRESENTATIVE

In the interest of budget management, the Town Board hereby designates the Mayor and Town Manager to serve as the primary contacts to the Town Attorney outside of the regular Town Board 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.

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 Town 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 the Effective Date 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 Town.

- B. The Parties understand and agree that the compensation to be provided by the Town pursuant to this Agreement is subject to annual appropriation by the Town. Although the Parties recognize that the Town may effectively terminate this Agreement through a refusal to appropriate funds for a given fiscal year, the Town 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 Town, the Firm shall not accept work on behalf of any client that will create a conflict or the potential for a conflict with the Town.

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 Town 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 Town 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 Town 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 Town in accordance with this policy.
- C. Document Ownership. Files maintained by the Firm as the result of the performance of services for the Town shall be the property of the Town. Upon termination of this Agreement, the Firm shall deliver such files to the Town.
- 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 during an investigation pursuant to C.R.S. § 8- 17.5-102 (5).

[signature page follows]

TOWN OF MEAD, a statutory town of the
State of Colorado

Colleen G. Whitlow

Colleen G. Whitlow, Mayor

Date: April 27, 2020

ATTEST:

Mary E. Strutt

Mary E. Strutt, MMC, Town Clerk



MICHOW COX & MCASKIN LLP

Marcus McAskin

Marcus McAskin

EXHIBIT A

ATTORNEY RATES PER HOUR FOR LEGAL SERVICES

Partner	\$ 205.00
Senior Associate/Of Counsel	\$ 190.00
Associate	\$ 175.00
Paralegal/Research Professional	\$ 100.00

For development/land use applications for which the Town passes through consultant and legal review fees to the applicant/developer for payment, the Firm charges the following hourly billing rates:

Partner:	\$255
Senior Associate/Of Counsel	\$250
Associate:	\$205

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:

While 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