

MUNICIPAL SERVICES AND CONSULTING AGREEMENT

THIS MUNICIPAL SERVICES AND CONSULTING AGREEMENT (“Agreement”) is made by and between the **City of Grand Junction**, a Colorado municipal corporation with a principal place of business at 250 N. 5th Street, Grand Junction, CO 81501 (hereinafter “City”), and The Circuit Clerk, LLC, a limited liability corporation with a principal place of business at 18521 Highway 145, Dolores, Colorado (hereinafter “Contractor”), with an effective date of November 16, 2020. The City and the Contractor may be referred to collectively as “Parties” or “the Parties.”

For the purposes of establishing the relative rights, interests, duties, and obligations of the parties, and for valuable consideration, the adequacy of which is acknowledged by the parties, the following agreements and understandings are made:

ARTICLE 1 SERVICES AND SCHEDULE

1.01 Scope of Services. Contractor shall provide the Services described in Appendix A (attached hereto and identified as “Services” therein) in accordance with all applicable specifications and minimum standards. The Services of the Contractor shall be under the direction of the Project Manager (“Project Manager” as identified in Appendix A) designated to act as the City’s representative during the performance of this Agreement.

1.02 Schedule. Contractor shall provide the Services described in Appendix A hereto in a timely manner and in accordance with the schedule set forth in Appendix A (identified as “Schedule” therein).

ARTICLE 2 COMPENSATION

2.01 Fee. City shall pay Contractor the Fee described in Appendix A (identified as “Fee” therein) for Services identified pursuant to this Agreement. City shall pay the fee to Contractor as an entity and not to any individual owner, employee or agent of Contractor. The Contractor is not an employee and as such the City shall not pay Contractor a wage or salary.

2.02 Payment and Late Fees.

- a. Contractor shall submit an invoice for the Services provided and any pre-authorized expense reimbursement not later than the last day of the calendar month following the calendar month in which the services were provided or the expense incurred. Unless reasonably disputed the City shall pay such invoices within fourteen (14) days of receipt thereof (“Due Date”).
- b. If payment is not paid by the Due Date, City shall pay an additional late charge equal to ten percent (10%) of the past due amount.

2.03 Billing Records and Audits. Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the services for at least ninety (90) days

after termination of this Agreement. City shall have access to such books, records, and documents for the purpose of inspection or audit during normal business hours upon five (5) days written notice.

2.04 Non-Appropriation. All fees or payments contemplated by this Agreement are subject to annual appropriation by the City. The City is not obligated to appropriate funds or make payments in future years absent the appropriation of funds. In the event funds are not appropriated, this Agreement shall terminate on the last day of the fiscal year in which appropriations were made.

ARTICLE 3 LIABILITY FOR COSTS AND EXPENSES

3.01 Costs and Expenses. Except for those costs expressly identified as "City Costs" in Appendix A hereto, Contractor shall bear all overhead costs, out-of-pocket expenses and other costs of providing the Services, including but not limited to costs of labor, equipment, maintenance, supplies, tools, travel, meals, fees, fines, licenses, bonds, taxes, insurance, and all other costs of doing business.

ARTICLE 4 RELATIONSHIP OF THE PARTIES

4.01 Status. Contractor's relationship with City shall be solely that of independent contractor and shall not be that of employee, partner or joint venturer. The Contractor shall not be supervised by any official of the City, nor shall the Contractor exercise supervision over any employee or official of the City. Contractor shall not represent itself as an employee or agent of the City in any capacity.

4.02 Independence. Contractor shall determine the means and methods of performing the Services, and City shall have no right to do so. City may provide specifications or minimum standards for the final product or deliverables but shall not oversee the performance of the Services or give instructions in how to perform the Services. City shall not dictate the time of performance, but may establish a completion schedule. City shall not provide training to Contractor in how to perform the Services but may provide reasonable orientation to familiarize Contractor with City's operations, facilities, equipment (including software and information technology systems) and personnel. City shall not require Contractor to work exclusively for City, and Contractor shall retain the right to provide services to others during the term of this Agreement, subject to Section 7.03. City shall not combine its business operations in any way with Contractor's business but shall instead maintain such operations as separate and distinct.

4.03 Tools, Equipment, Materials and Supplies. Contractor shall provide its own tools, equipment, materials, and supplies necessary to perform the Services.

4.04 Income Taxes and Withholdings. City shall not withhold from Contractor's compensation any amounts for taxes of any kind. **Contractor is obligated to pay federal and state income taxes on any monies paid pursuant to this Agreement.** Contractor is responsible for payment of its own FICA and Social Security benefits with respect to this Agreement.

4.05 No Benefits. City shall not provide any employment benefits to Contractor or Contractor's personnel. Contractor and its personnel are not entitled to health insurance benefits, unemployment insurance benefits or workers' compensation benefits unless such benefits are provided by Contractor or some other entity other than City.

ARTICLE 5 MISCELLANEOUS OBLIGATIONS

5.01 Permits and Licenses. Contractor shall be solely responsible for compliance with all federal, state and local laws regarding business permits and licenses that may be needed to provide any of the Services under this Agreement.

5.02 Sales and Use Tax. The City is exempt from payment of Colorado State Sales and Use Taxes, including services performed on behalf of the City. The City will execute an exemption certificate if requested and submitted by Contractor. The Contractor is not exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Contractor authorized to use the City's tax-exempt number in securing such materials.

ARTICLE 6 RESTRICTIONS

6.01 No Authority to Bind City. Contractor shall have no authority to speak for City or bind City in any way unless expressly granted such authority in writing.

6.02 Confidentiality. In providing the Services, Contractor may have access to confidential and proprietary information or materials of City, including, but not limited to technical data; procedures; business and financial data and information; confidential bid information; confidential application information; voter information; legally privileged information; and other information not generally known to the public ("Confidential Information"). Contractor acknowledges and agrees that all such Confidential Information is a valuable asset of City. Contractor shall not, directly or indirectly use or disclose any Confidential Information to any third parties except as authorized by law or as necessary to perform the duties pursuant to this Agreement. Contractor shall return all Confidential Information and copies thereof (in paper and electronic form) to City upon request or upon termination of this Agreement or within thirty (30) days of the completion of Services, whichever is earlier.

6.03 Conflict of Interest. Contractor shall not engage in work during the term of this Agreement for any entity that presents a conflict of interest with Contractor's duties to City. Contractor has been selected based on Contractor's knowledge and expertise in the subject matter, professorial experience, and positions. Contractor shall exercise independent professional judgment in performing the Services consistent with the terms of this Agreement and the description of Services contained in Appendix A.

If, in Contractor's reasonable judgment, Contractor is unable to determine if a conflict exists, lacks information sufficient to determine the existence of a conflict of interests, or seeks a waiver of a conflict of interests with respect to a prospective client, then prior to accepting such work, Contractor shall notify the City in writing, in a manner consistent with Section 9.06, of the

prospective business association, interest or other circumstance which may pose a conflict such that it could influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. The notification shall identify and describe the potential conflict and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict. The City agrees to respond to the Contractor of its opinion within 14 days of receipt of notification by the Contractor. The City shall state in the response its opinion and the basis thereof as to whether the prospective business association, interest or circumstance would or would not constitute a conflict of interest by the Contractor, or if a waiver of the conflict is being granted by City. Failure to respond within 14 days shall constitute a waiver of any potential conflict. Contractor may rely upon a representation of the City that a conflict of interest does not exist in deciding whether to provide services to another entity or client.

6.04 Gifts. Contractor shall not accept gifts or anything else of value from City customers or vendors having a pecuniary interest in the Services provided by Contractor.

6.05 Personnel. If necessary, Contractor shall secure at its own expense all necessary personnel required to perform the Services pursuant to this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with, the City.

ARTICLE 7 TERMINATION

7.01 Duration of Agreement. This Agreement shall terminate by expiration on December 31, 2022 ("Expiration Date"), unless earlier terminated as provided herein or otherwise extended through modification or amendment as provided herein. Sections 6.01 and 6.02 shall survive any termination of this Agreement.

7.02 Termination for Cause. Either party may terminate this Agreement with cause upon written notice to the other party. Cause shall include but not be limited to: (a) any material breach of this Agreement that is not cured within fourteen (14) calendar days after written notice of such breach from the non-breaching party is received; or (b) the City's failure to pay invoices within sixty (60) days of the Due Date.

Upon termination of this Agreement for cause by City, Contractor's liability to the City shall be limited to costs incurred for Services paid for but not provided or received as of the effective date of termination.

Upon termination of this Agreement for cause by Contractor, City shall be liable to the Contractor for unpaid fees and costs due to Contractor through the effective date of termination, as well as the remaining unpaid value of the contract.

7.03 Termination without Cause. This agreement may be terminated without cause by either upon thirty (30) days written notice to the other party. Upon termination of this Agreement without cause, the Contractor shall be paid for services rendered through the date of termination and 50% of the remaining contract value. Upon notice of termination without cause, and unless otherwise directed by the City, the Contractor shall:

- a. Stop work on the date and to the extent specified;
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work;
- c. Transfer all work in process, completed work, and other material related to the terminated work to the City;
- d. Continue and complete all Services that have not been terminated.

ARTICLE 8 COMPLIANCE WITH C.R.S. § 8-17.5-102

8.01 Contractor certifies that at the time of this Certification, it does not knowingly employ or contract with any illegal alien who will perform work under this Agreement and will participate in the e-verify program or the Colorado Department of Labor and Employment Program ("department program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

8.2 By signing this Agreement, the Contractor certifies it shall not (a) knowingly employ or contract with an illegal alien to perform work under this contract for services, or (b) enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the contract for services.

8.3 Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the e-verify program or the department program.

8.4 Contractor is prohibited from using the e-verify program or the department program procedures to undertake preemployment screening of job applicants with public contract for services is being performed.

8.05 If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

- a. notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

8.6 The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to C.R.S. § 8-17.5-102(5).

8.7 By signing this Agreement, the Contractor certifies that it shall in all respects comply with the provisions of C.R.S. § 8-17.5-101, *et seq.*

ARTICLE 9 GENERAL PROVISIONS

9.01 **Entire Agreement.** This Agreement, and its Appendix (attached hereto and incorporated herein), is the entire agreement between the parties regarding the matters addressed herein and supersedes any and all prior agreements, proposals or negotiations. Each party acknowledges that it has neither received nor relied upon any representations, inducements, promises or agreements that are not embodied herein.

9.02 **Modifications and Amendments.** Except as set forth above, this Agreement shall not be modified or revoked without the written consent of both parties. Any modifications or amendments to this Agreement must be in writing and executed by the City and Contractor.

9.03 **Assignment of Agreement.** This Agreement may not be assigned, sublet, conveyed, or transferred, in whole or in part, by any party without the prior written consent of the all the parties.

9.04 **Waiver.** The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach hereof.

9.05 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

9.06 **Notices.** Any notice to be given hereunder shall be in writing and delivered by (a) personal delivery, (b) registered or certified mail, postage prepaid with return receipt requested, or (c) electronic mail ("email"). Notice to a party shall be addressed to the party's address or email shown below, which may be changed by notice to the other party. Notices delivered personally will be deemed communicated as of actual receipt; notices delivered by email will be deemed communicated the day after the email is sent; mailed notices will be deemed communicated as of two days after postmark.

For Contractor:

Laura Bauer
The Circuit Clerk, LLC
18521 Highway 145
Dolores, CO 81323
Phone: 303.875.4783
Email: thecircuitclerk@gmail.com

For the City:

Wanda Winkelmann, City Clerk
City of Grand Junction
250 N. 5th St.
Grand Junction, CO 81501
Phone: 970.244.1509
Email: wandaw@gjcity.org

9.07 Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

9.08 Acknowledgement of Open Records Act – Public Document. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* (the “Act”), and as such, this Agreement and any exhibits or attachments hereto, and any documents or reports produced pursuant to this Agreement, may be subject to public disclosure under the Act.

9.09 Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 21st Judicial District in Mesa County, Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, each party shall bear its own court costs and attorney fees.

9.10 Counterparts. This Agreement may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Agreement. Additionally, a copy of an executed original Agreement signed by a party hereto and transmitted by facsimile or electronic mail shall be deemed an original, and any party hereto is entitled to rely on the validity, authenticity, and authority of an original transmitted by facsimile or electronic mail.

9.11 Authority. By signature below, the undersigned acknowledge that this Agreement has been read, the conditions set forth above agreed upon, and that the undersigned has authority to enter into this Agreement on behalf of the party indicated.

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IN WITNESS WHEREOF, the parties have executed, acknowledged, and delivered this Agreement on the date specified above.

THE CIRCUIT CLERK, LLC

Laura Bauer
Authorized Signature

Laura Bauer
Printed Signature

Managing member
Title

The City of Grand Junction, Colorado

Approved as to Substance:

Greg Caton
Greg Caton, City Manager

Date: November 16, 2020

Approved as to Legal Form:

[Signature]
City Attorney

APPENDIX A

SERVICES: Assisting and advising City Staff in Developing a Comprehensive Marijuana Licensing Program

SERVICES INCLUDE:

- Attending program development meetings as requested/required by City
- Developing training materials in marijuana licensing as requested by City
- Develop licensing forms as requested by City
- Develop licensing instructional material for licensing applicants and staff as requested by City
- Develop and participate in the implementation of licensing related application process(es) as requested by City

PROJECT MANAGER: Wanda Winkelmann, City Clerk

SCHEDULE: To be determined between Contractor and Project Manager.

FEE: \$80 per hour when working remotely and \$700 per day, no per diem, onsite

Fee Budget:	\$5,000.00
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Travel and Expenses	n/a
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Total Contract Price	\$5,000.00
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City Costs (to be paid by City): Up to but not exceeding, \$5,000.00, limited to:

Travel and Expenses: Consistent with expenses to be paid based upon submission and verification of receipts or other documentation of allowable expenses as limited by and in accordance with the Agreement, Section 3.01.

ADDITIONAL TERMS AND CONDITIONS: Not applicable.