

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 January 3, 2022. The City and the Contractor may be referred to individually as a “Party” or 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, by and through the personal service of Laura Bauer, its sole member, shall provide the Services described in Appendix A (attached hereto and identified as “Services” therein) in accordance with all applicable law and other specifications and minimum standards as required of a City Clerk with the MMC designation. The Services of the Contractor shall be under the direction of the City Manager Greg Caton (“City Manager”) who shall be the City’s representative during the Contractor’s delivery and performance of Services pursuant to 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 and Housing Allowance as described in Appendix A (collectively “Compensation”) for Services 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 its Fee 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 the Contractor within fourteen (14) days of receipt of invoices (“Due Date”).
- b. Unless reasonably disputed, any payment not made by the Due Date shall incur a late charge of ten percent (10%) of the past due amount.

2.03 Billing Records and Audits. For at least ninety (90) days after termination of this Agreement, Contractor shall maintain records to justify all charges, expenses, and costs incurred in performing the Services. The 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. The Compensation contemplated by this Agreement is 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 an appropriation(s) is(were) made.

ARTICLE 3 LIABILITY FOR COSTS AND EXPENSES

3.01 Costs and Expenses. Except for those costs and expenses expressly identified 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, cellular telephone equipment and service and all other costs of doing business and performing the Services for the City.

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 report to the City Manager but will not be directly supervised by him or any other official of the City.

4.02 Independence. The Contractor is an experienced City Clerk and accordingly the 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. For the term of this Agreement the Contractor will work exclusively for the City.

4.03 Tools, Equipment, Materials and Supplies. Except for cellular telephone equipment and service, the City will provide the tools, equipment, materials, and supplies necessary for the Contractor 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.** As applicable Contractor is responsible for payment of FICA and Social Security benefits for its employee(s) and/or member(s) 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 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. During the term of this Agreement the Contractor has authority to speak for the City as the City Clerk in and for the City of Grand Junction as those duties are defined and described in Appendix, the Grand Junction Municipal Code and the City Charter. The Contractor may not bind the City in any way unless expressly granted such authority in writing and after consultation with the City Manager and/or City Attorney.

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, professional 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.

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 March 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. After the initial term, the Parties may mutually agree to renew the Agreement on a month-to-month basis or other term.

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 Party 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. 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 matters 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.

8.02 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.

8.03 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.

8.04 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.

8.06 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).

8.07 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 Appendix A 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 other Party.

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:

Greg Caton, Manager
City of Grand Junction
250 N. 5th St.
Grand Junction, CO 81501
Phone: 970.244.1508
Email: gregc@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 arising out of or under this Agreement, each party shall bear its own court costs and attorney fees.

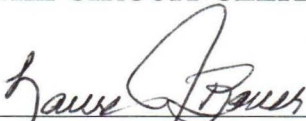
9.10 Counterparts. This Agreement may be executed in counterpart originals, each of which shall be deemed an original, and each of which shall be deemed to constitute one and the same Agreement. Additionally, a copy of an executed original Agreement signed by a Party hereto and transmitted by facsimile 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



Authorized Signature

LAURA J. BAUER

Printed Signature


OWNER/MANAGING MEMBER

Title

1-4-22

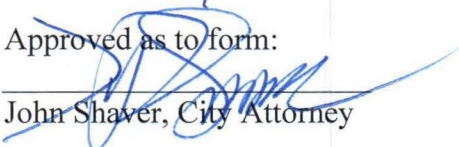
Date:

The City of Grand Junction, Colorado



Greg Caton, City Manager

Date: *1/4/2022*

Approved as to form:


John Shaver, City Attorney

APPENDIX A

SERVICES: Provide Services as an Interim City Clerk reporting to City Manager.

SERVICES INCLUDE:

- Serve as Interim Clerk to the City Council, Secretary to the municipal corporation, Secretary to the Board of Directors of the Dos Rios General Improvement District, and member of the Director Team all as required by law and the City Charter
- Administer, prepare, and coordinate all City elections in accordance with federal, state, and local laws.
- Coordinate and prepare agendas for all City Council meetings and workshops.
- Record and maintain proceedings (minutes) of all regular City Council meetings; coordinate the broadcasting and streaming of City Council Meetings. Oversee the collection, retention and dissemination of records and documents.
- Maintain custody of City Seal and execute official City documents.
- Maintain records such as ordinances and resolutions; mail or publish all official and legal notices.
- Oversee the liquor licensing and cannabis licensing programs.
- Provide support as needed to City’s Liquor Licensing Authority, Cannabis Licensing Authority, and other committees or task forces.
- Coordinate the recruitment, application and appointment processes for the City’s boards and commissions.
- Respond to inquiries for information about City government operations and City Council legislation and decisions.

SCHEDULE

To be determined between Contractor and City Manager.

Services under this Agreement shall commence January 3, 2022 and expire on March 31, 2022 unless earlier terminated as provided herein or otherwise extended through modification or amendment. After the initial term, the Parties may mutually agree to renew the Agreement on a month-to-month basis or other term.

COMPENSATION

\$750 per day, no per diem (Fee) and \$500 per month (Housing Allowance).
Fee is paid for each day Services are provided.
Housing Allowance is paid on the 1st day of each month.