

## SERVICES AND CONSULTING AGREEMENT

**THIS 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 ("City"), and Orion Investigations, LLC, a limited liability corporation with a principal place of business at 374 Caprock Drive, Grand Junction, Colorado (r "Contractor"), with an effective date of the Agreement being 2/14, 2023. 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 John W. Piatanesi, for and on behalf of the Contractor, shall provide the Services described in Appendix A (attached hereto and identified as "Services" therein) in accordance with applicable law and other specifications and minimum standards as required of an investigator commonly held in this field. The Services of the Contractor shall be performed under the general direction of the Chief of Police Matt Smith ("Chief"), or the Chief's designee, 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 timely provide the Services described in Appendix A in accordance with the schedule set forth therein.

### ARTICLE 2 – COMPENSATION

**2.01 Fee.** City shall pay Contractor a rate of \$125.00 per hour for Services rendered under this Agreement, billed in ¼ hour increments ("Fee"). Additionally, City shall pay Contractor for mileage of \$0.65 per mile for travel outside of Mesa County, Colorado, and any additional reasonable costs, so long as the additional expenses are necessary to complete the Services to be provided under this Agreement. The Contractor agrees to a maximum fee of \$25,000.00 ("Maximum Fee") for all Services rendered, which include the hourly rate and any costs or expenses incurred in the course of completing Services. Contractor may exceed the Maximum Fee only with prior written consent of the Chief in an amount mutually agreed to by the City and the Contractor. 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. The Contractor shall not require a retainer.

#### **2.02 Payment and Late Fees.**

- a. Contractor shall submit invoice(s) for payment of Fee(s) for the Services performed not later than the last day of the calendar month following the calendar month in which the

Services were provided, or the expense incurred. The invoice(s) shall describe the Services and any cost reimbursement. Unless reasonably disputed the City shall pay the Contractor within fourteen (14) days of receipt of invoice(s) ("Due Date").

- b. Unless reasonably disputed, any payment not made by the Due Date shall incur a late charge of six percent (6%) of the past due amount.

**2.03 Billing Records and Audits.** For at least one hundred eighty (180) days after termination of this Agreement, Contractor shall maintain records of 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.** Payment of Fees contemplated by this Agreement is subject to appropriation by the City. The City is not obligated to appropriate funds or make payments in future years absent annual appropriation. In the event funds are not appropriated, this Agreement shall terminate.

### ARTICLE 3 – LIABILITY FOR COSTS AND EXPENSES

**3.01 Costs and Expenses.** Except for those costs and expenses expressly identified in herein, 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, 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 Chief or designee but will not be directly supervised by him or any other official of the City.

**4.02 Independence.** The Contractor is an experienced investigator 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, at upon execution of the Agreement and at the request of the Contractor.

**4.03 Tools, Equipment, Materials and Supplies.** The Contractor shall supply all tools, equipment, materials, and supplies necessary to accomplish Services. City will provide the Contractor with workspace when necessary to complete 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 applicable federal, state and local laws regarding business permits, licenses, and compliance with any other laws or regulations pertaining skills, qualification, experience and training that may be necessary or required for the Consultant to provide Services to the City under this Agreement.

## ARTICLE 6 - RESTRICTIONS

**6.01 No Authority to Bind City.** During the term of this Agreement the Contractor has no authority to speak for the City other than the fact that Contractor has been hired to complete Services pursuant to this Agreement. The Contractor may not bind the City in any way unless expressly granted such authority in writing and after consultation with the Chief 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; personnel information; confidential application information; legally privileged information; criminal justice 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, work product, or any materials gained through providing Services ("Confidential Material") to any third parties except as authorized by law or as necessary to perform the Services pursuant to this Agreement, to include necessary Testimony to any competent Court, or state or federal agency. Contractor shall not identify individual employees' identities to others involved in the investigation and will only report the identities of employees in a final report or to the Chief or Police or designee upon request.

**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, and professional experience. Contractor shall exercise independent professional judgment in performing the Services consistent with the terms of this Agreement.

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 8.06, 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 employees, agents, 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 upon delivery and acceptance by the City of the final product called for in Appendix A and payment for Services, unless earlier terminated as provided herein or otherwise extended through modification or amendment as provided herein. Sections 6.01 and 6.02 shall survive termination of this Agreement.

**7.02 Termination.** . Either party may terminate this Agreement with or without cause upon written notice to the other party.

Termination for Cause may 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 keeping and maintaining Confidential Materials and work product subject to Section 6.02 and to deliver those materials to the City or another entity of the City's choosing.

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.

Termination without cause may occur 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. Safely maintain all work in process, completed work, Confidential Materials, and other material related to the terminated work to the City;
- d. At the City's direction, transfer all completed work, Confidential Materials, and other work product and material related to Services to either the City or an entity of the City's choosing.

## ARTICLE 8 - GENERAL PROVISIONS

**8.01 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 representation(s), inducement(s), promise(s) or agreement(s) that are not embodied herein.

**8.02 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.

**8.03 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.

**8.04 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.

**8.05 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.

**8.06 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:  
John W. Piatanesi  
c/o Orion Investigations, LLC  
P.O. Box 2205  
Grand Junction, CO 81502  
Phone: 970-778-5030  
Email: [orion.investigations.llc@gmail.com](mailto:orion.investigations.llc@gmail.com)

For the City:  
Matt Smith, Chief of Police  
c/o Grand Junction Police Department  
555 Ute Ave.  
Grand Junction, CO 81501  
Phone: 970-549-5000  
Email: [matts@gjcity.org](mailto:matts@gjcity.org)

**8.07 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.*

**8.08 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.

**8.09 Governing Law and Venue; Recovery of Costs.** This Agreement shall be governed by Colorado law. Venue for any action arising out of or under this Agreement 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.


**8.10 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.


**8.11 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.


**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

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

**Orion Investigation, LLC:**

  
\_\_\_\_\_  
John W. Piatanesi

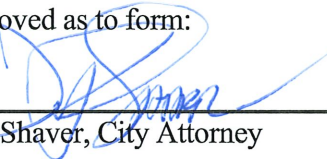
  
\_\_\_\_\_  
Printed Signature

  
\_\_\_\_\_  
Date

**The City of Grand Junction:**

  
\_\_\_\_\_  
Matt Smith, Chief of Police

  
\_\_\_\_\_  
Date

Approved as to form:  
  
\_\_\_\_\_  
John Shaver, City Attorney

**APPENDIX A-  
SERVICES TO BE PERFORMED BY THE CONTRACTOR**

The Contractor has agreed and shall provide to the City certain investigative service (“SERVICES”) which include:

- Conducting an investigation of the work environment and culture of the Grand Junction Regional Communication Center (“GJRCC”)
- By and through offering all employees of the GJRCC an opportunity to be interviewed the Contractor will document employee complaints, causes and concerns with and about job dissatisfaction, scheduling, workload, staffing etc.
- By and through offering all employees of the GJRCC an opportunity to be interviewed the Contractor will document compliments, expressions of approval with and about job satisfaction and/or comments and suggestions for training and improvement.
- Investigate for complaints with the work environment and culture of the GJRCC.
- Review personnel complaints and previous investigations for the previous 5 years.
- Investigate complaints of GJRCC personnel for factual basis, including anonymous complaints.
  - Contractor shall not promise anonymity to anyone interviewed or participates in the investigation, and shall provide a warning to employees interviewed that participation in the investigation will not be anonymous.
- Produce a final report to the Chief of Police containing the following:
  - Summary of reported satisfaction and complaints.
  - Factual basis for the findings reported.
  - Recommendations from GJRCC employees to improve.
  - The final report shall be produced in a document that is delivered to the Chief of Police by methods consistent with Section 8.06.
- Maintain all Confidential Material.

**SCHEDULE:**

Services to begin upon execution of Agreement. The Contractor shall deliver a final report to the Chief of Police on May 1, 2023. Extension of time may be allowed with a written authorization from the Chief of Police.