

**RESOLUTION NO. 23-60**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,  
COLORADO APPROVING AN AMENDED AND RESTATED AGREEMENT FOR  
LEGAL SERVICES OF CITY ATTORNEY WITH MICHOW GUCKENBERGER  
MCASKIN LLP**

WHEREAS, in accordance with Section 8.2 of the Castle Pines Home Rule Charter, the City Council is authorized to appoint a city attorney; and

WHEREAS, Linda Michow, associated with the law firm of Michow Cox & McAskin LLP, has served as the City Attorney for the City of Castle Pines since 2009; and

WHEREAS, the City and Michow Cox & McAskin LLP entered into that certain Agreement for Legal Services of City Attorney dated February 23, 2016 (“Existing Agreement”), replacing the 2009 legal services agreement with Widner Michow & Cox, LLP dated February 11, 2009; and

WHEREAS, effective October 1, 2023, Michow Cox & McAskin LLP began doing business under a new name, to wit: Michow Guckenberger McAskin LLP (“Firm”); and

WHEREAS, the City wishes to continue to retain the Firm for the purpose of providing legal representation for the City, and the Firm wishes to continue to provide such representation; and

WHEREAS, the City and Firm desire to amend the Existing Agreement to reflect the Firm’s new name, new business location, changes in compensation and other minor revisions to supersede and replace the Existing Agreement with an effective date of January 1, 2024.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES THAT:**

Section 1. The City Council hereby approves an Amended and Restated Agreement for Legal Services of City Attorney with Michow Guckenberger McAskin, LLP, a copy of which is attached to this Resolution and on file, following execution by the parties, in the City Clerk’s Office. Said Amended and Restated Agreement shall supersede and replace the Existing Agreement, effective January 1, 2024.

Section 2. The Mayor is hereby authorized to execute the Amended and Restated Agreement for Legal Services of City Attorney on behalf of the City Council.

Section 3. This Resolution is effective upon adoption.

**INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 7 IN FAVOR AND  
0 AGAINST THIS 12th DAY OF DECEMBER 2023.**



  
Tracy Engerman (Dec 27, 2023 22:02 MST)

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Tracy Engerman, Mayor

**ATTEST:**



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Tobi Duffey, MMC, City Clerk

**APPROVED AS TO FORM:**



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Linda C. Michow, City Attorney

**EXHIBIT A**

**AMENDED AND RESTATED AGREEMENT FOR LEGAL SERVICES OF CITY  
ATTORNEY**

**AMENDED AND RESTATED AGREEMENT FOR LEGAL SERVICES  
OF CITY ATTORNEY**

**THIS AMENDED AND RESTATED AGREEMENT** is made effective as of the 1<sup>st</sup> day of January, 2024 between **MICHOW GUCKENBERGER MCASKIN LLP**, a Colorado limited liability partnership with its principal place of business at 5299 DTC Boulevard, Suite 300, Greenwood Village, Colorado 80111 (the “Firm”), and the **CITY OF CASTLE PINES, COLORADO**, a home rule municipal corporation of the State of Colorado, with offices at 7437 Village Square Drive, Suite 200, Castle Pines, CO 80108. Collectively, the Firm and the City shall be referred to herein individually as a “Party” and collectively as the “Parties.”

**WITNESSETH:**

WHEREAS, the City Council of the City of Castle Pines (“City”) retained the law firm of Michow Cox & McAskin LLP on February 23, 2016 for the purpose of providing legal representation for the City, and appointed Linda Michow as the City Attorney; and

WHEREAS, the Parties entered into that certain Agreement for Legal Services of City Attorney dated February 23, 2016 (“Original Agreement”); and

WHEREAS, effective October 1, 2023, Michow Cox & McAskin LLP began doing business under a new name, to wit: Michow Guckenberger McAskin LLP; and

WHEREAS, the City wishes to continue to retain the Firm for the purpose of providing legal representation for the City, and the Firm wishes to continue to provide such representation; and

WHEREAS, the Parties intend this Amended and Restated Agreement for Legal Services of City Attorney (“Agreement”) to supersede and replace the Original Agreement, effective January 1, 2024.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows between the City and the Firm:

**1. APPOINTMENT OF GENERAL LEGAL COUNSEL**

- A. The Firm is engaged and appointed as general legal counsel to represent and advise the City with respect to legal matters referred by the City to the Firm in accordance with this Agreement.
- B. Linda Michow is designated and appointed as the City Attorney for the City of Castle Pines. The Firm may change the designation of the attorney to serve as the City Attorney only with the express consent of the City. The Firm may represent to third parties and identify in Firm advertising and other Firm-sponsored materials that the Firm serves or represents the City as the City Attorney unless the City specifically directs the Firm not to make such representation on a particular matter or to a particular party.

- C. The City Attorney and the Firm will work cooperatively and in concert with other City-appointed attorneys who may be appointed by City Council to represent the City 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 City Attorney and provide legal services to the City as deemed appropriate by the City Attorney, and such additional attorneys may be deemed "Assistant City Attorneys" for such purposes. The City shall retain the right to reasonably reject the assignment of any Firm-selected Assistant City Attorney.
- E. The City authorizes the Firm's attorneys to execute documents connected with the representation of the City, including pleadings, applications, protests, contracts, commercial papers, settlement agreements and releases, verifications, dismissals, orders, and all other documents, and to represent the City in matters associated with providing legal services to the City.

## 2. SCOPE OF LEGAL SERVICES

- A. The Firm shall provide to and coordinate for the City all usual and customary legal services authorized to and provided by a City Attorney or City Attorney's Office for comparable cities that engage a law firm on a contract basis for general legal services. The legal services shall include, but not be limited to:
  - i. Representing the City Council, the City staff and the various Boards and Commissions of the City, as may be created by City Council;
  - 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 City;
  - iv. Representing the City in judicial and appropriate administrative proceedings;
  - v. Advising the City on current municipal laws affecting the City and changes or developments therein; and
  - vi. Providing advice and topical seminars to the City Council and City staff on a periodic basis.
- B. The Firm shall provide for support by any para-professional personnel in its representation of the City as deemed necessary and cost effective by the City Attorney.
- C. The City reserves the right to engage special legal counsel on any matter deemed appropriate by the City, following consultation with the Firm, to advise the City or to assist the Firm.
- D. 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 City or assist the Firm when it deems reasonable and in the best interest of the City and in cases of conflict of interest

by the Firm. The Firm may also recommend hiring special legal counsel to advise the City or provide second opinions on matters of extraordinary importance to the City, including matters involving complex litigation or a substantial financial or other impact on the City or its residents, considering the City's budget as a whole, or considering City functions or programs as a whole, when such matters of extraordinary importance also involve legal uncertainties or complexities.

- E. Any attorneys who are not employed by the Firm, but who are employed by or retained by the City to perform legal representation or to assist such employed or retained representatives, shall be under the general coordination of the City Attorney although such non-Firm attorneys shall contract directly with the City 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.
- F. Although the Firm actively seeks to avoid potential for conflicts, the City understands and recognizes that unanticipated conflicts may arise that could impair the ability of the City Attorney and the Firm to represent the City on specific legal matters. In such event, the City Attorney shall comply with the requirements of the Colorado Rules of Professional Conduct in addressing such conflict with the City. The Parties understand that the City is not obligated to waive any conflict in order to permit the City Attorney to represent the City.

### 3. COMPENSATION

The City shall compensate the Firm for the services of the City Attorney and other attorneys and paralegals of the Firm at their standard billing rates, a copy of which is attached to this Agreement as **Exhibit A**. For legal services provided in connection with a land use application (e.g., annexation, zoning, subdivision, special or conditional use permits, variances, right-of-way vacations, and similar land use applications) for which the City is in fact reimbursed by a developer/applicant, the City shall compensate the Firm for services performed at the rates listed in **Exhibit A**. Separate billing invoices shall be established by the Firm for individual land use applications and for such other special matters as deemed necessary by the City in consultation with the Firm.

B. The Firm evaluates its billing rates annually and may adjust the hourly rates for attorneys and other professionals from time to time by providing the City with at least thirty (30) days' prior written notice of any such adjustment. Such written notice shall contain a new **Exhibit A** that will supersede the rates set forth herein as of the effective date of any rate adjustment.

C. The City 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 mark-up;
- ii. Employee benefits;
- iii. Employee insurance, including malpractice insurance;

- iv. Training and continuing legal education of attorneys;
  - 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, telefax, PDAs and mobile telephones;
  - 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 City in accordance with the Firm's standard policies;
  - ix. Telefax expenses except for long-distance telefax charges which may be charged at the Firm's cost;
  - x. Newspapers and professional periodicals;
  - xi. Postage for regular mail delivery by United States Postal Service except for mass mailings (with prior City Manager approval) and special, expedited, or overnight delivery services, which may be charged at cost;
  - xii. Office supplies used by the City 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
  - xiii. Archival storage and retrieval of outdated client files performed in accordance with the Firm's standard client file storage and retention policies; provided, however, that the Firm may return outdated files to the City for storage.
- A. The City shall compensate the Firm for out-of-pocket fees and costs incurred on the City's behalf, including but not limited to filing fees, service of process, expert witness fees (only as pre-authorized by the City), 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 City at the Firm's cost without mark-up.
- B. The City shall compensate the Firm for mileage expenses for personal use of private vehicles used by the City Attorney, other Firm attorneys and paralegals for travel within the Denver metropolitan area incurred in the direct and exclusive performance of services for the City. Mileage shall be charged at the U.S. Internal Revenue Service-issued standard mileage rates.
- C. The Firm shall provide to the City a detailed invoice for all legal services on a monthly basis. Such billings shall separate work and fees, including allocations associated with specific projects for which the City accounts separately. The City shall pay all undisputed billings from the Firm within thirty (30) days of receipt of invoice. If the Client fails to pay any charges within thirty (30) days of the date of the bill, the Firm may elect to stop all work for the Client. The Client's obligation to make prompt payment of all fees and charges does not depend upon achievement of any specific result.

4. AVAILABILITY

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

5. CITY DESIGNATED REPRESENTATIVE

In the interest of budget management, the City Council hereby designates the Mayor and City Manager to serve as the primary contacts to the City Attorney outside of the regular City Council 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 Conduct 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, gender identity, gender expression, ancestry, pregnancy (and related condition), 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 City 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 January 1, 2024 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 City.
- B. The Parties understand and agree that the compensation to be provided by the City pursuant to this Agreement is subject to annual appropriation by the City. Although the Parties recognize that the City may effectively terminate this Agreement through a refusal to appropriate funds for a given fiscal year, the City agrees that its exercise of such authority will be undertaken in good faith and in accordance with the provisions of Section 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 City, the Firm shall not accept work on behalf of any client that will create a conflict or the potential for a conflict with the City.

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 City 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 City 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 Arbitrator 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 Arbitrator 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 City 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's Document Retention Policy is attached to this Agreement as **Exhibit C**. The Firm will conduct its representation of the City in accordance with these policies. If the Firm changes either of these policies, the Firm will notify the City within thirty (30) days after the effective date of such change.
  
- C. Document Ownership. Files maintained by the Firm as the result of the performance of services for the City shall be the property of the City. Upon termination of this Agreement, the Firm shall deliver such files to the City as provided in Section 9.A of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands this \_\_\_\_ day of December, 2023.

**CITY OF CASTLE PINES**

ATTEST:

By: \_\_\_\_\_  
Tobi Duffey, MMC, City Clerk

By: \_\_\_\_\_  
Tracy Engerman, Mayor

**MICHOW GUCKENBERGER MCASKIN LLP**

By: \_\_\_\_\_  
Linda C. Michow, Partner

**EXHIBIT A**

**ATTORNEY RATES PER HOUR FOR MUNICIPAL LEGAL SERVICES**

*Effective January 1, 2024*

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**RATES FOR LEGAL SERVICES**

Partner	\$ 265.00
Of Counsel and Senior Associate	\$ 240.00
Associate	\$ 215.00
Paralegal/Research Professional	\$ 100.00

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

Partner:	\$300.00
Of Counsel and Senior Associate:	\$280.00
Associate:	\$250.00
Paralegal/Research Professional	\$125.00

## EXHIBIT B

### FIRM PRIVACY POLICY NOTICE

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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.

#### **NON-PUBLIC PERSONAL INFORMATION WE COLLECT:**

In the course of 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 Guckenberger McAskin LLP, please be assured that all non-public 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 non-public, 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 non-public 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 Guckenberger McAskin LLP

## EXHIBIT C

### FIRM DOCUMENT RETENTION POLICY

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The Client is advised that the files created and compiled by the Firm for work on Client matters, including notes, correspondence, pleadings, research, and any other documents prepared by the Firm, will not be retained indefinitely. The Firm will notify the Client at least one time per year regarding the conclusion of Client matters, and may elect to provide Client with such notice more frequently (for example, at the time that such matter has concluded). Upon the Client's request, we will return Client files to the Client or its designee once a matter is concluded, so long as the Client has paid all fees and costs owed to the Firm and reasonably necessary to transfer such files. We may retain copies of all or any portion of the Client's file duplicated at our expense. If the Client does not request their files, we will keep the files and information therein for a minimum of thirty days after the conclusion of a matter or termination of representation, after which we may retain, destroy, or otherwise dispose of them as we deem appropriate.

The Firm generally keeps Client records electronically. As a general matter, once documents are part of our electronic records, we will destroy all paper documents provided to us, unless the Client provides express written instructions otherwise. Notwithstanding the foregoing, we will not destroy: (i) original documents entrusted to us for continued representation as part of our services; or (ii) any documents that the Client is obligated by law to retain.