



**TOWN OF MILLIKEN  
TOWN BOARD OF TRUSTEES  
AGENDA MEMORANDUM**

<b>To:</b> Mayor Tokunaga and Town Board of Trustees	<b>Meeting Date:</b>
<b>From:</b> Kent Brown, Town Administrator	Wednesday, February 24, 2016

Agenda Item #	Action:	Discussion:	Information:
	<b>X</b>		
<b>Agenda Title:</b> Approval of Legal Services Agreement			
<b>Attachments:</b> Legal Services Agreement with Michow Cox & McAskin LLP			

**PURPOSE**

The attached legal services agreement with Michow Cox & McAskin LLP ("Agreement") is presented for Town Board consideration and approval on the February 24, 2016 agenda.

**BACKGROUND**

As was presented at the February 10, 2016 Board meeting, Town Attorney Michow advised the Board that the firm Widner Michow & Cox, LLP is realigning into two law firms. Town Attorney Michow will become a part of a firm consisting of Linda Michow, Tim Cox, Marcus McAskin and Kathie Guckenberger to be known as a the firm Michow, Cox & McAskin, LLP. Due to the firm change, a new legal services agreement is presented for Board consideration.

**BUDGET IMPLICATIONS**

n/a.

**RECOMMENDATION**

Staff recommends the Board of Trustees approve the attached legal services agreement with the firm of Michow Cox & McAskin, LLP and authorizes the Mayor to sign the agreement.

**SUGGESTED MOTION**

"I move to approve the Agreement for Legal Services of Town Attorney with Michow Cox & McAskin, LLP and authorize the Mayor to sign the Agreement."

## **AGREEMENT FOR LEGAL SERVICES OF TOWN ATTORNEY**

**THIS AGREEMENT** is made effective as of March 1, 2016, 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 MILLIKEN, COLORADO**, a municipal corporation of the State of Colorado, with offices at 1101 Broad Street, Milliken, Colorado 80543 (the "Town" or "Client").

### **WITNESSETH:**

WHEREAS, the Town previously appointed Linda Michow to serve as Town Attorney through a legal services agreement with Widner Michow & Cox, LLP dated September 1, 2015; and

WHEREAS, Linda Michow is establishing a new firm, joined by Tim Cox, Marcus McAskin and Kathie Guckenberger, to be known as Michow Cox & McAskin, LLP; and

WHEREAS, Linda Michow, through the Firm, desires to continue serving as the Town Attorney; and

WHEREAS, the Town, by and through its Board of Trustees, wishes to retain the Firm to continue providing general legal services to the Town.

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 represent and advise the Town with respect to legal matters referred by the Town to the Firm in accordance with this Agreement.
- B. Linda Michow is hereby designated and appointed as the Town Attorney and Kathie Guckenberger as the Deputy Town Attorney for the Town of Milliken. The Firm may change the designation of the attorney to serve as the Town Attorney only with the express consent of the Town. With the prior written approval 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 for Milliken 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 Town Board to represent the Town on specialized matters.
- D. The Firm may utilize other qualified attorneys and para-professionals of the Firm to assist the Town Attorney and provide legal services to the Town as deemed appropriate by the Town Attorney. The Town shall retain the right to reasonably reject the assignment to perform services for the Town of any Firm attorney or para-professional. The Firm understands and agrees that the Town may

terminate this Agreement at any time and for any reason.

- E. Subject to the prior approval by the Town it 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 the Town Attorney for comparable cities/towns 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 Town Board and the various Boards and Commissions of the Town, as may be created by Town Board;
  - ii. Providing legal advice and services associated with annexation, zoning, land use development, subdivision, and other land planning applications;
  - iii. Providing legal advice and services for the various administrative departments, divisions, and offices of the Town;
  - iv. Providing legal advice and services in support of the functions and operations of contractors of the Town only to the extent such advice or services are not otherwise imposed as a contract obligation of the contractor;
  - v. Preparing or reviewing all ordinances, contracts, bonds and other written instruments as requested by the Town;
  - vi. Representing the Town in judicial and appropriate administrative proceedings;
  - vii. Advising the Town on current municipal laws affecting the Town and changes or developments therein; and
  - viii. Providing advice and topical seminars to the Town Board and Town Staff on a periodic basis.
- B. The Town may authorize the Town Attorney in writing to engage special legal counsel on any matter deemed appropriate by the Town to advise the Town or to assist the Firm.
- C. 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.

- D. Any attorneys who are not employed by the Firm, but who are retained in accordance with paragraph 2(C) to perform legal representation, 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.
- E. 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. The Town shall compensate the Firm for the services of the Town Attorney at a rate of \$185.00 per hour and \$175.00 per hour for the Deputy Town Attorney. Attorney travel time to Milliken shall be billed for one-way only. Other attorneys of the Firm are billed at current rates. The Firm charges \$250.00 per hour for developer pass-through work (i.e., billed through to developers on land use applications) and litigation handled by our Firm. 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 Town in consultation with the Firm. These rates would remain without increase through December 31, 2016, and thereafter, billing rates may increase no more than five percent (5%) per year.
  - i. The Town shall not be required to compensate the Firm for: 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. The Firm shall not be entitled to compensation or reimbursement for:
  - 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, including personal computers, laptops, computer printers, telefax, 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. Large project copying (typically more than 300 pages/project) may be charged to the  
  
Town at a rate of .20 cents per page;
  - ix. Telefax expenses;
  - x. Newspapers and professional periodicals;
  - xi. Postage for regular mail delivery by United States Postal Service except for mass mailings (with prior Town Administrator approval) and special, expedited, or overnight delivery services, which may be charged at cost;
  - xii. 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
  - xiii. 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 relinquish possession of outdated files to the Town for storage at the Town's expense.
- B. Upon invoice submitted to the Town, the Town shall compensate the Firm for out-of-pocket fees and costs incurred on the Town's behalf, including but not limited to 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. Upon invoice submitted to the Town, 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 provide to the Town detailed invoices each month for all legal services performed at an hourly rate. The Town shall pay all undisputed billings from the Firm within thirty (30) days of receipt of invoice. If the Town 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 Town Attorney shall routinely attend regular and special Town Board meetings and be reasonably available to provide legal services for the Town Board of Trustees. The Town Attorney will attend Town Board study sessions, Board retreats, and other Town business meetings as requested by the Mayor, Town Administrator or Town Board. During any period where the Town Attorney is unavailable due to illness, vacation, or other circumstance warranting absence, the Deputy Town Attorney or other attorney of the Firm shall attend meetings as requested by the Town.
- B. The Town Attorney shall be available to render the services required hereunder on an "on call" basis, and when necessary shall cause any other Attorneys to be available by appointment for consultation with Town representatives.

5. INDEPENDENT CONTRACTOR

- A. Independent Contractor. The Firm shall perform the Services as an independent contractor to the Town and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town other than as a contracting party and independent contractor.

Subject to conformance with Town-adopted policies and procedures and full conformance with Firm's representations set forth in this Agreement, the Firm shall have and maintain the requisite judgment, discretion, and responsibility for and control of the performance of the Services, the discipline of the Firm's employees and other matters incidental to the performance of the Services, duties and responsibilities as described and contemplated in this Agreement. Unless specifically stated otherwise herein, the Firm shall provide and bear the cost of all tools, and any other items, wages, or services required in the performance of the Services, and the Town shall not provide any other assistance or benefits to the Firm for performance of the Services under this Agreement.

- B. Liability for Employment Related Rights and Compensation. The Firm shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing the services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Firm as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment. The Firm will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Firm's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the Town shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Firm's employees, or any other liabilities whatsoever, unless otherwise

specifically provided herein. The following disclosure is provided in accordance with Colorado law:

**FIRM ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS FIRM OR SOME ENTITY OTHER THAN THE TOWN PROVIDES SUCH BENEFITS. FIRM FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. FIRM ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

6. 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.

7. ASSIGNMENT

This Agreement for services is personal to the parties hereto and shall not be assigned by either party.

8. TERM AND TERMINATION

- A. This Agreement shall be effective as of March 1, 2016 and may be terminated at any time by the Town or by the Firm with or without cause 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 files from the Firm to the Town's selected Town Attorney.
- B. 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.

9. 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. This requirement shall specifically preclude the Firm from undertaking work on behalf of Weld County, any special district whose jurisdiction or area of service lies within all or any portion of the Town, and any landowners, businesses, and developers residing or working within the Town.

10. 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 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 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 A**. 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 and, upon termination of this Agreement, shall be delivered to the Town following termination.
- 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 certifies as of the date of this Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Firm will participate in the e-verify program or Department of Labor and Employment ("Department") program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Firm is prohibited from using either the e-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Firm obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs

or contracts with an illegal alien, the Firm shall be required to notify the subcontractor and the Town within three (3) days that the Firm has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Firm shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Firm's actual knowledge. The Firm shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Firm shall comply with any reasonable request of the Department made in the course of an investigation pursuant to C.R.S. § 8-17.5- 102 (5).

- E. Amendments. Any amendments or alterations to this Agreement will be agreed to by both parties, in writing.
- F. Malpractice and Liability Coverages. The Firm agrees to provide the Town with documentation acceptable to the Town of its insurance coverages as follows:
- Lawyers Professional Liability Insurance - \$500,000 per claim; \$1,000,000 policy aggregate;
  - Workers Compensation and Employers Liability Insurance - \$500,000 per claim.

IN WITNESS WHEREOF, the parties hereto have set their hands this \_\_, day of February 2016.

ATTES  
T:

**TOWN OF MILLIKEN**

By: \_\_\_\_\_  
Cheryl Powell, Town Clerk

By: \_\_\_\_\_  
Milt Tokunaga, Mayor

**MICHOW COX & MCASKIN LLP**

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

**EXHIBIT A**  
**MICHOW COX MCASKIN**  
**LLP PRIVACY POLICY**

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**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:**

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 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