

GLENWOOD SPRINGS
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GARFIELD & HECHT, P.C.
ATTORNEYS AT LAW
Since 1975
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April 4, 2023

VIA EMAIL

City of Fruita – City Council
Attn: Michael Bennett, City Manager
325 E. Aspen Avenue
Fruita, Colorado 81521
mbennett@fruita.org

Re: UPDATED LEGAL REPRESENTATION AND FEE AGREEMENT

Dear Mayor, City Council and Mr. Bennett:

1. **Scope of Engagement; You Hire Us To Act As Your Attorney:** Thank you for the opportunity to continue to represent the City of Fruita (the “City”) as its City Attorney, covering all departments and legal matters, including water law matters. This agreement updates our prior representation and fee agreement with the City executed in 2018 and the recent updated fee agreement from October 2022. Please note we are not business or investment advisers and do not make decisions or give advice as to whether or not it would be advantageous, profitable or otherwise in your best interests to engage in any particular transaction. Where we represent the City in connection with the purchase, sale, financing, lease or any other transaction involving property, such representation does not extend to identifying physical or environmental defects or conditions; our review of title matters is circumscribed by those items listed and produced as exceptions to and requirements of title by the particular title company selected by the parties to the transaction and we may rely, without further inquiry, on reports, studies or investigations provided by third party professionals, such as surveyors, home inspectors or title companies. Where our representation arises through a referral from another attorney, we assume no responsibility for acts or omissions on the part of such prior attorney. After completion of this engagement, changes may occur in the applicable laws or regulations that may impact your future rights or liabilities. Unless the City specifically engages us to provide additional services after the completion of this engagement, we do not undertake to advise it with respect to future legal developments relating to this engagement.

2. **Fees and Staffing; We Bill By The Hour:** We will continue to bill the City on a tiered structure. Mary Elizabeth Geiger and Shareholders within the firm will bill the City for City work at a rate of \$250 per hour and Associates will bill the City at a rate of \$230 per hour. For all work provided on behalf of the City subject to reimbursement to the City by developers or other third parties, Ms. Geiger and Shareholders within the firm will bill at a rate of \$310.00 per hour and Associates will bill at a rate of \$290.00. From time to time, we may assign other lawyers, primarily associates, or paralegals for discrete tasks. The paralegal rate is \$110.00 per hour. We agree to keep records of all time spent. Unless otherwise advised, the City will be billed monthly. Unless otherwise agreed, the City will be billed for

professionals' time at increments of 1/10th hour. Our rates and fees are based on factors set forth in Rule 1.5(a) of the Colorado Rules of Professional Conduct, applicable to all Colorado attorneys. We periodically review and adjust the hourly rates of our attorneys, paralegals or other timekeepers in response to rising costs, market conditions or other factors law firms typically take into account. By this letter you approve adjustments that do not exceed annually ten percent (10%) over the hourly rate initially quoted to the City. Where we represent the City in connection with the sale or purchase of real estate or other transaction where a settlement statement may be utilized, the City authorize us to add a line item for the balance of our legal fees to be paid out of the closing. However, such payment does not always constitute full payment of our legal fees. At the time of closing it may not be possible to have accounted for all our legal fees, especially if incurred a couple of days before or on day of closing or in attending to post-closing matters. The City agrees to remain responsible for all such fees. Nothing herein shall be construed as to constitute a multiple fiscal year obligation of the City under Article X, Section XX of the Colorado Constitution or any other provision of Colorado law.

3. **Expenses; The City Will Reimburse Us For Expenditures On Its Behalf:** The City agrees to pay promptly for such legal services and to pay all expenses incurred in connection therewith, such as long distance, court reporters, data compilation and management, office copying service, postage, Federal Express or other overnight carriers, filing, recording fees, secretarial overtime, and the like allocated to the City. We may also incur travel, mileage, lodging and subsistence expenses for the City which the City is also responsible; provided, however, we would not charge for travel time to attend one regular City Council meeting per month and would charge at half the regular rate for additional travel if needed. In certain matters, we will need to retain consultants, vendors and experts on the City's behalf. The City authorize us to incur costs on its behalf, but we are not required to do so. We will attempt to obtain the City's consent before incurring costs in excess of \$500.00, but you understand that circumstances may make it impractical to obtain the City's consent before incurring such costs. The City agrees that it is solely responsible for any costs incurred on its behalf. In lieu of advancing costs, we may request funds from you for the payment of anticipated costs, which will be kept in our COLTAF account until the costs are incurred. These payments or requested funds for payment must be paid promptly.

4. **Litigation; We Cannot Guarantee Success:** If our representation of the City involves a contested or adversarial matter, we intend to assert the City's position vigorously and efficiently. However, you must understand that, in representing any client in a contested or adversarial matter, we cannot promise or guarantee the ultimate success of the City's position, whether in a lawsuit, arbitration or any other forum. Our performance also depends, in large part, upon the City's cooperation and particularly upon prompt receipt of information and instructions from the City from time to time as the matter progresses. Further, the level of activity may, in large measure, depend on the steps the other parties may take and their willingness, if any, to resolve the City's dispute without a full-scale trial. We hereby advise the City of the existence of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

6. **Payment; We Charge Interest On Late Payment:** If the City is billed for any legal services or expenses, you agree that payment must be made within 30 days of the date of any such bill. The City will be charged compounded interest at a periodic monthly rate of 1.5% (this is an annual percentage rate of 18%) on any balance unpaid after 30 days, but in no event less than a 1.5% periodic

monthly rate. In the event that the City does not pay an invoice within forty-five (45) days and no information is brought to our attention regarding a dispute as to the amount owed, we may elect to take legal action including a collection lawsuit to recover our unpaid legal fees and costs and accrued interest. Under such circumstances the City agrees to pay our reasonable legal fees and costs incurred in such collection activity and the City further agrees to submit to the jurisdiction of the County or District Court in Colorado of the county in which our office is located where the primary legal services were provided as reasonably determined by us.

7. **Withdrawal; We Reserve The Right To Withdraw, You May Always Terminate Us:** By written notice, we may withdraw as the City's counsel for reasons including, but not limited to, failure to pay fees or expenses, failure to cooperate with the firm, conflicting communications where there is more than one client and those mandated by the Colorado Rules of Professional Conduct or otherwise provided in this agreement. If permission for withdrawal from employment is required by court rules, the firm shall withdraw upon receiving permission from the court; and the City agrees to pay all legal fees until such permission is obtained or otherwise incurred incident to the winding up and conclusion of your representation. Upon withdrawal, the City shall immediately pay any remaining balance owed on the City's account. The City may also terminate our employment by notifying us in writing. The firm reserves its right to assert a retaining lien or charging lien, as appropriate, on any unpaid balance.

8. **Privacy; The City's Assurance Of Confidentiality, When Disclosures Are Permitted:** Subject to professional and ethical standards, all communications between us are protected by the attorney-client privilege. This privilege may be waived by the City if it shares the communications or advice with third parties. We advise the City not to share or disclose attorney-client communications to any third parties without first consulting us. Additionally, we advise that the City avoid posting any information related to the scope of our representation on social media, as this may result in a waiver of the attorney-client privilege. Any information that the City posts on social media may be discoverable by adverse parties; we advise the City to avoid posting any information related to the scope of our representation or the City's underlying legal matters on social media. Confidential information may be shared by us with other attorneys, paralegals, contract attorneys or legal assistants and outside consultants retained on the City's behalf whose services are necessary in the course of our representation. Confidential information may also be disclosed by us to third parties where such disclosure is implied from the legal services the City has requested us to provide such as our outside ethics counsel or our IT provider. We protect all such information with physical, electronic, and procedural safeguards that comply with our professional standards.

9. **Insurance; We Are Not Responsible For Insurance the City May Have:** It is possible the City may have insurance policies relating to the matters wherein the City has requested our assistance. The City should carefully check all policies and, if coverage may be available, notify the insurance company about matters that may be covered as soon as possible. We do not undertake any responsibility to advise the City as to the existence, applicability or availability of any insurance coverage or to give notice or tender any claims to any insurance company for any of the matters being handled by this firm. If any insurance company undertakes the payment of any portion of our billing statements, the City will still remain responsible for any amounts not paid by the insurance company. Finally, if there is insurance involved in any transaction where we represent the City, it is your responsibility to determine whether or

not the underwriter has adequate resources to pay any claim. We are not financial analysts, and we do not have the expertise to advise the City as to the financial condition of any underwriter or insurance agent.

10. **Conflicts of Interest; Conflict Checks; Conflicts That May Arise Later and Waivers:**

To protect both of us and to comply with our professional obligations, our representation is subject to clearance of any conflicts of interest with present or former clients of our firm, as well as approval by the firm's management which reviews all new matters. Conflicts of interest may also arise at some later date. If a conflict arises through no fault of our law firm, for example, new issues that may come up between the City and a private third party, the City agrees that such circumstances will not be a basis to disqualify us in this or any other matter. If a conflict arises because a particular lawyer joins our firm, the City agrees that it will be a sufficient remedy to screen such lawyer or lawyers from our engagement(s) for you, including any relevant documents. This firm represents many companies and individuals. It is possible that during the time we are representing the City, some of our current or future clients will have disputes or transactions with the City. The City agrees that we may continue to represent or undertake in the future to represent existing or new clients in any matter, including litigation, even if the interests of such other clients in such other matters are directly adverse to the City's, so long as those matters are not substantially related to our work for the City.

11. **File Retention Policy; When the City's Files May Be Disposed Of:** The firm reserves the right to dispose of any file four (4) years after the legal matters described therein have been resolved or four (4) years after the last work on the matter has been performed, whichever is first. If the City wishes to obtain its files, it must do so by written request within said four (4) year period. The City agrees to be responsible for the shipping and handling charges incurred in forwarding these files to the City or to any third party it may designate.

12. **Dispute Resolution; We Will Try To Resolve Disputes By Mediation And If Not Successful Then By Arbitration:** In the event of any dispute, controversy or claim (a "**Dispute**") arising from or relating to (1) this agreement or breach thereof, including a dispute as to the amount owed for legal fees or (2) any representation or services provided by the firm including possible malpractice where the Dispute cannot be resolved by direct discussions between the parties, the City and this firm agree to first endeavor to resolve the Dispute by mediation before resorting to arbitration. Mediation may be initiated by written notice by either party who has authority to resolve the Dispute. If the Dispute is not resolved within sixty (60) days after the beginning of mediation then, upon written notice by either party to the other, the dispute shall be finally resolved by binding arbitration conducted by, and in accordance with the rules of the Judicial Arbitrator Group, Inc., or, if such entity is no longer functioning, its successor or such other entity most nearly performing the same function in Colorado as we may reasonably determine. BY AGREEING TO ARBITRATION THIS FIRM AND YOU AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY. On balance we believe arbitration is a worthwhile way to resolve Disputes because it can be done expeditiously and with less expense than litigation. The place of mediation and arbitration shall be in the county in Colorado in which our office is located where the primary legal services were provided as reasonably determined by us. Except as may be required by law, a party, mediator or arbitrator may not, with respect to a Dispute, disclose the existence, content or results of any discussions, mediation, or arbitration hereunder without the prior written consent of both parties, and the process of discussions, mediation, if necessary, and arbitration, if necessary, shall, to the fullest

extent allowed by law, be the sole means of resolving any Disputes. If we prevail in the arbitration, you agree to pay our reasonable attorney fees and costs incurred. As to non-payment of legal fees only, and provided neither party has requested mediation or arbitration, we reserve the right to file a collection lawsuit. If we have commenced a collection lawsuit for legal fees owed and in the course of that litigation the City raises any matters that are required to be resolved in accordance with the dispute resolution procedures set forth herein, we shall dismiss or stay the litigation and submit the dispute to these resolution procedures.

13. **City Council Review.** Beginning in March 2023, the City Council may conduct an informal review of Ms. Geiger every March and a formal review of Ms. Geiger every September. Such reviews shall be conducted for the purpose of providing Ms. Geiger with feedback regarding her work product, interaction with City Council members and staff as well as her overall performance, including identifying areas of improvement.

14. **E-Mail Alerts; Website:** If the City has provided us with contact e-mail or mailing address, we may periodically send to the City via e-mail or regular mail alerts involving firm news or changes in laws. If the City does not wish to receive these alerts, please let us know, and we will omit your name from our distribution list. Sending such alerts is solely a courtesy to our clients and does not give rise to any duty on our part to keep the City informed of changes in laws or constitute legal advice. Documents we send the City by e-mail (whether or not containing confidential information) will not be encrypted unless you request us, in writing, to encrypt outgoing e-mail and we are able, without significant additional cost, to agree with the City and implement mutually-acceptable encryption standards and protocols. We make reasonable attempts to exclude from our e-mails and any attachments any virus or other defect that might affect any computer or information technology system. However, it is the City's responsibility to put in place measures to protect its computer system against any such virus or defect, and we do not accept any liability for any loss or damage that may arise from the receipt or use of electronic communication from us. If you are a corporation or other form of entity, your signature below constitutes a consent to include the City's name in the Representative Client listing appearing on our website. We never post the names of individuals on the list. If the City does not wish to have your name appearing on the listing, please let us know.

Please acknowledge the City's acceptance of the terms set forth herein by executing this letter and returning it to the undersigned, or send it back in electronic format. We understand that you, as City Manager, have been authorized by City Council to sign this agreement and will be our main point of contact with the City. We look forward to continue our working relationship with the City of Fruita.

Very truly yours,
GARFIELD & HECHT, P.C.

By: Mary Elizabeth Geiger
Mary Elizabeth Geiger

AGREED TO:

Michael Bennett
City of Fruita

If a different billing address is not provided below the address at the beginning of this engagement letter will be used for billing purposes. You may also elect to have the City's billing emailed to you. Please select your preferred method of delivery below and if other City employees should receive copies of billing please provide their information.

Billing Mailing Address:

E-Mail – Billing E-mail Address:
