

## LEGAL SERVICES AGREEMENT

**THIS LEGAL SERVICES AGREEMENT** is made and entered into as of the \_\_\_\_ day of January, 2015, to be effective as of January 1, 2015, by and between the CITY OF BRIGHTON, COLORADO, whose address is 500 South 4th Avenue, Brighton, CO 80601 (“City”) and FISCHER, BROWN, BARTLETT & GUNN, P.C., a Colorado corporation, whose address is 1319 E. Prospect Road, Fort Collins, CO 80525 (“FBBG”).

In consideration of the mutual covenants and obligations herein expressed, the City and FBBG agree as follows.

1. **Scope of Services.** FBBG agrees to provide legal services to the City upon the request of authorized representatives of the City. FBBG is customarily engaged in the profession of providing legal services to clients. FBBG shall not be obligated to work exclusively for the City during the term of this Agreement. However, FBBG will provide adequate professional time for the performance of legal services requested by the City hereunder. FBBG is responsible for providing its own offices, equipment, training and supplies for performance of the legal services.
2. **Time of Commencement and Completion of Services.** The legal services shall be provided commencing on January 1, 2015, and ending on December 31, 2015.
3. **FBBG Responsibility.** FBBG shall be responsible for the performance and supervision of all legal services requested by the City to be performed under this Agreement. In addition, FBBG shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all legal services performed under this Agreement. FBBG shall only employ qualified persons for performance of the legal services. Without additional compensation, and without limiting the City’s remedies, FBBG shall promptly remedy and correct any errors, omissions or other deficiencies in the legal services. FBBG agrees that all legal services performed hereunder shall be performed with the usual thoroughness and competence and in accordance with the high standards of care of the legal profession prevailing in Colorado.
4. **Compensation.** In consideration of the services to be performed pursuant to this Agreement, the City agrees to pay FBBG reasonable fees for services rendered by FBBG attorneys and legal assistants for legal services performed. Reasonable attorney fees billed by FBBG shall be determined in accordance with the factors to be considered in determining a lawyer’s reasonable fee, as set forth in Rule 1.5 of the Colorado Rules of Professional Responsibility adopted by the Colorado Supreme Court. It provides:

Factors to be considered in determining the reasonableness of the fee include the following:

- (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude the employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The time involved and the results obtained;
- (5) The time limitation imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

Due to various uncertainties, it is difficult to predict the nature, scope and extent of legal services required, and thus the anticipated fees for such services. The current Billing Policies of FBBG are attached as Exhibit A.

Billing Statements from FBBG shall include, at a minimum:

A. A list of FBBG's personnel who worked on legal matters for the City during the billing period, the amount of time each worked; and

B. A set percentage of 2% of fees is applied to each billing statement to cover general administrative expenses incurred in providing services such as photocopies, postage, facsimiles, and long distance charges. Any non-standard charges or amounts paid on the client's behalf (such as express mail charges, conference call charges, court fees, recording fees, wire transfer fees) are included in addition to these standard expenses and are set forth in the billing statement.

## **5. Payment and Review.**

A. Bills will be paid monthly; provided, however, that the City shall have the right to refuse to pay all or a portion of a billing statement in order to first verify the accuracy of the statement or resolve a dispute with FBBG regarding a statement.

B. FBBG representatives will meet with the City's representatives from time to time at the City's request to review the legal services performed and billings hereunder.

**6. Drawings and Other Documents.** FBBG shall provide the City with reproducible copies of all documents specially developed for the City in the performance of the legal services hereunder. Such documents shall be the sole property of the City. FBBG hereby assigns and conveys to the City all of its right, title and interest in and to any intellectual property rights, including by not limited to copyrights, which it may own in any and all work product produced under this Agreement.

**7. Parties' Representatives.** Each party designates the Representatives listed below who shall have the authority to make all necessary and proper decisions with reference to the legal services. All requests for Agreement interpretations, changes, and other clarifications or instructions shall be directed to the Parties' Representatives. Unless otherwise designated in writing, the City's Representatives will be Manuel Esquibel, Curtis Bauers and Margaret Brubaker, and FBBG's Representative will be Brent A. Bartlett.

**8. Key Personnel.** FBBG shall assign the following employees of FBBG to performance of legal services for the City for so long as the parties deem necessary, so long as they are employed by or associated with FBBG: Brent Bartlett, William H. Brown, Daniel K. Brown, Sara Irby, Donald E. Frick and William R. Fischer.

**9. Insurance.** FBBG shall maintain the following insurance in full force and effect during the full term of this Agreement:

A. Workmen's Compensation Insurance in amounts prescribed by applicable statutes; and

B. Professional Liability Insurance in the amount of \$2,000,000 per claim and in the aggregate.

**10. Confidentiality.** All information which FBBG or any person, firm or corporation employed by or otherwise connected with FBBG, receives from the City, the City's employees, any other contractor or subcontractor of the City or employees of any such other contractors or subcontractors under or pursuant to this Agreement, shall be considered confidential and maintained as a privileged attorney-client communication or trade secret and FBBG shall neither use such information, except pursuant to and in accordance with the terms and conditions of this Agreement, nor disclose such information to any third party without the prior written consent of the City.

**11. Independent Contractor.** Nothing herein shall be construed to make FBBG an agent or employee of the City for any purpose. FBBG shall in all respects be an

independent contractor of the City in its performance of the legal services, and FBBG and its employees and subcontractors shall in no way represent themselves to third parties as employees of the City in the performance of the legal services for any purpose.

**12. No Unemployment Insurance Benefits For FBBG.** FBBG is not entitled to unemployment insurance benefits as a result of performance of legal services for the City unless unemployment compensation coverage is provided by FBBG or some other entity.

**13. Payment of Taxes.** FBBG is and shall be solely liable and responsible for any federal and state income and withholding taxes, unemployment taxes, FICA taxes and worker's compensation payments and premiums applicable to this agreement or any services provided hereunder. FBBG shall indemnify the City for any liability resulting from nonpayment of such taxes and sums.

**14. Termination.** Both the City and FBBG shall have the right to terminate this Agreement for any reason upon the giving of notice to the other party.

**15. Indemnification.** FBBG shall indemnify and hold harmless the City, any affiliated entities of the City and their directors, officers, employees, consultants and agents, or any of them, from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the legal services; but only to the extent caused in whole or in part by negligent, grossly negligent or intentional acts or omissions of FBBG, its subcontractors or employees or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. In claims against any person or entity indemnified hereunder by an employee of FBBG, a subcontractor, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable, the indemnification obligation hereunder shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for FBBG or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**16. Force Majeure.** Except for the obligation to pay money, neither party shall be liable to the other party for any delay or inability to perform its obligations hereunder by reason of acts of God acts of the public enemy, riot, civil commotion, insurrection, acts or failure to act of governmental authorities, war, or any other cause or causes beyond the party's reasonable control.

**17. Notice.** All notices required to be given under this Agreement shall be in writing, and shall be deemed to have been duly given (a) when delivered personally to the other party to whom addressed or (b) upon receipt when sent by United States mail postage prepaid, as certified or registered mail, properly addressed as follows or (c) upon

confirmation when sent by facsimile transmission and receipt is confirmed by return facsimile transmission:

If to FBBG:

Brent A. Bartlett, Esq.  
FISCHER, BROWN, BARTLETT & GUNN, P.C.  
1319 E. Prospect Road  
Fort Collins, CO 80525  
Fax: (970) 407-1055

If to the City:

Curtis Bauers  
Director of Utilities  
City of Brighton  
500 South 4<sup>th</sup> Avenue  
Brighton, CO 80601  
Fax: (303) 655-2065

or to such other persons or addresses as the foregoing addressees may have designated by written notice.

**18. Entire Agreement.** This Agreement constitutes the entire agreement between the City and FBBG regarding the subject matter hereof and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

CITY OF BRIGHTON, COLORADO

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FISCHER, BROWN, BARTLETT & GUNN, P.C.

By: \_\_\_\_\_

Brent A. Bartlett

Title: Secretary

Date: \_\_\_\_\_