

RESOLUTION NO. 26

SERIES 2019

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2020

WHEREAS, the Town of Breckenridge desires to enter into a Town Attorney Agreement with Timothy H. Berry, P.C. for 2020;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The Town Attorney Agreement with Timothy H. Berry, P.C. for 2020, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, is hereby approved by the Town Council.

Section 2. The Mayor of the Town of Breckenridge be and hereby is authorized, empowered and directed in the name of the Town of Breckenridge and on behalf of its Town Council to make, execute and deliver the Town Attorney Agreement attached hereto as Exhibit "A".

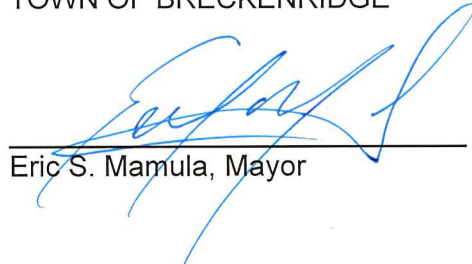
RESOLUTION ADOPTED AND APPROVED this 10th day of December, 2019.

ATTEST:

TOWN OF BRECKENRIDGE



Helen J. Cospolich, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

12/10/19
Date

TOWN ATTORNEY AGREEMENT

This Agreement (“**Agreement**”) is made and entered into this 10th day of December 2019, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and TIMOTHY H. BERRY, P.C., a Colorado corporation (“**Attorneys**”).

WITNESSETH:

1. The Town does hereby employ and retain the Attorneys as Town Attorney for the period commencing January 1, 2020 and ending December 31, 2020. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.
2. The Attorneys accept such employment and agree to perform the duties required of it as Town Attorney in a competent and professional manner.
3. The Attorneys are hired to, and shall perform, the following duties:
 - A. Act as legal advisor to, and be the attorney and counsel for, the Town Council.
 - B. Advise any Town officer, department head, or staff member in matters relating to his or her duties. To facilitate the performance of this duty, Timothy H. Berry, President of Attorneys, shall be available in the Town Hall offices from 9:00 a.m. to 4:30 p.m. each Tuesday, except on those Tuesdays when Timothy H. Berry is to attend a Town Council or Planning Commission meeting, in which event he shall be available until the conclusion of such meeting.
 - C. Prepare and review ordinances, contracts, and other written instruments when requested by the Town Council, municipal officials, or staff members, and promptly give its opinion as to the legal consequences thereof.
 - D. Call to the attention of the Town Council, Town officials, and staff members all matters of law, and changes and developments therein, which affect the Town.
 - E. Have Timothy H. Berry attend all regular and special meetings of the Town Council, unless his attendance at such meetings is not required.
 - F. Have Timothy H. Berry attend regular and special Town Planning Commission meetings when requested to do so by the Town staff or the Planning Commission.
 - G. Have Timothy H. Berry attend meetings of the Breckenridge Open Space Advisory Commission when requested to do so by the Town staff or the Open Space Advisory Commission.

2020 TOWN ATTORNEY AGREEMENT

- H. Have Timothy H. Berry attend meetings of the Town's Liquor and Marijuana Licensing Authority when requested to do so by the Town staff or the Liquor and Marijuana Licensing Authority.
- I. Unless otherwise directed by the Town Council, the Attorneys shall represent the Town in any litigation in state or federal courts or before administrative agencies.
4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of \$211.00 per hour for each hour of time, whether litigation or non-litigation, expended by Timothy H. Berry (whether in the Town's offices or the Attorneys' offices). Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with litigation matters including, but not limited to, the cost of subpoenas and witness fees. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorney for such services. The Attorneys shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorneys' monthly statement for services rendered shall be mailed to the Town on or before the fifth day of each month and shall be paid by the Town in the normal course of the Town's business.
5. Notwithstanding the provisions of Paragraph 4 of this Agreement, legal services performed by the Attorneys for the Town that are to be reimbursed by third parties (such as real estate developers or property owners) shall be billed at the rate of \$220.00 per hour. Such services shall be separately billed and accounted for as directed by the Finance Director of the Town.
6. The Attorneys shall not bill the Town for travel time to and from Attorneys' Leadville office and Breckenridge. In lieu thereof, the Town shall pay to the Attorneys a mileage allowance of \$0.25 per mile round trip for each regularly scheduled trip made on Town business by Attorneys.
7. The Attorneys shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$1,000,000.00 yearly aggregate.
8. The Attorneys shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees.
9. The Attorneys understands that: (i) Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Attorneys are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorneys are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorneys are not entitled to unemployment

insurance benefits unless unemployment compensation coverage is provided by Attorneys or some other entity. Attorneys agree to indemnify and hold Town harmless from any liability resulting from Attorneys' failure to pay or withhold state or federal taxes on the compensation paid hereunder.

10. The Attorneys shall devote so much of the firm's time to the business of the Town as may be required to assure proper representation of the Town, but the Attorneys shall not be prevented from taking other employment by reason of this Agreement; provided, however, that the Attorneys shall not enter into other contractual or business relationships, nor undertake to represent a client, when such contract, business relationship, or representation would create a conflict of interest as to Attorneys' continued representation of Town.
11. The Attorneys understand and acknowledge that the firm serves at the pleasure of the Town Council, and that this Agreement may be terminated at any time by the Town Council, without liability to the Attorneys for breach, and without the need for either cause for the termination or a hearing. The Attorneys may also terminate this Agreement, without liability to the Town for breach by giving the Town not less than six (6) months' advance written notice.
12. Throughout the extended term of this Agreement, Attorneys shall not:
 - A. knowingly employ or contract with an illegal alien who will perform work under this Agreement; or
 - B. enter into a contract with a subcontractor that fails to certify to Attorneys that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Attorneys have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Colorado Department of Labor and Employment employment verification program. As used in this provision: (i) the term "E-Verify Program" means the electronic employment verification program created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program; and (ii) the term "Colorado Department of Labor and Employment employment verification program" means the program established by Section 8-17.5-102(5)(c), C.R.S.

Attorneys are prohibited from using E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.

If Attorneys obtain actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Attorneys shall:

- A. notify such subcontractor and the Town within three days that Attorneys have actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Attorneys shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Attorneys shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Attorneys violate any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section 12, the Town may terminate this Agreement for a breach of the contract. If this Agreement is so terminated, Attorneys shall be liable for actual and consequential damages to the Town.

- 13. The Town shall contract with another attorney or law firm to handle the prosecution of municipal ordinance violations in the Town's Municipal Court, and appeals from the judgments of such court. Such services are excluded from this Agreement.

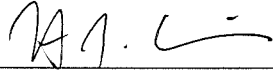
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____

Eric S. Mamula, Mayor

ATTEST:

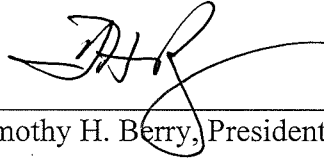


Helen Cospolich, CMC,
Town Clerk



TIMOTHY H. BERRY, P.C., a Colorado
corporation

By:



Timothy H. Berry, President