



## THE WHITMER LAW FIRM, LLC

◆ www.whitmerlawfirm.com ◆

Physical: 63331 U.S. Hwy. 40, Granby CO 80446  
Mailing: P.O. Box 38, Hot Sulphur Springs, CO 80451  
Phone 970.725.3460

Kent H. Whitmer (Kent@whitmerlawfirm.com)‡  
Sean C. Lemieux (Sean@whitmerlawfirm.com)◇

William G. Berry (Will@whitmerlawfirm.com)†  
Kaitlin Randall (Katie@whitmerlawfirm.com)◇

Stanley W. Cazier (WLFAdmin@whitmerlawfirm.com)◇  
OF COUNSEL

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July 20, 2021

*Sent Via Email to:* [ecannon@town.fraser.co.us](mailto:ecannon@town.fraser.co.us)

Re: Letter Agreement for Legal Services

Dear Board of Trustees:

This letter outlines our understanding of the scope of work and the fees that will be charged in connection with our representation of your interests. These arrangements are intended to take effect when Rod McGowan retires and Kent Whitmer is appointed as Town Attorney, which is anticipated to occur on or about October 1, 2021. They will also apply to any work we perform for the Town during the interim period up until that time.

1. **LEGAL SERVICES INCLUDED.** The scope of our services will include and be limited to providing general counsel representation to the Town of Fraser, which shall cover the following practice areas:

- a. advising the Board of Trustees and staff;
- b. contract drafting and review;
- c. land use and subdivision review;
- d. zoning and enforcement thereof;
- e. code review and enforcement;
- f. employment law; and
- g. litigation, as directed by client.

2. **OBLIGATIONS OF ATTORNEY AND CLIENT.** We will adequately perform the legal services outlined above, while updating you on any and all changes during our representation, and will respond to your inquiries or other communications without undue delay. You agree to be honest and to cooperate with us, keeping us abreast of new developments or changes that could affect your matter or case, particularly any changes in your address, telephone number and/or how to reach you. Our typical method of communication with you will be by

email or telephone. If you have an email address but do not use it on a regular basis we encourage you to check your account frequently. You also agree to make any and all payments in accordance with this letter agreement on or before the date due.

3. FEES, COSTS AND BILLING. It is understood that our billing rates for each staff member are as follows:

Kent Whitmer	\$245/hour
Will Berry	\$245/hour
Sean Lemieux	\$245/hour
Katie Randall	\$180/hour
Legal Assistant	\$140/hour

for services rendered, plus reimbursable expenses incurred at their actual cost (e.g. mailing costs, filing fees, and copy charges). Hourly rates are charged in increments of tenths (.1) of an hour, and will increase annually in accordance with a local CPI index. If travel is necessary, one-half our hourly rate will be billed for time on the road, plus mileage at the IRS allowed reimbursement rate. Statements will be sent once a month reflecting the amounts owed for services rendered over the course of the prior billing period, plus any prior outstanding balances due. Statements are to be paid in full within 15 days after the statement has been mailed or emailed. Interest shall accrue on any outstanding and unpaid balance at the rate of eighteen percent (18%) per year. If it becomes necessary to file suit to collect any past due amounts, we will be entitled to recover attorney's fees for time spent on collection and costs.

4. CLIENT'S PROPERTY. Your legal file and the documents therein, are your property. We shall retain your legal file during the period we represent your interests. Upon completion of our representation, we will, at your request, release to you your file and any of your other property in our possession. If you do not request release at the conclusion of the representation, we will retain your property for a total of six years before disposing of such property.

5. CONFLICTS OF INTEREST. You are hereby informed that the Colorado Rules of Professional Conduct require that before we may commence or continue representation of your interests, we must disclose any actual or potential conflict of interest between yourself and another person or entity represented by this firm. If an actual or potential conflict of interest exists, we may not represent you without your written consent concerning the conflict. In this regard, there are several clients we have represented in the past or are currently representing that are either located in the Town of Fraser or have current or past dealings with the Town, to wit:

- a. **Riverview Condominiums (Ted Carney).** We have assisted with the subdivision process for Ted. Our understanding, though, is that this subdivision is close to being completed and recorded. As such, it does not appear at this time

that this representation will still be in effect when the current Town Attorney Rod McGowan completely retires on October 1, 2021. However, in the event that the Riverview Condominiums subdivision process is not completed by the time Rod retires, there is the potential for a conflict.

- b. **Gold Medal Ranches, LLC (Norm Carpenter).** Gold Medal Ranches, LLC owns the west half of Byers Peak Ranch. The Town of Fraser has a water diversion structure on St. Louis Creek and an easement for a water line on this property. While it does not appear that there is presently a conflict due to the easement and improvements the Town possesses on the Gold Medal Ranches property, the easement contains provisions that define the rights and responsibilities of the parties, which, as with any agreement, has the potential for interpretation and disagreement.
- c. **Grand County Water and Sanitation District #1 (GCWSD).** We took over the representation of this district with the retirement of Stan Cazier several years ago. This client is mentioned as a potential conflict because the Town of Fraser and GCWSD are part of the JFOC agreement in connection with the waste water treatment plant. It is also mentioned because this district is currently prosecuting a water augmentation plan through water court and the Town of Fraser is participating in that case as an opposer. The fact that GCWSD and the Town of Fraser are parties to the JFOC does not necessarily create a present conflict, but in the event that the parties ever disagreed on its interpretation or wished to renegotiate the JFOC, there is the potential for a conflict. The current water court proceeding *does* present a present conflict, however, attorney David Bailey is handling that water court proceeding for GCWSD, so it is more of an indirect conflict.
- d. **Winter Park Water and Sanitation District (WPWSD).** We also took over representation of this district with the retirement of Stan Cazier. WPWSD is also currently prosecuting a water augmentation plan through water court and the Town of Fraser is also participating in that case as an opposer, just as it is in the GCWSD water case. However, unlike the GCWSD water case, we are the firm prosecuting this case through water court. Thus, there is a direct conflict present in this instance. Nevertheless, the conflict is probably softened by the fact that the Town of Fraser has separate water counsel handling this matter on its behalf.

We encourage you to discuss the actual conflicts and potential conflicts disclosed above with Rod McGowan. Should you agree to engage our firm, you agree that these conflicts have been disclosed, that you have had an opportunity to discuss the ramifications of each with Rod, and that you nevertheless waive these potential or actual conflicts. You also acknowledge that should any of the above-mentioned conflicts ever become adversarial, that it may be necessary

to withdraw our representation of the Town, or, alternatively, for the Town to engage other counsel for these conflict situations.

6. SETTLEMENT. If legal services rendered pertain to a claim, suit, litigation or other similar action, we shall notify you of any offer received by us. We will not accept any offer to settle without first obtaining your approval. You shall have the unequivocal right to accept or reject any such settlement offer.

7. ATTORNEY'S LIEN. We shall have a lien for attorney's fees and/or costs advanced on behalf of our representation of your interests under this letter, and on all funds obtained by judgment, settlement, or arbitration award payable to you.

8. DISCHARGE OF ATTORNEY. You may, at any time, discharge us for any reason whatsoever by written notice, which shall become effective upon our receipt. Upon such receipt, we shall cease to provide all legal services to you, unless otherwise agreed upon. If required to notice a court of our discharge, you shall execute and return a substitution of attorney form immediately on its receipt. You acknowledge that following termination, you shall be obligated to pay for all attorney's fees and costs owed to us as required under this letter agreement.

9. WITHDRAWAL OF ATTORNEY. We may, for any reason, withdraw as your attorneys of record at any time in accordance with the Colorado Rules of Professional Conduct. In such event, you shall be obligated to pay all attorney's fees and costs owed to us as required under this agreement.

10. DISCLAIMER. You acknowledge that we have made no guarantee regarding the outcome or success stemming from our representation of your interests. You understand that we do not have or hold any power to guarantee any certain outcome in your favor.

11. TAX AND SECURITIES LAW ADVICE. Please be aware that we are not tax attorneys and do not give tax advice. Regardless of the nature of any legal matters that we may be handling on your behalf, specifically including and without limitation litigation matters, you should always contact your own tax attorney, accountant or other tax consultant regarding tax implications for you of any transaction, agreement, settlement or other action, and we strongly encourage you to do so. Further, if we are assisting you with the formation of any legal entity, please be aware that we are not advising you with regard to compliance with state or federal securities law, and you may require the advice of a securities law specialist in connection with such matters.

12. ENTIRE AGREEMENT. This letter agreement is complete in its entirety between you and us. This letter agreement supersedes all other verbal or written agreements made prior to or concurrent with this Agreement.

13. SEVERABILITY. In the event any portion of this letter agreement shall be held to be unenforceable, in whole or in part, the remaining valid provisions shall remain effective and enforceable between the parties.

14. MODIFICATIONS. This letter agreement may be modified only by the execution of a written agreement signed by all the parties hereto. You understand and acknowledge that if you desire any additional legal services that have not been included in this letter, a separate letter agreement will be necessary.

15. ARBITRATION OF FEE DISPUTE. In the event of a dispute pertaining to fees and costs charged, such dispute shall be resolved by binding arbitration.

16. ARBITRATION OF MALPRACTICE. In the event a dispute arises between us regarding any alleged malpractice, such dispute shall be resolved by binding arbitration.

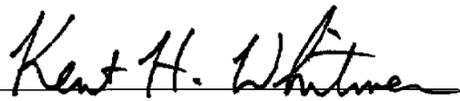
17. PRIVACY POLICY. All information we receive from you is held in confidence and is not released to any person or entity outside of this law firm, except as agreed to by you, or as required under an applicable law or court order. We maintain physical and procedural safeguards to protect your personal nonpublic information. However, if you choose to communicate by e-mail, we cannot guarantee that such communications will remain confidential. Therefore, we recommend that sensitive information not be transmitted to us electronically.

If the above terms are acceptable, please indicate your consent and approval by signing below and returning an original signed copy of this letter to us.

We look forward to working with you and thank you for the opportunity to represent your interests.

Sincerely,

THE WHITMER LAW FIRM, LLC

By: 

Kent H. Whitmer  
Managing Member

**CONSENT AND APPROVAL**

The undersigned agrees to the terms and conditions of the above Letter Agreement for Legal Services, dated July 20, 2021.

Signed:

TOWN OF FRASER

By: \_\_\_\_\_  
Philip Vandernail, Mayor

MAILING ADDRESS: P.O. Box 370  
Fraser, CO 80442

PHYSICAL ADDRESS: 153 Fraser Avenue  
Fraser, CO 80442

PHONE NUMBER: 970-726-5491 (office)