

**CITY OF CREEDE, COLORADO
RESOLUTION NO. 21-16**

**A RESOLUTION OF THE CITY OF CREEDE, COLORADO, AUTHORIZING
THE TOWN MANAGER TO EXECUTE AN ENGAGEMENT AGREEMENT
WITH MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C. FOR THE
PURPOSE OF ADJUDICATING A NEW WATER RIGHT FOR THE CITY
RELATED TO THE CONSTRUCTION OF A HYDRO-POWER GENERATION
FACILITY ALONG WILLOW CREEK**

WHEREAS, the City of Creede is currently working toward the implementation of a micro-hydro electric generation facility along Willow Creek; and

WHEREAS, the construction of said facility will necessitate the adjudication of a new water right for the City; and

WHEREAS, the City of Creede currently utilizes Moses, Wittemyer, Harrison and Woodruff P.C for matters related to water rights;

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the City of Creede, Mineral County, Colorado, that:

Section 1. The Board of Trustees for the City of Creede, CO hereby authorizes the Town Manager to execute the attached engagement letter with Moses, Wittemyer, Harrison and Woodruff, P.C to adjudicate a new water right for the City related to the implementation of a micro-hydro electric generation facility along Willow Creek.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The City Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 7th DAY OF DECEMBER, 2021.

ATTEST;



Sarah Ethim-Williamson, City Clerk

CITY OF CREEDE

By 

Jeffrey Larson, Mayor

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

LAW OFFICES

RICHARD J. MEHREN
JENNIFER M. DILALLA

2595 CANYON BOULEVARD, SUITE 300
BOULDER, COLORADO 80302

TELEPHONE: (303) 443-8782
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RAPHAEL J. MOSES
(1913-2011)
CHARLES N. WOODRUFF
(1941-1996)

JOHN E. PECKLER
JOSHUA B. BOISSEvain
LINDSEY A. RATCLIFF

OF COUNSEL
JOHN WITTEMYER
DAVID L. HARRISON
JAMES R. MONTGOMERY
TIMOTHY J. BEATON

December 3, 2021

PRIVILEGED AND CONFIDENTIAL
BY EMAIL

City of Creede
Attn: Mr. Louis Fineberg, City Manager
P.O. Box 457
Creede, CO 81130

Re: Engagement Agreement – City of Creede Hydropower Water Right

Dear Louis,

To follow up on the emails we've exchanged recently, this letter describes the terms on which Moses, Wittemyer, Harrison and Woodruff, P.C. ("MWHW") will provide legal services as special water counsel to the City of Creede for the water rights work related to the City's planned hydropower project. The scope of work will be to prepare, file and prosecute to completion with the Division 3 Water Court an application to adjudicate a new water right for the City's planned hydropower project.

As we have discussed, I estimate that the scope of work described above can be completed for between \$10,000 - \$15,000 in legal fees and costs. However, the actual legal fees and costs to complete the scope of work could be more or less than my estimate depending on a number of factors, including the level of opposition to the application and whether the case goes to trial before the water judge. Although we make no guarantee that we can complete the scope of work within the estimate provided above, our billings for the scope of work will not exceed \$15,000 without further authorization from Creede.

While the City is a long-time client of MWHW, we have determined that the scope of work described above does not present a conflict with work we are doing or have done for other clients of the firm. However, if an unforeseen conflict should arise, it is the firm's policy to cease representing the newer client and to continue representing the more senior client(s). By agreeing to retain our firm, you acknowledge this policy and agree that if it becomes necessary in the event of an unforeseen conflict, you will retain separate counsel and will consent to our continuing representation of the senior client(s).

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

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December 3, 2021
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I will be primarily responsible for the work performed on the City's behalf, with help from our associate attorneys and legal assistants whenever possible. Our hourly rates for 2021 are listed on the attached fee schedule. We review and adjust those hourly billing rates on an annual basis, and we will advise you in writing of any rate changes before undertaking any work at rates different from those on the fee schedule. Our monthly bills will indicate the hourly charges by attorney or other staff member, as well as any out-of-pocket expenses. Mileage is billed at the IRS standard mileage rate (currently 56¢ per mile). Payment of invoices is due within 30 days of billing, and it is the firm's policy to charge interest at a rate of 1% per month on any principal balance that is not paid within that time.

We will use our best efforts in representing the City in connection with the scope of work identified above, but we make no promises or guarantees regarding the outcome. Our comments regarding the probable outcome of any matter are mere expressions of opinion. We cannot guarantee that any case or controversy involving court action or administrative proceedings will be resolved within a specific time frame because that is often beyond our control. The City agrees to provide us with all data, documents, or other information relating to the matters within the scope of our representation. The City has the right to terminate the engagement of our firm at any time, and we reserve the right to do the same within ethical constraints and upon adequate notice to the City of such termination.

If the policies, terms, and conditions of this proposal for legal services are acceptable, please sign below and return a copy to me.

We are excited to continue working with you and the City, and we look forward to collaborating with the City's general counsel on this hydropower project.

Sincerely,

MOSES, WITTEMYER, HARRISON AND
WOODRUFF, P.C.




Richard J. Mehren

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

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The foregoing is accepted as the terms of engagement of Moses, Wittemyer, Harrison and Woodruff, P.C. to serve as special water counsel to the City of Creede with respect to the matters described in this letter.

Dated: Dec. 7th, 2021



Louis Fineberg
City Manager

RJM/jab
Attachment
cc: Rick Samson (by email)

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

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This is to advise that effective January 1, 2021 our hourly rates for professional services rendered will be as follows:

David L. Harrison	\$315.00 per hour
James R. Montgomery	\$305.00 per hour
Timothy J. Beaton	\$305.00 per hour
Richard J. Mehren	\$285.00 per hour
Jennifer M. DiLalla	\$260.00 per hour
John E. Peckler	\$195.00 per hour
Joshua B. Boissevain	\$190.00 per hour
Lindsey A. Ratcliff	\$190.00 per hour
Paralegal	\$105.00 per hour
Senior Law Clerks	\$105.00 per hour

Interest at the rate of 1.0% per month accrues on amounts not paid within 30 days of billing.

The firm reserves the right to charge on other than an hourly rate basis, or to charge a fee in addition to hourly rates, for work involving special risks, effort or time constraints including, without limitation, opinions relating to title, bonds and similar matters.