

FY24 HOLDEN, KIDWELL, HAHN AND CRAPO PLLC ENGAGEMENT AGREEMENT FOR LEGAL SERVICES

This Agreement is made and entered into by Teton County, a political subdivision of the State of Idaho, (the "County"), and Holden Kidwell, Hahn & Crapo PLLC, an Idaho professional limited liability company (the "Firm") (together, the "Parties").

The County's Board of County Commissioners (the "Board") possesses the authority pursuant to Idaho Code §§ 31-801, 31-813 and 31-828 to enter this Agreement with the Firm. Because this Agreement is for professional services, no formal procurement process is required under Idaho Code § 67-2803(4). The Board has consulted with the Teton County Prosecuting Attorney (the "Prosecuting Attorney"), who has approved this Agreement.

The Parties agree as follows:

1. Scope of work.

(a) The Firm will work at the direction of the Prosecuting Attorney, who will have the ultimate authority to determine and direct the work performed by the Firm.

(b) The Firm agrees to represent the County and provide the following services, as directed by the Prosecuting Attorney (the "Scope of Work"):

- i. Advise and consult on land use, planning and zoning and building code matters, including but not limited to preparation and review of development agreements and other documents relating to the County's planning and zoning functions; preparation of ordinances, resolutions, and decisions relating to the County's planning and zoning functions, as directed; attendance at portions of Board of County Commissioner Meetings pertaining to planning and zoning issues and/ or attendance at Planning and Zoning Commission meetings (being present remotely by technological means or, at the County's election and subject to weather and travel conditions, in person).
- ii. Consult with, mentor and supervise, as needed, the salaried Civil Deputy Prosecuting Attorney on civil work such as contract review, procurement issues, public records requests and other civil topics and projects, as directed by the Prosecuting Attorney.

2. Compensation.

(a) Fees. The County will compensate the Firm for legal services provided by attorney D. Andrew Rawlings at a rate of \$200 per hour, and services performed under the supervision of Mr. Rawlings by law clerks or paralegals at a rate of \$75 per hour.

(b) Weekly expectations. The Parties acknowledge the hours required to perform the Scope of Work will fluctuate, but the County expects the Firm to provide approximately 6-30 hours of Services to Teton County each week (approximately 24-120 hours a month). The Firm has no obligation

to work any particular hours or days, although the Firm agrees that its other contracts and obligations shall not interfere with the performance of services under this agreement.

(c) Additional expenses. Unless otherwise specified or agreed, the County will not reimburse the Firm's costs for phone calls, continuing legal education credits, state bar license fees, or office equipment. The County will reimburse the Firm for postage, filing fees, expert fees, transcription fees, witness fees and any other necessary costs related to the Firm's representation of and work for the County. The Firm may only use resources provided by the Prosecuting Attorney's office, such as a County laptop, for purposes of representation of and work for the County pursuant to this Agreement.

(d) Invoices & Payment. The Firm shall provide an invoice to the County within five business days of the end of each calendar month. The invoices must show the total number of hours billed. The County shall pay invoices within 30 days of receipt, unless other payment arrangements are approved by the Firm.

3. Term. The initial term of this Agreement (the "Term") is from the date of the last signature to this Agreement until September 30, 2024. Upon expiration of the Term, this Agreement will automatically renew for successive renewal terms extending from October 1 until September 30 of the following calendar year unless terminated per the below procedure.

4. Termination.

(a) Termination for convenience. Either Party may terminate this Agreement, in whole or in part, at any time, with or without cause, by providing at least 10 calendar days prior written notice to the other Party.

(b) Mutual termination. This Agreement may be terminated immediately by mutual agreement in writing by both parties.

6. Non-appropriation. In order to comply with the requirements of Article VIII, Section 3 of the Constitution of the State of Idaho, the County may cancel this Agreement for any fiscal year if the necessary funds for fulfillment of this Agreement are not budgeted for, and appropriated by, the County. The County may, solely at its option, at the end of any fiscal year of the County, cancel this Agreement, without penalty, if the County determines not to budget or appropriate funds from revenues legally available to it, for the contracted goods and services. The County's fiscal year commences on October 1 of each year and terminates September 30 the following year.

7. Assignment. The Firm's duties under this Agreement shall be personally performed by Andrew D. Rawlings, Esq. and shall not be transferred or assigned to any other individual that may come to work at the Firm or any other party without the prior written consent of the Prosecuting Attorney.

8. Indemnification.

(a) By the Firm. In the event that the County is alleged to be liable as a result of wrongful acts, omissions, or negligence, or all three, of the Firm, its employees, agents or its subcontractors, the Firm shall indemnify, defend, and hold harmless the County, its employees, elected

officials, officers, agents, representatives, externs, interns, volunteers, affiliates, successors, and permitted assigns (collectively, the "Indemnified Party") from and against all liability, claims, loss, costs, and expenses arising out of, or resulting from, the actions of the Firm. The Firm shall not enter into any settlement without Indemnified Party's prior written consent. This duty extends only to the extent there are no allegations of wrongful acts, omissions or negligence of the Indemnified Party.

(b) By the County. To the extent allowed by Idaho law, including Article VIII, Section 4 of the Idaho Constitution and the Idaho Tort Claims Act (Idaho Code § 6-901, et seq.), the County shall indemnify and hold harmless the Firm, its officers, employees, and Firm-designated volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of the County's negligent acts, errors, or omissions in the performance of this Agreement. This duty extends only to the extent there are no allegations of wrongful acts, omissions or negligence of the Firm.

9. Insurance.

(a) Without limiting the County's right to indemnification, prior to commencing any activities under this Agreement, the Firm shall secure and maintain during the term of Agreement, insurance coverage as follows:

- iii. Comprehensive general liability insurance or commercial general liability insurance, including coverage for premises and operations, contractual liability, personal injury liability, and independent contractor's liability (if applicable), in an amount of not less than \$1,000,000 per occurrence, combined single limit, written on an occurrence form. The policy shall name and protect the Firm, all the Firm's employees, the County, and the County's officers, agents, employees, prior officers or employees and assigns from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the Firm's acts.
- iv. Professional liability insurance coverage in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate during the term of this Agreement. The Firm shall maintain such coverage for at least one year from the termination of this Agreement.

(b) The Firm shall provide proof of liability coverage as set forth above to the County prior to rendering services under this Agreement.

10. Independent contractor.

(a) Right of control. The County has no right to control or direct the details, manner, or means by which the Firm accomplishes the results of the services performed hereunder, other than otherwise set forth in this Agreement. The County may inspect the work of the Firm as it progresses solely for the purpose of determining whether the work is completed. The Firm must not let its other contracts or work interfere with the performance of its services under this Agreement.

(b) Relationship. The Firm is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of the County. The Prosecuting Attorney determines the work to be done by the Firm, but the Firm determines the legal means by which it accomplishes the work specified by the Prosecuting Attorney.

(c) Taxes. The County will not withhold income taxes (federal, state, or local) or payroll taxes on behalf of Firm, its employees, agents or subcontractors. The County shall provide the Firm with an IRS Form 1099-MISC on or before the January 31 following any year in which the Firm has rendered services to County. The Firm is liable for all federal, state, and local taxes, including Social Security taxes, for itself, its employees, and its subcontractors. The County will not treat the Firm, its employees, or its subcontractors as employees of the County with respect to the services performed hereunder.

(d) Benefits. Because the Firm is engaged in its own independently established business, the Firm, its employees, and its subcontractors are not eligible for, and may not participate in, any of the County's benefits of employment, including, but not limited to, vacation, medical insurance, life insurance, disability insurance, employee pension, health insurance, or any other fringe benefit. The County is not responsible for making any insurance contributions, including for unemployment or disability, or obtaining workers' compensation insurance on behalf of the Firm, its employees, or its subcontractors.

11. Representations. The Firm represents the following:

(a) That it possesses the skill and experience necessary and all licenses required to perform the services under this Agreement.

(b) That there are no judgments, liens, actions, or proceedings existing or pending against the Firm which would materially affect the Firm's ability to enter into or perform under this Agreement.

(c) Entering into this agreement and/or performing the Scope of Work will not cause the Firm to breach any other agreement to which it is a party.

(d) That the Firm is an Idaho professional limited liability company, duly organized, validly existing, in good standing under the laws of the State of Idaho, and has all necessary corporate powers to enter into this Agreement.

(e) That this Agreement shall not be interpreted to limit the County's authority to retain the services of outside legal counsel to perform any legal services, whether as a result of the County's need for special expertise or otherwise.

(f) That the Firm will comply with all applicable laws and rules of professional conduct in the performance of the services hereunder.

12. Conflicts of Interest. The Firm represents that the following clients/matters are the only

actual or potential conflicts of interest the Firm has identified in which the Firm is or was adverse to the County, or that could potentially impact the Firm's representation of the County:

- (a) The Firm represents Grand Teton Canal Company;
- (b) The Firm represented Eagle Rock Timber in Eagle Rock Timber, Inc. v. Teton County (CV41-20-0117 and Idaho Supreme Court Docket No. 49373-2021);
- (c) The Firm represented Sorensen Creek Homeowners Association in its opposition to a plat amendment proposed by Aaron Powers, a matter before the Teton County Board of County Commissioners (the "BOCC");
- (d) The Firm represents Carl Jordan as an intervenor in Powers v. Teton County, CV41-23-0199 regarding Centennial Estates Subdivision;
- (e) The Firm represents Carl Jordan in Jordan v. Powers, CV41-22-0167, which is currently pending before the Idaho Supreme Court;
- (f) The Firm represents Mayo and Susan Lykes and drafted a letter to Teton County regarding a Special Use Permit application before the BOCC;
- (g) The Firm represented Deanne and David Barsickow in a matter relating to Teton Valley Hospital.

The BOCC has informed itself regarding the nature of the above listed representations, and the County provides informed consent to any conflict of interest posed by such matters.

If the Firm becomes aware of any other actual or potential conflicts of interest, the Firm shall inform the County as soon as possible to procure informed consent and/or a waiver of any conflict, as required by applicable laws and rules of professional conduct.

The Firm agrees to at all times comport itself in accordance with the Idaho Rules of Professional Conduct.

13. Nonwaiver. Failure of either party to exercise any of the rights under this Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

14. Choice of law. Any dispute under this Agreement, or related to this Agreement, shall be decided in accordance with the laws of the State of Idaho.

15. Choice of forum. No Party may commence any action, litigation, or proceeding against the other Party in any way arising from or relating to this Agreement (including but not limited to claims sounding in contract, equity, tort, fraud, or statutory claims), in any forum other than the courts of the State of Idaho sitting in Teton County, Idaho, and any appellate court from any thereof, or, if such court does not have subject-matter jurisdiction, the United States District Court for the District of Idaho. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and must bring any such action, litigation, or proceeding only in such courts. A final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

16. Waiver of jury trial. The parties hereby waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement (including but not limited to claims sounding in contract, tort, breach of fiduciary duty, and all other common law or statutory claims). The

parties represent that each has reviewed this waiver and each knowingly and voluntarily waives its jury trial rights. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court.

17. Entire agreement. This Agreement is the entire agreement between the Parties, and is a complete and exclusive statement of the terms of the Agreement between the Parties with respect to its subject matter.

18. Amendments. No amendment to this Agreement is effective unless it is in writing and signed by the Parties.

19. Severability. This Agreement is intended to be as broad and inclusive as is permitted by applicable law, and if any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason, (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) is not in any way to be affected or impaired thereby, and (b) to the fullest extent possible, the unenforceable provision is to be deemed modified and replaced by a provision that approximates the intent of the Parties and economic effect of the unenforceable provision.

20. Attorney fees. Reasonable attorney fees shall be awarded to the prevailing party in any action arising from or relating to this Agreement.

21. Survival. The terms of sections 8, 9, 14, 15, 16, and 20 survive termination or expiration of this Agreement.

[signatures on the following page]

TETON COUNTY

Cindy Riegel, Chair
Teton County Commissioner

Date

Bob Heneage
Teton County Commissioner

Date

Michael Whitfield
Teton County Commissioner

Date

HOLDEN KIDWELL HAHN & CRAPO PLLC

Andrew D. Rawlings, Esq.

Date