



**NOTICE OF THE REGULAR MEETING OF THE GENERAL ASSEMBLY**

**TOWN OF OPHIR, CO 81426**

**TUESDAY 7:00 PM, June 18, 2024**

OPHIR TOWN HALL 36 PORPHYRY ST.

[Join Zoom Meeting](#)

Meeting ID: 867 0143 8435 Passcode: 373146

+16699006833,,86701438435#,,,,\*373146# US (San Jose)

**AGENDA**

1. CALL TO ORDER
2. APPROVAL OF AGENDA
3. MEETING MINUTES APPROVAL for May 21, 2024
4. BUSINESS ITEMS
  - a. Appointment of David McConaughy as Town of Ophir Attorney
5. STAFF REPORTS
  - a. Town Manager
  - b. Other
6. NEW BUSINESS
7. ADJOURN

## **General Assembly Meeting Memorandum**

To: Ophir General Assembly

From: John Wontrobski, Ophir Town Manager

Date: June 14, 2024 for June 18, 2024 GA meeting

4a. The GA will need to approve the appointment of David McConaughy as the new Town of Ophir Attorney. A New Client Engagement Letter is included in the meeting packet. Mr. McConaughy will be present via Zoom to introduce himself and answer any questions or concern GA members may have.

GLENWOOD SPRINGS OFFICE  
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Glenwood Springs, Colorado 81601  
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GARFIELD & HECHT, P.C.  
ATTORNEYS AT LAW  
Since 1975  
[www.garfieldhecht.com](http://www.garfieldhecht.com)

*David McConaughy*  
[dmcconaughey@garfieldhecht.com](mailto:dmcconaughey@garfieldhecht.com)

May 22, 2024

VIA Email

John Wontrobski, Town Manager  
Town of Ophir  
P.O. Box 683  
Ophir CO 81426  
[manager@ophir.us](mailto:manager@ophir.us)

Re: LEGAL REPRESENTATION AND FEE AGREEMENT

Dear Mr. Wontrobski:

1. **Scope of Engagement; You Hire Us To Act As Your Attorney:** Thank you for the opportunity to represent the town of Ophir (the “Town”) as Town Attorney. This engagement letter will supersede all prior agreements regarding legal services for the Town.
2. **Fees and Staffing; We Bill By The Hour:** We will bill the Town on a tiered structure depending on the nature of the assignment and the attorneys involved:
  - a. For general work not billed back to a developer or land use applicant, the rate will be \$290.00 per hour David McConaughy and other shareholders, senior associates, or “of counsel” attorneys. The rate will be \$275.00 for associate attorneys.
  - b. For litigation matters and water rights matters the rate will be \$400.00 per hour for shareholders, senior associates or “of counsel” attorneys. For associates, the litigation rate will be \$350.00 per hour.
  - c. For all work subject to reimbursement from developers or land use applicants, the rate will be \$340.00 per hour for all attorneys of the firm.
  - d. Travel to and from the Town at your request, or to court, will be billed one-way only from our Glenwood Springs office for one trip per month by one attorney. Whenever possible, we will try to set meetings for times when one of our attorneys is already traveling to Telluride or Mountain Village for other business unrelated to Ophir. In that case, mileage will be billed round trip from Telluride. Any additional travel time will be billed at the general rate regardless of the nature of the matter. We also charge mileage at the IRS rate. We can appear via Zoom or similar platform when practical.

From time to time, we may assign other lawyers, primarily associates, or paralegals for discrete tasks. We agree to keep records of all time spent. Unless otherwise advised, you will be billed monthly. Unless otherwise agreed, you will be billed for professionals' time at increments of 1/10<sup>th</sup> hour. Our rates and fees are based on factors set forth in Rule 1.5(a) of the Colorado Rules of Professional Conduct, applicable to all Colorado attorneys. We periodically review and adjust the hourly rates of our attorneys, paralegals or other timekeepers in response to rising costs, market conditions or other factors law firms typically take into account. By this letter you approve adjustments that do not exceed annually ten percent (10%) over the hourly rate initially quoted to you. Any estimate given regarding fees or costs of your matter are preliminary in nature and unless agreed otherwise are not binding on us and should not be relied upon. Actual fees and costs of your matter may vary substantially from estimates. Where we represent you in connection with the sale or purchase of real estate or other transaction where a settlement statement may be utilized, you authorize us to add a line item for the balance of our legal fees to be paid out of the closing. However, such payment does not always constitute full payment of our legal fees. At the time of closing, it may not be possible to have accounted for all our legal fees, especially if incurred a couple of days before or on day of closing or in attending to post-closing matters. You agree to remain responsible for all such fees. Hourly rates do not apply to opinion letters, and any undertaking in this regard is discretionary with us and subject to your approval as to scope and pricing.

3. **Expenses; You Will Reimburse Us For Expenditures On Your Behalf:** You agree to pay promptly for such legal services and to pay all expenses incurred in connection therewith, such as long distance, court reporters, data compilation and management, office copying service, postage, Federal Express or other overnight carriers, filing, recording fees, secretarial overtime, and the like allocated to your legal matter. We may also incur travel, mileage, lodging and subsistence expenses for your legal matter for which you are also responsible. In certain matters, we will need to retain consultants, vendors and experts on your behalf. You authorize us to incur costs on your behalf, but we are not required to do so. We will attempt to obtain your consent before incurring costs in excess of \$500.00, but you understand that circumstances may make it impractical to obtain your consent before incurring such costs. You agree that you are solely responsible for any costs incurred on your behalf. In lieu of advancing costs, we may request funds from you for the payment of anticipated costs, which will be kept in our COLTAF account until the costs are incurred. These payments or requested funds for payment must be paid promptly.

4. **Litigation; We Cannot Guarantee Success:** If our representation of you involves a contested or adversarial matter, we intend to assert your position vigorously and efficiently. However, you must understand that, in representing any client in a contested or adversarial matter, we cannot promise or guarantee the ultimate success of your position, whether in a lawsuit, arbitration or any other forum. Our performance also depends, in large part, upon your cooperation and particularly upon prompt receipt of information and instructions from you from time to time as the matter progresses. Further, the level of activity may, in large measure, depend on the steps the other parties may take and their willingness, if any, to resolve your dispute without a full-scale trial. We hereby advise you of the existence of alternative forms of dispute resolution which might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

5. **Town as Client:** We represent the Town as a municipal corporation and not any individual General Assembly member, official or employee. We may undertake defense or representation of an official or employee acting in their official capacity if so directed by the Town in accordance with the Charter. We

will take day-to-day direction from the Town Manager and Mayor or other staff as they may authorize, but ultimately the decision to hire the firm or terminate the attorney-client relationship will rest solely with the governing body of the Town. This means it is our duty to place the Town's welfare and interests ahead of the interests of any of the individual officials, employees, or citizens.

6. **Payment; We Charge Interest On Late Payment:** If you are billed for any legal services or expenses, you agree that payment shall be made upon receipt of the bill. If you have a disagreement with an invoice, you agree to bring that disagreement to our attention at your first convenience. You will be charged compounded interest at a monthly rate of 1.5% on any balance unpaid more than 30 days from the date of your bill.

7. **Corporate Transparency Act.** The scope of work described in this retention letter excludes any legal or other services regarding the applicability, filing requirements or any other matters as to compliance with the Act. If such services are desired you may request information from the firm as to the scope of such services and applicable fees. In any event, if you are an entity subject to reporting under the Act or exempt therefrom you agree from time to time, upon request, to provide evidence of such facts.

8. **Withdrawal/Termination; We Reserve The Right To Withdraw, You May Always Terminate Us:** You may terminate our relationship at any time by notifying us in writing. By written notice, we may terminate our relationship as your counsel for reasons including, but not limited to, failure to pay fees or expenses which are due on receipt, failure to cooperate with the firm, noncompliance with the terms of this agreement, conflicting communications where there is more than one client, and any other circumstance we determine in our professional judgment warrants termination under the Colorado Rules of Professional Conduct. If permission for withdrawal is required by court rules, the firm shall be deemed to have withdrawn upon receiving permission from the court, and you agree to pay all legal fees and costs incurred until such withdrawal is completed. Upon termination, you shall immediately pay any remaining balance owed on your account. The firm reserves its right to assert a retaining lien or charging lien, as appropriate, on any unpaid balance. You will be a former client of the firm if: (i) you terminate our representation; or (ii) we terminate our representation of you; or (iii) in the event of litigation permission from the court has been obtained to withdraw; or (iv) we complete any pending matters and notify you; or (v) without further notice upon the passage of time since last legal services were rendered as reasonably determined by us but in any event after the passage of one (1) year.

9. **Privacy; Your Assurance Of Confidentiality, When Disclosures Are Permitted:** Subject to professional, ethical, and evidentiary standards, your communications with us are protected by the attorney-client privilege and rules of confidentiality. The attorney-client privilege may be waived by you if you share the communications or advice with third parties. We advise you not to share or disclose attorney-client communications to any third parties without first consulting us. Additionally, we advise that you avoid posting any information related to the scope of our representation on social media, as this may result in a waiver of the attorney-client privilege. Any information that you post on social media may be discoverable by adverse parties; we advise you to avoid posting any information related to the scope of our representation or your underlying legal matter on social media. Confidential information may be shared by us with other attorneys, paralegals, contract attorneys, legal assistants and outside consultants retained on your behalf in the course of our representation. Confidential information may also be disclosed by us to third parties where your consent to such disclosure is implied from the legal services you have requested us

to provide, or under other circumstances where such disclosure is allowed by the Rules of Professional Conduct. You agree that, if requested, your identity as a client may be disclosed to any municipality that is or may become a client of the firm to allow us and the municipality to consider conflicts of interest. This disclosure is limited to legal matters within the territorial limits of such municipality or properties that may be eligible for annexation and subject to the requirement that the municipality keep such names confidential to the extent permitted by law. We protect all information with physical, electronic, and procedural safeguards that comply with our professional standards. If we are representing multiple clients in this matter, all relevant communications received from you may be disclosed to the other clients we represent.

10. **Insurance; We Are Not Responsible For Insurance You May Have:** It is possible you may have insurance policies relating to the matter wherein you have requested our assistance. You should carefully check all policies and, if coverage may be available, notify the insurance company about the matter as soon as possible. We do not undertake any responsibility to advise you as to the existence, applicability or availability of any insurance coverage or to give notice or tender any claims to any insurance company for any of the matters being handled by this firm. If any insurance company undertakes the payment of any portion of our billing statements, you will still remain responsible for any amounts not paid by the insurance company. Finally, if there is insurance involved in any transaction where we represent you, it is your responsibility to work with the insurer or to hire separate insurance coverage counsel to represent you in any disagreement with the insurer. We are not financial analysts, and we do not have the expertise to advise you as to the financial condition of any underwriter or insurance agent.

11. **Conflicts of Interest; Conflict Checks; Conflicts That May Arise Later and Waivers:** To protect both of us and to comply with our professional obligations, our representation is subject to the Rules of Professional Conduct, including rules that address conflicts of interest with present, former, and future clients of our firm. In the event of any difference between such rules and the terms of this agreement, the Rules shall govern. We screen new clients and matters for conflicts at the time we enter into an engagement; however, conflicts of interest may arise at some later date. If a conflict of interest arises between you and another client being represented by our firm as a result of your own actions independent of our work for you—for example, as a result of a merger, acquisition, or other transaction that you enter—you consent to our continued representation of that other client, even though such other client’s interests may be directly adverse to yours, provided that our representation of the other client does not involve the assertion of claims against you. This firm represents many companies, associations, individuals, municipalities and other governmental or quasi-governmental entities. It is possible that during the time we are representing you, some of our current or future clients will have disputes or transactions with you. You understand that, after our work for you has concluded, you have the status of a former client, and we may represent existing or new clients in any matter, including litigation, even if the representation of such other clients in such other matters is directly adverse to you, so long as those matters are not substantially related to our work for you. Where the attorney handling your case may have a material personal relationship with the opposing attorney, we will consider if such relationship may interfere with the effective representation you would expect from us absent such relationship. Should we perceive that such relationship might interfere, we will disclose such circumstances to you.

We have disclosed to you that we represent the Town of Mountain Village. By your signature below, you acknowledge this disclosure and confirm that you perceive no current conflict of interest with Mountain Village. If that changes, we each agree to discuss the matter promptly.

12. **File Retention Policy; When Your Files May Be Disposed Of:** The firm reserves the right to dispose of any file four (4) years after the legal matters described therein have been resolved or four (4) years after the last work on the matter has been performed, whichever is first. If you wish to obtain your file, you must do so by written request within said four (4) year period. You agree to be responsible for shipping, handling or any extraordinary charges incurred in forwarding these files to you or to any third party you may designate.

13. **Disputes;** In the event of any dispute, controversy or claim (a “**Dispute**”) arising from or relating to our services performed under or this agreement or breach thereof, including a dispute as to the amount owed for legal fees where the Dispute cannot be resolved by direct discussions between the parties, then, upon written notice by either party to the other, the dispute shall be resolved by binding arbitration conducted by, and in accordance with the rules of the Judicial Arbitrator Group, Inc., or, if such entity is no longer functioning, its successor or such other entity most nearly performing the same function in Colorado as we may reasonably determine. The place of arbitration shall occur at such location in Colorado as the arbitrator determines. Except as may be required by law to confirm an award or otherwise, a party, or arbitrator may not, with respect to a Dispute, disclose the existence, content or results of any discussions, or arbitration hereunder without the prior written consent of both parties. As to non-payment of legal fees only, and provided neither party has requested arbitration, we reserve the right to file a collection lawsuit. The exclusive forum for such lawsuit will be the State Courts of Colorado in the County in which our office is located where primary legal services were provided. If we prevail in any such arbitration or collection lawsuit, you agree to pay our reasonable legal fees and costs incurred. Notwithstanding the proceeding as to any malpractice claim and in lieu of arbitration or where malpractice is first asserted in an arbitration, we reserve the right to require that the claim be resolved by the state courts of Colorado and further reserve the right to require a jury trial such proceedings to take place in any county in Colorado we select where the firm maintains an office.

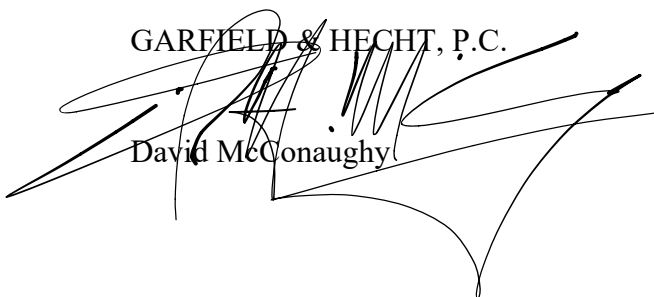
14. **E-Mail Alerts; Website;** If you have provided us with your e-mail or mailing address, we may periodically send to you via e-mail or regular mail alerts involving firm news or changes in laws. If you do not wish to receive these alerts, please let us know, and we will omit your name from our distribution list. Sending such alerts is solely a courtesy to our clients and does not give rise to any duty on our part to keep you informed of changes in laws or constitute legal advice. Documents we send you by e-mail (whether or not containing confidential information) will not be encrypted unless you request us, in writing, to encrypt outgoing e-mail and we are able, without significant additional cost, to agree with you and implement mutually acceptable encryption standards and protocols. We make reasonable attempts to exclude from our e-mails and any attachments any virus or other defect that might affect any computer or information technology system. However, it is your responsibility to put in place measures to protect your computer system against any such virus or defect, and we do not accept any liability for any loss or damage that may arise from the receipt or use of electronic communication from us. If you are a corporation or other form of entity, your signature below constitutes a consent to include your name in the Representative Client listing appearing on our website. We never post the names of individuals on the list. If you do not wish to have your name appearing on the listing, please let us know.

Please acknowledge your acceptance of the terms set forth herein by executing this letter and returning it to the undersigned by email or facsimile at (970) 947-1937. If you prefer to have an electronic

version I am happy to forward it to you via DocuSign for ease of signing. We look forward to working with you.

Very truly yours,

GARFIELD & HECHT, P.C.



David McCaughy

AGREED TO:  
TOWN OF OPHIR

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

If a different billing address is not provided below the address at the beginning of this engagement letter will be used for billing purposes. You may also elect to have your billing emailed to you. Please select your preferred method of delivery below.

Billing Mailing Address:

E-Mail – Billing E-mail Address:

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