

CONTRACT SERVICES AGREEMENT FOR CITY ATTORNEY SERVICES FOR CITY OF HARTSVILLE

This CONTRACT SERVICES AGREEMENT FOR CITY ATTORNEY SERVICES (the “Agreement”) is effective as of the 1st day of July, 2023, by and between the law firm of SMITH, ROBINSON, HOLLER, DuBOSE, AND MORGAN, LLC, a South Carolina Limited Liability Company (“SR” or “Smith Robinson”), and the CITY OF HARTSVILLE, a municipal corporation (“City”). The term “City” shall also include all boards, commissions, financing authorities, and other bodies of City.

1. APPOINTMENT

City Council hereby appoints and hires Daniel Plyler as the City Attorney, and hires SR as its City Attorney legal team, to render such legal services as are customarily rendered by such officials and as further specified herein, including attending meetings of the City Council, Planning Commission, and other boards and bodies of City, and its affiliated agencies, as directed by the City. Other attorneys at SR may additionally provide legal services to the City as contemplated by this agreement. All future references to SR shall be interpreted to Daniel Plyler in his capacity as the lead City Attorney.

Notwithstanding the foregoing appointment, the designated City Attorney may be established from time to time or modified by resolution of the City Council. SR represents it employs, or will employ at its own expense, all personnel required for the satisfactory performance of any and all tasks and services set forth herein. SR shall not replace the designated City Attorney (or any successor to such person) without the City Council’s prior approval, except from time to time necessary due to illness or vacation scheduling. Approval of any such temporary substitute shall be obtained from the City Manager. City Attorney may appoint various assistants and deputies as City Attorney deems appropriate, without the need for amendment hereof.

2. SCOPE OF WORK AND DUTIES

A. SR shall perform any and all work necessary for the provision of legal services to City Council, including, without limitation, the following:

(i) Attendance at City Council, Planning Commission meetings, etc. upon request by the City Manager or his/her designee; and

(ii) Provide legal advice, written legal opinions, and consultation on all matters affecting the City; and

(iii) Be available for telephone consultation with the City, as needed on legal matters which are within the city’s area of operation; and

(iv) Prepare or review necessary legal documents such as: ordinances and resolutions; all agreements of any nature; all real property instruments of any nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; public works construction documents including bid specifications, contracts,

bonds, insurance, liens and related documents; memorandums of understanding; franchise agreements; and all similar documents, all as requested by City; and

(v) Represent and advise City on pending and potential litigation as requested by City; notwithstanding the foregoing, it is expressly understood that SR shall not be responsible for any pending litigation matter(s) handled by attorneys previously or otherwise employed by the City until all files have been transferred to SR and SR has specifically appeared in the matter(s) as attorneys of record on behalf of City; and

(vi) Monitor pending and current legislation and case law as appropriate; and

(vii) Notify City Manager of any item(s) sent to City Attorney on behalf of the city immediately and prior to taking any action, and

B. SR, as a full-service law firm, is prepared to, and will upon request of the City Council, provide representation to City in all of its legal affairs, including, but not limited to, municipal law, land use, environmental, toxics, mining, code enforcement, criminal prosecution, redevelopment, housing, cable television, franchising, contracts, airport, water, waste water, waste management, transportation, enterprise and other matters, except where conflicts exist or where the City Council may otherwise direct. The City Attorney shall represent City in all of the foregoing legal matters, and in initiating and defending all litigation unless otherwise directed by the City Council, City Manager or designee.

C. The City Attorney will keep City informed as to the progress and status of all pending matters in accordance with such procedures as the City Council may establish from time to time. The City Attorney is expected to manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. All legal services shall be properly supervised and all personnel shall be qualified to handle the work assigned. The City wishes to be kept up to date on all matters for which SR is providing legal services to and/or on behalf of the City. SR agrees to provide updates to the City in a timely fashion upon receipt, and to provide quarterly updates to the City on all pending legal matters for which SR is providing legal services to and/or on behalf of the City. Quarterly reports will be sent on, or as close there to as can be accomplished by SR, October 1st, January 1st, April 1st, and July 1st of each calendar year. Failure to timely provide such reporting may result in City withholding payment on SR's billing invoice until such report is received.

D. All legal services shall be coordinated under the direction of the City Manager, or designee. Notwithstanding any other provision contained herein, any legal services can only be authorized by the City Council or delegated by City Council to the City Manager or designee. Nothing in this Agreement shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matters of City from or to SR.

3. CITY DUTIES

City agrees to provide such information, assistance, cooperation, and access to books, records, and other information as is necessary for SR to effectively render its professional services

under this Agreement. City further agrees to abide by this Agreement, and to timely pay SR's bills for fees, costs, expenses, as established by this Agreement. However, nothing in this Section, or any other part of this Agreement, shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matters of City from or to SR.

4. COMPENSATION

- A. Compensation shall be as set forth in Exhibit A.
- B. Payment of Compensation shall be as set forth in Exhibit B.

5. COSTS AND OTHER CHARGES

SR may incur various costs and expenses in rendering the legal services required by this Agreement which, if customary and necessary for the performance of legal services hereunder, shall be reimbursable by City. These costs and expenses are described in more detail in Exhibit A. All clerical services, ordinary travel costs (*e.g.*, from the SR office to City Hall), and miscellaneous expenses (*e.g.*, telephone and facsimile charges) are included within the rates set forth above, and there shall be no additional charges for such expenses. City agrees to reimburse SR for expenses such as experts' or consultant fees, or litigation expenses such as court reporters, which shall be passed through to the City at the actual costs thereof. Reimbursable costs shall not include any overhead or administrative charge by SR or SR's cost of equipment or supplies except as provided herein.

SR may determine it necessary or appropriate to use one or more outside investigators, consultants, or experts in rendering the legal services required (particularly if a matter goes into litigation). City will be responsible for paying such fees and charges. SR will not, however, retain the services of any outside investigators, consultants, or experts without the prior agreement of City. SR will select any investigators, consultants, or experts to be hired only after consultation with City.

Extraordinary travel expenses, including transportation, meals, and lodging, when incurred on behalf of the client shall be reimbursed by City only with the prior agreement of City, which shall not be unreasonably withheld.

6. STATEMENTS

SR shall render to City a statement for fees, costs, and expenses incurred on a monthly basis. Such statement(s) shall indicate the basis of the fees, including the hours worked, the hourly rate(s), and a brief description of the work performed. Separate billing categories can be established to track costs associated with City funding categories or to track project costs, or such other basis as the City may direct. Reimbursable costs shall be separately itemized.

Payments shall be made by City within thirty (30) days of receipt of the statement, except for those specific items on an invoice which are contested or questioned and are returned by City with a written explanation of the question or contest, within thirty (30) days of receipt of the

invoice. Payments made more than thirty (30) days after the due date shall draw interest at the legal rate.

7. SUBCONTRACTING OR ASSIGNMENT

The experience, knowledge, capability and reputation of SR, its partners, associates, and employees, was a substantial inducement for City to enter into this Agreement. Therefore, SR should provide most of the legal work required by the City. However, should other legal counsel be necessary from time to time, SR shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of City. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors, or otherwise, without the prior written approval of City. Adding attorneys to SR, changes in the partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of City or amendment hereof.

8. INDEPENDENT CONTRACTOR

SR shall perform all legal services required under this Agreement as an independent contractor of City, and shall remain, at all times as to City, a wholly independent contractor with only such obligations as are required under this Agreement. Neither City, nor any of its employees, shall have any control over the manner, mode, or means by which SR, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. City shall have no voice in the selection, discharge, supervision or control of SR employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

9. NOTICES

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor; postage prepaid and addressed as follows:

CITY: City of Hartsville
Post Office Drawer 2497
Hartsville, South Carolina 29551
Attention: City Manager

ATTORNEY: Smith Robinson
2530 Devine Street, Third Floor
Columbia, SC 29205
(803) 254-5445 (office)
(803) 254-5007 (fax)
Attention: Daniel C. Plyler
Daniel.Plyler@SmithRobinsonLaw.com

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit with the United States Postal Service shall be

deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that specified above.

10. INSURANCE

SR agrees to obtain and maintain during the term of this Agreement legal malpractice insurance in the amount of at least \$1,000,000.00. In addition, Attorney agrees to obtain liability and workers' compensation insurance (statutory limits) from an insurer authorized to do business in the State of South Carolina with the City listed as an "additional insured". Attorney agrees to provide written proof of such insurance coverage to the City at the time this Agreement is entered. This will be provided annually upon renewal of insurance coverage.

11. LICENSE

At all times pertinent to the performance of the work to be performed by SR, its employees and agents, SR shall obtain and maintain a valid, current business license from the City of Hartsville regarding the activities and services rendered pursuant to this Agreement.

SR agrees to assure and by does assure the City that any and all license fees, taxes, utilities, fees or fines of any type that are now, or may hereafter become, due and owing by the SR, or any of its principals or owners, to the City shall be promptly and fully paid; and the failure to promptly and timely pay license fees, taxes, utilities, fees or fines of any type when they become due shall constitute a breach of this Agreement at the option of the City. This condition is intended to assure that all persons and entities doing business with and within the City, including individual owners of SR and including all of their said business interests, whether such interests are incorporated or not, and whether such business interests and activities are related to the purpose of this Contract or not, are persons and entities who are all in full compliance with the City Code.

12. NON-DISCRIMINATION

In connection with the execution of this Agreement, SR shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, or national origin. SR shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, marital status, handicap, sexual persuasion, or national origin. Such actions shall include, but not be limited to the following: employment, promotion, demotion, transfer, duties assignment; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

13. TERM, DISCHARGE & WITHDRAWAL

This Agreement shall commence on July 1, 2023, and shall remain in full force and effect until June 30, 2026 as approved by City Council Resolution 05-23-01. City may discharge SR at any time. The City Attorney shall have no right to hearing or notice, and may be discharged with or without notice. SR may withdraw from City's representation at any time, to the extent permitted by law, and the Rules of Professional Conduct, upon at least sixty (60) days' notice to City.

In the event of such discharge or withdrawal, City will pay SR professional fees and costs, in accordance with this Agreement, for all work done (and costs incurred) through the date of cessation of legal representation, including without limitation, proration of the monthly retainer amount to the date of such cessation. City agrees to execute, upon request, a stipulation in such form as to permit SR to withdraw as City's attorneys of record in any legal action then pending. SR shall deliver all documents and records of City to City, or to counsel designated by City, and assist to the fullest extent possible in the orderly transition of all pending matters to City's new counsel.

14. CONFLICTS

SR has no present or contemplated employment which is adverse to the City. SR agrees that it shall not represent clients in matters either litigation or non-litigation against the City. However, SR may have past and present clients or may have future clients, which, from time to time, may have interests adverse to City, and SR reserves the right to represent such clients in matters not connected with its representation of the City.

If a potential conflict of interest arises in SR's representation of two clients, if such conflict is only speculative or minor, SR shall seek waivers from each client with regards to such representation. However, if real conflicts exist, SR would withdraw from representing either client in the matter, and assist them in obtaining outside special counsel.

15. INTERPRETATION OF AGREEMENT

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of South Carolina. In the event of any dispute hereunder, forum shall be the Court of Common Pleas, Darlington County.

16. INTEGRATED AGREEMENT

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

17. CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

{Signature pages and exhibits to follow}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the City.

DATED: _____, 2023

CITY OF HARTSVILLE,
a Municipal Corporation

SMITH ROBINSON,
a South Carolina Limited Liability
Company

By: _____
Daniel Moore, City Manager

By: _____
Daniel Plyler, Member

ATTEST: _____
Sherron L. Skipper, City Clerk

**EXHIBIT “A”
BILLING RATES**

- (1) General legal services will be billed at the rate of Two Hundred Fifty Dollars (\$250.00) per hour for SR partners and One Hundred Seventy-five Dollars (\$175.00) per hour for SR associates.
- (2) In addition to the foregoing and not otherwise prohibited by the terms of the Agreement, SR shall be reimbursed for out-of-pocket expenses including telecopier, messenger, courier, and other communication costs; reproduction expense; court reporters; and other costs and expenses incurred on behalf of the City. Notwithstanding the foregoing, we do not charge for word processing, routine computer-assisted legal research, local calls or mileage to City Hall or City offices. In exchange, when on-site, we would have the ability to use City copiers and telephones without charge.
- (3) The rate for paralegals, irrespective of matter, shall be One Hundred Dollars (\$100.00) per hour, other support staff will be billed, as needed, at Forty Dollars (\$40.00) per hour.
- (4) The foregoing fee arrangement shall remain in effect unless adjusted by the City Council. If City Council were to make an adjustment to this fee agreement, a new fee agreement would be required and would then need to be accepted and/or approved by SR.

**EXHIBIT “B”
BILLING STATEMENT AND PAYMENT**

SR’s fees are charged on an hourly basis for all time actually expended and are billed monthly with payment due within thirty (30) days after the date of the bill. The current hourly design rate for the attorneys and staff working on this matter will be set forth in the billing statement.

SR will incur various costs and expenses in performing legal services. These costs and expenses are separately billed to the client and include fees fixed by law or assessed by public agencies, litigation costs including deposition, reporter fees, and transcript fees, messenger and other delivery fees, postage, and any other expense pre-approved by Client, all based on the actual and reasonable cost (mileage, reproduction and other costs are periodically adjusted in accordance with SR’s actual costs).

Travel costs including mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals are charged in connection with administrative or judicial proceedings. Travel time may also be charged in connection with such proceedings. In addition, the client will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the client.

It is understood that SR will generally not charge for mileage between our office and City facilities, nor for local telephone calls or calls made to the City. In exchange, Firm shall not be charged for calls made or received at the City, whether local or long-distance, or for copying charges since copying on-site will reduce the charge to the client.

The monthly billing statements for fees and costs shall indicate the basis of the fees, including a detailed and auditable breakdown of the hours worked, the billable rates charged and description of the work performed. All bills are expected to be paid within thirty (30) days of the date of the billing statement.

Registration fees for attorneys attending conferences and seminars are paid by SR and are never charged to the City (unless expressly requested by the City).