

**Agenda Item No:** CA-c

**Meeting Date:** June 12, 2023

**Subject:** Resolution No 23-53, a Resolution approving an Agreement with Kissinger and Fellman, P.C.

**Presenter:** Jennifer Krieger, AICP, Community Development Director

**Background:** Resolution 23-53 approves a Representation Agreement with Kissinger and Fellman, P.C. to assist with the negotiation of right-of-way and cable franchise agreements with Comcast, the review and revision of a Master Service Agreement with Lumen related to extending a fiber optic line to the public works facility, and any other related broadband or cable matters.

The City of Dacono is a Colorado Communication and Utility Alliance (CCUA) member. Through the CCUA, the City receives resources and expertise in public policy development, legislation, education, technology, and programming on state and federal matters impacting the interests of local governments.

CCUA is represented by Kissinger and Fellman, P.C. The firm's attorneys have expertise in government, telecommunications, and utilities and are highly respected as advisors on these issues at the municipal, state, and federal levels, including the Federal Communications Commission (FCC). All member communities are provided 8 hours of legal advice on individual member matters related to communications as part of their CCUA dues.

Most recently, in 2021, the City approved a Representation Agreement with Kissinger and Fellman, P.C., by Resolution 21-59, for assistance with negotiating a broadband agreement.

**Staff Recommendation:** Staff recommends approval of Resolution No 23-53.

**RESOLUTION NO. 23-53**

**A RESOLUTION APPROVING A REPRESENTATION AGREEMENT WITH KISSINGER AND FELLMAN, P.C.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:**

**Section 1.** The proposed Representation Agreement by and between the City of Dacono and Kissinger and Fellman, P.C. to provide legal counsel, advice and assistance in connection with the negotiation of right-of-way and cable franchise agreements with Comcast, the review and revision of a Master Service Agreement with Lumen related to extending a fiber optic line to a certain facility, and any other related broadband or cable matters as may be authorized by Client from time to time is approved in essentially the same form as the copy of such Representation Agreement accompanying this resolution.

**Section 2.** The Mayor is hereby authorized to execute the Agreement, and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 12<sup>th</sup> day of June, 2023.

CITY OF DACONO, COLORADO

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Adam Morehead, Mayor

ATTEST:

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Valerie Taylor, City Clerk

# KISSINGER & FELLMAN, P.C.

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COLLEEN MCCROSKEY  
PAUL D. GODEC, SPECIAL COUNSEL

## REPRESENTATION AGREEMENT

The City of Dacono ("Client"), hereby employs the law firm of Kissinger & Fellman, P.C., ("the Firm") to provide legal counsel, advice and assistance in connection with (1) the negotiation of right-of-way and cable franchise agreements with Comcast; (2) the review and revision of a Master Service Agreement with Lumen related to extending a fiber optic line to a certain facility; and (3) any other related broadband or cable matters as may be authorized by Client from time to time. Legal fees and costs will be billed in accordance with the Billing Policies of the Firm set forth on this Representation Agreement which are part of this agreement. It is understood and agreed that the Firm's hourly rates may increase in the future.

The Firm's policy is to require from time to time an advance fee deposit/retainer for services and fees from each client prior to beginning any new or additional work on the client's matters. In this particular situation, an initial fee deposit/retainer of \$0.00 has been agreed upon. This deposit/retainer will be placed in the Firm's trust account and applicable disbursements will be made from the trust account to the Firm each month at the time of billing, to cover fees earned and expenses accrued. Client agrees to promptly make such subsequent deposits/retainers as the Firm may require from time to time.

## BILLING POLICIES

Our regular hourly charges for professional services of each attorney in the firm are as follows:

Jonathan M. Abramson	\$350 per hour	Colleen McCroskey	\$175 per hour*
Brandon M. Dittman	\$225 per hour*	Julie Nikolaevskaya	\$220 per hour
Kenneth S. Fellman	\$305 per hour*	Bobby G. Riley	\$225 per hour*
Paul D. Godec	\$275 per hour*	Paralegal/Law Clerk	\$ 90 per hour

**\* BMD rate reduced from \$260; KSF rate reduced from \$405; PDG rate reduced from \$350; CEM rate reduced from \$185; and BGR rate reduced from \$280.**

Adjustments in the Firm's rates and charges do occur from time to time, and we endeavor to notify all our then active clients of any changes at the time they are to take place. Nonetheless we still encourage all client inquiries concerning the rates in effect at the beginning of each project and will provide an updated copy of these Billing Policies upon every request.

If there are services which can be performed by our paralegals or law clerks, this time will be charged at \$90 per hour. Billing will reflect all time expended on clients' matters, such as: office conferences, legal research, telephone calls, correspondence, travel time, drafting, court or hearing preparation and appearances, etc. Direct costs or expenses relating to clients' work (i.e., photocopies, postage, long distance telephone calls, mileage, parking, etc.) will be billed in addition to our hourly charges for professional services rendered.

Billing will normally be on a monthly basis. On matters which are not ongoing, a final billing may be made at the conclusion of the matter.

Our terms are payment in full within 30 days of the date of billing. If payment is not received timely, services and expense advances may be discontinued by the firm until satisfactory arrangements can be made to reinstate any past due account. **Interest** shall accrue at the rate of 1.5% per month on all amounts


overdue and unpaid. If collection efforts become necessary on any unpaid amounts, the client shall be responsible for costs and legal fees related thereto.

**DOCUMENT/FILE RETENTION POLICY**

When our engagement in this matter ends, at your written request, all materials/property you provided to us during the course of the representation will be returned to you. You agree that we have the right to make copies of all documents generated or received by us from any source during the course of our representation of you. When you request information from your file, the cost of transmitting original documents to you and/or the cost of providing you with copies of other documents will be charged to you. It is your responsibility to secure the return of any documents or property in the file. Following the conclusion of the matter, the client file may be converted to electronic format for storage. During the course of the representation, we may generate certain documents related to the matter (such as drafts, notes, internal memoranda, legal research, factual research, including investigative reports prepared by or for the internal use of lawyers on the case or in the firm, and administrative records) that will be retained by us (as opposed to being sent to you) or destroyed. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials that belong to the law firm within a reasonable time after our final bill for the matter is sent to you.

KISSINGER & FELLMAN, P.C.

Attorneys at Law

By:   
Kenneth S. Fellman  
President

By: \_\_\_\_\_  
Jennifer Krieger

Title: Community Development Director  
Date: \_\_\_\_\_

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