

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 56, SERIES 2022**

**A RESOLUTION APPROVING THE INDEPENDENT CONTRACTOR AGREEMENT
FOR MUNICIPAL PROSECUTOR SERVICES.**

WHEREAS, the Town Council of the Town of Timnath (the “Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as **Exhibit A** is the Independent Contractor Agreement for Municipal Prosecutor Services between the Town and Tricia McCarthy, (the “ICA”); and

WHEREAS, the Town Council is familiar with the ICA and finds it to be in the best interest of the Town, its residents, and the general public to enter into the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval

The ICA is hereby approved, authorized, and ratified in substantially the form attached hereto as **Exhibit A**, with such modifications and additions as the Town Manager, in consultation with legal counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this resolution. Any actions taken prior to the execution of this Resolution, that are within the authority conferred hereby, are ratified, confirmed, and approved by the Town Council.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON NOVEMBER 8, 2022.

TOWN OF TIMNATH, COLORADO



Mark J. Soukup, Mayor

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk



EXHIBIT A

ICA

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF TIMNATH
AND THE AUSMUS LAW FIRM, P.C.**

This Professional Services Agreement, hereinafter "Agreement", is made by and between the Town of Timnath, hereinafter the "Town", and the undersigned contractor, hereinafter the "Contractor", and both collectively referred to from time to time herein as the "Parties".

WHEREAS, the Town desires to retain Contractor for the services as described herein; and

WHEREAS, the Contractor desires to be retained by the Town for the services as described herein.

NOW, THEREFORE, in consideration of the agreements and covenants contained herein, the Parties hereto agree as follows:

1. BASIC TERMS:

A. Name, Address, and Phone Number of the Parties.

Town:

Town of Timnath
4750 Signal Tree Drive
Timnath, Colorado 80547
Phone: 970-224-3211

Contractor:

Ausmus Law Firm, P.C.
6020 Greenwood Plaza Blvd., Suite 100
Greenwood Village, Colorado 80111
Phone: 303-694-4248

B. Scope of Services. Contractor shall perform municipal prosecution services for the Town. The scope of services is more fully set forth in **ATTACHMENT A** to this Agreement.

C. Compensation. The services set forth in this Agreement shall be completed for a flat fee of \$800.00 per court session and shall be based upon the current municipal court schedule, wherein municipal court is held on the first Thursday of the month beginning at 9:30 a.m. and running until conclusion of the docket, and shall include all services set forth in **ATTACHMENT A**. If the municipal court schedule is expanded beyond one day per month, the Parties agree to renegotiate and modify the amount of the compensation.

The Contractor may provide additional services upon the request of the Town Manager, including without limitation jury trials, defendant appeals of municipal court matters, police officer trainings, subpoena preparation or any other requests required outside the above scope of services. The Town will pay the Contractor for such additional services at a rate of \$125.00 per hour, billed based on 1/10 hour increments.

Any expenses related to postage for mailings or personal service of subpoenas shall be paid for directly by the Town or reimbursed to Contractor at Contractor's actual cost. In addition, Contractor shall be reimbursed for travel mileage between the Town and the law firm address at the I.R.S. standard rate (currently 62.5 cents per mile). Not later than the tenth (10th) day of each month, Contractor shall submit an invoice to the Town for the prior month's time and expenses.

D. **Term.** The term commences on January 1, 2023 and expires on December 31, 2023. Notwithstanding the foregoing, unless terminated as set forth in Section (1)(E) below, or unless the Town determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew for up to four (4) additional one (1) year terms commencing January 1 of the next succeeding year.

E. **Termination.** Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party.

2. CONTRACTOR NOT EMPLOYEE. Contractor is an independent contractor and not an employee, partner, or agent of the Town. The Contractor shall have exclusive domain and control over the activities of its employees, if any, and under no circumstances shall Contractor or Contractor's employees be considered employees or agents of the Town. Contractor recognizes and agrees that independent contractors are not entitled to workers' compensation benefits and that independent contractors may be obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship.

3. COLORADO GOVERNMENTAL IMMUNITY ACT. The Parties acknowledge that provisions of this Agreement are not intended to waive any of the rights and defenses afforded the Town under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, et. seq.).

4. CONTRACTOR LICENSE, EXPERTISE AND INSURANCE. Town has selected Contractor because of Contractor's special training, education and expertise to provide the services identified herein. Contractor shall maintain professional liability insurance, at its expense, in an amount of at least \$500,000 per occurrence and 1,000,000 in the aggregate.

The work performed by Contractor under this Agreement shall be consistent with the highest professional standards of the Denver Metropolitan and Colorado Front Range areas. Contractor shall maintain such licenses as may be necessary to provide the services set forth in this Agreement.

5. DOCUMENTS. All documents prepared or furnished by Contractor pursuant to this Agreement shall be the property of the Town. In addition, the Town shall have access to Contractor's financial records that are relevant to the Town and the services performed hereunder for the purposes of audit. Such records shall be complete and available for audit for ninety (90) days after final payment under this Agreement and shall be retained and available for audit purposes for at least five (5) years after final payment hereunder.

6. TABOR. Notwithstanding other provisions in this Agreement to the contrary, the Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR").

A. The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.

B. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31.

C. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the Town and other applicable law.

D. Notwithstanding any other provision of this Agreement concerning termination, upon the Town's failure to appropriate such funds, the Agreement shall automatically terminate.

7. CONFIDENTIALITY. The Parties agree that Contractor will, in the course of its duties hereunder, receive information concerning the Town, its residents, employees, elected and appointed officials, property, equipment and functions. Contractor agrees to hold all such information confidential and to not disclose the same other than to the extent required to perform its duties, or upon a proper request from an authorized Town official, or pursuant to a proper request under the Colorado Open Records Act, C.R.S. § 24-72-101, *et. seq.*, to which the authorized Town official has confirmed it is appropriate for Contractor to respond or pursuant to a lawful court order or when required by the Colorado Rules of Professional Conduct. The requirements of this Section shall survive the termination of this Agreement.

8. MISCELLANEOUS.

A. **Severability/Governing Law.** This Agreement is to be governed and construed according to the laws of the State of Colorado with venue of any litigation to be in Larimer County. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

B. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties hereto relating to the services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Town.

C. **Waiver and Modification.** The waiver by Town of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of services hereunder by Town shall not be deemed to be a waiver of any preceding breach by Contractor of any term, covenant or condition of this Agreement. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach of the same or any other provision hereof. If this Agreement is contingent upon approval by the Town Council, it is expressly agreed that, except as may otherwise be provided by applicable statute or ordinance, no official of the Town has the authority to waive or modify any provision of this Agreement without formal approval of the Town Council.

D. **Headings.** The headings and titles in this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

E. **Time.** Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

F. **Corporate Authority.** If Contractor is a corporation, an LLC, an LLP, a limited partnership, a general partnership, an LLLP, or other non-natural entity, each individual executing this Agreement on behalf of said entity represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of said entity, in accordance with a duly adopted resolution of the board of directors, partners, or members of said entity or in accordance with the governing documents of said entity, and that this Agreement is binding upon said entity in accordance with its terms.

G. Notices. Any notice or other communication given by any of the Parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given:

(I) On the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified in Section 1, above;

(II) On the date of delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified in Section 1, above; or

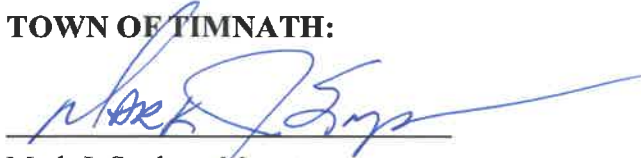
(III) Within twenty-four (24) hours after deposit with a nationally recognized overnight courier or messenger service, properly addressed as specified in Section 1, above.

Either Party may change such address by written notice to the other Party.

H. NON-ASSIGNMENT. This Agreement is an agreement for services by which Contractor was selected for Contractor's special expertise. This Agreement may not be assigned by either Party.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the 8th day of November, 2022.

TOWN OF TIMNATH:



Mark J. Soukup, Mayor

ATTEST:



Milissa Peters-Garcia, CMC, Town Clerk

CONTRACTOR:

Ausmus Law Firm, P.C.

DocuSigned by:

J. ANDREW AUSMUS, PRESIDENT

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Tricia McCarthy, Attorney at Law

ATTACHMENT A
(Scope of Services)

The scope of services shall include the following:

- a. Preparation and review of municipal court docket.
- b. Attendance at the once-a-month court session.
- c. Prosecution of municipal court cases from arraignment, including plea bargaining with defendants at court, motions hearings and court trials if applicable.
- d. Coordinate with the Town court clerk between and during court session.
- e. Witness preparation for trial.
- f. Provide ongoing police officer training during court appearances as well as being available for phone calls for officer questions.
- g. Any other requests from the Town Manager or the municipal judge surrounding the operation of the municipal court.