

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 22 – SERIES 2016**

**A RESOLUTION AUTHORIZING THE MAYOR OF THE
TOWN OF MINTURN TO SIGN A SERVICE CONTRACT
BETWEEN CARLSON AND CARLSON, P.C. AND THE
TOWN OF MINTURN CONTRACTING FOR MINTURN
MUNICIPAL COURT PROSECUTING ATTORNEY
SERVICES**

WHEREAS, The Town of Minturn desires Carlson and Carlson, P.C. to serve as the Minturn Municipal Court Prosecutor as set forth in this Legal Services Agreement (“Agreement”).

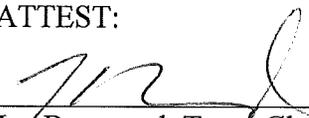
**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF
THE TOWN OF MINTURN, COLORADO THAT THE MAYOR OR HIS DESIGNEE IS
AUTHORIZED TO SIGN ON BEHALF OF THE TOWN OF MINTURN ANY AND ALL
NEGOTIATED DOCUMENTS REQUIRED TO EXECUTE SAID AGREEMENT.**

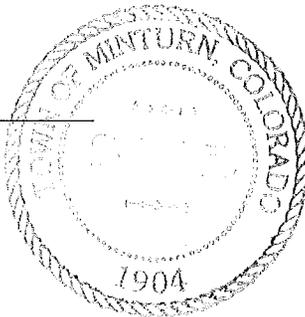
**INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this
7TH day of September, 2016.**

TOWN OF MINTURN

By: 
Matt Scherr, Mayor

ATTEST:


Jay Brunvand, Town Clerk



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 7th day of September, 2016 by and between the TOWN OF MINTURN, Colorado, a home rule municipality ("Minturn" or the "Town"), and Carlson and Carlson Attorneys at Law, P.C. (the "Contractor").

WHEREAS, the Town desires that Contractor perform the services of Municipal Court Prosecutor as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the job description attached as **Exhibit A**; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the Parties hereto desire to set forth certain understandings regarding the services in writing.

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

1. **Services.** The Town agrees to retain Contractor to provide the services set forth herein, and as further specified in **Exhibit A**, attached hereto and incorporated herein by reference ("Scope of Services"), and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. The Town reserves the right to omit any of the Services identified in **Exhibit A** upon written notice to Contractor. In the event of any conflict between this Agreement and **Exhibit A**, the provisions of this Agreement shall prevail. All services shall be performed in a good and workman like manner and in conformance with the standard of care in the industry in Colorado.

2. **Compensation.** The Town agrees to pay Contractor a sum not to exceed two hundred fifty dollars per hour for Mr. Carlson and one hundred eighty-five dollars per hour for Mr. O'Connor Dollars (\$250/\$185), as adjusted to reflect the deletion by the Town of any of the Services set forth in **Exhibit A**. Contractor shall obtain written permission from the Town prior to billing more than ten (10) hours in any given month. The Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Contractor, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

3. **Term.** The Term of this Agreement shall be from the date first written above and extend annually unless terminated in accordance with Section 10 of this agreement.

4. **Ownership of Instruments of Service.** The Town acknowledges the Contractor's work product, including electronic files, as instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to the Contractor.

5. **Monitoring and Evaluation.** The Town reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the Town's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the Town relating to such monitoring and evaluation.

6. **Independent Contractor.** The Parties agree that the Contractor shall be an independent contractor and shall not be an employee, agent, or servant of the Town. **Contractor is not entitled to workers' compensation benefits from the Town and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.**

7. **Insurance Requirements.**

a. **Comprehensive General Liability Insurance / Malpractice Insurance.** Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance / malpractice insurance insuring Contractor against any liability arising out of the performance of the Services with at least one million dollars (\$1,000,000.00) each occurrence. The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

b. **Comprehensive Automobile Liability Insurance.** Contractor or Contractor's employee(s) shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring Contractor or Contractor's employee against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by Contractor or Contractor's employee which are used in connection with the Project, with a combined single limit of at least \$100,000 per person and \$300,000 per occurrence. The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

c. **Terms of Insurance.**

i. Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as Contractor deems reasonable for the Services. No such policies shall be cancelable or subject

Town of Minturn
Professional Services Agreement

to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the Town. Contractor shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Contractor changes to "occurrence," Contractor shall carry a six (6)-month tail. Contractor shall not do or permit to be done anything that shall invalidate the policies.

ii. The policies described in subparagraphs a. and b. above shall be for the mutual and joint benefit and protection of Contractor and the Town. Such policies shall provide that the Town, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of Contractor, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the Town may carry.

d. Workers' Compensation and Other Insurance. During the term of this Agreement, Contractor shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law. If under Colorado law Contractor is not required to carry workers' compensation insurance, Contractor shall provide the Town an executed Certificate of Exemption From Statutory Workers' Compensation Law and Acknowledgment of Risk/Hold Harmless Agreement, which shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

e. Evidence of Coverage. Before commencing work under this Agreement, Contractor shall furnish to the Town certificates of insurance policies evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the Town shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance.

8. **Indemnification.** Contractor hereby covenants and agrees to indemnify, save, and hold harmless the Town, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or omission or other tortious conduct of Contractor, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

9. **Termination.**

a. For Convenience. The Town may terminate this Agreement without cause if it determines that such termination is in the Town's best interest. The Town shall effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least thirty (30) calendar days prior to the effective date of termination. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be

Town of Minturn
Professional Services Agreement

liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the Town.

b. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, and does not commence correction of such nonperformance or violation within seven (7) calendar days of receipt of written notice and diligently complete the correction thereafter, the Town shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Contractor. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the Town for any damages sustained by the Town by virtue of any breach of this Agreement, and the Town may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the Town from Contractor is determined.

c. Payment upon Termination. In the event that this Agreement is terminated, Contractor shall be entitled to payment for its costs and services performed, up through the date of termination, less allowances for services rendered that were negligent or otherwise contrary to this Agreement.

10. **Work By Illegal Aliens Prohibited.** This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work, or information technology services or information technology products and services. Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor warrants, represents, acknowledges, and agrees that:

a. Contractor does not knowingly employ or contract with an illegal alien.

b. Contractor shall not knowingly employ or contract with an illegal alien to perform works or enter into a contract with a subcontractor that fails to verify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

c. Contractor has participated in or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, "E-Verify") in order to verify that Contractor does not employ illegal aliens. If Contractor is not accepted into E-Verify prior to entering into this Agreement, Contractor shall forthwith apply to participate in E-Verify and shall submit to the Town written verification of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in E-Verify, and shall certify such application to the Town in writing, every three (3) months until

Town of Minturn
Professional Services Agreement

Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 11 shall be null and void if E-Verify is discontinued.

d. Contractor shall not use E-Verify procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:

i. notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

g. If Contractor violates this Paragraph, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

11. **Compliance with C.R.S. § 24-76.5-103.**

a. If Contractor is a natural person (*i.e.*, not a corporation, partnership, or other legally-created entity) 18 years of age or older, he/she must do the following:

i. complete the affidavit attached to this Agreement as **Exhibit C**; and

ii. attach a photocopy of the front and back of one of the valid forms of identification noted on **Exhibit C**.

b. If Contractor executes the affidavit stating that he/she is an alien lawfully present in the United States, the Town shall verify his/her lawful presence through the federal systematic alien verification or entitlement program, known as the "SAVE Program," operated by the U.S. Department of Homeland Security or a successor program designated by said department. In the event the Town determines through such verification

process that Contractor is not an alien lawfully present in the United States, the Town shall terminate this Agreement and shall have no further obligation to Contractor hereunder.

12. **Use of Software and other Intellectual Property.** Contractor hereby represents and warrants that it has obtained all necessary rights and licenses to use any software or other intellectual property that may be required by Contractor to perform the Scope of Services. Contractor hereby agrees to indemnify, hold harmless and defend Town against any claim brought against Town for improper use or infringement upon any software or intellectual property interest.

13. **Agreement Subject to Appropriation.** To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it shall be subject to annual appropriation pursuant to the Town of Silt Municipal Code and Article X, Section 20 of the Colorado Constitution. The Town shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

14. **Responsibilities.** The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees or subcontractors, to the extent caused by its negligent acts, errors and omissions hereunder, and shall indemnify and hold harmless the Town from any claims or actions brought against Contractor by reason thereof.

15. **Entire Agreement.** This Agreement, **along with any addendums and attachments hereto,** constitutes the entire agreement between the Parties. The provisions of this Agreement may be amended at any time by the mutual consent of both Parties. The Parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

16. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Eagle, State of Colorado.

17. **Governmental Immunity Act.** No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

18. **Assignability.** Contractor shall not assign this Agreement without the Town's prior written consent.

19. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors, and assigns.

20. **Survival Clause.** The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

Town of Minturn
Professional Services Agreement

21. **Severability.** In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

22. **Headings.** Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

23. **Notices.** Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Town:	TOWN OF MINTURN Attn: Town Clerk PO Box 309 Minturn, CO 81645
With copy to:	Michael J. Sawyer, Esq. Karp Neu Hanlon, P.C. 201 14 th Street, Suite 200 P. O. Drawer 2030 Glenwood Springs, Colorado 81602
If to Contractor:	Carlson and Carlson, P.C. 975 N Ten Mile Dr, Ste. P.O. Box 1829 Frisco, CO 80443

24. **Authority.** Each person signing this Agreement, **and any addendums or attachments hereto**, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the Party it represents to the terms and conditions hereof.

25. **Attorneys' Fees.** Should this Agreement become the subject of litigation between the Town and Contractor, the prevailing Party shall be entitled to recovery of attorneys' fees and costs. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

EXHIBIT A

SCOPE OF SERVICES

The scope of services requested for this procurement is to provide full range Town Prosecutor service for the Minturn Municipal Court. Town Prosecutor shall be an independent contractor and shall manage and prosecute all criminal cases including but not limited to preparation of pleadings; review of police reports and discovery; pretrial hearings and plea negotiations; research; case preparation for trial; oral and written argument of legal concepts and principals; conduct bench and jury trials, motion hearings and other related trial work as may be required.

EXHIBIT C

AFFIDAVIT PURSUANT TO C.R.S. 24-76.5-103

I, RONALD W. CARLSON, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
 I am a Permanent Resident of the United States, or
 I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.



Signature

9/12/16
Date

INTERNAL USE ONLY

The following documents are acceptable forms of identification:

- Produce:
 - A valid Colorado driver's license or a Colorado identification card issued under article 2 of title 42, C.R.S., unless the applicant holds a license or card issued under part 5 of article 2 of title 42, C.R.S.; or
 - A United States military card or a military dependent's identification card; or
 - A United States Coast Guard Merchant Mariner card; or
 - A Native American tribal document; and
- Execute an affidavit stating:
 - That he or she is a United States citizen or legal permanent resident; or
 - That he or she is otherwise lawfully present in the United States pursuant to federal law.

*A waiver may be available where no identification exists or can be obtained due to a medical condition, homelessness, or insufficient documentation to receive a Colorado I.D. or Driver's License. Contact your department director.