



CITY COUNCIL ACTION FORM

DEPARTMENT Administration	PRESENTED BY Christy Doon - City Administrator	DATE March 5, 2024
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ITEM

Resolution 2024-22, A Resolution of the City Council for the City of Salida appointing _____ as City Prosecutor and Approving the Employment Agreement

BACKGROUND

The City posted for the City Prosecutor Position at the end of 2023 after the Council terminated the contract with the presiding City Prosecutor. Since that time, the City's Attorney's Office has been providing prosecutorial services. The City received three proposals, which were presented to the Council at the March 4, 2024, work session, at which the Council interviewed potential prosecutors.

FISCAL NOTE

The employment agreement is attached, which includes a payment of \$1,725 per court session.

SUGGESTED MOTION

A City Councilmember should state, "I move to approve Resolution 2024-22, A Resolution of the City Council for the City of Salida Appointing _____ as City Prosecutor and Approving the Employment Agreement" followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
RESOLUTION NO. 22
(Series of 2024)

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,
APPOINTING THE CITY PROSECUTOR AND APPROVING A PROFESSIONAL
SERVICES CONTRACT**

WHEREAS, Salida Municipal Code § 2-3-10 identifies that a Municipal Prosecutor shall be appointed by a majority of the members of the City Council and shall serve as a department head; and

WHEREAS, the Municipal Prosecutor position is currently vacant; and

WHEREAS, the City of Salida solicited a Request for Prosecution services in order to fill the vacancy; and

WHEREAS, the Salida City Council desires to appoint [REDACTED] to perform all Municipal Court Prosecution services on behalf of the City of Salida Municipal Court.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO AS FOLLOWS:

Section 1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations and findings.

Section 2. The Salida City Council hereby appoints [REDACTED] as the Municipal Prosecutor and sets the Municipal Prosecutor's maximum salary at a rate of \$1,725.00.

Section 3. The Employment Agreement, attached hereto as "Exhibit A," which sets forth in detail the terms and conditions of the appointments made by Section 2 above, is hereby approved.

Section 4. The appointment made by Section 2 of this Resolution shall become effective on March 5, 2024.

RESOLVED, APPROVED AND ADOPTED this 5th day of March, 2024.

CITY OF SALIDA, COLORADO

Dan Shore, Mayor

[SEAL]

ATTEST: _____
City Clerk/Deputy City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into this 5th day of March, 2024 by and between the CITY OF SALIDA, COLORADO, a Colorado municipal corporation (“City”) and [REDACTED] (“Contractor”).

WHEREAS, the City desires that Contractor perform the services of Municipal 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 City 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 (“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.
2. Consideration. The City agrees to compensate Contractor up to One Thousand Seven Hundred Twenty-Five Dollars (\$1,725.00) for each court session, including review of the docket and reports, conducting arraignments, pretrial conferences and preparing for and conducting jury trials, appeals, and marijuana and liquor hearings. The City shall make payment within thirty (30) days of receipt and approval of invoices shall be submitted to the City 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 effective as of the date of its execution by both parties, as dated above until the Agreement is terminated pursuant to Section 8 of this Agreement; provided, however, that to the extent that the term of this Agreement exceeds one fiscal year, the obligations described herein shall be subject to annual appropriation by the City Council, at its sole discretion.
4. Outside Support Services and Sub-Contractor. Any sub-contractors shall be pre-approved by the City. A rate sheet for each sub-contractor shall be provided to the City.
5. Independent Contractor. The parties agree that the Contractor is an independent contractor and shall not be considered an employee, agent, or servant of the City for any purpose. Contractor is not entitled to workers’ compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement. The parties further agree and understand that as an independent contractor, Contractor does not receive the protections of the Colorado Governmental Immunity Act, that the Contractor is

responsible for their own liability insurance, and that the City's insurance coverage does not extend to independent contractors or to the Contractor.

6. Insurance Requirements. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor and naming the City as an additional insured against any liability for personal injury, bodily injury, damages to property, or death 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 the Contractor hereunder.
7. Indemnification. Contractor hereby covenants and agrees to indemnify, save, and hold harmless the City, 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 error and omission or other tortious conduct of Contractor, its officers, subcontractors, employees, or agents in the performance or nonperformance of its obligations under this Agreement.
8. Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:
 - a. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of notice of termination; and
 - b. In the event this Agreement is terminated, the Contractor shall be compensated for all work performed to date based on estimate percentage of completion, including the percentage of any and all work items begun but not completed.

If the parties have mutually determined that the work has become infeasible, the parties agree to terminate the Agreement in accordance with this Section.
9. 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.
10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue for any action instituted pursuant to this Agreement shall be in the County of Chaffee, State of Colorado.
11. 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.
12. 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.*

13. Assignability. Contractor shall not assign this Agreement without the City's prior written consent.
14. 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.
15. 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.
16. 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.
17. Notices. Any written notice required to be given under this Agreement shall be delivered as follows:

To the City:	City Administrator City of Salida 448 E. 1 st Street, Suite 112 Salida, CO 81201 (719) 530-2629
Copy to:	Wilson Williams Fellman Dittman Attn. Nina P. Williams 1314 Main Street, Suite 101 Louisville, CO 80027
To the Contractor:	[Name of selected Prosecutor] [Address]
18. Authority. Each person signing this Agreement, and any addendums or attached 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 thereof.
19. Attorneys' Fees. Should this Agreement become the subject of litigation between the City and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. 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.

CITY OF SALIDA, COLORADO

By: _____
Dan Shore, Mayor

ATTEST:

City Clerk/Deputy City Clerk

CONTRACTOR:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing Agreement for Professional Services was acknowledged before me this ____ day
of _____, 2024, by _____.

Witness my hand and official seal.

My commission expires _____.

Notary Public

EXHIBIT A

Scope of Services and Fee Schedule

SCOPE OF WORK

The Municipal Prosecutor for the City of Salida will represent the City in the prosecution of violations of the Salida Municipal Code in the City's Municipal Court and related prosecutorial functions (i.e. plea negotiations, sentencing recommendations, probation revocations and contempt hearings). Legal services will include all necessary court appearances, legal research, investigation, correspondence, preparation of legal documents, trial preparation, appeals to Municipal and District Court and all related work required to properly represent the City in the following areas:

1. Prosecute violations of the Salida Municipal Code.
2. Prepare for and attend trials (once per month), hearings, and other criminal and civil case activities.
3. Review facts and law, conduct legal research, prepare pleadings, and conduct defense interviews.
4. Conduct pretrial conferences, including negotiation of plea agreements offers and terms of deferred prosecution.
5. Perform professional legal work (carrying the highest levels of volume, complexity, consequence, autonomy and responsibility), including regularly drafting subpoenas, motions, notices and proposed order.
6. Collaborate and confer with the City Attorney, as needed, including consulting with the City Attorney on interpretations of the Salida Municipal Code and appeals.
7. Work with the City Attorney, City Administrator, Chief of Police, and additional City Staff in preparing matters for Municipal Court prosecution and other duties as required by the Salida City Council.