

RESOLUTION NO. 2

SERIES 2022

A RESOLUTION PROVIDING TOWN ATTORNEY ASSISTANT FOR MUNICIPAL PROSECUTION AND ESTABLISHING RATES

WHEREAS, the Town Charter, Article VIII, entitled Legal and Judiciary, Section 8.1, provides, among other things, that the Town Attorney shall serve as the legal representative of the Town;

WHEREAS, the Town Charter further states that the Town Council must approve any assistants of the Town Attorney and establish their compensation;

WHEREAS, the Town Council has deemed it necessary for the Town Attorney to be provided an assistant attorney to represent the Town in municipal prosecution of criminal and noncriminal infractions ("Municipal Prosecutor");

WHEREAS, the Municipal Prosecutor shall further provide prosecutorial services for disciplinary actions against liquor licensees before the Town of Breckenridge Liquor Licensing Authority and to prosecute disciplinary actions against marijuana licensees before the Town of Breckenridge Marijuana Licensing Authority;

WHEREAS, the Town of Breckenridge approves the continued retention of WEST HUNTLEY GREGORY PC for 2022;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The Town Council hereby provides for a municipal prosecutor under the terms of conditions established by the Town Attorney;

Section 2. The Town Council hereby establishes the hourly rate of \$137.16 of the Town Prosecutor.

RESOLUTION ADOPTED AND APPROVED this 11th day of January, 2022.

ATTEST:

TOWN OF BRECKENRIDGE

Helen J. Cospolich, CMC, Town Clerk

Eric S. Mamula, Mayor

APPROVED IN FORM

Town Attorney

Date

MUNICIPAL COURT PROSECUTOR AGREEMENT

This Agreement ("Agreement") is made and entered into this 24^h day of January, 2023, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and WEST HUNTLEY GREGORY P.C., a Colorado professional corporation ("Prosecutors").

The Town Attorney does hereby retain West Huntley, Gregory to act as the prosecutor in the Town's Municipal Court ("Prosecutors") for the period commencing January 1, 2023 and ending December 31, 2023. The Prosecutors shall perform the services as more fully described in Paragraph 3 of this Agreement.

1. The Prosecutor accepts agrees to perform the duties required of it as Prosecutor in a competent and professional manner.

2. The Prosecutor is retained to, and shall perform, the following duties:

A. Prosecute all matters brought in the Town's Municipal Court ("Municipal Court"), including having Robert Gregory, or another competent prosecuting attorney, appear on behalf of the Town in each session of the Municipal Court, which sessions are generally scheduled on the second and fourth Wednesday of each month, with additional sessions scheduled as required by the Municipal Court's schedule.

B. Unless otherwise requested by the Town Attorney, represent the Town in any appeals of Municipal Court matters.

C. Advise any Town officer, department head or staff member in matters relating to cases Prosecutors are handling in case pending before the Municipal Court.

D. Attend Town Council or other Town meetings when requested to do so by the Town Attorney.

E. Prosecute disciplinary actions against liquor licensees before the Town of Breckenridge Liquor Licensing Authority.

F. Prosecute disciplinary actions against marijuana licensees before the Town of Breckenridge Marijuana Licensing Authority.

3. As compensation for the services to be provided by the Prosecutors as set forth in Paragraph 3, the Town shall pay the Prosecutors the sum of One Hundred Forty One and 61/100 Dollars (\$141.61) per hour for each hour expended by the Prosecutors on matters related to the Municipal Court. Prosecutors shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with Municipal Court matters including, but

not limited to, the cost of subpoenas, witness fees and photocopying costs incurred outside of Prosecutors' office, and in the event any of those expense are chargeable to any defendant, defense attorney, or other third party under the Colorado Municipal Court Rules of Procedure or through common custom, the Prosecutors agree to charge such amount to such third party, rather than seeking reimbursement for such items from the Town. It will occasionally be necessary and appropriate for the Prosecutors' paralegals or support staff to perform services on certain matters related to the Municipal Court rather than the Prosecutors, which shall be billed at a rate of Eighty Dollars (\$80.00) per hour. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Prosecutors for such services, and the Town shall provide the Prosecutors with a portable laptop computer and remote access to court software . The Prosecutor shall submit to the Town Attorney on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Prosecutors' monthly statement for services rendered shall be mailed to the Town on or before the fifth day of each month and shall be paid by the Town not later than the 15th day of each month.

4. The Prosecutors shall not bill the Town for travel time to and from the Municipal Court. In the event that any other travel is required as part of Prosecutors' duties, such travel shall be billed at the hourly rate set forth above.

5. The Prosecutors shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$1,000,000.00 yearly aggregate.

6. The Prosecutors shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees; provided, however, Robert Gregory shall be granted an annual family Recreation Wellness Pass and an Employee Parking Pass.

7. The Prosecutors understand that (i) the Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Prosecutors are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Prosecutors are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Prosecutors are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Prosecutors or some other entity. Prosecutors agree to indemnify and hold Town harmless from any liability resulting from Prosecutors' failure to pay or withhold state or federal taxes on the compensation paid hereunder.

The Prosecutors shall devote so much of the firm's time to the business of the Town as may be required to assure proper representation of the Town, but, subject only to the Colorado Rules of Professional Conduct, particularly Rule 1.7, the Prosecutors shall not be prevented from representing other clients which may have business with and against the Town, including, but not limited to, the Department of Community Development, the Planning Commission and the Town Council.

8. The Prosecutors understand and acknowledge that this Agreement may be terminated at any time by the Town Attorney or by action of the Town Council, without liability to the Prosecutors for breach, except liability for compensation due the Prosecutors for services performed prior to the termination, and without the need for either cause for the termination or a hearing.

9. Throughout the extended term of this Agreement, Prosecutors shall not:

A. knowingly employ or contract with a worker without authorization to perform work under this Agreement; or

B. enter into a contract with a subcontractor that fails to certify to Prosecutors that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

Prosecutors have verified or have attempted to verify through participation in the Federal Basic Pilot Program that Prosecutors do not employ any workers without authorization; and if Prosecutors are not accepted into the Federal Basic Pilot Program prior to the extension of the term of this Agreement, Prosecutors shall apply to participate in the Federal Basic Pilot Program every three months thereafter, until Prosecutors are accepted or this Agreement has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.

Prosecutors are prohibited from using Federal Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

10. If Prosecutors obtain actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, Prosecutors shall:

A. notify such subcontractor and the Town within three days that Prosecutors have actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and

B. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with a worker without authorization; except that Prosecutors shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

Prosecutors shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of

Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Prosecutors violate any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section 13, the Town may terminate this Agreement for a breach of the contract. If this Agreement is so terminated, Prosecutors shall be liable for actual and consequential damages to the Town.

11. In the event that Robert Gregory is unavailable to attend any Municipal Court session, the Prosecutors shall find a substitute prosecutor, with the approval of the Town Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

ATTEST:

TOWN OF BRECKENRIDGE

Town Clerk

Town Attorney, Kirsten J. Crawford

WEST HUNTLEY GREGORY P.C.

By: Robert Gregory, Attorney