

**CITY OF LITTLETON  
AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into on April 3, 2019 by and between Vincent Atencio whose business address is 4115 S. Fox Street, Englewood, Colorado 80110 (the "Contractor" or "Judge") and the **CITY OF LITTLETON, COLORADO** ("City"), a Home Rule municipality of the State of Colorado. The City and the Contractor may be individually referred to as a "Party" or collectively referred to as the "Parties."

**RECITALS AND REPRESENTATIONS**

**WHEREAS**, the City needs for certain services to be performed as described in this Agreement; and

**WHEREAS**, the Contractor represents that it has the skill, ability, and expertise to perform the services described in this Agreement; and

**WHEREAS**, the Contractor represents that it can perform the services described in this Agreement within the deadlines provided in this Agreement; and

**WHEREAS**, this Agreement is made pursuant to the authority granted to the City by, and the mandate of, C.R.S. § 13-10-101, *et seq.*, and Littleton City Code Section 1-6-20; and

**WHEREAS**, the Parties desire to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

**1.0 SERVICES AND PERFORMANCE.** The Contractor shall provide the services described in Section 1 of Exhibit A (the "Services"). Exhibit A is incorporated herein in its entirety.

**2.0 INDEPENDENT CONTRACTOR.** The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any employment benefits of any kind or type to or for the Contractor, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or retirement account contributions. Subject to conformance with City-adopted policies and procedures and full conformance with performance standards set forth in this Agreement, the Contractor shall have and maintain the requisite judgment, discretion, and responsibility for and control of the performance of the Services, the discipline of the Contractor's employees and other matters incident to the performance of the Services, duties and responsibilities as described

and contemplated in this Agreement. The Parties recognize and understand that some level of direction and supervision by the City is necessarily involved in successfully implementing City policies and procedures and in administering this Agreement, but the Parties each understand that the Contractor shall bear the burden and shall advise the City in writing of any conflict or inconsistency between the City's direction or supervision and the Contractor's legal status as an independent contractor. The Contractor, by execution of this Agreement and having received such counsel and advice as deemed appropriate by the Contractor, represents to the City that this Agreement does not create a partnership, joint venture, employer/employee or other relationship with the City other than that of an independent contractor and the Contractor understands that the City shall reasonably rely upon such representation in the City's execution of this Agreement.

**2.1** Contractor represents it is engaged in an independent profession or business and may use the full range of judicial discretion in conducting the session over which it presides;

**2.2** Contractor does provide services to other cities and clients and is free to provide services to others and is not required to work exclusively for the City;

**2.3** The City will rely upon the Contractor's expertise and will not oversee the actual work or instruct the Contractor as to how the work will be performed, or provide training;

**2.4** Contractor is responsible for providing its own training and benefits at Contractor's own cost.

**2.5** Contractor is not entitled to workers' compensation benefits or unemployment insurance benefits unless paid for by Contractor and Contractor is obligated to pay Federal and State income tax on any monies earned pursuant to the contract relationship.

**2.6** Payments shall be made by check payable to the business name of the Contractor.

**2.7** Contractor's business shall be maintained separate from the City's business.

**3.0 COMPENSATION.** Following execution of this Agreement by the City, the City shall compensate the Contractor in accordance with Section 2 of Exhibit A.

**4.0 TERM AND TERMINATION.** The term of service shall be for a period of two years from the effective date of appointment as substitute judge, April 3, 2019. Termination of appointment shall be pursuant to Section 58 of the Littleton City Charter.

**5.0 INSURANCE.** Notwithstanding the fact that the Contractor is compensated as an independent contractor, pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-1-101 et seq., the Judge is entitled to any and all benefits of law pertaining to judicial or sovereign immunity and to coverage of the City's insurance applicable to persons holding such position.

## **6.0 MISCELLANEOUS PROVISIONS**

- 6.1 No Waiver of Rights.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, Services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver by resolution of the City Council, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- 6.2 No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 6.3 Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not authorize assignment.
- 6.4 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of the Contractor. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 6.5 Article X, Section 20/TABOR.** The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. 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 City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the

City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

- 6.6 Governing Law, Venue, and Enforcement.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.
- 6.7 Survival of Terms and Conditions.** The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 6.8 Assignment and Release.** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the City Council for the City. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the City Council for the City. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 6.9 Headings.** The captions in this Agreement are for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 6.10 Integration and Amendment.** This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the City and the Contractor.
- 6.11 Severability.** Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in

any given circumstance shall not affect the validity of any other provision of this Agreement.

- 6.12 Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

**If to the City:**

**If to the Contractor:**

|  |   |
|--|---|
| City Manager<br>City of Littleton<br>2255 W. Berry Avenue<br>Littleton, Colorado 80120                   | Vincent Atencio<br>4115 S. Fox Street, Englewood,<br>Colorado 80110 |
| With Copy to:<br>City Attorney<br>City of Littleton<br>2255 W. Berry Avenue<br>Littleton, Colorado 80120 |   |

**7. AUTHORITY**

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City and the Contractor and bind their respective entities.

THIS AGREEMENT is executed and made effective as provided above.

**CITY OF LITTLETON, COLORADO**

**APPROVED AS TO FORM**

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CONTRACTOR

## EXHIBIT A

To Agreement between the City and Contractor:

1. Scope of Services. The Contractor hereby agrees to and accepts responsibility to perform, among other things, the following services.

- Adjudicate civil and criminal cases arising under the City Charter, City code and other ordinances of the City of Littleton.
- Explain the laws and system to offenders. Evaluate evidence, testimony and legal briefs. Issue written findings as necessary.
- Apply appropriate ordinances, code provisions and/or regulations. Impose fines and penalties as authorized by code or ordinance. Assess and direct the collection of civil penalties.
- Order and enforce contempt, failure to appear, abatement of nuisance and other responsibilities prescribed by the City Charter, City code or ordinance.
- Issue inspection and search warrants in accordance with applicable law.
- Attend quarterly judicial team meetings and other meetings, as directed by presiding judge.
- Perform general administrative duties, as directed by presiding judge.

2. Compensation. The City agrees to compensate the Contractor for the performance of services detailed in Section 1, Scope of Services, as follows:

| SESSION   | AMOUNT  |
|---|---|
| Court Session (morning and afternoon to be considered separate sessions)                                    | \$278.10 <sup>1</sup><br>(and if afternoon session exceeds 3 hours due to jury trial, \$92.70 for each additional hour) |
| Scheduled On-Call Session for Video Arraignment (compensated regardless of whether arraignments are needed) | \$92.70<br>(and \$92.70 for each additional hour)   |
| Scheduled On-Call Session for Probable Cause Review (compensated regardless of whether reviews are needed)  | \$92.70 for each scheduled session (and \$92.70 for each additional hour)   |

<sup>1</sup> Calculated based on a rate of \$92.70 per hour and that all morning and afternoon court sessions, other than video arraignment and probable cause review sessions, are deemed to be three hour sessions for purposes of calculating compensation

|  |   |
|--|---|
| Judicial Team Meetings   | \$185.40  |
| General Administrative Session, as directed by presiding judge | \$92.70<br>(and \$92.70 for each additional hour) |