



**TOWN OF MILLIKEN  
TOWN BOARD OF TRUSTEES  
AGENDA MEMORANDUM**

<b>To:</b> Mayor Tokunaga and Town Board of Trustees	<b>Meeting Date:</b>
<b>From:</b> Kent Brown, Town Administrator	Wednesday, September 9, 2015

Agenda Item #	Action: <b>X</b>	Discussion:	Information:
Agenda Title: Consideration of Approval of an Agreement by and between the Town of Milliken and Professional Services for Municipal Court Prosecutor			
Attachments: Proposed Agreement between Sunita Sharma of the Law Offices of Sunita Sharma, LLC and the Town of Milliken			

**PURPOSE**

To review and consider for approval a professional services agreement from Sunita Sharma to perform the duties of Municipal Court Prosecutor.

**BACKGROUND**

Previously, Bruce Fickel performed the duties of Town Attorney and Municipal Court Prosecutor for the Town of Milliken. Bruce Fickel informed the Town of his desire to retire from his position of Town Attorney in 2015. At the Board's request, The Town of Milliken sought the services of a municipal attorney or attorneys to fulfill the duties under the Town Attorney position. As stated in the request for proposal, "Depending on discussions with the successful applicant, the duties of Prosecuting Attorney could be filled separately." After the appointment of Linda Michow of Widner, Michow & Cox LLP as Town Attorney and agreement was approved by the Board at the August 26, 2015 meeting, Mayor Tokunaga discussed the Municipal Court Prosecutor position with Sunita Sharma and directed staff to request a proposal for professional services. Sunita Sharma has presented this proposed agreement for the Board's review.

The agreement is for a one (1) year term and may be renewed annually.

**BUDGET IMPLICATIONS**

Legal services for municipal court prosecution are an annually budgeted item, which has been approved within the Town of Milliken's 2015 Annual Budget. The proposed contract falls within the allocated 2015 Annual Budget.

## **RECOMMENDATION**

Police Chief Garcia, police department personnel and staff, and Town Administrator Brown recommend approval of the professional services contract with Sunita Sharma.

## **SUGGESTED MOTION**

"I move to approve the Professional Services Contract between the Town of Milliken and Sunita Sharma of the Law Offices of Sunita Sharma, LLC to perform the duties of Municipal Court Prosecutor."

**A G R E E M E N T**  
**For Professional Services**

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the TOWN OF MILLIKEN, COLORADO, COLORADO, a statutory town (the "Town"), and Sunita Sharma of the Law Offices of Sunita Sharma, LLC ("Sharma").

WHEREAS, pursuant to Section 31-4-304 of the Colorado Revised Statutes, the Town by and through its Board of Trustees, may appoint officers to perform certain functions for the benefit of the Town, the Town desires to appoint attorney Sharma as its Municipal Court Prosecutor to handle all court prosecutions in its municipal court and community court; and

WHEREAS, Sharma desires to provide such prosecutorial services to Town.

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

1. Services. Town agrees to retain Sharma to act as its Town Prosecutor whose duty shall be, to prosecute all matters over the Town's municipal court and community court (the "Services"), and Sharma agrees to so serve. Currently municipal court and community court are held on the first and third Wednesday afternoons of every month. Trials may be scheduled at other times pursuant to the Court's calendar. Sharma represents that she 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. Compensation. Town agrees to pay Sharma a sum not to exceed one-hundred and seventy-five dollars per hour (\$175.00/hr.) for such Services. Travel time shall only be billed for one way travel. There shall be no compensation for mileage. Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Sharma, 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 September 9, 2015 until September 9, 2016, and may be renewed annually for up to five years by written agreement of the parties and pursuant to Town Board approval of reappointment.

4. Appropriation. The parties agree and acknowledge that this Agreement does not constitute a multiple fiscal year debt or financial obligation of Town based on Town's ability to terminate this Agreement pursuant to "Termination," below. Sharma acknowledges that Town has made no promise to continue to budget funds beyond the current fiscal year and that Town has and will pledge adequate cash reserves on a fiscal year-by-fiscal year basis.

5. Monitoring and Evaluation. Town reserves the right to monitor and evaluate the progress and performance of Sharma to ensure that the terms of this Agreement are being satisfactorily met.

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

7. Insurance Requirements. The parties acknowledge that court prosecutors enjoy immunity from civil actions under state and federal law. Nonetheless, the Town shall provide defense insurance coverage for Sharma as provided under its Colorado Intergovernmental Risk Sharing Agency ("CIRSA") insurance policy for actions against Sharma that arise from or out of her position with the Town which are within the scope and performance of her Services. Additionally, Sharma shall also provide Town with proof of professional liability insurance for her services with a limit of at least \$1,000,000 per claim and annual aggregate. Sharma shall be required to maintain such insurance coverage at all times during the term of this Agreement.

8. Indemnification. Sharma hereby covenants and agrees to indemnify, save, and hold harmless 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 actions outside the scope and performance of her Services for Town.

9. Termination. Either party may terminate this Agreement without cause by giving written notice of termination to the other party, specifying the effective date of termination, at least fourteen (14) calendar days prior to the effective date of termination. In the event of such termination, the Town shall be liable to pay Sharma for Services performed as of the effective date of termination, but shall not be liable to Sharma for anticipated profits. Sharma shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by Town.

10. 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.*

11. 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 Weld, State of Colorado.

12. Assignability and Substitution of Counsel. Sharma shall not assign this Agreement without the Town's prior written consent. At her discretion, Sharma may on occasion utilize other attorneys such as the prosecutors for the Town of Windsor (Kim Emil) or the City of Loveland (Teresa Ablao) to serve as substitution counsel for prosecution services in the event of her absence or in the event of a conflict of interest.



TOWN OF MILLIKEN, COLORADO

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

LAW OFFICES OF SUNITA SHARMA, LLC:

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Sunita Sharma.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public