

## MUNICIPAL PROSECUTOR AGREEMENT

AGREEMENT on this 11th day of December 2017, by and between the Town of Litchfield, a New Hampshire municipal corporation, with a principal address of Two Liberty Way, Litchfield, New Hampshire 03052 (hereinafter "TOWN"), and Bradford H. Coates, [REDACTED] (hereinafter "ATTORNEY").

ORIGINAL  


WHEREAS, pursuant to RSA § 41:10-a, the Board of Selectmen of the TOWN are authorized to appoint and compensate municipal prosecutors;

WHEREAS the TOWN desires to appoint a municipal prosecutor to represent the State of New Hampshire in cases involving, without limitation, civil causes, violations, misdemeanors, and felonies within the jurisdiction of the 9<sup>th</sup> Circuit Court - Merrimack, unless the prosecutorial jurisdiction over a particular case or class of cases is pre-empted by the Hillsborough County Attorney or the New Hampshire Attorney General;

WHEREAS, ATTORNEY desires to provide said prosecutorial services according to the terms and conditions set forth below;

FOR AND IN EXCHANGE of the mutual promises contained herein, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

### 1.0 DURATION.

This AGREEMENT shall commence on January 1, 2018 and end on December 31, 2020.

### 2.0 COMPENSATION AND BENEFITS.

2.1 Compensation. ATTORNEY shall be paid \$68,000 (\$1,307.70 weekly) in year 2018, \$72,000 (\$1,384.62 weekly) in year 2019 and \$76,000 (\$1,461.54 weekly) in year 2020. ATTORNEY agrees that such compensation shall be payment in full for all services rendered by ATTORNEY for the TOWN and the State of New Hampshire.

2.2 Benefits. ATTORNEY is a professional person and the relationship created by this AGREEMENT is that of an independent contractor. ATTORNEY is not an employee of the TOWN, and is not entitled to the benefits provided by the TOWN to its employees, including, without limitation, sick leave, holidays, paid vacation, or participation in insurance or retirement plans.



3.0 DUTIES.

3.1 Legal Services. ATTORNEY shall perform the services required of him by the TOWN as a police prosecutor. ATTORNEY shall perform the full range or prosecutorial tasks, including without limitation:

3.1.1 Providing consultation and legal advice to Litchfield Police Officers and personnel related to criminal law and proper procedures for enforcing the law;

3.1.2 Evaluating information and reports, reviewing search warrants, questioning witnesses, considering evidence, and giving opinions as to probable cause and the merit of cases;

3.1.3 Drafting and filing criminal complaints;

3.1.4 Appearing at arraignments, probable cause hearings, pre-trial hearings and motion hearings;

3.1.5 Drafting motions, memoranda of law, and all pleadings;

3.1.6 Attending to discovery and disclosure matters with defense counsel;

3.1.7 Initiating settlement discussion and plea negotiations;

3.1.8 Handling all phases of trial, including without limitation compelling attendance of witnesses and production of evidence at trial, arguing cases before justice(s) of the Merrimack District Court, examining and cross-examining witnesses, preparing for and rendering defense arguments and all other tasks necessary for the fair prosecution of cases;

3.1.9 Appearing at sentencing and review hearings; and

3.1.10 Arrangement for conflict counsel as needed.

3.2 Assignment of Duties by TOWN. ATTORNEY may be required to be "on duty" or "on call" at night or on weekends or on holidays. ATTORNEY shall also perform such additional duties as may be required by the TOWN or the Chief of Police from time-to-time, without having any effect upon other terms of this AGREEMENT.

ORIGINAL



- 3.3 Normal Working Hours. ATTORNEY is expected to work during normal business hours, Monday through Friday 50 weeks per year. ATTORNEY agrees to devote his best efforts as the police prosecutor for the TOWN. ATTORNEY will devote a minimum of 24 hours per week / 1,200 hours per year to the performance of his duties under this AGREEMENT, either in Court, Attorney's Office or in the offices of the TOWN. Upon prior approval by the Chief of Police, work schedule may be altered to accommodate scheduling conflicts, vacation, holidays, illness and other similar absences.
  
- 3.4 Other Employment Allowed. ATTORNEY shall not be prevented from other employment by reason of this AGREEMENT, provided that such other employment(s) do not create any conflicts of interest, ethical considerations, or otherwise compromise the ability of ATTORNEY to continue and carry out his duties as the police prosecutor for the TOWN. Nevertheless, the ATTORNEY agrees to devote all necessary time to properly represent the TOWN and the State of New Hampshire in accordance with the terms of this AGREEMENT.
  
- 3.5 Records. ATTORNEY is required to keep and maintain records relating to all professional services rendered in the form and manner as required by the TOWN. ATTORNEY will also be required to prepare reports, memoranda, and correspondence as required. All of these records, as well as, police reports, statements, and investigative materials created or generated by ATTORNEY and related materials shall be the exclusive property of the TOWN, and shall continue to remain the exclusive property of the TOWN upon termination of this AGREEMENT, with or without cause.
  
- 3.6 Licensing/Certification. This AGREEMENT is subject to and conditional upon ATTORNEY at all times being licensed and certified to practice law in the State of New Hampshire. If ATTORNEY does not maintain his license and certification, or loses his license and certification, the TOWN may terminate this AGREEMENT immediately. ATTORNEY shall be responsible for paying any costs, including bar membership dues, to maintain his license and certification.
  
- 3.7 Continuing Education. ATTORNEY shall devote a reasonable amount of time, at least equal to the minimum required CLE credit hours, attending professional conventions and otherwise participating in continuing education in order to improve and



maintain his professional skills. ATTORNEY shall be responsible for paying the cost of tuition and registration for such activities.

3.8 Expenses and Facilities. The TOWN shall provide facilities, equipment and supplies suitable to ATTORNEY's position and adequate for performing his duties under this AGREEMENT. It will be the ATTORNEY's responsibility to pay expenses for his personal automobile, home telephone and other miscellaneous expenses as required to properly carry out the terms and conditions of this AGREEMENT.

3.9 Automobile. Since ATTORNEY is required to use his own automobile on the business of the TOWN, it is required that ATTORNEY provide and maintain an automobile for such duties and to pay insurance in connection therewith which policies shall be required to be satisfactory to the TOWN. ATTORNEY shall also provide an endorsement on the policy of insurance in favor of the TOWN.

4.0 ATTORNEY to Report to Chief of Police. ATTORNEY shall be under the direct supervision and shall report to the Chief of Police. ATTORNEY shall keep the Chief of Police advised of the status of all legal proceedings in which ATTORNEY is involved on behalf of the TOWN and the State of New Hampshire. ATTORNEY shall submit all bills for expenditures or the payment of money in connection with any such legal proceedings to the Chief of Police for examination and approval. Subject to applicable law and the professional and ethical rules governing the practice of law, ATTORNEY understands and acknowledges that the final decision to file a criminal complaint or enter into a plea bargain agreement is subject to review and approval by the Chief of Police.

5.0 STANDARD OF CARE.

ATTORNEY represents and warrants that he has the requisite training, skill and experience necessary to provide the services described herein and is a member in good standing of the New Hampshire bar. Services provided under this AGREEMENT shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances, including maintaining the confidentiality of investigative information, handling evidence with due care, and at all times representing the TOWN and the State of New Hampshire in a manner that reinforces the public trust and confidence in the TOWN, the State of New Hampshire, and the Courts of the State of New Hampshire.



6.0 INDEMNIFICATION.

6.1 Indemnification. ATTORNEY shall hold the TOWN harmless and indemnify the TOWN and its officers, officials, employees, volunteers, agents, successors and assigns against any and all claims, injuries, damages, losses or suits, including attorney's fees which result from any acts, errors or omissions of ATTORNEY in the performance of this AGREEMENT.

7.0 TERMINATION.

7.1 Termination without Fault. Pursuant to RSA § 41:10-a ATTORNEY may terminate this AGREEMENT upon sixty (60) days advance notice. Such notice shall indicate the date of termination.

7.2 Termination for Cause. The TOWN may terminate this AGREEMENT for cause immediately upon written notice to ATTORNEY. Such notice shall specify in reasonable detail the nature of the cause. For purposes of this AGREEMENT, cause shall include, without limitation: 1) any material breach of this AGREEMENT, 2) unethical practices as set forth in the New Hampshire Rules of Professional Conduct, 3) suspension or revocation of the license to practice law in the State of New Hampshire, or 4) fraudulent, dishonest, or offensive conduct that tends to bring the TOWN or State of New Hampshire into disrepute or undermine the public confidence in the TOWN, the State of New Hampshire, or the Courts of the State of New Hampshire. The TOWN shall have the sole discretion to determine whether there is cause to terminate this AGREEMENT.

7.3 Non-appropriation. In the event that during any fiscal year of the TOWN sufficient funds are not appropriated for the payment of all compensation due to the ATTORNEY under the terms of this AGREEMENT, and the TOWN provides written notices to ATTORNEY as soon as practicable after the non-appropriation, the TOWN may terminate this AGREEMENT, as of the end of its then current fiscal year, and shall not be obligated to make any payments to ATTORNEY beyond such fiscal year.

8.0 DISCRIMINATION AND COMPLIANCE WITH LAWS.

8.1 Discrimination. ATTORNEY agrees not to discriminate against any person in the performance of this AGREEMENT because of race, creed, color, national origin, marital status, gender, age, disability or

other circumstance prohibited by federal, state or local laws or ordinances.

8.2 Compliance with Laws. ATTORNEY shall comply with all federal, state, and local laws and ordinances during the term of this AGREEMENT.

9.0 SUSPENSION OF COMPENSATION.

If ATTORNEY shall become temporarily unable to attend to his duties under this AGREEMENT due to illness, leave of absence, or any other reason, the TOWN may suspend the ATTORNEY's compensation for that period of time during which the ATTORNEY was unable to perform his duties under this AGREEMENT. The TOWN will recommence the payment of compensation at such date as ATTORNEY shall resume and perform the ATTORNEY'S duties under this AGREEMENT. The right of the TOWN as set forth herein is in addition to the right of the TOWN to terminate this AGREEMENT at any time as set forth above.

10.0 CONFIDENTIALITY.

ATTORNEY acknowledges that during the term of this AGREEMENT, he will be employed in a position of trust and confidence and will have access to the confidential information and records of the TOWN and the State of New Hampshire and become familiar with the methods, services, and procedures used by the TOWN and its Police Department. ATTORNEY shall never, directly or indirectly, make use of any such confidential information for his own or anyone else's benefit, other than the benefit of the TOWN and the State of New Hampshire, and shall not divulge such confidential information to any other party not entitled thereto.

11.0 INDEPENDENT CONTRACTOR.

ATTORNEY is and shall be at all times during the term of this AGREEMENT an independent contractor.

12.0 NOTICES.

All notices by either the TOWN or ATTORNEY to terminate this AGREEMENT shall be in writing and sent by Certified Mail return receipt requested to the other party as herein provided. Any notices to ATTORNEY will be given to the ATTORNEY at his last known address.

13.0 ASSIGNMENT.

TOWN





This AGREEMENT may not be assigned by either party without the express written consent of the other party, and said consent may be withheld in that parties' sole discretion.

**14.0 SEVERABILITY; GOVERNING LAW.**

14.1 If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect. The contract shall be governed by the laws of the State of New Hampshire. In any action arising out of this AGREEMENT, the TOWN shall be entitled to recover its attorney's fees and expenses incurred in such action if it is the prevailing party .

14.2 Each of the provisions of this AGREEMENT shall be enforceable independently of any other provision of this AGREEMENT and independent of any other claim or cause of action. In the event of any dispute arising under this AGREEMENT, it is agreed between the parties that the law of the State of New Hampshire will govern the interpretation, validity and effect of this AGREEMENT without regard to the place of execution or place of performance thereof.

**15.0 WAIVER OF BREACH.**

The waiver by the TOWN of a breach of any provision of this AGREEMENT by ATTORNEY shall not operate or be construed as a waiver of any subsequent breach by ATTORNEY.

**16.0 COMPLETE AGREEMENT.**

This AGREEMENT supersedes all prior contracts and understandings between the TOWN and ATTORNEY and may not be modified, changed or altered by any promise or statement by whomsoever made; nor shall any modification of it be binding upon the TOWN until such written modification shall have been approved in writing by the TOWN.

17.0 SIGNATURES.

IN WITNESS WHEREOF, the TOWN and ATTORNEY have hereunto set their hands and seals as of the date first above written.

TOWN

By its Board of Selectmen:

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Brent T. Lemire, Chairman

  
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Steven D. Perry, Vice - Chairman

  
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John R. Brunelle, Selectman

  
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Kevin C. Bourque, Selectman

  
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Kurt D. Schaefer, Selectman

ATTORNEY:

  
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Bradford H. Coates, Esq.

