

RESOLUTION NO. 40

Series 1998

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 1999

WHEREAS, the Town of Breckenridge desires to enter into a Town Attorney Agreement with Timothy H. Berry, P.C. for 1999;

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

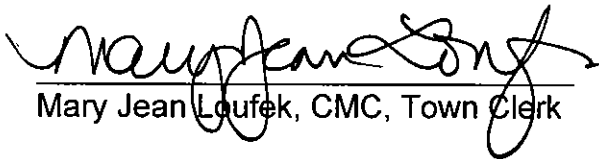
Section 1. The Town Attorney Agreement with Timothy H. Berry, P.C. for 1999, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, is hereby approved by the Town Council.

Section 2. The Mayor of the Town of Breckenridge be and hereby is authorized, empowered and directed in the name of the Town of Breckenridge and on behalf of its Town Council to make, execute and deliver the Town Attorney Agreement attached hereto as Exhibit "A".

RESOLUTION ADOPTED AND APPROVED this 8th day of December, 1998.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Stephen C. West, Mayor

APPROVED IN FORM


Town Attorney

12/8/98
Date

TOWN ATTORNEY AGREEMENT

This Agreement ("Agreement") is made and entered into this day of _____, 199__, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and TIMOTHY H. BERRY, P.C., a Colorado corporation ("Attorney").

WITNESSETH:

1. The Town does hereby employ and retain the Attorney as Town Attorney for the period commencing as of January 1, 1999, and ending December 31, 1999, to perform the services as more fully described in Paragraph 3 of this Agreement.
2. The Attorney accepts such employment and agrees to perform the duties required of it as Town Attorney in a competent and professional manner.
3. The Attorney is hired to, and shall perform, the following duties:
 - A. Act as legal advisor to, and be the attorney and counsel for, the Town Council.
 - B. Advise any Town officer, department head or staff member in matters relating to his or her duties. To facilitate the performance of this duty, Timothy H. Berry, President of Attorney, shall be available in the Town Hall offices from 9:00 a.m. to 4:30 p.m. each Tuesday, except on those Tuesdays when the Timothy H. Berry is to attend a Town Council or Planning Commission meeting, in which event he shall be available until the conclusion of such meeting. On those Tuesdays when Timothy H. Berry is to attend the Town Council worksession, but not the Town Council meeting, he shall be available until 5:30 p.m.
 - C. Prepare and review ordinances, contracts and other written instruments when requested by the Town Council, municipal officials or staff members and promptly give its opinion as to the legal consequences thereof.
 - D. Call to the attention of the Town Council, municipal officials and staff members all matters of law, and changes and developments therein, which affect the Town.
 - E. Have Timothy H. Berry attend Town Council meetings when requested to do so by the Town Council. Unless otherwise

instructed, Timothy H. Berry shall attend the second regular meeting of the Town Council each month. Timothy H. Berry shall be available to attend other regular and special Town Council meetings on an "as needed" basis.

F. Have Timothy H. Berry attend one meeting of the Town's Planning Commission each month. Town will attempt to give Mr. Berry at least 24 hours's advance notice of which meeting each month he is to attend.

G. Have Timothy H. Berry attend meetings of the Breckenridge Open Space Advisory Commission on an "as needed" basis.

H. Prosecute municipal ordinance violations in the Town's municipal court and handle all appeals from the decisions of said court. Such actions may be taken by a contract attorney hired and paid for by Attorney.

I. Unless otherwise directed by the Town Council, the Attorney shall represent the Town in any litigation in state or federal courts or before administrative agencies.

4. As compensation for the services to be provided by the Attorney as set forth in Paragraph 3, the Town shall pay the Attorney the sum of \$110.00 per hour for each hour of non-litigation time expended by Timothy H. Berry (whether in the Town's offices or the Attorney's offices); \$120.00 per hour for each hour expended by Timothy H. Berry in litigation matters; and \$75.00 per hour for all time expended in connection with the prosecution of municipal court violations. Time expended by Attorney's Associate, Seth Murphy, shall be compensated at the rate of \$75.00 per hour. The prosecution of municipal ordinance violations in the Town's municipal court, and appeals from the decision of said court, shall be treated as non-litigation matters. Attorney shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with litigation matters including, but not limited to, the cost of subpoenas, witness fees and photocopying costs incurred outside of Attorney's office. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorney for such services. The Attorney shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorney's monthly statement for services rendered shall be mailed to the Town on or before the first day of each month and shall be paid by the Town not later than the 15th day of each month.

5. The Attorney shall not bill the Town for travel time to and from Attorney's Leadville office and Breckenridge. In lieu thereof, the Town shall pay to the Attorney a mileage allowance of \$0.25 per mile round trip for each trip made on Town business by Timothy H. Berry and any attorney responsible for handling municipal court prosecutions.

6. The Attorney 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.

7. The Attorney shall not be entitled to a paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees, except golf privileges for Timothy H. Berry.

8. The Attorney understands that (i) 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) Attorney is obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorney is not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorney is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Attorney or some other entity. Attorney agrees to indemnify and hold Town harmless from any liability resulting from Attorney's failure to pay or withhold state or federal taxes on the compensation paid hereunder.

9. The Attorney shall devote so much of its time to the business of the Town as may be required to assure proper representation of the Town, but the Attorney shall not be prevented from taking other employment by reason of this Agreement; provided, however, that the Attorney shall not enter into other contractual or business relationships, nor undertake to represent a client, when such contract, business relationship or representation would create a conflict of interest as to Attorney's continued representation of Town.

10. The Attorney understands and acknowledges that it serves at the pleasure of the Town Council and that this Agreement may be terminated at any time by the Town Council without liability to the Attorney for breach hereof without cause and without hearing.

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

ATTEST:

TOWN OF BRECKENRIDGE

Town Clerk

By _____
Mayor

TIMOTHY H. BERRY, P.C., a Colorado corporation

By: Timothy H. Berry, President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this _____ day of _____, 199____, by Stephen C. West, as Mayor, and Mary Jean Loufek, as Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF LAKE)

The foregoing instrument was acknowledged before me this _____ day of _____, 199____, by Timothy H. Berry, President of Timothy H. Berry, P.C., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

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