

TOWN OF KEYSTONE
Summit County, Colorado

RESOLUTION 2024-04

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO
APPOINTING INTERIM TOWN MANAGER AND INTERIM FINANCE DIRECTOR AND
DELEGATING CONTRACT AUTHORITY**

WHEREAS, the Town of Keystone is a home rule municipality governed by the Keystone Home Rule Charter; and

WHEREAS, Section 7.1 of the Keystone Home Rule Charter provides that Town Council shall hire a Town Manager; and

WHEREAS, Town Council is in the process of selecting and hiring a Town Manager; and

WHEREAS, until such time as Town Council selects and hires a Town Manager, the Town Council appoints Gary Martinez as the Interim Town Manager and Interim Finance Director; and

WHEREAS, Interim Town Manager Gary Martinez shall serve at the pleasure of Town Council; and

WHEREAS, the Town Council delegates to the Interim Town Manager contract authority in the amount of fifteen thousand dollars (\$15,000) to execute contracts on behalf of the Town.

Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:

Section 1. The Town Council appoints Gary Martinez to serve as the Interim Town Manager and Interim Finance Director until such time as full-time, permanent Town Manager is appointed. The Town Council authorizes the Mayor to execute a consultant agreement with Mr. Martinez.

Section 2. The Interim Town Manager shall have the authority to execute on behalf of the Town without first needing to obtain Town Council approval all contracts (regardless of title) for goods and services that do not exceed fifteen thousand dollars (\$15,000).

Section 3. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

ADOPTED by a vote of 7 in favor and 0 against, this 8th day of February 2024.

By: Kenneth D Riley
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

By: Madeline Siehw
Town Clerk

By: Jennifer Madson
Town Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE TOWN OF KEYSTONE, AND GARY MARTINEZ**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this 8th day of February 2024 (“Effective Date”), by and between the Town of Keystone, a Colorado Municipality), and Gary Martinez (the “Consultant”). The Town of Keystone, and the Consultant may be collectively referred to as the “Parties” and each individually as “Party”.

NOW, THEREFORE, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. LINE OF AUTHORITY: The Town of Keystone Town Council delegated to the Town Mayor the authority to sign this Agreement. The Town Mayor is designated as the Authorized Representative for the purpose of administering, coordinating, and approving the work performed by the Consultant under this Agreement.

2. SCOPE OF SERVICES: Consultant shall act as the Interim Town Manager for the Town of Keystone and advising the Town Council.. The Consultant shall be responsible to and report directly to the Town Council on the proper administration of all affairs of the Town placed in the Interim Town Manager’s charge, and to that end, the Interim Town Manager shall have the powers and duties as set forth by the Town Council by the Home Rule Charter, policy, and ordinance, including, but not limited to:

- Enforcing or supervising the enforcement of all laws of the Town; and
- Supervising and overseeing all aspects of Town functions and activities, services, contracts, personnel, and departments that report to the Interim Town Manager; and
- Performing or supervising the performance of budget-related duties, accounting duties and financial and risk planning, reporting, and management; and
- Reporting regularly to the Town Council on the functioning of all Town departments, services, activities, and financial matters; and
- Attending Town Council meetings unless attendance is excused; and
- Performing such other duties as set forth in the Ordinances of the Town or by direction of the Town Council; and
- Performing, or delegating the performance of, all Town Manager functions as required by Colorado law and the Town of Keystone Home Rule Charter; and
- Hiring and supervising the Town Staff consisting of the Town Clerk, Town Deputy Clerk, and Community Development Director, or any other staff position as directed by the Town Council; and
- Leading the search and, recommending the selection process to the Town Council for hiring the for a Permanent Town Manager; and
- Participating in negotiations and advising the Town Council on Intergovernmental Agreements; and
- Establishing the operations of Town functions and services; and
- Performing the duties of the Town Finance Director as required by Colorado Statute and the Town of Keystone Charter
- Performing other duties as requested by the Authorized Representative.

The Consultant shall perform the services in a manner reasonably satisfactory to the Authorized Representative and Town Council.

3. COMPENSATION FOR SERVICES: In consideration for the provision of Services described in Paragraph 2, the Town of Keystone agrees to compensate the Consultant the amount of \$150.00/hour. Consultant agrees the fee is not to exceed \$60,000 for performing as the Town of Keystone Interim Town Manager and consulting with the Town of Keystone Town Council and Town Manager unless the Authorized Representative agrees in writing to an increase.

The Town of Keystone agrees to reimburse the Consultant for reasonable expenses which include:

- Mileage at a rate of IRS rate of 67 cents per mile.
- Meals with receipts during travel to Keystone for work included in the scope of services outlined in paragraph 2 above.
- Other expenses as agreed upon by the Authorized Representative and Town Council.

The Consultant is not entitled to any fees or reimbursements beyond those specified in this contract.

Payment by the Town of Keystone is based on the following:

- The Consultant shall submit invoices to the Town of Keystone in accordance with the terms of this Agreement. Invoices will be billed on a regular basis, but no more frequently than every month. Consultant agrees that payment for the invoices can be deferred until no later than May 31, 2024.
- The Consultant's invoices shall be in a format acceptable to the Town of Keystone, shall be supported by information in such detail as may be required by Town of Keystone and shall be sufficient to substantiate that the Consultant has performed the Services described in paragraph 2. The Town of Keystone may withhold payment for work, which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily and may deny payment for such work upon termination by the Consultant.

4. TERM: The term of the Agreement is expected to be less than ninety days. It is mutually agreed by the Parties that the term of this Agreement shall commence as of the Effective Date and terminate on the date as designated by the Authorized Representative. However, the Agreement shall not extend beyond April 30, 2024, unless the Authorized Representative agrees in writing to extend the consulting services.

5. INDEPENDENT CONTRACTOR: The Consultant 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 town of Keystone other than as an independent consultant. The Town of Keystone shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Consultant or the Consultant's employees, sub-consultants, Consultants, agents, or representatives, 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 health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

THE CONSULTANT ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONSULTANT OR SOME ENTITY OTHER THAN THE ELECTION COMMISSION PROVIDES SUCH BENEFITS. THE CONSULTANT FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. THE CONSULTANT ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

6. INDEMNIFICATION: The Town of Keystone cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever.

7. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, either in whole or in part without the prior written approval of the Town of Keystone. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Consultant hereunder.

8. OWNERSHIP OF DOCUMENTS: Any work product, materials, and documents produced by the Consultant pursuant to this Agreement shall become property of the Town of Keystone upon delivery and shall not be made subject to any copyright unless authorized by the Town of Keystone.

9. TERMINATION: The Town of Keystone shall have the right to terminate this Agreement, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, which notice shall be given at least ten (10) calendar days before the effective date of such termination. In such an event, all finished or unfinished documents, data, studies, and reports shall become the Town of Keystone's property. The Consultant shall be entitled to receive compensation in accordance with this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of notice of termination. Notwithstanding the above, the Consultant shall not be relieved of liability to the Town of Keystone for damages sustained by the Town of Keystone by virtue of any breach of the Agreement by the Consultant. The Consultant's indemnification obligations hereunder shall survive termination of this Agreement.

10. GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Summit, State of Colorado. The Consultant expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

11. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the Services performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations of the State of Colorado.

12. NO MULTIPLE YEAR OBLIGATION: Nothing in the Agreement shall create a multiple-fiscal year financial obligation as contemplated and as prohibited by Article X, Section 20 of the Constitution of the State of Colorado. Therefore, the parties agree that this Agreement is subject

to an annual appropriation by the Town Council and that the failure to make such appropriation will be deemed a termination of the Agreement.

13. SEVERABILITY: In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected, provided that the remaining provisions without the invalidated provisions are consistent with the Parties' intent. Should either party fail to enforce a specific term of this Agreement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

14. NO THIRD-PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Town of Keystone and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

15. HEADINGS; RECITALS: The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The Recitals to this Agreement are incorporated herein.

16. COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

17. ENTIRE AGREEMENT: The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any elected official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Authorized Representative and/or the Consultant Authorized Representative, shall be valid unless they are contained in writing and executed by all the Parties with the same formality as this Agreement.

18. FORCE MAJEURE: Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Consultant's subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increases the costs incurred by the Consultant, such items shall be handled in accordance with Section 2 and 3.

IN WITNESS WHEREOF, the Town of Keystone, and the Consultant have executed this Professional Services Agreement as of the above date.

CONSULTANT: Gary Martinez

BY:

Name:

Gary Martinez

DATE: _____, 2024

STATE OF _____)

) ss.

COUNTY OF _____)

Acknowledged before me this _____ day of _____, 2024, by Gary Martinez.

Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV)

Notary

My Commission Expires: _____.

Town of Keystone

BY: _____

Kenneth D. Riley, Town Mayor

DATE: _____, 2024

ATTEST:

By: _____

Town Clerk



The Town of Keystone

State of Colorado

County of Summit

I, **Gary Martinez**, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Colorado, and the Charter and Ordinances of the Town of Keystone, and that I will faithfully perform the duties of the Town Manager office and the Finance Director office for the Town of Keystone to the best of my skill and ability.

Gary Martinez, Town Manager and Finance Director, Town of Keystone, Colorado

Madeline Sielu, Town Clerk, Town of Keystone, Colorado

Subscribed and sworn before me this 8th day of February A.D. 2024.