

**RESOLUTION NO. 1512**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY A PROFESSIONAL SERVICES AGREEMENT JOHN L. RODABAUGH II FOR PROSECUTION SERVICES FOR 2013

WHEREAS, the City of Fife needs a Prosecutor to enforce the criminal laws and other ordinances of the Fife Municipal Code; and

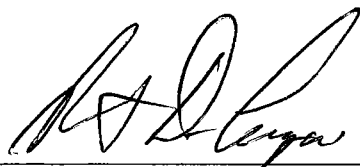
WHEREAS, the City has determined that prosecution services can be more efficiently and cost-effectively provided through use of an independent contractor rather than a fulltime employee of the City; and

WHEREAS, in 2008 the City went through a formal process of requesting proposals from qualified individuals, and John Rodabaugh II was determined to best meet the needs and requirements of the City; and

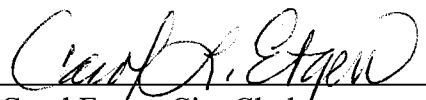
WHEREAS, the current contract with Mr. Rodabaugh expires at the end of 2012, and the City Council has determined that it is in the best interests of the City to continue the services of Mr. Rodabaugh for the year 2013 on the same terms and conditions as the current contract; now, therefore,

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute on behalf of the City the professional services agreement with John L. Rodabaugh II attached hereto as Exhibit A to provide prosecution services to the City for the year 2013 at the base amount of \$10,400 per month.

ADOPTED by the City Council at an open public meeting held on the 20<sup>th</sup> day of November, 2012.

  
\_\_\_\_\_  
Robert D. Cerqui, Mayor

Attest:

  
\_\_\_\_\_  
Carol Etgen, City Clerk

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**CITY OF FIFE**

5411 – 23<sup>rd</sup> Street East  
Fife, Washington 98424

**PROFESSIONAL SERVICES AGREEMENT  
FOR PROSECUTION SERVICES**

**1. Parties**

This Agreement is entered into between the City of Fife, Pierce County, Washington ("City"), and John L. Rodabaugh II ("Prosecutor"); collectively, the "Parties."

**2. Notices**

All notices required by this Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

**CITY:**

CITY OF FIFE  
5411 – 23<sup>rd</sup> Street East  
Fife, Washington 98424  
Contact: City Manager  
Phone: (253) 922-2489

**PROSECUTOR:**

JOHN L. RODABAUGH II  
16521 13<sup>th</sup> Avenue West, Suite 107  
Lynnwood, WA 98037  
Phone: (425) 742-9112; (888)715-8800  
Fax: (253) 743-0486  
Email: John.Rodabaugh@frontier.com

It is the responsibility of Prosecutor to notify City in writing of any change to the contact information appearing above.

**3. Effective date and term**

This Agreement shall be effective as of the 1<sup>st</sup> day of January 2013, and shall expire in one year from the effective date. However, the Agreement may be renewed for an additional year upon written agreement of the parties.

**4. General description of services**

Prosecutor has been retained by the City to provide professional legal services in Fife Municipal Court and other courts as required.

**5. Scope of Work**

A. Prosecutor agrees to provide all necessary prosecution services to the City of Fife, including but not limited to:

- C. As of the effective date of this Agreement, Prosecutor shall generally be required to appear in Fife Municipal Court on a four-day-a-week schedule, but agrees and understands that jury trials, motions, contested traffic infractions represented by counsel and other special hearings may require occasional additional appearances.
- D. Prosecutor agrees and understands that, while the City will make good faith efforts to consult with Prosecutor prior to changing the schedule of court hearings, and will try to take Prosecutor's needs into account, the City will have final discretion to alter the scheduling of court hearings and it shall be Prosecutor's responsibility to ensure such hearings are covered by Prosecutor.
- E. *Conflict counsel.* In the event the prosecution of any person would constitute a conflict of interest for the Prosecutor pursuant to the Washington State Bar Association Rules of Professional Conduct, the Prosecutor shall notify the court of the conflict as soon as it becomes apparent and shall not handle further prosecution of the matter, but shall be responsible for securing another qualified and licensed individual to serve as conflict counsel.
- F. *Commercial dealings with City staff prohibited.* To ensure the appearance of independence and fairness and to avoid potential conflicts of interest, the Prosecutor is prohibited from engaging in the selling of merchandise or professional services to any City employee, or their immediate family, during the term of this Agreement.

## 7. Compensation

- A. Base Rate. The City shall pay the Prosecutor a base rate of ten thousand four hundred dollars (\$10,400) per month for performing all services necessary to effectively prosecute violations of the Fife Municipal Code, including appeals, and for representing the City on infraction cases where the violator has retained counsel or requested discovery, any civil forfeiture hearings, and code enforcement matters where the Prosecutor's assistance is requested by the City. This amount shall include compensation for out-of-court preparation time and all normal office expenses (including but not limited to clerical staff; office rent; photocopies and letters; mailing costs; telephone expenses).
- B. Additional Compensation. In addition to the base rate described above, the City shall pay additional compensation to Prosecutor for the following services:
  - (1) Other special assignments: Prosecutor shall be paid \$100 per hour for other special assignments as requested by the City and accepted by Prosecutor.

## 8. Payment

- A. Payment schedule. Except as noted below, payment shall be made monthly according to the payment policies of the City.

disrepute or undermine public confidence in the City or its court. The City shall have the sole discretion to determine whether there is cause to terminate the Prosecutor's services under this Agreement.

**11. Standard of Care**

Prosecutor represents and warrants that he or she, and any agents used by Prosecutor to perform services under this Agreement, has the requisite training, skill and experience necessary to provide the services described herein and is a member in good standing of the Washington bar. Services provided under this Agreement shall be performed in a manner consistent with that 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 City in a manner that reinforces public trust and confidence in the City and its court.

**12. Investigative Materials Remain City Property**

Police reports, statements, and physical evidence (including but not limited to photographs, computer files, tape recordings or digital recordings, videos) which are created or generated as part of a criminal or civil investigation by the City, or used by the Prosecutor in making a charging decision or as part of a court hearing, shall remain the property of the City and must not be copied or used by Prosecutor for purposes unrelated to the prosecution, sentencing, or review of a case without written permission of the City, provided, the Prosecutor may provide copies of such materials to other law enforcement agencies as needed and as allowed by law.

**13. Indemnification/Hold Harmless**

Prosecutor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Prosecutor in performance of this Agreement, provided however, that such provision shall not apply to the extent that damage or injury results from the fault of the City or its officers, other agents, or employees. "Fault" as used herein shall have the same meaning as set forth in RCW 4.22.015.

**14. Insurance**

The Prosecutor shall procure and maintain for the duration of the Agreement professional liability insurance with limits no less than \$500,000 per claim and \$500,000 policy aggregate limit. This policy shall be written to insure Prosecutor and its agents, representatives, and employees.

**15. Assigning or Subcontracting**

**22. Waiver of Breach**

The failure of any Party hereto to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreement, but the same shall be and remain in full force and effect.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

**CITY OF FIFE**

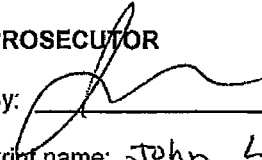
By: \_\_\_\_\_

Print name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**PROSECUTOR**

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

Print name: John L Rodabegh

Title: Attorney at Law

Date: 11-5-12