

**RESOLUTION NO. 1697**

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 2016

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

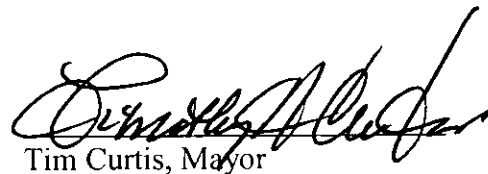
WHEREAS, the City has determined that prosecution services can be more efficiently and cost-effectively provided through use of an independent contractor rather than a fulltime employee of the City; and

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

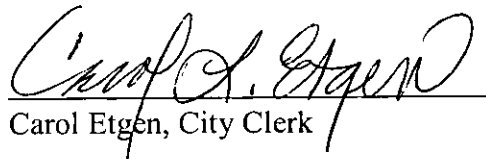
WHEREAS, the current contract with Mr. Rodabaugh expires at the end of 2015, and the City Council has determined that it is in the best interests of the City to continue the services of Mr. Rodabaugh for the year 2016 on similar terms and conditions as the current contract; now, therefore,

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 2016 at the base amount of \$12,000 per month.

ADOPTED by the City Council at an open public meeting held on the 8<sup>th</sup> day of December, 2015.

  
Tim Curtis, Mayor

Attest:

  
Carol Etgen, City Clerk

**CITY OF FIFE PROFESSIONAL SERVICES AGREEMENT  
FOR PROSECUTION SERVICES**

**1. Parties and Date.** THIS Agreement is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between CITY OF FIFE, WASHINGTON ("City") and John L. Rodabaugh II ("Prosecutor").

**2. Effective Date and Term.** This Agreement shall be effective as of the 1st day of January 2016, and shall expire one year from the effective date. However, the Agreement may thereafter be renewed for successive one year terms upon written agreement of the parties.

**3. Services by Prosecutor.**

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

- (1) Providing advice to Fife Police Officers on matters relating to criminal law and proper procedures for enforcing the law;
- (2) Reviewing police reports for determination of probable cause and charging;
- (3) Drafting and filing criminal complaints and probable cause statements as necessary;
- (4) Appearing at arraignments, pretrial hearings, and motions;
- (5) Initiating settlement discussions and plea negotiations;
- (6) Handling all phases of jury trials;
- (7) Drafting briefs and motions;
- (8) Appearing at sentencing and review hearings;
- (9) Tracking case dispositions, including reasons for declining to prosecute;
- (10) Appearing on infractions where the violator has requested discovery or has retained counsel;
- (11) Handling all phases of appeals of any criminal cases out of Fife Municipal Court;
- (12) Appearing at bail forfeiture and civil asset forfeiture hearings;
- (13) Handling code enforcement cases as requested by the City;
- (14) Arranging for conflict counsel as needed;
- (15) Securing judgments against bail bonding companies;
- (16) Appearing as needed for special hearings, including but not limited to motions to vacate conviction or application for concealed weapons permit;
- (17) Maintaining a local or toll-free telephone number so that persons who live or work in the City of Fife are able to contact the prosecutor without incurring long distance charges;
- (18) Advise the City Attorney of any ordinance changes that are required or desirable in order to comply with all statutes and case law;
- (19) Advise the City Attorney as necessary with regards to any matters relating to the prosecution of City ordinance violations;
- (20) Attend police officer meetings when requested for legal updates and courtroom training.

B. The services performed by Prosecutor shall not exceed the Scope of Work without prior written authorization from the City.

C. The City may from time to time require changes or modifications in the Scope of Work. However, such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

**4. Schedule of Work and Continuity of Representation.**

A. It is agreed by the parties that continuity of representation is very important for effective prosecution. Therefore, John L. Rodabaugh shall be the primary person providing services under this Agreement and shall make good faith efforts to be personally present for all court hearings unless he or she is unable to appear due to vacation, illness, emergency, or occasional scheduling conflicts. Permanent change of primary prosecutor shall be required whenever it becomes impossible for John L. Rodabaugh to meet the obligations described in this section. Prosecutor shall make good faith efforts to ensure that there is continuity of representation in choice of substitute prosecutors.

B. Prosecutor shall appear for all regularly scheduled court hearings in the Fife Municipal Court to perform the services described in the Scope of Work.

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.

**5. Compensation.**

A. Base Rate. The City shall pay the Prosecutor a base rate of twelve thousand dollars (\$12,000) 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.

C. **Bar Dues.** In addition to the compensation described above, the City shall pay the Prosecutor's annual bar licensing dues to the Washington State Bar Association during the Agreement term.

**6. Professional Development.** During the Agreement term, the City shall pay the enrollment fee for the Prosecutor's attendance at the annual Criminal Justice Institute two day CLE program and the cost (if any) for the services of a substitute prosecutor, if necessary, during Prosecutor's attendance at the program.

**7. Payment.**

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

B. **Prorated payment.** Should this Agreement be terminated before the end of a full month, the base rate shall be prorated by subtracting payment for any scheduled court days where Prosecutor failed to appear.

C. **Additional compensation.** Prosecutor shall maintain time and expense records for any services or costs that are eligible for additional compensation and shall provide an invoice to the City within thirty (30) days of incurring such costs or performing the services. Such invoices shall be in a format acceptable to the City. All invoices for additional services shall be paid within sixty (60) days of receipt of a proper invoice.

D. **Records retention.** Prosecutor shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

E. **Dispute over services.** If the services rendered do not meet the requirements of the Agreement, Prosecutor will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

**8. Discrimination and Compliance with Laws.**

A. Prosecutor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Prosecutor shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Prosecutor shall obtain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 8 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

**9. Termination of Agreement**

A. Termination without fault. Either party may terminate this Agreement upon a minimum of ninety (90) days' advance notice to the other party. Such notice shall indicate the date of termination.

B. Termination for cause. The City may terminate the Prosecutor's contract for "cause" (as defined in this Section) immediately upon written notice to the Prosecutor. Such notice shall specify in reasonable detail the nature of the cause. For purposes of this Agreement, "cause" shall include, without limitation: (1) material breach of this Agreement; (2) unethical practices as set forth in the Rules of Professional Conduct; (3) suspension or revocation of license to practice law in the state of Washington; or (4) fraudulent, dishonest, or offensive conduct that tends to bring the City into 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.

**10. 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.

**11. Investigative Materials.**

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 be shall 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. Documents pertaining to work done by the Prosecutor for the City may be considered public records under the Public Records Act (RCW 42.56) and shall be tendered to the City upon the City's request.

**12. 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, except for injuries and damages caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes the Prosecutor's waiver of immunity under Industrial Insurance, Title 51

RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**13. Insurance.** The Prosecutor shall procure and maintain for the duration of this Agreement, insurance coverage as set for the below. Prosecutor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Prosecutor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Prosecutor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability insurance appropriate to the Prosecutor's profession.

B. Minimum Amounts of Insurance

Prosecutor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The automobile and professional liability policy limits may be satisfied by an umbrella liability policy. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Prosecutor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Prosecutor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Prosecutor upon request.

F. Notice of Cancellation

The Prosecutor shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

**G. Failure to Maintain Insurance**

Failure on the part of the Prosecutor to maintain the insurance as required shall constitute a material breach of contract.

**H. Full Availability of Prosecutor Limits**

If the Prosecutor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits maintained by the Prosecutor, irrespective of whether such limits maintained by the Prosecutor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Prosecutor.

**14. Assigning or Subcontracting.** Prosecutor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the City's sole discretion.

**15. Independent Contractor.** The Contractor is and shall be at all times during the term of this Contract an independent contractor and not an employee of the City. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City. As an independent contractor, the Contractor shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

**16. Notice**

A. Any notice or communication required by this Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, by express delivery service, or by registered or certified mail, return receipt requested. If given personally, by express delivery service, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:

Subir Mukerjee  
City Manager  
5411 23<sup>rd</sup> Street East  
Fife, WA 98424

Phone: 253 922-2489  
Fax: 253 922-5355  
Email: smukerjee@cityoffife.org

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

B. Either party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of paragraph 16.A.

**17. Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

**18. Attorneys' Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

**19. Severability.** Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

**20. Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF FIFE, WASHINGTON

PROSECUTOR

By: \_\_\_\_\_  
Subir Mukerjee  
City Manager

\_\_\_\_\_  
John L. Rodabaugh II

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

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

Approved as to form:

By: \_\_\_\_\_  
Gregory F. Amann  
Assistant City Attorney