

MEMORANDUM
For Meeting of December 9th, 2008

TO: Mayor and Councilmembers
FROM: Steve Worthington, City Manager
SUBJECT: Resolution No. 1255 Authorize Agreement for Prosecutor Services

REPORT IN BRIEF:

The City went through a formal process of requesting proposals from qualified individuals, and respondent John Rodabaugh II was determined to best meet the needs and requirements of the City.

FISCAL IMPACT:

Base amount of \$120,000 for 2009

ATTACHMENTS:

Prosecution Services Agreement

DISCUSSION:

Council questions/comments

RECOMMENDED MOTION:

“Motion to authorize City Manager Worthington to execute a professional services contract between the City of Fife and John L. Rodabaugh II for prosecution services.”



Approved for Agenda:
Steve Worthington, City Manager

RESOLUTION NO. 1255

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF FIFE AND JOHN L. RODABAUGH II IN THE BASE AMOUNT OF \$120,000 FOR PROSECUTION SERVICES FOR 2009

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, the City went through a formal process of requesting proposals from qualified individuals, and respondent John Rodabaugh II was determined to best meet the needs and requirements of the City. Now, therefore,

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute a professional services agreement between the City of Fife and John L. Rodabaugh II to provide prosecution services to the City in 2009 at the base amount of \$10,000 per month, with possible additional compensation for other assignments, with said Agreement to be in substantially the same form and contain the same content as the attached Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 9th day of December, 2008.

Barry D. Johnson, Mayor

Attest:

Steve Marcotte, City Clerk

CITY OF FIFE

5411 – 23rd 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 – 23rd Street East
Fife, Washington 98424
Contact: [REDACTED]
Phone: (253) 922-2489
Fax: (253) 922-5355

PROSECUTOR:

JOHN L. RODABAUGH II
21 Avenue A, Suite E
Snohomish, WA 98290-2962
Tax I.D. # [REDACTED]
Phone: (360) 568-9112; (888) 715-8800
Fax: [REDACTED]
Email: John.Rodabaugh@verizon.net

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 [REDACTED] day of [REDACTED] 20[REDACTED], 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:
- (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.
- 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.

6. 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.

7. Compensation

- A. Base Rate. The City shall pay the Prosecutor a base rate of ten thousand dollars (\$10,000) 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.

8. 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.

9. 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. Violation of Section 9 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 of Prosecutor to do further work for City.

10. 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.

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 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.

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

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

16. Independent Contractor

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

17. Governing Law and Venue for 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 King County, Washington.

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. Extent of Agreement/Modification

This Agreement represents the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only by express written consent of both parties. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.

20. Severability

If any term or provision of the Agreement is held invalid, the remainder of such terms or provisions of this Agreement shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

21. Interpretation and Fair Construction of Contract

This Agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for, nor against, either party.

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

PROSECUTOR

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____