



CITY OF WOODINVILLE, WA
REPORT TO THE CITY COUNCIL
17301 133rd Avenue NE, Woodinville, WA 98072
WWW.CI.WOODINVILLE.WA.US

To: Honorable City Council **Date:** 1/24/2013
From: Richard A. Leahy, City Manager
By: Zach Schmitz, Management Analyst 
Subject: Prosecuting Attorney Services

FINANCIAL ACTION SUMMARY		
Expenditure Required	Amount Budgeted/Approved	Additional Amount Required
\$104,000	\$104,000	\$0

ISSUE: Shall the City Council approve a 2-year professional services agreement with the Law Offices of Moberly and Roberts PLLC of Kirkland, WA for an amount not to exceed \$104,000?

RECOMMENDATION: To approve the contract, substantially in the form presented, and authorize the City Manager to take other actions necessary to implement the agreement.

POLICY DECISION:

1. Pursuant to the City's Purchasing Policies, contracts over \$35,000 require Council approval.
2. Retaining a Prosecuting Attorney is a statutory requirement for the City of Woodinville.

BACKGROUND/DISCUSSION: The City is mandated under RCW 36.27.020 to prosecute criminal cases brought under State Statutes or City Ordinances. Prosecution services include providing advice to law enforcement officers during an investigation to determine if criminal charges should be filed, plea negotiations, pretrial hearings, trial, sentencing hearings, and appeals. Since January 2005, the City has contracted with Moberly and Roberts for prosecution services. The Chief of Police and staff members involved believe that the firm has provided a high level of service for the City and recommends extending this contract for the years 2013/2014.

ANALYSIS: The proposed contract is for two years and adds language allowing the Consultant to receive an annual cost of living adjustment (COLA) increase based on the approved annual COLA increase that is provided to non-represented City employees. In 2013, the COLA is 2.7%.

ALTERNATIVES:

1. Approve the Agreement, as presented
2. Amend the Contract Language
3. Direct staff to solicit a Request For Proposals from other law firms.

RECOMMENDED MOTION:

I MOVE THAT THE CITY COUNCIL APPROVE THE AGREEMENT WITH THE LAW OFFICES OF MOBERLY AND ROBERTS PLLC OF KIRKLAND, WA, IN AN AMOUNT NOT TO EXCEED \$104,000 THROUGH DECEMBER 31, 2014, SUBSTANTIALLY IN THE FORM PRESENTED, AND AUTHORIZE THE CITY MANAGER TO TAKE OTHER NECESSARY ACTIONS TO IMPLEMENT THIS AGREEMENT.

Attachment 1: Proposed Agreement with Moberly and Roberts PLLC.

AGREEMENT FOR SERVICES
BETWEEN THE CITY OF WOODINVILLE AND THE LAW OFFICES OF
MOBERLY AND ROBERTS, PLLC

THIS AGREEMENT, is made this ____ day of _____, 2013, by and between the City of Woodinville (hereinafter referred to as "City"), a Washington Municipal Corporation, and the Law Office of Moberly & Roberts, PLLC (hereinafter referred to as "Service Provider"), doing business at 12040 98th Avenue NE Kirkland, WA 98034.

WHEREAS, Service Provider is in the business of providing certain professional services specified herein; and

WHEREAS, the City desires to contract with the Consultant for the provision of criminal prosecution services, and Consultant agrees to contract with the City for same; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Description of Work.** Consultant shall perform work as described in Attachment A, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
2. **Payment.**
 - A. The City shall pay the Consultant a flat monthly fee of Four Thousand Two Hundred Ninety Four Dollars (\$4,294). This fee includes prosecution of all criminal cases and also includes all appeals arising out of those cases. Additionally, this monthly fee will include all administrative costs associated with prosecution including postage, copies, faxes, and legal messenger services.
 - i. The flat fee shall be automatically adjusted on January 1, 2014, by the annual COLA increase granted to non-represented City employees by the City Council. If no increase is granted by the City Council, then no increase shall be effective for the contract.
 - ii. Specialty matters that are not included in this flat fee are civil forfeitures, civil code violations, and formal police training. Specialty matters will be billed at One Hundred Dollars per hour (\$100/hour).

- iii. If Consultant deems that the retention of one or more experts is reasonably necessary in order to effectively prosecute a particular case, the Consultant shall promptly inform the City in writing and request the City's written approval prior to retaining any such experts. The City may, in its sole discretion, either approve or deny such requests. The Consultant shall remain exclusively responsible for any expert fees and charges expended prior to City approval.
- B. One Hundred Four Thousand Dollars (\$104,000) is the maximum amount to be paid under this Agreement in 2013/2014, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.
- C. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for specialty matters and reimbursable expenses.
- D. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
- 3. **Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Consultant is customarily engaged in an independently established trade, which encompasses the specific service provided to the City hereunder, no agent, employee, representative, or subcontractor of Consultant shall be or shall be deemed to be the employee, agent, representative, or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance, are available from the City to the Consultant or its employees, agents, representatives or subcontractors. Consultant will be solely and entirely responsible for its acts and for the acts of Consultant's agents, employees, representatives, and subcontractors during the performance of this Agreement.
- 4. **Duration of Work.** The period of performance starts January 1, 2013, and will expire on December 31, 2014. Renewal beyond that date will require Council approval.
- 5. **Termination.**
 - A. At Election of City. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon thirty (30) days written notice to the Service Provider.
 - B. At Election of Consultant. The Consultant may terminate this Contract without the necessity of substantiating cause upon the expiration of thirty (30) days from receipt by the City of written notice of such termination.

- C. *For Reasons Beyond Control of Parties.* Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as, but not limited to, labor dispute, including strike, walkout, or lockout, sabotage, or superior governmental regulation or control.
 - D. *Rights upon Termination.* In the event of termination, the City shall only be responsible to pay for all cases completed by the Consultant prior to the effective date of termination, as described in the final invoice to the City. PROVIDED, that Consultant shall, consistent with applicable rules of professional conduct, continue to diligently prosecute any outstanding cases until said cases have been formally transferred to a new prosecuting attorney as designated by the City.
6. **Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
7. **Indemnification / Hold Harmless.** The Consultant 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
- Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant'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.
8. **Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, their agents, representatives, employees, or subcontractors.
- A. **Minimum Scope of Insurance.** Consultant 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. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$2,000,000 policy aggregate limit.
 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- B. Minimum Amounts of Insurance. Service Provider 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 each occurrence, \$2,000,000 general aggregate limit.
- C. *Other Insurance Provisions.* The Service Provider's Automobile Liability and Professional Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute to it.
1. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- 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.* Service Provider 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 Service Provider before commencement of the work.
- F. *Notice of Cancellation.* The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

- G. *Subcontractors.* Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
9. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
10. **City's Right of Supervision, Limitation of Work Performed by Consultant.** Even though Consultant works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Consultant shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
11. **Work Performed at Consultant's Risk.** Consultant shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
12. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.
13. **Assignment.** Any assignment of this Agreement by Consultant without the written consent of the City shall be void.
14. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
15. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
16. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its

reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

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

CITY OF WOODINVILLE

By: _____
City Manager
Richard A. Leahy

CONSULTANT

By: _____
Title: _____
Taxpayer ID #: _____

CITY CONTACT

Zach Schmitz
City of Woodinville
17301 133rd Avenue NE
Woodinville, WA 98072
Phone: 425.877.2267
Fax: 425-489-2705

CONSULTANT CONTACT

Sarah Roberts
Moberly & Roberts PLLC
12040 98th Avenue NE
Kirkland, WA 98033
Phone: _____
email: _____

ATTEST/AUTHENTICATED

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney

ATTACHMENT A

SCOPE OF WORK

Provide prosecution services on misdemeanor, gross misdemeanor and traffic infraction cases, where the City has original jurisdiction over any of the above matters committed within the City boundaries. All such services shall comply fully with any and all standards, rules, guidelines, and regulations applicable to the legal profession, including but not limited to the Rules of Professional Conduct.

1. **Review of cases for filing** – Cases sent by the Woodinville Police Department for prosecutor filing decision will be approved for filing or declined for filing within 14 days of receipt. Unless a case is approved for filing, the prosecutor will promptly send a memo to WDP explaining a decline or requesting additional information to be used in making the filing decision.
2. **Complaints** – Within thirty (30) days after a defendant pleads not guilty, the prosecutor will file a complaint with the court. At the same time, file notes will be prepared regarding evidence, witnesses and any extra information needed before trial.
3. **Discovery** – Discovery for all the above matters will be promptly provided to defense upon receipt of notice of appearance.
4. **Subpoenas** – The prosecutor is responsible to subpoena all City witnesses, file proof of service with the court, and notify witnesses if they are not needed.
5. **Plea Offers** – The prosecutor will prepare a plea offer for each case except for bail forfeitable offenses.
6. **Victims of Complaining Witnesses** – For domestic violence cases, it is anticipated that the domestic violence advocate will have contact with the victim right around the time of arraignment. Otherwise, the prosecutor will make direct contact with the victim (or if that is not practical, send a letter to the victim) by no later than two (2) weeks after arraignment. In other cases, shortly after the defendant pleads not guilty, the prosecutor will contact all necessary prosecution witnesses where it is likely that such witnesses will be necessary to appear for trial.
7. **Case Management** – Within thirty (30) days after a defendant pleads not guilty (without waiting for the case to come up on a court calendar) each case will be reviewed for trial readiness. This review will include insuring that proof of elements of the crime will be in hand for trial (e.g. admissible evidence re: status of driver's license). The prosecutor will send out subpoenas to witnesses and/or officers and other pertinent parties promptly after receipt of court calendars. In cases where it is likely that witnesses may not otherwise appear at

court, the prosecutor will arrange for service of subpoenas. In the event an officers' attendance is not required for court, the prosecutor will provide cancellation notice consistent with WPD policy.

8. **Domestic Violence Advocate** – The prosecutor should have regular communication with the domestic violence advocate, particularly for discussion of upcoming cases. The prosecutor shall seek the input of the advocate before any unusual disposition of a case is proposed in court.
9. **Court Appearance** – The prosecutor shall appear at all regular calendars held Thursday afternoons at King County District Court, Redmond Division. In addition to regular calendars on Thursday afternoons, the prosecutor shall attend all jury trials set by the parties. This includes sentencing, trials, contested hearings, and probation hearings. However, it is likely that the standard procedure will be for the prosecutor to be excused from attending certain categories of calendars, such as routine review hearings during probation. The WPD or the court may request that the prosecutor attend all court hearings for individual defendants. When a case involves an offense, which WPD has indicated to the prosecutor is of particular sensitivity, the prosecutor shall, contact the WPD before any unusual disposition of the case is presented in court. In any event, the prosecutor shall advise the WPD of such disposition as soon as possible after its presentation in court.
10. **Appeals** – Prosecutor will represent the City for RALJ appeals at Superior court. The prosecutor will perform legal research and file a responsive brief only after discussion with the WPD. The prosecutor shall then, as necessary, prepare for and attend any required court appearances and oral arguments.
11. **Liaison** – The prosecutor will be the liaison between the WPD and the court system regarding both court procedures and ongoing law enforcement operations.
12. **Charging Decisions** – Upon request of a police officer, the prosecutor will review criminal files to assist the WPD in making filing decisions. Cases are occasionally referred to the prosecutor to determine if there is sufficient evidence to file criminal charges. The prosecutor may then draft a criminal complaint and file it in court, or if there is insufficient evidence may decline to charge or request additional police investigation.
13. **Legal Advisor** – The prosecutor shall be routinely available through e-mail to all WPD officials and officers, including office visits, e-mail and phone access for questions and issues.
14. **Coverage** – The prosecutor will arrange for coverage for illness or other absence. The prosecutor will provide the court with the names and telephone numbers of at least two other attorneys with whom the prosecutor has made

prior arrangements with coverage for court appearances in the event that unexpectedly the prosecutor cannot attend. The prosecutor will ensure that availability of attorney's and support staff is consistent with efficient delivery of services.

Specialty Work

The following services are specialty services.

15. **Training** – The prosecutor, at no expense to the City, will keep current on legal issues and legislation, including attendance at Continuing Legal Education. The prosecutor will provide information and/or on-going training to the WPD regarding recent developments in the Northeast District Court, address how the Judge is ruling on particular issues so that officers will be best prepared for court actions, and present discussions on legal issues both from a statutory and case law point of view. Also, address legislation relevant to law enforcement activities within the timeframe requested by the WPD. This includes providing special training events for officers as requested by the WPD.
16. **Forfeiture Actions (Civil)** – The prosecutor will represent the City in all civil forfeiture matters filed regardless if matters are heard by the City Hearing Examiner or are removed to another jurisdiction.
17. **Code Enforcement** – The prosecutor shall only represent the City on actions that are initiated by a non-police agency, in particular code enforcement actions, at the request of the City. At the City's specific written request, the prosecutor shall charge and prosecute persons and businesses who violate provisions of the Woodinville Municipal Code, including such matters as illegal signs, failing to maintain property sufficient to constitute a public nuisance, or failing to comply with the Uniform Fire Code.
18. **Bail Book** – At the request of the police department, actively maintain and update a bail book that lists all the crimes and infractions for the State of Washington. List the elements of the crime, and the charging language to be used on citations issued by officers. Update every six (6) months.