



## **INFORMATIONAL MEMORANDUM**

**TO: Mayor Ekberg  
Community Services and Safety Committee**

**FROM: David Cline, City Administrator**

**BY: Cheryl Thompson, Executive Assistant**

**DATE: May 16, 2023**

**SUBJECT: Contract for Prosecution Services**

### **ISSUE**

The current contract for Prosecution Services expires June 30, 2023. Attached is a proposed contract for July 1, 2023 – December 31, 2024.

### **BACKGROUND**

The City contracts for Prosecution Services. For several years the Walls Law Firm provided prosecution services to the City of Tukwila initially as employees of Kenyon Disend, then by a subcontract with Kenyon Disend and effective September, 2018 contracting directly with the firm. In April 2022, the Walls Law Firm brought on Karen Lentz as a subcontractor and Ms. Lentz was designated as the Tukwila Prosecuting Attorney.

In September 2022 the City published a Request for Proposals for Prosecution Services. The Walls Law Firm was the only proposal received. City staff prepared a contract for services for 2023-2024 based on the proposal terms. Upon receipt of the contract for services, the Walls Law Firm indicated a potential change in circumstances regarding a pending judicial appointment in 2023 could impact the staff designated as the prosecuting attorney for Tukwila. Therefore, in late 2022 the City amended the term of the 2021-2022 Contract for Services to extend through June 30, 2023.

As the proposal received in September 2022 is no longer relevant, the City published an updated Request for Proposals for Prosecution Services on May 9.

### **DISCUSSION**

The City received two responses to the Request for Proposals for Prosecution Services: one from the Walls Law Firm and one from Karen Lentz, who is interested in contracting directly with the City rather than subcontracting with the Walls Law Firm. After reviewing the submitted proposals, the City is recommending we contract with Karen Lentz for Prosecution Services for July 1, 2023 through December 31, 2024 at the rate of \$14,000 per month. Pre-pandemic we paid \$13,500 per month and during the pandemic we negotiated the rate down

to \$12,500 per month. The modest increase to \$14,000 is reasonable. The additional \$1,500 per month will require a \$9,000 budget amendment for 2023 and \$18,000 for 2024.

**RECOMMENDATION**

The Committee is being asked to move this contract forward to the consent agenda of the June 5, 2023 Council Meeting.

**ATTACHMENTS**

Draft Contract for Prosecution Services for July 1, 2023 – December 31, 2024.



**CONTRACT FOR PROSECUTION SERVICES**

This Agreement is entered into by and between the City of Tukwila, Washington, a non-charter optional municipal code city hereinafter referred to as “the City,” and Karen S. Lentz, PLLC hereinafter referred to as “the Contractor”.

WHEREAS, the City has determined the need to have certain services performed for its citizens but does not have the staffing or expertise to perform such services; and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions; now, therefore,

IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. **Scope and Schedule of Services to be Performed by Contractor.** The Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, the Contractor shall at all times comply with all Federal, State, and local statutes, ordinances and rules applicable to the performance of such services. Compliance with these standards goes to the essence of this Agreement. The Contractor shall request and obtain prior written approval from the City if the scope of services is to be modified in any way.
2. **Compensation and Method of Payment.** The City shall pay the Contractor for services rendered according to the rate and method set forth on Exhibit B attached hereto and incorporated herein by this reference.
3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing July 1, 2023 and ending December 31, 2024 unless sooner terminated under the provisions hereinafter specified.
4. **Independent Contractor.** Contractor and City agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.
5. **Indemnification.** The Contractor shall defend, indemnify and hold the City, its officers, agents, 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor’s liability

hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor'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.

6. **Insurance.** The Contractor 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 Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor 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.** Contractor shall obtain insurance of the types and with the limits described below:
    1. **Automobile Liability:** The Contractor shall procure and maintain in full force throughout the duration of this Agreement Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile liability insurance shall cover 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. Commercial General Liability: Waived.
    3. **Workers' Compensation:** The Contractor shall procure and maintain Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
    4. **Professional Liability Insurance:** The Contractor shall procure and maintain in full force throughout the duration of this Agreement Professional Liability insurance with a minimum coverage of \$2,000,000 per claim and \$2,000,000 aggregate. Contractor shall provide evidence of such coverage in a manner and form acceptable to the City in the City's sole discretion. Cancellation of the required insurance shall automatically result in termination of this Agreement.
  - B. **Other Insurance Provision.** The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain or be endorsed to contain that they shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
  - C. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
  - D. **Verification of Coverage.** Contractor 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 Contractor before commencement of the work.

E. **Notice of Cancellation.** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

7. **Record Keeping and Reporting.**

A. The Contractor shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement and other such records as may be deemed necessary by the City to ensure the performance of this Agreement and to ensure compliance with the Public Records Act, chapter 42.56 RCW.

B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with RCW Chapter 40.14 and by the City.

8. **Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by law during the performance of this Agreement, to the extent permitted by law.

9. **Termination.** This Agreement may at any time be terminated by the City giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same. Failure to provide products on schedule may result in contract termination. If the Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement immediately.

10. **Discrimination Prohibited.** The Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.

11. **Assignment and Subcontract.** The Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the City. If the Contractor is unable to attend Court due to illness, vacation or unforeseen circumstances, she will make arrangements with a qualified attorney to cover in her absence. If coverage is needed for more than 5 consecutive Court days, the Contractor will obtain written approval from the City.

12. **Entire Agreement.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.

13. **Notices.**

Notices to the City of Tukwila shall be sent to the following address:  
City Administrator, City of Tukwila  
6200 Southcenter Blvd.  
Tukwila, Washington 98188

Notices to the Contractor shall be sent to the following address:

Karen S. Lentz, PLLC  
10410 163<sup>rd</sup> Court NE  
Redmond WA 98052

- 14. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
- 15. **Applicable Law; Venue; Attorney’s Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney’s fees and costs of suit.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF TUKWILA

CONTRACTOR

\_\_\_\_\_  
Allan Ekberg, Mayor

\_\_\_\_\_  
Karen S. Lentz, WSBA# 50396

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O’Flaherty, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kari L. Sand, City Attorney

## EXHIBIT A - SCOPE OF SERVICES

Contractor agrees to provide a level of service equal to or greater than the level of service provided by an in-house Prosecuting Attorney. Karen S. Lentz is the designated attorney that will serve as the City Prosecutor. Any changes in this designation must be approved in advance by the City.

1. **Police Report Review.** Review all Tukwila Police Reports involving misdemeanor and gross misdemeanor crimes, make decision as to filing of criminal charges or referral for pre-filing diversion in alignment with City policies and in consultation with the Tukwila Police.
2. **Court Appearances.** Appear at all criminal calendars in Tukwila Municipal Court on behalf of the City of Tukwila including but not limited to: in-custody/out-of-custody arraignments, pretrial hearings and motions, readiness hearings, bench trials, jury trials, sentencings, review hearings, tow hearings and contested traffic and parking infraction hearings when the offender is represented by an attorney.

Represent the City in appeals in connection with criminal misdemeanor and gross misdemeanor cases.

3. **Case Preparation.** Conduct investigations, contact witnesses, advise victims regarding their rights and responsibilities, coordinate with the victim advocate when appropriate, conduct plea bargain negotiations and make appropriate plea offers consistent with the laws and regulations as well as City of Tukwila standards and policies, make sentencing and bail recommendations to the Court, prepare and present legal memoranda, subpoenas, jury instructions and other related materials, argue motions, represent the City at restitution hearings, bench trials and jury trials.
4. **Administrative Functions.** Administrative functions relating to criminal prosecution and contested traffic and parking hearings such as creation and maintenance of files, and completion of discovery requests. All files shall remain property of the City and shall be returned to the City upon termination of this Agreement or upon request by the City. Contractor shall retain all records in accordance with Washington State document retention laws.
5. **Police Department Support.** Advise the Tukwila Police Department on the conduct of investigations, search warrants, trial preparations and related matters. Provide legal research, training and assistance to the Tukwila Police Department including statutory interpretation, enforcement issues and case decisions. Attend police department administrative staff meetings as requested. The Prosecutor shall be reasonably available for night and weekend contact by police personnel.
6. **Training.** Contractor agrees to attend seven (7) hours of prosecution focused training each year. This requirement also applies to all associate counsel. Each Attorney will submit a copy of their Continuing Legal Education (CLE) Credits transcript from the Washington State Bar Association (WSBA) with the Annual Report.
7. **Reporting.** Contractor agrees to submit the following reports:
  - **Monthly Statistics Reports:** This report shall take substantially the same form as that attached hereto as Exhibit C and shall be submitted with the monthly invoice.
  - **Annual Report:** This report will detail the number of cases filed for the year, the number of cases referred for pre-filing diversion, the number of cases where pre-filing diversion was successfully completed, the number of cases where stipulated orders of continuance or deferred prosecution was agreed to, and the number of cases dismissed.

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

1. Base Compensation. For all prosecution services set forth in Exhibit A, Contractor shall be paid a flat monthly fee of \$14,000.
2. Invoices. The Contractor shall invoice the City by the tenth day of each month for the previous month services.
3. Community Court or Additional Court Calendars. The Tukwila Municipal Court is researching implementation of a Community Court. If a Community Court or additional court calendars are implemented during the term of this contract, the impact to provision of prosecution services will be assessed and compensation will be negotiated and adjusted accordingly.

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EXHIBIT C – PROSECUTION MONTHLY REPORT

<b>CASES</b>		
New Filings		
Cases Declined		
<b>PRE-FILING DIVERSION</b>		
Referred for pre-filing diversion		
Successful completion of pre-filing diversion		
<b>DISPOSITIONS</b>		
Deferred Prosecution		
SOC/ Pre-Trial Diversion Agreement		
DWLS 3 Amended to Infraction		
Dismissals prior to Readiness		
<b>TRIALS</b>	<b>SET</b>	<b>TRIED</b>
Stipulated Facts Trial		
Bench Trial		
Jury Trial		
Dismissals – Post Readiness/Day of Trial		