

RESOLUTION NO. 2016-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WAPATO, WASHINGTON APPROVING THE PROSECUTING ATTORNEY SERVICES CONTRACT WITH TONY SWARTZ FOR ONE YEAR.

WHEREAS, Tony Swartz has experience as a prosecuting attorney for other cities and has agreed to be the prosecuting attorney for the City of Wapato in all cases wherein he does not have a conflict, and,

WHEREAS, such representation and obligations are set out in the Contract, attached hereto as Exhibit "1"; and,

WHEREAS, Tony Swartz is a member in good standing of the Washington State Bar Association and has experience in criminal law; and,

WHEREAS, it is necessary to have prosecuting attorney available so that he can represent the City in criminal cases; and,

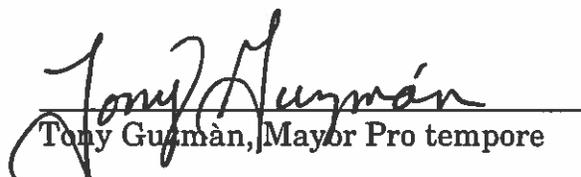
WHEREAS, the City and Mr. Swartz will enter into an agreement regarding a one year contract to ensure continual representation for the City; and,

WHEREAS, the City Council of the City of Wapato finds that it is in the best interest of the City and the residents of the City to enter into an agreement with Tony Swartz for prosecuting attorney for one year in the Wapato Municipal Court, now therefore,

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WAPATO, WASHINGTON, AS FOLLOWS:

The City Council of the City of Wapato authorizes the Mayor or his designee to execute the Contract for Prosecuting Attorney Services between Tony Swartz and the City of Wapato in the form attached hereto as Exhibit "1."

ADOPTED BY THE CITY COUNCIL this 9th day of April, 2016.


Tony Guzmán, Mayor Pro tempore

ATTEST:

Gloria Acosta
Gloria Acosta, Deputy Clerk-Treasurer

APPROVED AS TO FORM:

Kellen Holgate
Kellen Holgate, City Attorney

1st Touch Date: 3/21/2016

2nd Touch Date: 4/4/16

**CONTRACT FOR LEGAL SERVICES
(Prosecuting Attorney for the City of Wapato)**

I. PARTIES

THIS CONTRACT is entered into this 4th day of April, 2016, by and between the CITY OF WAPATO, a municipality of the State of Washington (hereinafter referred to as "City"), and TONY SWARTZ, attorney at law (hereinafter referred to as "Prosecuting Attorney").

II. SERVICES OF THE PROSECUTING ATTORNEY

2.1 Primary Services. The Prosecuting Attorney shall serve at the pleasure of the City under the direction of the Mayor. Under the supervision of the Prosecuting Attorney, other attorneys as approved by the City may provide assistance to the Prosecuting Attorney as may be necessary. If the Prosecuting Attorney is unable to continue to provide services as required, Prosecuting Attorney shall provide advance notice so that the City may seek another prosecuting attorney.

2.2 Conflict Services. In the event of a conflict with the Prosecuting Attorney of a case requiring a "conflict prosecutor", it shall be the responsibility of the Prosecuting Attorney to provide such substitute coverage, with an attorney approved to assist the Prosecuting Attorney.

III. QUALITY OF SERVICES

3.1 Ethical Coverage. Prosecuting Attorney and assisting attorneys shall perform legal services as set forth hereafter in a capable and efficient manner, and in accordance with the professional and ethical standards of the Washington State Bar Association. The Prosecuting Attorney and all assisting attorneys shall maintain the highest standards of conduct and behavior towards the court, other counsel, and all parties.

IV. SERVICES PROVIDED

4.1 Prosecution Services. The Prosecuting Attorney shall represent the City as Prosecuting Attorney in all proceedings before the Wapato Municipal Court, including jury trials, bench trials, pre-trial hearings, arraignments, show cause hearings, and other hearings as required by the Municipal Court. The duties of the Prosecuting Attorney shall include the review and signing of citations and complaints as required; review of police incident reports and supporting documents for charging determination; appearance at hearings and trials (bench and jury trials); telephone conversations, meetings and negotiations with the police department and its officers, victims, defendants, witnesses and opposing counsels as required; preparation of documents required by subpoenas. The City, through its police department shall provide that support necessary to accomplish the prosecution of the above criminal matters. The Prosecuting Attorney shall appear at all calendars for the City. The Prosecuting Attorney shall be responsible for preparation and maintenance of all prosecution files, until the time for any appeal has expired. Upon expiration of the time for appeals, Prosecuting Attorney shall deliver such files to the City for storage. The Prosecuting Attorney shall also represent the City in all Municipal Court actions that are appealed to the Yakima County Superior Court.

4.2 Ancillary Services. In addition, the Prosecuting Attorney shall provide the following services:

4.2.1 Be available to the City Police Department regarding matters affecting criminal prosecution;

4.2.2 Provide training as needed for City police officers and employees on legal matters affecting the satisfactory prosecution of criminal matters;

4.2.3 Make recommendations to the City Police Department concerning suggestions, amendments, modifications or additions to City Ordinances affecting the satisfactory prosecution of criminal matters; and

4.2.4 Provide feedback to the City Police Chief regarding performance of City police officers in the discharge of their duties and other matters of mutual concern.

V. FEES AND COSTS

5.1 Flat Fee. As compensation for the services to be rendered by the Prosecuting Attorney and any attorneys assisting the Prosecuting Attorney, the City agrees to pay to the Prosecuting Attorney a monthly flat fee in the sum of Three Thousand Five Hundred Dollars (\$3,500.00) per month.

5.2 Additional Compensation. If the City should require the services of the Prosecuting Attorney other than those services set forth hereinabove, the Prosecuting Attorney shall invoice the City at the rate of One Hundred Dollars (\$100.00) per hour. Prosecuting Attorney shall not engage in services that would require the City to pay additional compensation without prior permission from the City. Legal services for representation in the Appellate Courts of the State of Washington or Federal Courts shall be negotiated separate from this Contract.

5.3 Interpreters and Transcription Costs. Expenses for interpreters and transcription costs shall be the sole responsibility of the City.

5.4 Payment Terms. Fees are due from the City upon billings by the Prosecuting Attorney. A service charge shall accrue at the rate of six percent (6%) per annum (1/2% per month) and be added to any balance remaining unpaid sixty (60) days after the statement date.

VI. CONTRACT PERIOD

6.1 Term. This Contract shall take effect on the 1st day of April, 2016, and shall continue in effect until the 31st day of March, 2017, unless earlier terminated by either party as provided herein. Unless so terminated, or otherwise renegotiated, this Contract shall renew automatically for successive calendar months upon the same terms and conditions until terminated upon thirty (30) days written notice.

6.2 Renewal. The Prosecuting Attorney shall submit a proposed contract commencing April 1, 2017 on or before the 1st day of January, 2017, or unless otherwise agreed. The City also retains the right to solicit other proposals for the Prosecuting Attorney at any time.

6.3 Termination. This Contract may be terminated by the City or the Prosecuting Attorney upon sixty (60) days advance written notice to the other party. In the event that the City determines that the Prosecuting Attorney is in material default of this Contract, the City shall provide the Prosecuting Attorney with written notice specifying such default. If such material default is not cured within ten (10) days from the Prosecuting Attorney's receipt of such written notice, this Contract shall be terminated without further notice.

VII. INSURANCE AND INDEMNIFICATION

7.1 Liability Insurance. During the life of this Contract, the Prosecuting Attorney shall maintain professional liability and malpractice insurance that shall provide coverage for the Prosecuting Attorney and anyone acting for or on behalf of the Prosecuting Attorney in the performance of this Contract, unless the acting attorney carries his or her own policy consistent with the provisions of this Contract. Such insurance shall be obtained from an insurance company authorized to do business in the State of Washington and shall have minimum policy limits of ONE MILLION DOLLARS (\$1,000,000.00) or more.

7.2 Indemnification. Prosecuting Attorney shall indemnify and hold the City, its elected officials, officers and employees, harmless from any and all claims, losses or liability, including attorneys' fees, whatsoever arising out of the Prosecuting Attorney's performance of obligations pursuant to this Contract, including but not limited to claims arising by reason of accident, injury or death caused to persons or property of any kind occurring by the fault or neglect of the Prosecuting Attorney, her agents, associates, employees or assisting attorneys. Prosecuting Attorney's duty under this subparagraph to indemnify the City, its elected officials, officers and employees shall not apply to liability caused by or resulting from the sole negligence of the City or its elected officials, officers and employees. In the event of damages caused by or resulting from the concurrent negligence of (1) the City or its elected officials, officers or employees, and (2) Prosecuting Attorney or her agents, associates, employees or assisting attorneys, Prosecuting Attorney's duty to indemnify the City and its elected officials, officers and employees shall only apply to the extent of the negligence of Prosecuting Attorney or her agents, associates, employees or assisting attorneys. PROSECUTING ATTORNEY SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51, FROM THE REVISED CODE OF WASHINGTON. FURTHER, THE INDEMNIFICATION OBLIGATIONS UNDER THIS CONTRACT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFITS ACTS OR OTHER EMPLOYEE BENEFIT ACTS; PROVIDED, PROSECUTING ATTORNEY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS SUBPARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST PROSECUTING ATTORNEY BY CITY AND DOES NOT INCLUDE, OR EXTEND TO ANY CLAIM BY PROSECUTING ATTORNEY'S EMPLOYEES DIRECTLY AGAINST PROSECUTING ATTORNEY.

VIII. AFFIRMATIVE ACTION

8.1 Non-Discrimination in Employment. During the performance of this Contract, the Prosecuting Attorney shall comply with the Washington "Law Against Discrimination" and should any part of the performance contemplated hereunder be financed by federal funds, the Prosecuting Attorney shall comply with all applicable federal laws against discrimination in employment. Satisfactory performance of this clause by the Prosecuting Attorney shall include, but not be limited to the following:

During the performance of this Contract, Prosecuting Attorney shall not be discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, creed, marital status, ago or the presence of any sensory, mental or physical handicap. Performance shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other form of compensation, and programs for training including apprenticeships, unless such distinctions are based upon a bona fide occupational qualification.

IX. MISCELLANEOUS

9.1 Notices. That if any notice is required or desired to be given under this Contract, such shall be deemed given if such is personally delivered or sent in writing by certified mail to his/her office, in the case of the Prosecuting Attorney, or the Mayor, in the case of the City.

9.2 Independent Contract. The City and the Prosecuting Attorney understand that the Prosecuting Attorney is considered for all purposes an independent contractor and not an employee of the City. The Prosecuting Attorney shall be responsible for payment of all state and federal taxes, assessments and reporting therefore.

9.3 Entire Contract. This Contract contains the entire understanding of the parties. It may be changed only by an agreement in writing signed by the party against whom enforcement of any waiver, change or modification, extension or discharge is sought.

IN WITNESS WHEREOF the parties have executed this Contract on the 4th day of April, 2016.

PROSECUTING ATTORNEY


TONY SWARTZ, WSBA #45206

CITY OF WAPATO,
a Washington Municipal Corporation

Attest:

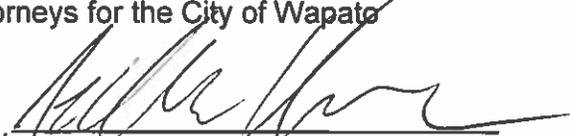
By: 
Tony Guzman, Mayor Pro Tempore


Gloria Acosta, Deputy Clerk-Treasurer

Approved as to Form:

HALVERSON NORTHWEST LAW GROUP P.C.
Attorneys for the City of Wapato

By:


Kellen J. Holgate