

RESOLUTION NO. 031317-2

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH RYAN & MULLIN, P.A. FOR PROSECUTION SERVICES FOR THE MUNICIPAL COURT OF THE CITY OF ABILENE, KANSAS

WHEREAS, the City of Abilene desires to enter into a Professional Services Agreement with Ryan & Mullin, P.A. ("Prosecutor") to provide prosecution of City violations to the Municipal Court.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Professional Services Agreement. That a Professional Services Agreement with Prosecutor is hereby adopted as attached hereto as **Exhibit A**.

SECTION TWO. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 13th day of March, 2017.



ATTEST:

CITY OF ABILENE, KANSAS

By: Dee Marshall
Dee Marshall, Mayor

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

EXHIBIT A

Professional Services Agreement

March 13, 2017

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered on this 13th day of March, 2017, between Ryan & Mullin, P.A. ("Prosecutor") and the City of Abilene, Kansas, a Kansas municipal corporation, ("City") with respect to the facts and objectives set forth below.

RECITALS

- A. The City requires a City Prosecutor to provide legal services related to the prosecution of violations of the City Code of the City of Abilene.
- B. Ryan & Mullin, P.A. desires to serve as City Prosecutor ("Prosecutor") and to provide services related to the prosecution of violations of City Code and other applicable local ordinances and regulations and as otherwise provided in this Agreement.

NOW, THEREFORE, in accordance of the mutual promises and the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree to the following terms and conditions:

1. City Prosecutor. Ryan & Mullin, P.A. is hereby appointed to serve as City Prosecutor of the City of Abilene, Kansas, by and through its licensed attorneys and legal assistants of the firm as designated by the lead attorney, Dustin W. Mullin. The Prosecutor will ensure that an attorney licensed to practice in the State of Kansas is available to prosecute Municipal Court every Monday beginning at 1:00 pm, except on Mondays designated as holidays by the City or when court is otherwise cancelled by the Municipal Judge. The Prosecutor will also prosecute cases appealed to the District Court.
2. Independent Contractor. The Prosecutor shall be considered an independent contractor, and as such the City shall not be responsible for paying any withholding taxes, workman's compensation insurance, health insurance, or any other insurance or benefits for the Prosecutor. No person employed by the Prosecutor shall be deemed an employee of City. The City shall neither have nor exercise any control or direction over the methods by which the Prosecutor performs legal services hereunder. The sole interest and responsibility of the City is to see that the services covered by this Agreement are performed and rendered in a competent, efficient, and satisfactory manner.
3. Term. The term of this Agreement shall begin on April 1, and shall continue unless otherwise terminated by either party as provided herein. The parties agree to review the Agreement annually during preparation of the annual budget to determine if the contractual amount for services should be adjusted.
4. Termination for Convenience. Either party may terminate this Agreement, with or without cause, by giving the other party sixty (60) days written notice of its intention to terminate the professional relationship.
5. Termination by City for Cause. If Prosecutor fails to fulfill in a timely manner and proper manner its obligations under the Agreement, or if Prosecutor shall violate any of the terms, covenants, conditions, or stipulations of the Agreement, the City have may terminate the Agreement by promptly giving written notice to Prosecutor of such termination and specifying the reasons for the termination and the effective date thereof.
6. Contract Amount. The City agrees to pay the Prosecutor the annual sum of \$35,000, to be paid in

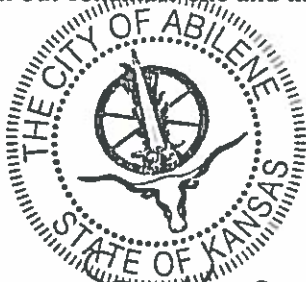
equal monthly increments, pro-rated as necessary, during the term of this Agreement, for prosecution services for the Municipal Court as defined in this Agreement. The City shall provide payment to the Prosecutor for services rendered by the 15th of the month following the provision of said services.

7. Office and Supplies. The Prosecutor shall provide office, office equipment and supplies as well as office staff to perform the duties specified in this Agreement.
8. Municipal Court Operations. The Prosecutor shall work with the Municipal Judge to establish court hours and days mutually convenient to both parties. The Prosecutor agrees to be available in order to meet with defendants, attorneys, and police officers. The Prosecutor shall be responsible for completing journal entries, waivers of counsel, witness subpoenas and complaints for Failure to Appear or Comply. The Prosecutor shall also be responsible for the dissemination of reports to defense counsel. The Court Clerk, who is an employee of the City, shall be responsible for preparation of Bench Warrants, for obtaining certified driving records and for service of complaints and/or subpoenas. The Police Clerk, who is an employee of the City, shall be responsible for providing Prosecutor with complete court reports following a "not guilty" plea at first appearance.
9. Conflict of Interest. In the event that a conflict of interest is identified that would prevent the Prosecutor from fulfilling prosecution duties, the Prosecutor will notify the City Attorney to arrange temporary assignment of responsibility to the City Attorney. The Prosecutor shall notify the City Manager when such reassignment is facilitated.
10. Public Funds. The Prosecutor may not obligate City for any monies or purchases, provided that City may agree to reimburse the Prosecutor for forms and software to produce court forms with prior approval by the City Manager.
11. Court Procedures and Policies. The Prosecutor agrees to provide the City Manager with a copy of written policies and procedures related to the prosecution of City violations within ninety days of the effective date of this Agreement. The Prosecutor agrees to supply the City Manager with any amendments to said policies and procedures prior to the implementation of said proposed changes. The City Manager shall have the authority to review and approve all policies and procedures prior to implementation, and reserves the right to consult with the City Attorney, Municipal Judge, Municipal Court Clerk, and Police Chief on any proposed changes to the policies and procedures prior to implementation by the Prosecutor.
12. Delegation of the City's Sovereign Authority. By entering into this Agreement for legal services, the City makes a limited delegation of its sovereign powers to the Prosecutor to the extent necessary to perform the legal services required hereunder pursuant to K.S.A. 12-4110, as amended.
13. Performance and Reports. The City Prosecutor agrees to provide quarterly reports to the City Manager showing aggregate data concerning such metrics as convictions, plea bargains, continuances, etc., in order for the City Manager to understand how the Prosecutor is performing. The City Manager will conduct an annual evaluation of the Prosecutor, to be completed by December 1st.
14. Subcontracting and Assignment. The Prosecutor shall not subcontract any of the Services nor assign any interest or obligation under this Agreement.
15. Cash-Basis Requirements. This Agreement must comply with the applicable provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et. seq., as amended. The City is only obligated to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Agreement during the City's current budget year.

Notwithstanding any other provision of this Agreement, in the event that the City does not budget and appropriate funds for any future calendar year, for any reason in its sole discretion, the parties agree that they shall be relieved of all obligations under this Agreement without penalty. To the extent that the City does budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

16. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and supersedes all previous communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement. This Agreement shall be governed by the laws of the State of Kansas. It shall not be modified without the written consent of both of the parties to this agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers or representatives in multiple counterpart copies, each of which shall be deemed an original but constitute one and the same instrument, effective as of the date first set forth above.



ATTEST:

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

By:

Dee Marshall
Dee Marshall, Mayor

RYAN & MULLIN, P.A.

By:

Dustin W. Mullin
Dustin W. Mullin