



**AGENDA ITEM REQUEST FORM  
CITY OF JOHNSON CITY, TEXAS  
CITY COUNCIL**

**ITEM NO. 13**

**MEETING DATE:**           **October 5, 2021**

**AGENDA PLACEMENT:**

- Ceremonial
- Consent
- Individual
- Closed Session

**CAPTION:**

Discussion of and action on a First Amendment to a Professional Services Agreement for prosecutorial services between the City of Johnson City, Texas and Kimberly Ashby increasing the rate of compensation from \$500.00 per month to \$1,000.00 per month. (K. Ashby)

**STRATEGIC WORK PLAN:**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Not Applicable                     | <input type="checkbox"/> Goal 5:    Improve Fire Safety                                |
| <input type="checkbox"/> Goal 1:    Increase Housing Diversity         | <input type="checkbox"/> Goal 6:    Improve Streets                                    |
| <input type="checkbox"/> Goal 2:    Expand Quality Lodging             | <input type="checkbox"/> Goal 7:    Increase Publicity &<br>Promotion of the Community |
| <input type="checkbox"/> Goal 3:    Improve Code Enforcement           | <input type="checkbox"/> Goal 8:    Increase Economic<br>Development Activities        |
| <input type="checkbox"/> Goal 4:    Improve Streetscaping &<br>Signage |  |

**EXECUTIVE SUMMARY:**

The existing Agreement between the City of Johnson City and Municipal Court Prosecutor Kimberly Ashby was predicated on “an expected average of two hours of services to be performed per month.”

Due to increased citations, warrants, Code violations, et cetera, the number of hours needed by the Municipal Court for prosecutorial work has increased. Court Clerk Mikla estimates 20 to 25 hours of work required per month.

Consequently, Mrs. Ashby is requesting an increase in compensation from \$500.00 per month to \$1,000.00 per month, with no maximum number of hours.

**FINANCIAL:**

\$1,000.00 per month or \$12,000.00 per year. Required funds budgeted in the FYE 2022 Municipal Budget.

**ATTACHMENTS:** Proposed First Amendment to Agreement

**SUGGESTED ACTION:**

Motion to approve a First Amendment to a Professional Services Agreement for prosecutorial services between the City of Johnson City, Texas and Kimberly Ashby increasing the rate of compensation from \$500.00 per month to \$1,000.00 per month.

**PREPARED BY:** City Staff

**DATE SUBMITTED:** 9/30/21

**FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT FOR  
PROSECUTORIAL SERVICES  
BETWEEN THE  
CITY OF JOHNSON CITY AND KIMBERLY ASHBY**

This First Amendment ("First Amendment") to Professional Services Agreement ("Agreement") is made and entered into by and between the City of Johnson City, Texas, a Type A general law city ("City") and Kimberly Ashby, ("Prosecutor"), individually "Party" and collectively the "Parties".

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WHEREAS, in November, 2019, the Parties entered into an Agreement whereby the Prosecutor agreed to perform the duties and responsibilities of Municipal Court Prosecutor for the City upon the terms and conditions set forth in the Agreement; and

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WHEREAS, the Parties desire to update and amend the Agreement as provided herein.

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**NOW, THEREFORE**, in exchange of the mutual covenants and other valuable consideration contained herein, the Parties agree as follows:

1. The foregoing recitals are adopted as facts and are incorporated fully herein.
2. Section 2 of the Agreement is amended as follows:

**2. Compensation and Payment for Services.**

- A. The Prosecutor shall be compensated for all prosecutorial services performed, including pretrial matters, court preparation, and court appearances, for all criminal and civil matters including code violations, presented in municipal court, at a rate of \$500.00 \$1,000.00 monthly. (based on an expected average of two hours of services to be performed per month). This rate may be reevaluated after five (5) months after the date of execution of this Agreement on the request of either party.
- B. The Prosecutor shall submit an invoice and the City shall ~~render~~ issue payment to Prosecutor within thirty (30) days of receipt of Prosecutor's invoice.
- C. The Prosecutor shall be responsible and pay for all applicable local, state, federal taxes, including income tax, withholding tax, and social security tax on compensation received from the City. The City shall provide Prosecutor with all proper forms for reporting and filing.

3. This First Amendment shall be effective October 1, 2021 following approval by the City Council.

IN WITNESS WHEREOF, the undersigned Parties have executed this First Amendment on the dates indicated below.

**CITY OF JOHNSON CITY, TEXAS**  
303 E. Pecan Drive  
Johnson City, Texas 78636

\_\_\_\_\_  
Rhonda Stell, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Whitney Walston, City Secretary

\_\_\_\_\_  
Date

**KIMBERLY ASHBY**  
**MUNICIPAL COURT PROSECUTOR**  
Address on file

\_\_\_\_\_  
Kimberly Ashby  
State Bar No. 24080775

\_\_\_\_\_  
Date

**PROFESSIONAL SERVICES AGREEMENT FOR  
PROSECUTORIAL SERVICES  
BETWEEN THE  
CITY OF JOHNSON CITY AND KIMBERLY ASHBY**

This Professional Services Agreement (“Agreement”) is made and entered into by and between the City of Johnson City, Texas, a Type A general law city (“City”) and Kimberly Ashby, (“Prosecutor”), individually "Party" and collectively the "Parties", whereby the Parties agree that the Prosecutor shall perform the full duties and responsibilities as Municipal Court Prosecutor for the City upon the terms and conditions as set forth below and in accordance with state law.

**NOW, THEREFORE**, in exchange of the mutual covenants and other valuable consideration contained herein, the Parties agree as follows:

**1. Description of Services.**

- A. Prosecutor shall serve and act as the Municipal Court Prosecutor for the City at the City’s municipal court.
- B. Prosecutor shall perform all duties, responsibilities, and obligations necessary under state and federal law, the Texas Local Government Code, state and federal regulations, municipal ordinances, and in accordance with standard and professional practices to perform and complete those tasks for the prosecutorial services which City is acquiring.
- C. The Prosecutor shall have no supervisory role over the municipal court clerk except with regard to procedures and operations of the court.
- D. The Prosecutor shall maintain eligibility and the appropriate licenses as may be required to serve in the capacity as municipal court prosecutor and shall maintain competency as a municipal court prosecutor by completing continuing legal education as required by state law.

**2. Compensation and Payment for Services.**

- A. The Prosecutor shall be compensated for prosecutorial services performed, including pretrial matters, court preparation, and court appearances, at a rate of \$500.00 monthly (based on an expected average of two hours of services to be performed per month). This rate may be reevaluated after five (5) months after the date of execution of this Agreement on the request of either party.
- B. The Prosecutor shall submit an invoice and the City shall render payment to Prosecutor within thirty (30) days of receipt of Prosecutor’s invoice.
- C. The Prosecutor shall be responsible and pay for all applicable local, state, federal taxes, including income tax, withholding tax, and social security tax on compensation received from the City.

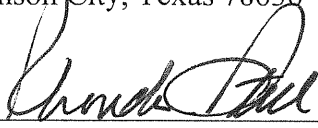
3. **Effective Date and Term.** This Agreement shall commence upon the last date of execution of the Parties of this Agreement and shall continue indefinitely unless terminated as provided below.
4. **Termination.**
  - A. This Agreement may be terminated:
    - (a) at the option of either Party upon 30 days advance written notice to the other Party;
    - (b) on removal:
      - (i) for incompetency, corruption, misconduct, or malfeasance in office by the City Council after notice and hearing in accordance with Local Government Code Section 22.077(a), as amended; or
      - (ii) for lack of confidence on a two-thirds vote by the City Council in accordance with Local Government Code Section 22.077(b), as amended.
  - B. On termination, compensation shall be issued for services through the date of termination.
5. **Relationship of Parties.** The Prosecutor is an independent contractor and not an employee of the City. Other than an attorney-client relationship as established and provided for under state law, this Agreement does not create any other relationship, including a partnership or joint venture, between Prosecutor and City.
6. **Employees.** Employees of Prosecutor, if any, who perform services for City under this Agreement shall also be bound by the provisions of this Agreement. Prosecutor employees shall not have any individual, private right of action against the City.
7. **Indemnification.** City agrees to indemnify, save and hold Prosecutor harmless from any and all claims for damages, losses, expenses, fees, including attorney's fees, costs and judgments that may be asserted against Prosecutor that result from acts or omissions of City, its employees, if any, agents or contractors.
8. **Assignment.** Prosecutor's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.
9. **Notice.** All notices shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, to the addresses as indicated in this Agreement. Either Party may change such address from time to time by providing written notice to the other. Notice is deemed to have been received three (3) days after deposit in the U.S. mail.
10. **Entire Agreement and Amendment.** This Agreement contains the entire agreement of the Parties. There are no other promises or conditions in any other agreement either oral or written. This Agreement supersedes any prior written agreements between the Parties. This Agreement may be modified or amended in writing signed by both Parties.
11. **Severability.** If for any reason any clause, sentence, paragraph, section or part of this Agreement is held invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not affect any valid provisions of this Agreement.

12. **Waiver of Contractual Right.** The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of limitation to that Party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.
13. **Applicable Law.** The laws of the State of Texas shall govern this Agreement. Venue for any disputes arising under this Agreement shall be in Blanco County, Texas. The Parties agree to mediate in good faith before filing any suit for damages. Each Party shall bear its own litigation costs.
14. **Mandatory Disclosures.** Texas law requires that vendors make certain disclosures. To the extent required and applicable under Texas law, within 30 days after execution of this Agreement, Prosecutor must submit to the City a copy of the Conflict of Interest Questionnaire form (Form CIQ) and the Affidavit regarding Prohibition on Contracts with Companies Boycotting. Prosecutor must also complete and submit the Certificate of Interested Parties Form 1295 and submit it to the Ethics Commission with a copy to the City.
15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original instrument, and all of which, when taken together, shall constitute one and the same instrument.

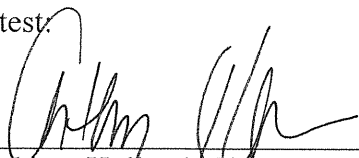
IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement on the dates indicated below.

**CITY OF JOHNSON CITY, TEXAS**

303 E. Pecan Drive  
Johnson City, Texas 78636

  
\_\_\_\_\_  
Rhonda Stell, Mayor

11/8/2019  
Date

Attest:  
  
\_\_\_\_\_  
Anthony Holland, City Secretary

11/8/2019  
Date

**KIMBERLY ASHBY  
MUNICIPAL COURT PROSECUTOR**

Address on file

  
\_\_\_\_\_  
Kimberly Ashby  
State Bar No. 24080775

11-14-19  
Date