

RESOLUTION NO. 012615-1

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ANDREA K. SWISHER CONCERNING THE CITY PROSECUTOR OF THE CITY OF ABILENE, KANSAS

WHEREAS, the City of Abilene desires to enter into a Professional Services Agreement with Andrea K. Swisher 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 1. Professional Services Agreement. That a Professional Services Agreement with Andrea K. Swisher is hereby adopted as attached hereto as **Exhibit A**.

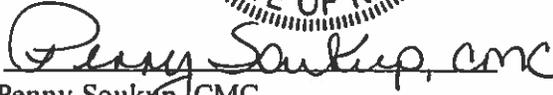
Section 2. Implementation. The Mayor is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

Section 3. 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 26th day of January, 2015.



ATTEST:


Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

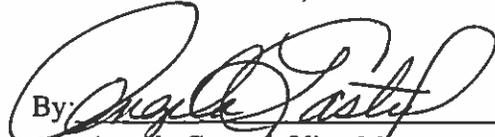
By: 
Angela Casteel, Vice-Mayor

EXHIBIT A

Professional Services Agreement

Andrea K. Swisher

and

City of Abilene, Kansas

January 26, 2015

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered on this 26th day of January, 2015, between Andrea K. Swisher ("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 is in need of a City Prosecutor to provide legal services related to the prosecution of violations of the City Code of the City of Abilene.
- B. Andrea K. Swisher 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. Andrea K. Swisher, is hereby appointed to serve as City Prosecutor of the City of Abilene, Kansas. In the event that Mrs. Swisher is unable to temporarily fulfill the duties of City Prosecutor, City Attorney Mark Guilfoyle will temporarily serve as City Prosecutor until she is able to return to her duties. Mrs. Swisher agrees to contact Mark Guilfoyle and coordinate any such temporary absences.
2. Independent Contractor. The City 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 Prosecutor. No person employed by Prosecutor shall be deemed an employee of City.
3. Term. The term of this Agreement shall begin on February 1, 2015 and shall continue through February 1, 2016. This Agreement will automatically continue for another one year term unless otherwise terminated by either party. The parties agree to review the Agreement annually, but no later than December 1st, to determine if the contractual amount should be adjusted.
4. Contract Amount. The City agrees to pay Prosecutor the sum of Twenty-Five Thousand Dollars (\$25,000.00) to be paid in equal increments for legal services related to the prosecution of City violations as defined in this Agreement. The City shall provide payment to the City Prosecutor for services rendered by the 15th of the month following the provision of said legal services.
5. Supplies. The Prosecutor shall provide office, office equipment and supplies as well as office staff to perform the duties specified in this Agreement.

6. Municipal Court Operations. The Prosecutor shall work with the Municipal Court Judge to establish court hours and days mutually convenient to both parties. The Prosecutor agrees to establish office hours in Abilene to provide time to meet with defendants and attorneys. Prosecutor shall be responsible for completing journal entries, waivers of counsel, witness subpoenas and complaints for Failure to Appear or Comply. The Court Clerk, who is an employee of the City, shall be responsible for preparation of Bench Warrants, for providing Prosecutor with complete court reports following a “not guilty” plea at first appearance, for obtaining certified drivers records and for service of complaints and/or subpoenas.
7. Conflict of Interest. In the event that a conflict of interest is identified that would prevent the City Prosecutor or Assistant Prosecutor from fulfilling the duties of City Prosecutor, the Prosecutor will notify the City Attorney to arrange temporary assignment of responsibility to the City Attorney.
8. Public Funds. The Prosecutor may not obligate City for any monies or purchases, provided that City may agree to reimburse Contractor for forms and software to produce court forms with prior approval by the City Manager.
9. 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, and Police Chief on any proposed changes to the policies and procedures prior to implementation by the Prosecutor.
10. 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 City Prosecutor is performing. The City Manager agrees to conduct an annual evaluation of the City Prosecutor, to be completed by December 1st.
11. 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.

**ADOPTED BY THE CITY COMMISSION OF THE CITY OF ABILENE, KANSAS ON THE
26th DAY OF JANUARY, 2015.**

CITY OF ABILENE, KANSAS

By: _____

Brenda Finn Bowers
Brenda Finn Bowers, Mayor

ATTEST:

Penny Soukup, CMC

Penny Soukup, CMC
City Clerk

CITY PROSECUTOR

By: _____

Andrea K. Swisher
Andrea K. Swisher