



MONROE CITY COUNCIL

Agenda Bill No. 20-018

SUBJECT:	Authorize Mayor to Sign the City of Monroe Prosecution Contract (Primary Provider)
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
01/21/2020	Police	Jeff Jolley	Jeff Jolley	New Business #1

Discussion: 01/21/2020
Attachments: 1. Request for Proposals (RFP)
 2. Draft contract for prosecution services

REQUESTED ACTION: Move to authorize the Mayor to sign the contract for prosecution services with Zachor and Thomas, Inc., in substantially the form presented; and expressly authorize further minor revisions as deemed necessary or appropriate.

POLICY CONSIDERATIONS

RCW 39.34.180 (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services..

DESCRIPTION/BACKGROUND

On October 8, 2019, the City issued a Request for Proposals (RFP) for Prosecution Services. The RFP was posted on the City’s website, City Hall, and sent to the Snohomish County Prosecutor’s Office (See attachment 1)

The deadline for submissions was November 1, 2019. Two proposals were received: 1) Zachor & Thomas, Inc., P.S. – *(the City’s current provider)*; and 2) John L. Rodabaugh II, Attorney at Law.

The City of Monroe utilized a panel to conduct interviews of the two proposal candidates. Panel members included: 1) Pam Haley, Monroe Municipal Court Administrator; 2) Ryan Irving, Deputy Chief, City of Monroe 3) Paul Ryan, Sergeant, City of Monroe

Interviews were held on November 21, 2019. After conducting interviews of the two proposal candidates, reviewing the interview notations, and general discussion, the Interview Panel recommended contracting for services with Zachor & Thomas, Inc., P.S. as the City of Monroe Prosecutor.

Highlights of the contract and services provided include:

- Accessibility: Multi-staff approach 24/7 to serving the prosecution needs of the City.
- Technology: The Prosecutor has purchased a system to electronically transfer case records. This will save administrative time for City staff and the Prosecutor’s office in managing the cases.
- Term: January 1, 2020, through December 31, 2022.
- Compensation: \$14,000 a month for Base Prosecution Services and \$300 per case for Forfeiture cases. Additional hourly rates for Specialty Services.

Working through the City Attorney's Office, the attached contract for prosecution services has been prepared, and vetted through the proposed contractor.

IMPACT – BUDGET

\$183,000 is accounted for in the 2020 Budget for prosecutor services. This provides for payment of a monthly rate of \$14,000 with additional funds for Specialty Services.

The previous year's budget was \$183,000 which provided for a monthly rate of \$15,000 per month plus additional funds for Specialty Services.

TIME CONSTRAINTS

The contract is for services beginning January 1, 2020 through December 31, 2022.

ALTERNATIVES TO REQUESTED ACTION

1. Do not approve the contract and provide direction to the Mayor and Staff regarding areas of concern, and to bring back an amended contract for consideration by the Council at a special meeting.
2. Do not approve the contract and provide direction to the Mayor and Staff to prepare a contract with John Brodabaugh for consideration by the Council at a special meeting.



CITY OF MONROE

REQUEST FOR PROPOSAL FOR PROSECUTING ATTORNEY SERVICES

Date: November 1, 2019
Time: 4:30 pm

I. PURPOSE OF REQUEST

The City is requesting written proposals from well-qualified law firms, attorneys and public agencies interested in serving as City Prosecutor on a contractual basis for the City of Monroe, Washington ("City").

II. TIME SCHEDULE

The City will follow a timetable, which should result in a selection of a firm by January 1, 2020. Proposals will be accepted until **4:30 p.m. on November 1, 2019**. Interviews of selected candidates will, if required, be scheduled in November 2019. The City anticipates entering into a three year contract for prosecution services upon completion of the request for proposal process with a possible one year extension at the option of the City.

III. SCOPE OF WORK

The Prosecutor will represent the City in the prosecution of all misdemeanor violations, civil and traffic infractions, criminal code enforcement and animal control matters of state law and the Monroe Municipal Code. The contracted services are intended to begin on January 1, 2020.

The City contracts with a law firm for the provision of civil legal services. The City has its own police department, with approximately 30 police officers. The City's municipal court is housed in the City of Monroe campus at 806 W Main Street, Monroe, WA 98272. Monroe Municipal Court sessions are held in a multi-purpose room which also serves as the City Council Chambers and various meetings.

IV. The Municipal Court

The Monroe Municipal Court began operating in 2015 providing court services to the City of Monroe. This request proposal is for prosecution services for this City only. The following are the total number of cases in 2018 as provided by Washington Courts:

Non-traffic related misdemeanors	451
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DUI / Physical control	71
Other traffic misdemeanors	112
Contested traffic hears with prosecutor	216

Current court sessions are every Wednesday which is a full day and includes pretrials, arraignments, compliance reviews, contested infractions with representation and in custody video calendar. The 1st and 3rd Tuesdays in the morning are reserved for motions, the 2nd and 4th Tuesday mornings are infraction hearings – non-represented. The 2nd and 4th Fridays are reserved for jury trials. At 3:15 pm on Fridays is reserved for an in custody calendar as needed.

V. SERVICES REQUESTED/QUALIFICATIONS

Required prosecution services include regular appearances at Monroe Municipal Court for all criminal case calendars, unless excused by the Court. Appearance is required in selected traffic infraction cases. Services also include:

- Review of cases for decision as to filing of criminal charges, with input from the Monroe Police Department;
- Providing discovery;
- Managing cases;
- Representing the City at arraignments, pretrial hearings, readiness hearings, motions, bench and jury trials, sentencing and review hearings, and certain contested hearings;
- Representing the City in appeals under the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ);
- Representing the City in forfeiture actions and at tow hearings;
- Representing the City in Extreme Risk Protection Orders;
- Preparing and presenting legal memoranda, subpoenas, jury instructions, and other related materials;
- Making appropriate sentencing recommendations to the Court;
- Advising the Monroe Police Department on the conduct of investigations, trial preparation, seizures, and related matters;
- Providing legal research, regular training, and assistance to the Monroe Police Department in criminal matters, including statutory interpretation, enforcement issues, and case decisions;
- Interviewing witnesses and victims of crimes;
- Advising victims regarding their rights and responsibilities;
- Assisting the City Attorney with legal and policy issues periodically;
- Creating and maintaining appropriate files; and
- Performing other related duties as required.

Minimum Qualifications:

Any attorney proposed to provide prosecution services shall be licensed in the State of Washington. Five or more years of legal experience is preferred for any attorney proposed as the lead prosecutor. Experience in the prosecution of criminal and infraction matters is highly desirable, including matters involving violations of municipal or county ordinances.

All Proposers must designate an attorney who will be accountable for contract performance. Proposers must identify one attorney as the City Prosecutor. This lawyer must appear at the Monroe Municipal Court on a regular and ongoing basis. The City Prosecutor must have prior work experience in criminal law. Prior experience as a prosecutor is strongly preferred. The contractor must provide continuity of representation while at the same time ensuring effective back-up coverage.

Any lawyer who may be called on as a back-up attorney must have current awareness of Monroe prosecution so that she or he is fully prepared to provide prosecution services in the event of an unanticipated absence. The contractor must ensure that availability of attorneys and support staff is consistent with efficient and skilled delivery of prosecution services, including coverage for regular vacations. The contractor needs to be able to involve a sufficient number of attorneys in the delivery of prosecution services as required for efficient case management.

The Prosecutor must be responsive to the Police Department, City Attorney, defense attorneys, and witnesses. For example, the City expects phone calls to the Prosecutor to be returned in a timely manner. The City anticipates that a caller would get a response from someone who is familiar with prosecution issues by the end of the next business day.

VI. PROSECUTION PHILOSOPHY

A key factor in the selection of the Prosecutor will be how well the proposer fits with certain overall City objectives. The City is committed to a philosophy of Community Oriented Policing with a focus on family issues and domestic violence. The City expects the Prosecutor to be a strong advocate in responding to domestic violence. The Prosecutor's filing decisions and agreed dispositions of cases need to be consistent with community concerns about patterns of domestic violence. The Prosecutor should also have regular and on-going contact with Police Officers to include communicating charging and filing standards, and updating officers of most recent case law and important changes in law.

VII. COMPENSATION/HOURS OF WORK

The City of Monroe and Prosecutor will enter into a professional services agreement that will provide for a compensation formula. Proposals are required to set forth the fees or fee structure (e.g. hourly, monthly retainer, per-case fee) to be charged for proposed services.

Total hours worked may vary based upon court activity, court procedures, and individual prosecutor service approach. The Prosecutor must be reasonably available for night and weekend (24 / 7) contact by police personnel.

VIII. REQUIREMENTS OF THE PROPOSAL

Please include the following in presenting your proposal:

- **Experience** – summarize experience relevant to prosecution services. Identify the attorney who would be the City Prosecutor, and the attorney designated for contact on administrative matters, if different. Include resumes of all attorneys who will provide prosecution services to include Washington Bar Numbers.
- **Method of Service Provision** – describe method of service delivery, philosophy and approach, and what makes you unique with respect to providing prosecution services.
- **Proposed Fee Structure** – Identify your proposal regarding compensation. Also, describe what expenses would be charged to the City. Identify whether you would charge for travel time or mileage to the Monroe Municipal Court.
- **Statement of Contract Compliance** – Discuss how your insurance meets the City's requirement to provide comprehensive general liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- **References** – Identify three references who can attest to your experience and capabilities as they relate to services requested. The references must include contact name, mailing address, email address and telephone number.

IX. PROPOSAL SUBMITTAL INSTRUCTIONS

A. All proposals should be sent to:

Debbie Willis, Administrative Director
City of Monroe
818 W Main Street

Monroe, WA 98272

- B. All proposals must be in a sealed envelope and clearly marked in the lower left-hand corner: "RFP – Prosecuting Attorney".
- C. **All proposals must be received by Friday, November 1, 2019 at 4:30 p.m.**, at which time they will be opened. Three copies of proposals must be presented. No faxed, e-mailed, or telephone proposals will be accepted.
- D. Proposals should be prepared simply and economically, providing a straight forward, concise description of the provider's capability to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc. are not desired. Emphasis should be on completeness and clarity of content. Use of both sides of paper sheets for any submittals to the City is desirable whenever practicable.

X. SELECTION PROCESS

- ◆ All proposals will be reviewed and screened with the top candidates invited to an interview. Appointment will occur after approval of the professional services contract by the City Council on December 10, 2019. This Request for Proposal is not an offer of employment. The City reserves the right to vary from the qualifications requested, to consider applicants who do not meet the qualifications and to reject all applicants. If you should have any questions regarding the position or the selection process, please contact Administrative Director Debbie Willis, 360-863-4579.

CONSULTANT AGREEMENT	
PROJECT TITLE AND IDENTIFICATION NUMBER 1	WORK DESCRIPTION 2 Prosecuting Attorney Services
CONSULTANT 3 Zachor & Thomas, Inc. P.S. 23607 Highway 99, Suite 1D Edmonds, WA 98026	CONSULTANT CONTACT NAME, AND TELEPHONE NO. 4 H. James Zachor, Jr. (425) 778-2429
FEDERAL I.D. NO. 5	BUDGET OR FUNDING SOURCE 6
PROJECT ADMINISTRATOR NAME, ADDRESS AND TELEPHONE NO. 7	MAXIMUM AMOUNT PAYABLE, IF ANY 8 \$
COMPLETION DATE 9 December 31, 2022	10 <input type="checkbox"/> Lump Sum <input type="checkbox"/> Cost Plus a Fixed Fee <input type="checkbox"/> Schedule Rate/Time and Materials <input type="checkbox"/> Time and Materials/Not to Exceed

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THIS AGREEMENT is entered into on _____, 2019 between the City of Monroe, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. Retention of Consultant - Scope of Work. The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.

2. Completion of Work. The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

3. Payment. The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 45

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days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. Changes in Work. The CONSULTANT shall promptly make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY; this work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. Extra Work.

A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

C. Failure to agree to any adjustment shall be a dispute as provided in Section 18. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

6. Ownership of Work Product. Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT. Electronic versions of all work products shall be provided to the CITY in a format compatible with CITY software, except to the extent expressly waived in the attached exhibits.

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7. Independent Contractor. The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

8. Indemnity. The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, employees and volunteers from and against any and all claims, injuries, losses, suits, costs or liability, including attorneys' fees (collectively, "Claims"), specifically including without limitation Claims resulting from injuries, sickness or death of employees of the CONSULTANT and/or damage to property, arising out of or otherwise resulting from the acts, errors, or omissions of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that: The CONSULTANT's obligation to indemnify, defend and hold harmless shall not extend to Claims caused by or resulting from the sole willful misconduct or 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 CONSULTANT and the CITY, its officers, officials, employees, and volunteers, the CONSULTANT's liability, including the duty and cost to defend, hereunder shall be only to the extent of the CONSULTANT's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the CONSULTANT'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 CITY's acceptance or approval of any services or work product under this agreement shall not be deemed to reduce, abridge, limit or otherwise alter the CONSULTANT's obligations as set forth in this section, unless such intent is expressly stated in writing by the CITY.

The provisions of this section shall survive the expiration or termination of this agreement.

9. Insurance. The CONSULTANT 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 CONSULTANT, its agents, representatives, or employees.

A. Minimum Scope of Insurance

CONSULTANT shall obtain insurance of the types described below:

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1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The CITY shall be named as an additional insured under the CONSULTANT's Commercial General Liability insurance policy with respect to the work performed for the CITY using an additional insured endorsement at least as broad as ISO CG 20 26.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability Professional liability insurance appropriate to the CONSULTANT's profession.

B. Minimum Amounts of Insurance

CONSULTANT shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

The amounts listed above are the minimum deemed necessary by the CITY to protect the CITY'S interests in this matter. The CITY has made no recommendation to the CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

C. Other Insurance Provisions.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement and prior to the performance of any work specified hereunder. The certificates of insurance shall cover the work specified in or performed under this agreement. The certificate and endorsement must be project and/or site specific.

D. Cancellation.

The CONSULTANT shall provide the CITY with written notice of any policy cancellation within two business days of its receipt of such notice. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

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The CONSULTANT's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the CONSULTANT's insurance and shall not contribute with it.

E. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

F. No Limitation.

The CONSULTANT's maintenance of insurance as required by this agreement shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or equity.

G. Failure to Maintain Insurance.

Failure on the part of the CONSULTANT to maintain the insurance as required shall constitute a material breach of contract, upon which the CITY may, after giving five business days notice to the CONSULTANT to correct the breach, immediately terminate this agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the CITY on demand, or at the sole discretion of the CITY, offset against funds due the CONSULTANT from the CITY.

H. City Full Availability of Consultant Limits.

If the CONSULTANT maintains higher insurance limits than the minimums shown above, the CITY shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the CONSULTANT, irrespective of whether such limits maintained by the CONSULTANT are greater than those required by this agreement or whether any certificate of insurance furnished to the CITY evidences limits of liability lower than those maintained by the CONSULTANT.

10. Records Retention and Disclosure. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose. The CONSULTANT shall also provide a complete electronic copy of all reports, plans, and specifications upon completion of the work or upon request of the CITY.

Separate from and additional to the foregoing, the CONSULTANT shall fully cooperate with and

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assist the CITY with respect to any request for public records received by the CITY and related to any public records generated, produced, created and/or possessed by the CONSULTANT and related to the services performed under this agreement. Upon written demand by the CITY, the CONSULTANT shall furnish the CITY with full and complete copies of any such records within five business days.

The CONSULTANT's failure to timely provide such records upon demand shall be deemed a material breach of this agreement. To the extent that the CITY incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, the CONSULTANT shall fully indemnify and hold harmless the CITY as set forth in Section 8.

For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.17 RCW and Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

The provisions of this section shall survive the expiration or termination of this agreement.

11. Notices. All notices required to be given by either party to the other under this agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

12. Project Administrator. The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it generally meets the requirements of this agreement, and for reviewing, monitoring and approving the general quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator. Provided, that nothing in this section shall be construed as altering the CONSULTANT'S duty of care or otherwise limiting, abridging, waiving or reducing the CONSULTANT'S obligations under this agreement.

13. Conflict Amongst Main Agreement and Attachments. In case of conflict between the Exhibits to this agreement and the portions of this agreement preceding the signature lines (Sections 1-23), the terms of Sections 1-23 shall prevail. Any limitations on liability and indemnification expressed in the attached exhibits beyond those specified in Sections 8 and 9 (prior to signature line) shall be null and void.

14. Termination. The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified in Box 3 on page 1. In the event that this agreement is terminated by the CITY other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services satisfactorily performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the

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CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. Non-Discrimination. The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. Subcontracting or Assignment. The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any subconsultants approved by the CITY at the outset of this agreement are named on Exhibit D attached hereto and incorporated herein by this reference as if set forth in full.

17. Non-Waiver. Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

18. Resolution of Disputes; Governing Law and Venue. This agreement shall be governed by and construed in accordance with the laws of the State of Washington. If any dispute arises out of or in connection with this agreement, including any question regarding its existence, enforceability, interpretation, or validity, the parties will, if practicable, meet and confer in good faith for a period of fourteen (14) days to attempt to resolve such dispute without an adversary proceeding. If at the end of the fourteen (14) day period such attempt at resolution is unsuccessful, the parties may resort to litigation. The exclusive venue for any litigation arising out this agreement shall be the Snohomish County Superior Court. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees.

19. Taxes. The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

20. Code of Ethics. The CONSULTANT and all subconsultants/subcontractors shall also comply with the Monroe Code of Ethics (Exhibit E), Chapter 2.52 MMC. Any violation of Chapter 2.52 MMC by the CONSULTANT or any of its subconsultants/subcontractors shall be considered a material breach of this Agreement.

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21. Entire Agreement. This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

22. Legal Compliance. In the performance of work under this agreement, the CONSULTANT shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to the CONSULTANT's business, equipment, and personnel engaged in operations covered by this agreement or accruing out of the performance of such operations.

23. Risk of Loss. The CONSULTANT shall be solely responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at the CONSULTANT's own risk, and the CONSULTANT shall be solely responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CONSULTANT:

CITY OF MONROE:

Geoffrey Thomas, City Mayor

By: _____

Title: _____

ATTEST/AUTHENTICATED:

Elizabeth M. Adkisson, MMC, City Clerk

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EXHIBIT A

SCOPE OF WORK

The Prosecutor (CONSULTANT) shall, in a capable and efficient manner and in accordance with the professional and ethical standards required of members of the Washington State Bar Association, represent the City as Prosecuting Attorney in the enforcement of its ordinances and prosecution of criminal and criminal traffic matters (gross misdemeanors and misdemeanors). The duties of the Prosecutor shall include but are not limited to the following services:

- 1.1 Review police incident reports for charging where prosecutor review is necessary
- 1.2 Maintain all current cases in an appropriate filing system;
- 1.3 Review and remain familiar with filed criminal misdemeanor and gross misdemeanor cases;
- 1.4 Interview witnesses as necessary in preparation of prosecution of cases;
- 1.5 Respond to discovery requests, make sentence recommendations and prepare legal memoranda, when necessary;
- 1.6 Prepare cases for trial, including the issuance of witness subpoenas (for service by the Police Department, when applicable), conduct evidence retrieval (with assistance of the Police Department and other City agencies), and prepare jury instructions, as necessary;
- 1.7 To assist the City Attorney, when applicable, in response to Public Disclosure requests;
- 1.8 Represent the City at arraignments, pretrial hearings, motion hearings, review hearings as requested by the judge, and bench and jury trials; as scheduled.
- 1.9 Prosecute contested code and traffic and non-traffic infraction violations as scheduled on the regular criminal calendar;
- 1.10 Represent the City in the prosecution of drug, felony and firearm forfeitures that are filed by the City with the Hearing Examiner. Forfeitures removed to other courts shall be billed at the hourly rate set forth hereafter;
- 1.11 Conduct legal update training for officers from time to time and at a mutually agreeable time and place to include quarterly Police Department training.
- 1.12 With the assistance of the Police Department, to review and make recommendations for update of the bail book, as needed. Printing and distribution shall be the responsibility of the City;
- 1.13 Be available to the Police Department for questions at all times, by providing appropriate telephone numbers; cell phone numbers, email addresses, and voice mail access. Calls are to be returned by the next business day.
- 1.14 Make recommendations to the Police Chief or City attorney concerning suggested amendments, modifications or additions to City ordinances

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- effecting the satisfactory prosecution of criminal matters.
- 1.15 Provide periodic feedback to the Police Command staff regarding the performance of City police officers in the discharge of their duties and other matters of mutual concern.

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EXHIBIT B

COMPLETION SCHEDULE

The Prosecutor (CONSULTANT) shall perform all services under this agreement in a timely and efficient manner, in accordance with the timing requirements imposed by all applicable statutes, court rules, case schedule orders and other applicable standards.

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EXHIBIT C

FEE SCHEDULE

The Prosecutor (CONSULTANT) shall be compensated for services rendered under this agreement as follows:

2.1 Base Rate—General Prosecution Services. The Prosecutor shall receive a monthly retainer of FOURTEEN THOUSAND (\$14,000.00) per month for performance of those duties set forth in Exhibit A except as specifically provided below. Forfeiture cases (drug, felony and firearms) shall be paid at the rate of \$300.00 per case if such has not been removed from hearing before the Chief Law Enforcement Officer or his designee.

2.2 Hourly Rate for Specialty Services. The following rates shall apply for the Specialty Services identified below:

2.2.1 RALJ appeals filed at Superior Court (\$250.00 per hour);

2.2.2 Appeals filed at the Court of Appeals (\$300.00 per hour);

2.2.3 Appeals filed at the Supreme Court \$300.00 per hour);

2.2.4 Extreme Risk protection order cases (\$150 per hour);

2.2.5 Cases filed at the District Courts that are not criminal gross misdemeanors or misdemeanors (examples include forfeiture cases removed to District Court) (\$250.00 per hour):

2.2.6 Such other activities or appearances, not accounted for above (such as review and re-write of city criminal/traffic/animal/parking codes), which are agreed to by the Prosecutor and the City (fee to be negotiated).

2.3 Expenses and Costs.

2.3.1 The City shall reimburse the Prosecutor for any reasonable out-of-pocket expenses that may be required, in excess of the standard scope of services (appellate filing fees, etc.) in the performance of its duties as Prosecuting Attorney.

2.3.2 Expenses of witnesses, expert witnesses, transcripts and transcriptions services, and interpreters, as may be required from time to time, shall be the sole responsibility of the City.

2.4 Annual Increase; Renegotiation.

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2.4.1 The rates set forth above shall be increased annually by three percent (3%) effective January 1st of each year during the term of this agreement.

2.4.2 In the event of a 10 percent increase in filings as measured from the number of 2020 filings, the Prosecutor may request that renegotiation of the rates set forth above. The City shall consider in good faith any such request.

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EXHIBIT D

SUBCONSULTANT LIST/SUBSTITUTE PROSECUTORS

Should the Prosecutor be absent, conflicted from, or otherwise unavailable to perform the services identified under this agreement, it shall be the responsibility of the Prosecutor to provide substitute coverage with a properly licensed State of Washington attorney, who has been previously approved by the City through its Police Chief. In the event of a dispute regarding approval of any individual, the City Council shall be final arbiter.

If a "Conflict Prosecutor" is required, such "Conflict Prosecutor" shall be approved by the City through its Police Chief. In the event a dispute regarding approval of any individual, the City Council shall be final arbiter. The Prosecutor is responsible for any and all compensation of and/or costs associated with retaining the "Conflict Prosecutor". However, if the conflict necessitating the "Conflict Prosecutor" is due to a conflict with the City, the expense of retaining a "Conflict Prosecutor" shall be the responsibility of the City.

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EXHIBIT E

MONROE CODE OF ETHICS

- [2.52.010](#) Purpose – Construction.
- [2.52.020](#) Definitions.
- [2.52.030](#) Award of contracts prohibited.
- [2.52.040](#) Board of ethics – Public officials.
- [2.52.050](#) Miscellaneous provisions.
- [2.52.060](#) Appeal – Penalties for violation.

2.52.010 Purpose – Construction.

The city of Monroe hereby adopts the code of ethics for municipal officers codified at Chapter [42.23](#) RCW, inclusive of any future amendments thereof. It is the city’s specific intent that the ethical standards set forth at Chapter [42.23](#) RCW shall govern the conduct of municipal officers within the city of Monroe. Except as expressly provided in this chapter, the city disclaims any intent to impose substantive standards of conduct that are more stringent than or otherwise different from those set forth in Chapter [42.23](#) RCW with respect to the subject matter of said chapter. (Ord. 019/2013 § 1 (Exh. A); Ord. 003/2010 § 1 (Exh. A))

2.52.020 Definitions.

The following words and phrases as used in this chapter shall, unless the context clearly indicates otherwise, have the following meanings:

- A. “Advisory opinion” means an opinion rendered by the board of ethics, based upon hypothetical circumstances, indicating how the board would rule on a matter having the same or sufficiently parallel facts, should an adversary proceeding develop.
- B. “Hypothetical circumstances” means circumstances of fact framed in such a manner as to call for an opinion from the board based on a series of assumptions and not based on the known or alleged past or current conduct of a specific public official or employee that could be the basis of a complaint under MMC [2.52.040](#).
- C. “Prima facie showing” means evidence which, standing alone and unexplained, would maintain the proposition and claimed violation of this chapter set forth in the complaint. (Ord. 019/2013 § 1 (Exh. A); Ord. 003/2010 § 1 (Exh. A))

2.52.030 Award of contracts prohibited.

Members of the city of Monroe, Washington, boards, commissions, and city staff are prohibited from being awarded contracts with the city. Exceptions to this rule are those covered by the CBA, RCW and WAC. This section was submitted to the Monroe city council as an initiative with enough required signatures to be submitted to the voters. The city council adopted the initiative as an ordinance as an alternative to placing on the ballot. Consequently, to the extent required by law, this subsection shall be construed as superseding any conflicting city requirements or requirements that otherwise operate to illegally amend the requirements of an initiative. (Ord. 019/2013 § 1 (Exh. A); Ord. 003/2010 § 1 (Exh. A))

2.52.040 Board of ethics – Public officials.

There is hereby created a board of ethics for city of Monroe public officials. The purpose of this board is to issue advisory opinions on the provisions of this code of ethics and to review and report to the city council on any alleged violations of the code of ethics, all as set forth below. The board shall also provide recommendations on amendments to the ethics ordinance, as directed by the city council:

- A. Composition. The board of ethics shall be composed of five members. None of these may be a public official, city employee or immediate family of either. The mayor shall appoint the board members, with the

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confirmation of the city council. The board of ethics must be citizens of the United States and residents of the city they serve for at least one year before their appointment to the ethics board.

The regular term of office for members of the board of ethics shall be three years. Each member shall hold office until a successor is appointed and confirmed. Regular terms shall commence January 1st and end December 31st. Initial terms shall be staggered with two members appointed for terms beginning upon their appointment in 2004 and ending December 31, 2004; two members appointed for terms beginning upon their appointment and ending December 31, 2005; and one member appointed for a term beginning upon his or her appointment and ending December 31, 2006. After expiration of the initial terms, subsequent appointees shall serve a regular three-year term.

The board shall elect from its membership a presiding officer who shall be referred to as a chairman, chairwoman, or chairperson, as may be appropriate, who shall serve for a period of one year, unless reelected. A majority of the board of ethics shall constitute a quorum. The board shall meet as frequently as it deems necessary, or at the request of the mayor or a quorum of the city council. The board shall adopt procedures governing the conduct of its meetings, hearings and the issuance of opinions.

B. Specific Complaint Against a Public Official.

1. Any person may submit a written complaint to the mayor or city administrator alleging one or more violations of this ethics code by a public official. The allegation shall set forth specific facts with precision and detail, sufficient for a determination of sufficiency by the board. The complaint shall also set forth the specific sections and subsections of this code that the facts violate, and the reasons why. Complaints should be signed by the person or persons submitting them and include the submitter's correct name, address at which mail may be personally delivered to the submitter, and the telephone number at which the submitter may be contacted.
2. The mayor or his/her designee shall inform the public official and the council of the complaint and shall submit the complaint to the board for determination of sufficiency of the complaint within twenty-four hours of its receipt. Voice mail, email or similar notification of the defendant is acceptable if actual notice is not immediately practicable. A copy of the complaint shall also be sent to the defendant by registered mail within three days of receipt. A complaint cannot be sufficient unless it precisely alleges and describes unjustified acts which constitute a prima facie showing of a violation of a specified provision or provisions of this code. The purpose of requiring that the complaint be sufficient is to ensure that the complaint is supported by identifiable facts, and to ensure that the complaint is not based on frivolous charges.
3. The complainant shall have the responsibility for proving the allegations in the complaint by a preponderance of the evidence.
4. Complaints shall be subject to a two-year statute of limitation. The limitations period shall commence from the date that information on completion of the alleged misconduct was reasonably available to the public.
5. Complaints may be amended as authorized by the decision-maker as justice requires; provided, that the time frames of the review process provide the defendant with a fair opportunity to respond.
6. All public officials and employees, excluding the alleged violator, shall observe strict confidentiality as to the complaint and alleged violator until the review is complete, to the extent that the information is acquired as a result of a person's status as a public official or employee. Confidentiality after completion shall be maintained unless the complaint or finding is released through a public disclosure request filed with the city attorney. City officials and employees may divulge information to the extent necessary to defend against inaccurate or misleading public information about their involvement in the complaint review process. The ethics board and/or city council may divulge information to the extent necessary to correct any inaccurate or misleading public information about the complaint review process. Any person who violates this subsection shall not be subject to criminal penalties; however, a violation of this subsection may result in disciplinary action against such person. The city council may remove a member of the board of ethics from the board if it determines that the member has violated this subsection.

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7. The board shall hold a hearing for the purpose of determining sufficiency of written complaints. The board shall begin the hearing no later than twenty days after the complaint is received and shall conclude the hearing(s) no later than twenty-four days after it receives the complaint; provided, however, that the running of these time periods shall be tolled and the complaint proceedings shall be stayed in the event the board makes application to the city council for continuance of the proceedings. Such continuances may only be granted by the city council when there is demonstrable and compelling reason(s) to do so, and may not exceed ten days. The board shall render a written report, setting forth its findings of sufficiency as to whether or not the individual against whom the complaint was filed may have violated the code of ethics.

8. The determination of sufficiency or insufficiency by the board is final and binding, and no administrative or other legal appeal is available. If the finding is one of sufficiency of the complaint, then the complaint shall be heard and reported as set forth below.

9. No report may be issued by the board, unless a person or entity complained against has had an opportunity to present information on his, her or its behalf at a hearing before the board.

10. A copy of the written report on sufficiency shall be delivered to the city council, person complained against, and the complaining party within ten days of conclusion of the hearing, unless a longer time period has been requested by the person complained against, and has been approved by the board or unless a longer time period has been requested by the board and has been approved by the city council.

11. In the event the written report provides that the board has found sufficiency in the allegations against whom the complaint has been filed, the matter shall be referred for hearing to the city's hearings examiner unless the defendant requests the matter be heard by the ethics board. (Hearings examiners will be rotated from a rotational roster maintained by the city and shall be licensed and practicing attorneys who are not residents of the city.)

a. Hearings by a hearings examiner or the ethics board must be held within twenty days of a finding of sufficiency unless an extension is requested, or granted, by the defendant. The hearing must be concluded within ten days of commencement of the hearing unless extended by the request or agreement of the defendant.

b. Findings of fact and conclusions and opinion of the hearings examiner or the ethics board must be received by the council no later than seven days after the conclusion of the hearing.

c. The complainant or defendant may request a subpoena for documentary evidence or the attendance of witnesses by making a written application to the mayor describing in detail the subject matter of the proposed subpoena and an explanation of why such information is reasonably necessary in order to conduct the hearing. The subpoena may be issued in the event the mayor determines the subpoena request is reasonable, relevant to the complaint and within the subpoena power of the city. The request for a subpoena shall be submitted to the mayor within two business days after the determination of sufficiency and the mayor shall have two business days to issue a decision. In the event the mayor denies the request or the complaint alleges a violation of the ethics code by the mayor, the defendant or complainant may request a decision from the city council. City council review shall be scheduled for the next regular city council business meeting or study session, unless an earlier special meeting is available. The commencement of the hearing on the merits shall be delayed until five days after the council makes a decision on whether to issue a subpoena.

12. In the event the final determination by either the hearings examiner or the ethics board provides that the individual against whom the complaint has been filed has violated the code of ethics, the council shall convene and render its decision within seven days of the receipt of said determination unless an extension is requested by the defendant and granted by council. In the event that the city council members agree by majority vote that one or more of the violations occurred, then as to the violations the city council may take any of the following actions by a

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majority vote of the council; provided, that penalties may only be based upon violations alleged in the complaint or amended complaint and not upon other violations discovered during the complaint process:

- a. Admonition. An admonition shall be a verbal nonpublic statement made by the mayor to the individual.
- b. Reprimand. A reprimand shall be administered to the individual by letter. The letter shall be approved by the city council and shall be signed by the mayor. If the individual objects to the content of such letter, he or she may file a request for review of the letter of reprimand with the city council. The city council shall review the letter of reprimand in light of the report and the request for review, and may take whatever action appears appropriate under the circumstances. The action of the city council shall be final and not subject to further review.
- c. Censure. A censure shall be a written statement administered personally to the individual. The individual shall appear at a time and place directed by the city council to receive the censure. Notice shall be given at least twenty days before the scheduled appearance at which time a copy of the proposed censure shall be provided to the individual. Within five days of receipt of the notice, the individual may file a request for review of the content of the proposed censure with the city council. Such a request will stay the administration of the censure. The city council shall review the proposed censure in light of the report and the request for review, and may take whatever action appears appropriate under the circumstances. The action of the city council shall be final and not subject to further review. If no such request is received, the censure shall be administered at the time and place set. It shall be given publicly, and the individual shall not make any statement in support of or in opposition thereto or in mitigation thereof. A censure shall be deemed administered at the time it is scheduled whether or not the individual appears as required.
- d. Removal. In the event the individual against whom the complaint has been filed is a member of a city board, commission, committee, or other multi-member bodies appointed by the mayor with the approval of the city council, the city council may, by a majority vote, remove the individual from such board, commission or committee; provided, however, that nothing in this section authorizes the city council to remove a council member or the mayor from his or her office.

13. Proceedings by the board or the hearings examiner when they relate to action involving a person shall be made in executive session; however, upon request of the person involved, the proceeding shall be open to the public. The complaint, the determination of sufficiency or no sufficiency, and written report of the board or the hearings examiner shall be considered public records.

14. Action by the city council shall be by majority vote. If the proceeding involves a member of the city council, the member does not vote on any matter involving the member. As provided in RCW [35A.12.100](#), the mayor shall vote in the case of a tie, except if the action is against the mayor. Deliberation by the council may be in executive session; however, upon request of the person complained against, the meeting shall be open to the public.

15. A complaint cannot be sufficient unless it precisely alleges and describes unjustified acts, which constitute a prima facie showing of a violation of a specified provision or provisions of this code.

C. Specific Complaint Against a City Employee Official. In the event the individual against whom the complaint has been filed is a city employee, the city shall follow the appropriate discipline, through the employee's supervisor and/or department head, procedures as outlined in the appropriate bargaining agreement, employee handbook, civil service rules, and/or standard operating procedures. Employees also have the right to appeal through the court system as regulated by state and federal law.

D. Board Unavailability – Hearing Examiner Authority. In the event the ethics board is unable to perform any function designated under this section due to lack of a quorum or other reason, such function shall instead be

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performed by the hearing examiner who shall be governed by the board's procedures. (Ord. 019/2013 § 1 (Exh. A); Ord. 003/2010 § 1 (Exh. A). Formerly 2.52.080)

2.52.050 Miscellaneous provisions.

The board of ethics shall also render written opinions concerning the applicability of the code of ethics to hypothetical circumstances or situations upon the request of the mayor or any council member. Requests for opinions from the public must be approved by either the mayor or a majority vote of council.

The city shall release copies of any written report resulting from a review of a complaint and any written censures or reprimands issued by the city council in response to public records requests as consistent with Chapter [42.56](#) RCW and any other applicable public disclosure laws.

The mayor shall provide staff, as he or she deems appropriate, to assist the board of ethics. Board members shall be reimbursed by the city for reasonable expenses incurred in their exercise of the official business of the board, consistent with the expense reimbursement policies of the city.

The city clerk shall cause a copy of this code of ethics to be distributed to every public officer of the city within thirty days after enactment of the ordinance codified in this chapter. The ordinance codified in this chapter will also be made available on the city's web page and hard copies will be made available upon request. (Ord. 019/2013 § 1 (Exh. A); Ord. 003/2010 § 1 (Exh. A). Formerly 2.52.090)

2.52.060 Appeal – Penalties for violation.

Appeal of a decision of the board of ethics that the code of ethics has been violated, or a decision of the city council as to an admonition, reprimand, censure, or removal, may be filed with the Snohomish County superior court, Washington State. Any person who files with the ethics board a false charge of misconduct on the part of any public official or public employee when the person knows it is false shall be guilty of a misdemeanor. In addition to criminal penalties, violators shall pay a civil penalty of five hundred dollars, or three times the economic value of anything received in violation of this chapter, whichever is greater. Any monetary penalty assessed civilly shall be placed in the city's general fund. (Ord. 019/2013 § 1 (Exh. A); Ord. 003/2010 § 1 (Exh. A). Formerly 2.52.100)

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